

ALASKA LEGISLATURE COMMITTEE FILES 1991-1990 0014

9608 SENATE LABOR & COMMERCE

- a. For candidates whose native language (native language means the common language of an individual's country of birth) is English, proof of at least three years full-time attendance at an English high school or
- b. Satisfactory completion of the Test of English as a Foreign Language (TOEFL), the Test of Spoken English (TSE*), and the Test of Written English (TWE), all administered by the Educational Testing Service (ETS**) of Princeton, New Jersey, must be shown.

(* Candidate should register for TSE-P)

(** ETS has assigned institution code 1212 to the ECFVG program.

This code should be used when reporting your passing TOEFL, TSE, and TWE scores to ECFVG).

In the interest of fairness and uniformity, graduates of colleges in all foreign countries are required to meet this requirement. The tests are given at many times and locations throughout the United States and the world. The TOEFL, TSE and TWE information is available from ETS, and contains time and place schedules for the examination as well as cost information.

3. The third step is successful completion of the National Board Examination in Veterinary Medicine (NBE) and the Clinical Competency Test (CCT). The Professional Examination Service in New York distributes and scores the NBE and CCT for the state veterinary licensing agencies. The passing score used by the ECFVG is the criterion-referenced passing score, which is also used by most, if not all state and provincial veterinary licensing boards.
4. The final step in the ECFVG certification procedure requires that a candidate must (a) pass a clinical proficiency examination approved by ECFVG, or (b) satisfactorily complete a year or evaluated clinical experience at an AVMA-accredited or -approved college of veterinary medicine.

ECFVG candidates who complete the year of evaluated clinical experience at an AVMA-accredited or -approved college of veterinary medicine out of sequence are considered for certification on a case-by-case basis by ECFVG (form ECFVG-7). The Commission meets periodically and reviews petitions for consideration of out-of-sequence evaluated clinical experience acquired at an AVMA-accredited or -approved college of veterinary medicine, or other out-of-the-ordinary requests that cannot be handled routinely by AVMA staff.

One-thousand three-hundred sixty-four (1,364) candidates have received ECFVG certificates since the present program began in 1973. Over 3,000 candidates have registered in the program since its inception. The design of the program is intended to eliminate unqualified candidates along the way, so dropouts are to be expected. Candidates must renew their ECFVG applications if they have not completed the certification process within two years after enrolling in the program. The biennial renewal fee is \$27.50

The ECFVG program is constantly being revised as methods are available to improve the program. The Commission periodically surveys state boards, state veterinary medical associations, and ECFVG certificate holders. Information from these surveys has been used to strengthen weak points of the program and to eliminate any portions of the program that are unnecessary. The Test of Spoken English, The Test of Written English, an appeal procedure that may be used by candidates or others affected adversely by ECFVG decisions, the granting of waivers of the English language examinations to persons whose native language is English, and the Clinical Proficiency Examination (CPE), for completion of the clinical experience portion of the program, all resulted from conclusions reached following the Commission's surveys.

**THE
NATIONAL BOARD EXAMINATION
FOR
VETERINARY MEDICAL LICENSING**

What are the objectives of the National Board Examination?

The primary objectives of the National Board Examination (NBE) are:

- To provide a comprehensive objective examination to state/provincial boards charged with the licensing of veterinarians.
- To protect the public by ensuring that veterinarians demonstrate a specified level of knowledge and skills before entering veterinary practice.
- To assess the professional competency of veterinarians in terms of their qualifications to enter practice.
- To provide a common standard in the evaluation of candidates that will be comparable from jurisdiction to jurisdiction.
- To contribute to the veterinary profession through the development of improved definitions of the relationship between knowledge and professional practice.
- To facilitate interstate/interprovincial licensing reciprocity for practicing veterinarians.

How is the National Board Examination constructed?

The NBE is a 400-item multiple choice examination developed under the direction of the National Board Examination Committee for Veterinary Medicine (NBEC). The NBEC and the Professional Examination Service (PES) work together to ensure that the NBE reflects current practice in the field of veterinary medicine. PES provides test development and test scoring services for the licensing of veterinarians.

Questions for the NBE are written exclusively by veterinarians who represent all aspects of the profession, including academicians, practitioners, members of the AVMA-affiliated specialty boards, and the national practice associations (e.g., American Animal Hospital Association). Each newly written question is reviewed and validated by at least three experts in the field of veterinary medicine for content relevance, importance, difficulty, and correctness. These questions are then reviewed and validated by PES's psychometricians and editors to ensure conformity to psychometric principles and to rules of grammar and style.

Questions that pass this rigorous review process are placed into PES's computerized item-banking system. The questions for potential use on the NBE are selected by the computer in accordance with the three-dimensional examination blueprint (subject-matter outline) developed by the NBEC. The NBE Review Panel and the NBEC Examination Preparation Subcommittee then review the computer-generated test, item by item, making changes and substitutions as necessary. Following these reviews, the finished examination is prepared by PES for the licensing boards, who are responsible for the administration of the test and reporting of scores to candidates.

What does the National Board Examination cover?

The NBE is divided into two test booklets. Since the May 1985 administration, the examination has

consisted of a total of 400 questions (200 questions in Part I, and 200 questions in Part II). The scoring of the NBE is based on candidate responses to 360 questions derived from the content outline (listed below). Forty (40) questions on each NBE are eliminated from scoring according to the criteria of being unclear, ambiguous, and/or potentially unfair, as determined by candidate answers and subsequent review. The scores achieved by candidates on these 40 items are *NOT entered into the total score* and therefore do *NOT affect a candidate's pass/did not pass status on the NBE*. These 40 items are then eliminated from the item pool. This procedure is performed to enhance the reliability and validity of the National Board Examination.

The two (2) parts of the NBE cover three veterinary practice roles and twenty-one (21) criterion statements obtained from a 5-year job analysis study recently completed by PES for the NBEC. The veterinary practice roles are the major areas of responsibility deemed essential for an entry-level veterinarian. The criterion statements are specific goal-directed actions undertaken by an entry-level veterinarian within a particular veterinary practice role. A complete list of the veterinary practice roles and criterion statements are presented in Appendix A (see page 9).

The veterinary practice roles covered in the NBE are broken down among the two examination booklets, each consisting of 200 questions, as follows:

Part I: Data Collection: Gathering, Recording, and Organizing Data (116 questions); and Problem Identification: Interpretation of Data (84 of 104 questions).

Part II: Problem Identification (20 of 104 questions); and Problem Management: Planning, Implementation, and Follow-Up (180 questions).

Each item in the NBE is cross-indexed by the organ system and the animal species that it addresses. The following organ systems and animal species are covered on the examination:

Organ Systems: Cardiovascular (24 questions), Endocrine (15 questions), Gastrointestinal (55 questions), Hemic and Lymphatic (15 questions), Integumentary (36 questions), Musculoskeletal (32 questions), Nervous (21 questions), Renal (13 questions), Reproduction (34 questions), Respiratory (52 questions), Special Senses (13 questions), and Multiple Organ System (60 questions). Thirty (30) NBE items are not allocated to a specific organ system; these items are selected by the computer and then approved by the examination committee.

Species: Small Animal (116 questions), including Canine (64 questions) and Feline (52 questions); Food Animal (84 questions), including Bovine (48 questions), Porcine (24 questions), Ovine/Caprine (8 questions), and Avian (4 questions); Equine (56 questions); Avian [Non-food] (10 questions); Other (10 questions), including aquatic life, laboratory animals, human, pocket pets, exotic and zoo animals, and wildlife. Non-species-specific questions total 124.

Each NBE is revised each year to ensure that the questions reflect current practice and important concepts in veterinary medicine.

Fifty sample questions of the type used on the NBE are included in Appendix B, beginning on page 11.

What are some of the important issues and diagnoses used to develop the NBE?

The following lists summarize most of the important issues and diagnoses covered by the National Board Examination.

BOVINE: Reproduction, Mastitis, Abortion, Ketosis, Rabies, Milk Fever, Displaced Abomasum, Scabies, Anaplasmosis, Leptospirosis, Clostridial Infections, Orthopedic Problems, Johne's Disease, Toxicosis, Cecal Torsion, Anthrax, Antibiotics in Feed, Nutrition, Leukemia, Internal and External Parasites, Respiratory Disease, Bovine Viral Diarrhea, Pink Eye, Squamous Cell Carcinoma, Polioencephalomalacia, Rumen Disease, Cardiovascular Disease, Neurologic Disease, Liver Disease, Infectious Disease, Cecal Disease, Renal Disease, Bacterial and Viral Gastroenteritis, and Calfhood Diseases.

CANINE: Canine Distemper, Gastric Dilatation-Torsion, Shock and Fluid Therapy, Heartworm Disease, Internal and External Parasites, Food Allergies, Pyometra, Alopecia, Bacterial Infections, Fungal Infections, Autoimmune Dermatoses, Parvovirus Infection, Malignant Lymphoma, Diabetes Mellitus, Seizure Disorders, Endocrine Diseases, AIHA, Atopy, Allergic Dermatitis, Rabies, Kidney Disease, Reproduction, Nutrition, Ophthalmic Conditions, Respiratory Disease, Heart Disease, Orthopedic Problems, Toxicosis, and Hepatic Disease.

EQUINE: Equine Infectious Anemia, Tetanus Vaccination, Orthopedic Problems, Internal and External Parasites, Azoturia, Restraint, Laceration Repair, Reproduction, Strangles, Abortion, Dentistry, Lameness, Purpura, Sarcoid, Aneurysm, Respiratory Disease, Ophthalmic Conditions, Influenza, Dermal Conditions, Diarrhea, Pediatrics, Nutrition, Colic, Toxicosis, Shock and Fluid Therapy, Foal Disease, Myopathies, Laminitis, Navicular Disease, Anesthesia/Sedation (Local and General), Neurological Disease, Liver Disease, Gastrointestinal Disease, Renal Disease, Endocrine Disease, and Neoplastic Disease.

PORCINE: *Haemophilus* sp. Infections, Transmissible Gastroenteritis, Colibacillosis, Mycoplasmal Pneumonia, Coccidiosis, Chronic Pneumonia, Swine Dysentery, Parvovirus Infection, Pseudorabies, Mange, Salmonellosis, Nutrition, Internal and External Parasites, Rhinitis, Erysipelas, Antibiotics in Feed, African Swine Fever, Reproduction, Abortion, Swine Herd Management, Rotavirus Infections, and Mastitis/Metritis/Agalactia Syndrome.

FELINE: Leukemia, Urinary Tract Disease, Panleukopenia, Respiratory Disease Complex, Feline Infectious Peritonitis, Heart Disease, Eosinophilic Skin Disease, Anemia, Gastrointestinal Disease, Diabetes Mellitus, Seizure Disorders, Internal and External Parasites, Hepatic Disease, Foreign Bodies, Toxoplasmosis, Endocrine Disease, Asthma, Kidney Disease, Ophthalmic Conditions, Nutrition, Shock and Fluid Therapy, Reproduction, Toxicosis, Bacterial Infections, and Heartworm Disease.

Note: The preceding lists are not exhaustive. Moreover, not every issue on these lists will be covered in any specific examination, and other issues which are not listed here may also be included on an examination. These lists are provided for *general information purposes only*.

How is the National Board Examination administered?

The NBE is administered in a single day. In the morning session, four (4) hours are allotted for Part I. An additional four (4) hours are allotted for Part II, which follows in the afternoon. Because the NBE is not designed to test speed of performance, these time allotments are more than sufficient to allow nearly all candidates to complete the test. Note that candidates will be allowed to complete testing and leave the test room no sooner than two (2) hours into each testing period. Exceptions to this procedure would be made for emergency situations (illness, power outages, etc.) and for candidates who wish to use the restrooms during the testing period.

What is the role of the state/provincial licensing board?

Candidates wishing to take the NBE must apply for the test through a state or provincial licensing board. In each jurisdiction, the board sets the eligibility requirements for the test, processes applications, and sets the fees for the examination. It is the responsibility of each candidate to obtain the necessary application materials from the board from which the license is being sought. Since the requirements, deadlines, and application fees vary among jurisdictions, candidates are advised to contact their chosen boards well in advance of the examination date. Most boards have a deadline for the receipt of applications one month or two months *prior to the examination date*. The addresses of the state and provincial licensing boards in the United States and Canada are contained in the current directory of the American Veterinary Medical Association, under Digests of Veterinary Practice Acts.

The NBEC and PES are committed to the principle of testing individuals in a manner that will yield valid and reliable examination results. In some instances, the examination administration procedures may need to be modified to provide reasonable accommodations for candidates with disabilities. Candidates with disabling conditions who wish alternative arrangements for examination administration should forward such requests to the licensing board in the state or province in which they will take the examination well in advance of the test date.

When is the National Board Examination administered?

The National Board Examination is administered on the second Tuesday of April and on the second Tuesday of December of each year. Candidates are reminded that the NBE is *not* administered in every state or province, *nor* is it administered twice a year in every jurisdiction. Therefore, candidates should contact the specific boards from which they intend to seek licensure to determine if those states or provinces will be administering or requiring the NBE.

Test dates for NBE administrations are as follows:

- 1995 - Tuesday, April 11 and Tuesday, December 12
- 1996 - Tuesday, April 9 and Tuesday, December 10
- 1997 - Tuesday, April 8 and Tuesday, December 9
- 1998 - Tuesday, April 14 and Tuesday, December 8
- 1999 - Tuesday, April 13 and Tuesday, December 14

Audit Report

DEPARTMENT OF COMMERCE
AND ECONOMIC DEVELOPMENT
BOARD OF VETERINARY EXAMINERS

December 1, 1996



Audit Control Number:

08-1445-97

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Anchorage or Juneau.

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January 22, 1997

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the following report is submitted for your review.

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF VETERINARY EXAMINERS

December 1, 1996

Audit Control Number

08-1445-97

This audit was conducted under the requirements of Alaska Statutes 44.66.050 and the authority of AS 24.20.271(1). In the report, we assess the operations and performance of the Board of Veterinary Examiners utilizing the criteria set out in AS 44.66.050(c). This statutory criteria is intended to be used to assess whether the activities of a given board, commission, council, agency, or program is effectively meeting a demonstrated public need. Currently, under AS 08.03.010 (c)(20) the board is scheduled for termination on June 30, 1997. The board would be allowed one year from this date in which to conclude its affairs, if not extended by legislative action. We recommend that the legislature extend the board until June 30, 2004.

The audit was conducted in accordance with generally accepted government auditing standards using the criteria set out in AS 44.66.050(c). Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.

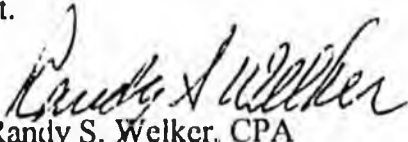

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Veterinary Examiners. As required by AS 44.66.050(a), the committee of reference shall consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 08.03.010(c)(20) states that the board will terminate on June 30, 1997, and will have one year from that date to conclude its affairs.

Objectives

The objectives of our review were:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public's interest. The assessment of the operations and performance of the board, was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the board.

Scope and Methodology

Our audit reviewed the operations and activities of the Board of Veterinary Examiners for the period of FY 94 through FY 96.

During the course of our examination, we reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Compliance with statutes and regulations related to the licensing of veterinarians and veterinary technicians. Our evaluation addressed considerations of license applications and testing of candidates.
3. Minutes of meetings of the Board of Veterinary Examiners.
4. Annual reports issued by the board.
5. Complaints filed with the Division of Occupational Licensing and the Department of Law.
6. Office of the Ombudsman closed case file.
6. Reading files maintained at the Division of Occupational Licensing.
7. Other documents deemed pertinent.

We also conducted interviews with

1. Employees of the Department of Commerce and Economic Development, Division of Occupational Licensing.
2. Members of the Board of Veterinary Examiners.
3. Members of related national professional organizations.

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ORGANIZATION AND FUNCTION

Alaska Statute 08.98.010 creates the Board of Veterinary Examiners. It is a regulatory board consisting of four licensed veterinarians and one public member. Members are appointed by the governor and approved by the legislature. Board members serve staggered four-year terms.

The board regulates the profession of veterinary care in the State by:

1. Examining applicants and approving the issuance of licenses to qualified applicants;
2. Establishing or amending rules and regulations necessary to enforce state statutes;
3. Conducting disciplinary proceedings in accordance with law.

<u>BOARD MEMBER</u>	<u>TERM EXPIRES(D)</u>
James Leach, III Veterinarian, Chair	January 31, 1996
Deanna J. Thornell Veterinarian	January 31, 1998
Connie J. Sanders Veterinarian	January 31, 1999
James L. Morris Veterinarian	January 16, 2000
William G. Lewis Public Member	January 31, 2000

Department of Commerce and Economic Development, Division of Occupational Licensing

The Department of Commerce and Economic Development, Division of Occupational Licensing provides administrative and investigative assistance to the Board of Veterinary Examiners. Administrative assistance includes budgetary services and functions such as collecting fees, maintaining files, receiving and issuing application forms, and publishing notices of examinations and meetings.

Alaska Statute 08.01.065, mandates the department, with the concurrence of the board, adopt regulations to establish the amount and manner of payment of fees for applications, examinations, licenses, registration, permits, investigations, and all other fees as appropriate for the occupations covered by the statute.

Alaska Statute 08.01.087 empowers the Division of Occupational Licensing with the authority to conduct an investigation on its own initiative or in response to a complaint.

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REPORT CONCLUSIONS

Alaska Statute 08.03.010(c)(20) requires that the Board of Veterinary Examiners be terminated on June 30, 1997. Alaska Statute 08.03.020 provides one year in which to conclude its affairs if the legislature does not enact legislation extending the existence of the board.

The Board of Veterinary Examiners has been found to serve a public purpose and has demonstrated its ability to conduct its business in a satisfactory manner. The board continues to propose changes to statutes and regulations to improve its effectiveness.

In our opinion, the Board of Veterinary Examiners is operating in an efficient and effective manner and should continue to regulate the profession of veterinary medicine. We believe the board is safeguarding the public interest by ensuring the competence and integrity of those who hold themselves out as licensed veterinarians or veterinary technicians. We recommend that the legislature extend the board's termination until June 30, 2004.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Office of the Governor should replace vacancies on the board in a more timely manner.

AS 08.01.035 states that members of occupational licensing boards are appointed for staggered terms of four years. A member of a board serves until a successor is appointed. Additionally, a member who has served all or part of two successive terms on a board may not be re-appointed to that board unless four years have elapsed since the person has last served on the board.

At the time of fieldwork, board membership included two veterinary board members whose second terms had expired. One member's second term expired on January 31, 1995, and the other's second term expired on January 31, 1996. A third member is relocating out of state and therefore has just submitted his resignation.

We believe the statutory intent of staggering the terms of board members is to allow for a smooth transition for new members and help promote the continuity of board operations. By not replacing board members in a timely manner the governor has established a situation where board members are serving longer than the statutory limits. Additionally, the turnover of four seats in one year puts undue burden on the remaining board member. We recommend the Office of the Governor take steps to appoint new members to the board as soon as possible in order to comply with statutory requirements.

Recommendation No. 2

The board should consider establishing in regulation a passing score on the examinations.

Current statutory language states that an applicant must have passed an examination prepared by the National Board of Veterinary Medical Examiners or an equivalent examination as determined by the board. Current regulations however, do not specify what constitutes a passing score.

Not all jurisdictions use the same criteria to determine a passing grade. In one situation, an applicant provided proof of passing the Clinical Competency Test (CCT) examination under the administering jurisdiction. Review of the grades however, reflected the examination score would not have been a passing grade in Alaska. Although the applicant satisfied all the requirements to obtain licensing, the board denied the application because "the applicant did not achieve a passing score on the CCT."

The precarious position created because regulations do not define a passing score resulted in an applicant challenging the board's decision to turn down the application because the statutes and regulations to obtain licensing were satisfied. By establishing a passing score in regulations, the board would not need to expend the resources to defend their position.

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AUDITOR'S COMMENTS

There is sentiment among current board members to seek legislation clarifying the statutes related to licensure by credential. Current statutes allow individuals to be licensed by credential (rather than by examination) if they have received a license in another jurisdiction and meet other conditions (see Exhibit below for text of full statute).

Licensure by credential involves reviewing the qualifications of an applicant who has been licensed in another jurisdiction. In reviewing such applications, the board compares the requirements that were in place for licensure in the other jurisdiction to those that were in place in Alaska at that time. The applicant's initial licensure requirements had to be "*substantially similar or higher*" to the State's requirements.

Beginning in 1981, the state board required applicants, seeking licensure by examination, to successfully complete the Clinical Competency Test (CCT). This is an examination which has been developed by the National Board Examination Committee for Veterinary Medicine. Adoption of the CCT for licensure by examination, has in turn, had an impact on how applicants for licensure by credentials have been evaluated.

In the past, if a credentialed applicant had been licensed elsewhere prior to 1981, but had not been required to pass the CCT, they could still be licensed in Alaska — since the examination requirement had not yet been adopted.

The board has come to place increasing emphasis on passage of the CCT when considering licensing an applicant by credential. That is, if an individual was licensed elsewhere, and had not been required to pass the CCT, the board denied licensure. This has been done even though at the time of the applicant's initial licensing, the State of Alaska did not require passage of the CCT. By applying this approach, the board is requiring applicants to meet current standards for credential licensure rather than the requirements that may have been in place at the time of licensure as provided for in statute.

CURRENT ALASKA STATUTES RELATED TO LICENSING BY CREDENTIAL

Under AS 08.98.184, an applicant for a veterinarian license may be licensed by what is termed "credentials." An individual may be licensed in such a manner if they hold a

... valid license to practice veterinary medicine in another state, territory, or country with licensing requirements substantially similar to or higher than those of this state which were in effect at the time the applicant obtained a license in the other jurisdiction if the applicant (emphasis added)

(1) has graduated from an accredited school of veterinary medicine or has successfully passed the examination of the American Veterinary Association Education Commission for Foreign Veterinary Graduates;

(2) has been engaged in the active practice of veterinary medicine for at least five of the seven years before filing the application;

(3) has not failed the state written or practical examination;

(4) has no disciplinary proceeding, unresolved complaints, or professional association review proceedings pending at the time a license is to be issued, and has not had a veterinary license revoked for cause in another jurisdiction; and

(5) has paid required fees.

The Board believes its increased reliance on the CCT is in the public's interest. In their view, the CCT provides objective, reliable evidence of the competency of the veterinary practitioner. They are concerned that by licensing veterinarians from other jurisdictions, who may have obtained their license without having to take the CCT, they may be exposing the public to incompetent or outdated veterinary practice.

At its recent meetings, the board has discussed the merits of pursuing legislative changes which would amend the credential licensure provisions. The board suggests that the statutes be changed to require that credential licensure applicants pass the CCT. This would make successful completion of the CCT a condition of licensure, regardless of Alaska's requirements at the time of the applicant's initial licensure.

Requiring credential applicants to meet current requirements would be unduly restrictive

If the licensing by credential statutes were amended to require applicants to meet current licensing requirements, most significantly the CCT examination requirement, entry into the veterinary profession in Alaska would be restricted. Such an action would sanction the board's current policy and approach which is serving to deny licensure to individuals who may not have been required to take the CCT at the time they were originally licensed in another jurisdiction.

Alternative, perhaps even more substantial, means can be used by the board to satisfy itself regarding the competency of an applicant, other than completion of the CCT. These measures are embodied in the various existing statutory provisions. They involve assessment of the applicant's practice history and the existence, or lack thereof, of disciplinary sanctions.

Under AS 08.98.184(4) an applicant is qualified to receive a license as a veterinarian who has no disciplinary proceeding, unresolved complaints, or professional association review proceedings pending at the time a license is to be issued, and has not had a veterinarian license revoked for cause in another jurisdiction. This provision allows the board to deny an applicant a license by credential if it has been determined the applicant has not maintained the standards of the profession while practicing in another jurisdiction. The board has access to a nationwide system that tracks disciplinary proceedings.

In addition, AS 08.98.184(2), requires credential applicants to have been engaged in active veterinarian practice for five of the last seven years. This requirement coupled with the absence of disciplinary action discussed previously, should provide some assurance that the individual has a history of professional, competent practice. Further, even though not a statutory factor in licensing, continuing education is required in 40 of the 56 licensing jurisdictions included in the American Association of State Veterinary Boards (AASVB). This provides additional assurance that most applicants from other jurisdictions have kept

apprised of current practice techniques and theory, regardless of what examination they may or may not have taken at the time they were initially licensed.

Additionally, any proposal along the lines suggested by recent board discussions would seem to run counter to model legislation currently under consideration by the AASVB. The model legislation, while recognizing the importance of the CCT (in addition to a second national examination — the National Board Examination, or NBE) contains language similar to our current statute.¹ That is, it permits reciprocity or credential licensing for individuals licensed in another jurisdiction who were not required to take either the CCT and/or the NBE, if they can demonstrate a history of professional, competent practice.

While we can appreciate the concerns of the board, we believe that there are other protections in place to assure that credential applicants are competent. If an applicant for licensure by credential can meet various other statutory requirements, we believe they would pose minimal risk to the public interest, and the benefits of allowing a more open access to the profession would outweigh any potential harm to the public.

¹Under the model legislation currently being reviewed by the American Association of State Veterinary Boards, an applicant could be licensed as follows:

person who:

(1) holds a current license in good standing in another state, U.S. territory or province of Canada, and

(2) has passed the National Board Examination (NBE) and the Clinical Competency Test (CCT) as prepared under the authority of the National Board Examination Committee for Veterinary Medicine (NBEC) (or its predecessor organization the National Board of Veterinary Medical Examiners), or any subsequent national licensing examination prepared under the authority of the NBEC or the American Association of Veterinary State Boards (AAVSB), or an equivalent examination(s) as established by this state's veterinary licensing body, unless at the time the applicant became licensed in the state, province, or U.S. territory from which he or she is applying, the NBE and/or CCT or subsequent examinations prepared under the authority of the NBEC was/were not required by this state (in which case the applicant need only have passed whatever national licensing examinations were required of the entry level licensees in this state at that time), and

(3) has actively practiced clinical veterinary medicine for 3,000 hours during the 3 years preceding application.

may be granted a license as a veterinarian in (the designated state) upon the satisfactory completion and acceptance of an application and payment of appropriate licensure fees, provided, however, prior to issuing such license the board may require satisfactory completion of an examination covering state laws and regulations related to the practice of veterinarian medicine and/or the state or national veterinary codes of ethics. [Emphasis added]

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ANALYSIS OF PUBLIC NEED

The extent to which the board, commission, or program has operated in the public interest.

The board continues to ensure the quality among those licensed to practice veterinary medicine and those registered as veterinary technicians. The board administers three national examinations. Additionally, the board administers and evaluates the results of a state administered examination. This examination tests the applicants knowledge of both veterinary medicine in the state of Alaska and jurisprudence. The state examination is produced from a database of questions developed and continually modified by the board.

State regulations require that an applicant for renewal of a veterinary license must certify having completed 15 hours per year of continuing education. The board continues to approve additional courses enabling a veterinarian many options to enhance his education. The board also audits the continuing education hours reported on the renewal application for a sample of the licensees.

The board distributes a handbook to all applicants for a veterinary license. The handbook assists veterinarians new to the State to become familiar with disease problems that exist in Alaska. It also provides information on state laws and regulations pertaining to domestic animals and it provides a list of resource agencies and contact persons.

The board will be required to approve renewals of veterinary technicians. The renewal process will also include verification of continuing education requirements.

The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The board amended regulations related to courtesy licenses allowing a veterinarian from another country to obtain such a license. This license will enable the practice of veterinary medicine for a single event or a clinic without having to go through all the requirements of obtaining a general veterinary license. Previously, regulations restricted those eligible for the courtesy license to those licensed in the United States or Canada. Additionally, the board decided to waive that requirement until the regulations could be amended to include courtesy licenses for foreign veterinarians.

The board has discussed the need of a state examination for veterinary technicians and whether the board membership should include a veterinary technician. Although neither of these issues have been acted upon by the board, the issues have been discussed.

The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

In 1996, the legislature established under AS 08.98.120(c) that the practicing of veterinary medicine without a license is a misdemeanor punishable by a fine of not more than \$10,000 or by imprisonment for not more than one year, or both. This empowers the board to effectively regulate the profession and take action against unqualified individuals providing services regulated by the Board of Veterinary Examiners.

Additionally, the board is considering revising the requirements for licensure by credentials. See Auditors Comments for a discussion on this.

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

The location, date, and time of upcoming Board meetings and notices of proposed changes in regulations are published in the *Anchorage Daily News*, the *Fairbanks Daily News-Miner* and *Juneau Empire*. Additionally, time for public comment was provided at all meetings.

As discussed previously, the board elected to waive the requirement that individuals needed to be licensed in another jurisdiction of the United States or Canada in order to obtain a courtesy license. Although the waiver of this regulation served the public by increasing the number of veterinarians available for the Iditarod, notice of the meeting did not go through the customary process. Notice of the meeting was broadcast over several radio stations less than a week before the meeting, contrary to established public notice requirements.

The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

Public notices of proposed regulations are published in major newspapers. As a result of public input changes were made to the proposed regulations.

A member of the public proposed to the board a new type of license which would allow a veterinary specialist into Alaska without needing to obtain a general veterinary license. The board considered the issues raised and incorporated that type of license into the regulations adopted regarding courtesy licenses.

The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

Between FY 94 and current FY 96, the Division of Occupational Licensing investigated 20 complaints related to the practice of veterinary medicine. We reviewed a sample of six

investigations. From our review we determined that the Division of Occupational Licensing was investigating and resolving complaints in a timely manner, given the budgetary constraints involved. Additionally, a board member was delegated to be the liaison between the board and the investigative staff to offer assistance to expedite the investigative process.

The extent to which the board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

The table below summarizes licensing activity for the past three fiscal years and lists the number of current license holders regulated by the board.

Licenses	Issued in FY 94	Issued in FY 95	Issued in FY 96	Total Current Active Licenses
Veterinarians	18	17	21	265
Veterinary Technician	19	5	3	83
Temporary Permits	3	2	3	N/A
Temporary Licenses	6	4	10	N/A
Courtesy Licenses	23	29	28	N/A

Veterinarian licensing requirements require three examinations. Two of the examinations are developed and graded nationally. The third examination has been developed by the board and includes questions specific to conditions in Alaska. The board has spent a considerable amount of time reviewing questions in the state examination database. Several questions have been removed from the database. Additionally, several questions have been developed by the board to add to the database.

The board also administers an examination for veterinary technicians. The examination is developed and graded by a national testing company.

The extent to which state personnel practices, including affirmative action requirements have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

No complaints regarding the Division of Occupational Licensing were received by the Ombudsman. We did not find any evidence that the board was not complying with the state personnel practices, including affirmative action in qualifying applicants. In no instances has the board denied an applicant a license based on personal attributes.

The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the Findings and Recommendations and Auditor's Comments sections of this report.

(Intentionally left blank)

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

P.O. BOX 110806
JUNEAU, ALASKA 99811-0806
PHONE: (907) 465-2534
FAX: (907) 465-2974
TDD: (907) 465-5437
E-mail address:
License@commerce.state.ak.us

March 4, 1997

Mr. Randy S. Welker
Legislative Auditor
Division of Legislative Audit
Legislative Budget and Audit Committee
P.O. Box 113300
Juneau, AK 99811-3300

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LEGISLATIVE AUDIT

Dear Mr. Welker:

Thank you for the opportunity to respond to the preliminary audit report on the Board of Veterinary Examiners.

The department agrees that the Board of Veterinary Examiners is operating in the public interest and should be extended until at least June 30, 2004. The following is the department's response to the analysis and recommendations contained in the preliminary audit.

Recommendation No. 1: The Office of the Governor should replace vacancies on the board in a more timely manner

The department defers to the Office of the Governor for response to this recommendation. However, it is the department's understanding that the Office of the Governor was hampered in its effort to fill vacancies by a lack of applicants for board seats. There are currently no vacant board seats. Two members' terms have expired, but they continue to serve until replacements are appointed.

Recommendation No. 2: The board should formally establish in regulation a passing score for licensing examinations

The department concurs with this recommendation and suggests that the board adopt the passing score recommended by the national testing service. Although each state is free to establish its own passing score, the testing company is the expert in the calibration and defense of the examination. The department recommends that credential applicants from states which accept a lower passing score be held to the Alaska standard.

Auditor Comments

The department agrees that the current credential statute has caused the board and applicants concern. The department supports statutes and regulations which make Alaska licensure as convenient as possible, while protecting the public from incompetent veterinarians. The department looks to the board as experts in veterinary medicine.

It is the department's understanding that the board believes applicants for licensure by credentials should be required to pass the following examinations in addition to the qualifications in AS 08.98.184(1) - (5):

- 1) the Clinical Competency Test (CCT) or an examination determined by the board to be equivalent; and
- 2) the National Board Exam (NBE) or an examination determined by the board to be equivalent.

Analysis of Public Need

The preliminary audit notes an incident in which a teleconference was not public noticed in newspapers in accordance with the division's internal policy and procedure. Instead, the teleconference was advertised on several radio stations. It is important to note that this method of notice followed guidance from the Department of Law. The department has been advised that announcing meetings via radio complies with the Open Meetings Act. The division has established a standard public notice policy which goes beyond the minimum requirements of the Open Meetings Act. Occasionally, situations arise in which the internal policy is too restrictive to serve the public interest. In response to audit comments, the division has revised its policy and procedure on public notice to allow for more limited application in some instances, while continuing to encourage more notice than technically required by the Open Meetings Act.

In conclusion, the department appreciates the effort required to produce a thorough and balanced audit, and thanks the Legislative Budget and Audit Committee for the opportunity to comment.

Sincerely,


William L. Hensley
Commissioner

WLH/CAR/go877
030 197a

STATE OF ALASKA
Boards and Commissions

VETERINARY EXAMINERS

BOARD: Board of Veterinary Examiners

BOARD IDENTIFICATION NUMBER: 102

DEPARTMENT: DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

AUTHORITY: AS 08.98.010

STATUS: Active

SUNSET DATE: June 30, 1997

REQUIREMENTS: Legislative Confirmation

PROHIBITIONS: Members cannot serve more than all or part of two consecutive terms.

TERM: 4 years

DESCRIPTION: 5 members appointed by Governor: 4 licensed veterinarians in active practice in Alaska for 5 years; plus 1 public member; no person may serve who is, or was during the two years immediately preceding appointment, a member of a faculty, board of trustees, or advisory board of a veterinary school.

FUNCTION: Regulates and controls applications, licenses, and permits of veterinarians and veterinarian technicians.

CHAIR: No provision.

SPECIAL FACTS: Serve at the pleasure of the Governor. Members serve until a successor is appointed. An appointment to fill a vacancy is for the remainder of the unexpired term. A member who has served all or part of two successive terms may not be reappointed unless four years have elapsed since the person has last served.
E-mail address: Kathy_Taylor@commerce.state.ak.us

COMPENSATION: Standard Travel and Per Diem.

MEETINGS: At least 3 meetings per year, 2 days per meeting, plus special meetings at board or division request.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Taylor, Licensing Examiner, Division of Occupational Licensing, DCED, P.O. Box 110806 M/S 0800, Juneau, AK, 99811 0806, Phone: 907 465 5470, Fax: 907 465 2974

STATE OF ALASKA
Boards and Commissions

Membership Roster
VETERINARY EXAMINERS (102)

Member	Appointed	Reappointed	Term Exp.
Jean Battig Veterinarian Alaska Veterinary Services P.O. Box 70965 Fairbanks, AK 99707	04/11/97		01/31/00
William G. Lewis Public 2855 Hurst Road North Pole, AK 99705	06/25/96		01/31/00
James L. Morris Veterinarian Wasilla Veterinary Clinic 2750 East Parks Highway Wasilla, AK 99654	01/02/97		01/15/01
Connie J. Sanders Veterinarian 2543 Brooke Drive Anchorage, AK 99517	06/25/96		01/31/99
Deanna Jo Thornell Veterinarian 2702 Peger Road Fairbanks, AK 99709	01/31/94		01/31/98

SB

95

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 95

Revision Date: _____
 Title: An Act relating to workers' compensation
 self-insurance
 Sponsor: Miller
 Requestor: _____

Department: Commerce and Economic Development
 BRU: Insurance
 Component: Insurance
 COMPONENT SERIAL NO. 324

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY01	FY 02	FY 03
PERSONAL SERVICES	72.0	36.0	37.0	37.0	38.0	38.0
TRAVEL	1.5	1.5	1.6	1.6	1.7	1.7
CONTRACTUAL	2.0	1.0	1.1	1.1	1.2	1.2
SUPPLIES	1.5	0.5	0.7	0.7	0.8	0.8
EQUIPMENT	5.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	82.0	39.0	40.4	40.4	41.7	41.7

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES/operating	(40.0)	(47.0)	(47.0)	(47.0)	(47.0)	(47.0)
Loss in premium tax/unrestricted	(135.0)	(270.0)	(270.0)	(270.0)	(270.0)	(270.0)

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund	72.0	39.0	40.4	40.4	41.7	41.7
1005 GF/Program Receipts						
1006 GF/MHTIA						
1091 Designated Program Receipts	10.0	0.0	0.0	0.0	0.0	0.0
TOTAL	82.0	39.0	40.4	40.4	41.7	41.7

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS

FULL-TIME	1					
PART-TIME		1	1	1	1	1
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached

Prepared by: Marianne K. Burke, Director
 Division: Insurance
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2515
 Date: 2-24-97
 Date: 2-25-97

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SB 95 Fiscal Note Analysis

The Division of Insurance assumes that approximately 20 proposed groups will file applications for certificates of approval along with the \$500.00 filing fee. The division anticipates that proposed groups may include homebuilders/contractors, the aviation industry, liquor distributors and a host of others. Assuming that 20 applications will be filed in the first year and each of these groups need only have 5 members, we could possibly have many groups within the same industry.

The first year impact on the division will be primarily the application process. The first year would also include review and development of standard forms and wording for trust documents, the indemnity agreement, and the fidelity bond amount for the administrator and service company, the minimum aggregate excess insurance form and amount. The complexity of this work and the level of expertise needed to perform these functions would require the duties of one full time Financial Examiner II. Additionally, an Examiner II is necessary because these are domestic insurers and not foreign insurers under jurisdiction of another state.

In subsequent years, items would include the general review of financial statement filings and other requests by these groups. The security amount may be reviewed and adjusted; and the aggregate excess insurance may be adjusted. If a self insurance group becomes insolvent, additional staff time will be needed in making that evaluation and in coordinating the wrap up of the group. Termination of a certificate of approval requires review by staff to verify that obligations are taken care of and to assist in hearings if hearings are requested. The director may be called on to approve an administrative fund account of more than 30% or, conversely, approve a claim fund account of less than 70%. These duties would require the services of a permanent part time Financial Examiner II. The responsibilities for review of rates and producer licensing would not result in increase in staff.

FY98

Pers Svcs: 1 PFT Financial Examiner II, Range 21, Anchorage
Travel: Statewide 2 trips \$750 each trip
Contractual: Usual and customary costs, ie: rent, equipment contracts, risk mgmt.
Supplies: Start up supplies
Equipment: Computer, software, desk and related start up items

FY99 and subsequent years*

Pers Svcs: 1 PPT Financial Examiner II, Range 21, Anchorage
Travel: Statewide 2 trips \$750 each trip
Contractual: Usual and customary costs, ie: rent, equipment rent, risk mgmt, etc.
Supplies: Maintenance supplies

**Slight increases are due to inflation factored into costs for later years.*

Loss in Operating Revenue/Premium Tax (unrestricted)

The loss in revenue for an estimated 20 self insurance groups is \$175,000 in FY98 and \$317,000 in subsequent years. These loss amounts are calculated as follows. (Fees support operating costs and premium taxes are unrestricted revenues)

FY98	AK Domestic/Foreign	AK Self Insurance Group
Application Fee	\$2,500.00	\$500.00
Estimated Premium Tax on \$250,000 minimum premium	<u>6,750.00</u>	<u>0.00</u>
	\$9,250.00	\$500.00
Each Subsequent Year		
Annual Continuation fee	\$2,250.00	0.00
Annual Statement filing fee	100.00	0.00
Estimated Premium Tax on \$500,000 minimum premium*	<u>13,500.00</u>	<u>0.00</u>
	\$15,850.00	0.00
FY98		Each Subsequent Year
\$6,750 X 20 = \$135,000 tax loss		\$13,500 X 20 = \$270,000 tax loss
\$2,000 X 20 = <u>40,000</u> fees loss		\$ 2,350 X 20 = <u>47,000</u> fees loss
\$175,000		\$317,000

* Per the 1995 Division of Insurance Annual Report, 156 companies are licensed to write workers' compensation insurance in Alaska. Average annual direct premium per company is \$1,141,692.00. Annual premium tax (2.7%) on this premium amount would be \$30,826.00. Substituting the estimated premium tax in the calculation above shows the tax loss for an estimated 20 self insurance groups would be :

FY98 and each subsequent year **\$616,520.00**

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 95

Revision Date: _____
 Title: Workers' Compensation self-
insurance group
 Sponsor: Senator Miller
 Requestor: Senate L&C

Department Affected: Labor
 BRU: Workers' Compensation
 Component: Workers' Compensation
 COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	37.4	37.4	37.4	37.4	37.4	37.4
TRAVEL						
CONTRACTUAL	6.1	1.1	1.1	1.1	1.1	1.1
SUPPLIES						
EQUIPMENT	5.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	48.5	38.5	38.5	38.5	38.5	38.5

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

CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	48.5	38.5	38.5	38.5	38.5	38.5
1005 GF/Program Receipt						
1006 GF/MHTIA						
1007 Interagency Receipt						
TOTAL	48.5	38.5	38.5	38.5	38.5	38.5

POSITIONS:

FULL-TIME	1					
PART-TIME						
TEMPORARY						

Estimate of current year (FY97) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary)
 This bill proposes amending AS 21 by adding chapter 47, "Workers' Compensation Self Insurance Groups". See attached for the impact to Workers' Compensation.

Prepared by: Paul Grossi, Director *Paul Grossi* Phone: 465-2790
 Division: Workers' Compensation Date: 2/21/97

Approved by Commissioner: Tom Cashen, Commissioner *Tom Cashen*
 Agency: Department of Labor *Deirdre Gerber* Date: 2/21/97

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SB95 Analysis:

The provisions of this bill apply to workers' compensation self insured groups. Under this bill the Division of Insurance would issue a certificate of approval to those persons who qualify for self-insurance coverage. Security from the self insurers would be deposited with the Division of Insurance and assigned to the Workers' Compensation Division to hold in trust, collect and transmit accruing interest to the depositor, and keep the Division of Insurance apprised of individual or group status changes within the self insured group.

A new position would be required to track all securities assigned; establish individual trust; monitor interest accrued and disbursed to the depositor; prepare form letters of status change; and keep the Division of Insurance kept apprised of any status changes within the self-insured groups.

One staff month of programming time will be required to develop computerized programs to interface with Division of Insurance and to track self insurer and individual changes within in each self insurance group.

Line 100 Personal Services

1 Administrative Clerk III

Salary & Benefits \$37.4

Line 300 Contractual Services

DP Programming (FY98 one time) 5.0

Postage 0.5

DP Operations 0.4

Printing form letters 0.2

\$6.1

Line 500 Equipment

(One time set up costs)

Computer 3.5

Office Furniture 1.5

5.0

Total \$48.5

POSITION INFORMATION HAS BEEN UPDATED

02/14/97

Position Information Inquiry/Update

Prior 11:52:11
Yr Actual Budgeted

Position: New Position	Project: 0	Salary:	23,953	25,480.56
Comp: 07-06-07-10-01-00	Region: _	Benefits:	9,756	11,917.56
Scenario: 1	FY: 98	COLA %: 1.500	Total:	33,709
				37,398.12

Actuals from Payroll (Status: FILLED) FLSA: N Retirement Code: A

A | Step: A for 12.0 months & Step: B for _0.0 months (total: 12.00)
 97/05/16 | Merit Date; use merit defaults? N (10.5 @ B & 1.5 @ C)
 2 | Class/Sched Prefix: 2 Schedule: 2A (actual: 2A)
 GG | Bargaining Unit: GG Range: 10 (actual: 10)
 EBA ? | Location Code: AWA Place: JUNEAU
 P1135 | Job Class Code: P1135 Title: ADMINISTRATIVE CLERK III _____
 F | Seasonal Indic.: F Type: FACL - FULL TIME / OMB AUTH

Optional Override Salary Rates:

Monthly Rate: 0.00 for _0.0 months & rate of 0.00 for _0.0 months
 Hourly Rate: 0.00 for _0.0 months Frozen at this rate? (Y/N): N

Press ENTER to update record; enter # or use PF key to go to another screen:
 1=Premium pay info 2=Funding info 4=Code Translations 6=Calculations
 8=Detail Report 12=Exit w/o update Selection: 0_

John S. Grummett
ACCOUNT EXECUTIVE

shattuck &
grummett

301 Seward Street
Juneau, Alaska 99801

Phone: 907/586-2414
FAX: 907/586-3770

Ribelin Lowell & Company
INSURANCE BROKERS INC.

LINDA S. HALL, CPCU, CIC

5111 C Street Suite 300 Anchorage, Alaska 99503-3925
Phone 907/561-1250 Fax 907/561-4315
In State 800/478-1251

1. Prudent Investment Practices

Chapter 21.21. INVESTMENTS

- Sec. 21.21.020. Eligible investments.
- Sec. 21.21.030. General qualifications.
- Sec. 21.21.040. Authorization of investment.
- Sec. 21.21.050. Diversification of investments.
- Sec. 21.21.060. United States or Canadian government obligations.
- Sec. 21.21.070. Loans guaranteed by the United States or Canada.
- Sec. 21.21.080. State, county, municipal, and school obligations.
- Sec. 21.21.090. Revenue bonds.
- Sec. 21.21.100. Improvement district obligations.
- Sec. 21.21.110. Obligations, stock of certain federal agencies.
- Sec. 21.21.120. International bank.
- Sec. 21.21.130. Development banks.
- Sec. 21.21.140. Corporate bonds and debentures.
- Sec. 21.21.150. Preferred or guaranteed stock.
- Sec. 21.21.160. Common stocks.
- Sec. 21.21.170. Insurance stocks.
- Sec. 21.21.180. Investments in subsidiaries.
- Sec. 21.21.190. Equipment trust certificates.
- Sec. 21.21.200. Investment trust securities.
- Sec. 21.21.220. Collateral loans.
- Sec. 21.21.225. Bank certificates of deposits.
- Sec. 21.21.230. Savings and loan.
- Sec. 21.21.240. Foreign securities.
- Sec. 21.21.245. Pooled investments.
- Sec. 21.21.250. Miscellaneous investments.
- Sec. 21.21.255. Regulation of securities held by insurers.
- Sec. 21.21.260. Real estate mortgages.
- Sec. 21.21.270. Chattel mortgages.
- Sec. 21.21.280. Real estate.
- Sec. 21.21.290. Time limit for disposal of real estate.
- Sec. 21.21.300. Time limit for disposal of other ineligible property and securities.
- Sec. 21.21.310. Failure to dispose of real estate, property, or securities.
- Sec. 21.21.321. Prohibited investments and investment underwriting.
- Sec. 21.21.350. Investment transactions with affiliated or controlling persons.
- Sec. 21.21.355. Certain deposits not prohibited.
- Sec. 21.21.360. Options and futures contracts.
- Sec. 21.21.370. Investments in medium grade and lower grade obligations.
- Sec. 21.21.380. Exceptions to limitations on investments in medium

- grade and lower grade obligations.
Sec. 21.21.390. Written plan requirement for investment in medium grade and lower grade obligations.
Sec. 21.21.400. Disposition or write-down of lower grade obligations.

2. Statutory Accounting Practices

Chapter 21.12. KINDS OF INSURANCE, LIMITS OF RISK, AND REINSURANCE *ck*

- Sec. 21.12.010. Limit of risk.
Sec. 21.12.020. Reinsurance credit allowed a domestic ceding insurer. *←*

Chapter 21.14. RISK BASED CAPITAL FOR INSURERS

- Sec. 21.14.010. Risk based capital reports. *no*
Sec. 21.14.020. Company action level event.
Sec. 21.14.030. Regulatory action level event.
Sec. 21.14.040. Authorized control level event.
Sec. 21.14.050. Mandatory control level event.
Sec. 21.14.060. Risk based capital plan.
Sec. 21.14.080. Hearings.
Sec. 21.14.090. Confidentiality; restrictions on use.

Chapter 21.18. ASSETS AND LIABILITIES

- Sec. 21.18.010. Allowable assets.
Sec. 21.18.020. Assets as deductions from liabilities.
Sec. 21.18.030. Assets not allowed.
Sec. 21.18.040. Disallowance of transactions; deceptions. *ck*
Sec. 21.18.050. Liabilities, in general.
Sec. 21.18.060. Unearned premium reserve.
Sec. 21.18.090. Loss reserves, liability insurance, and workers' compensation.
Sec. 21.18.100. Increase of reserves.
Sec. 21.18.120. Valuation of bonds.
Sec. 21.18.130. Valuation of other securities.
Sec. 21.18.140. Valuation of property.
Sec. 21.18.150. Valuation of purchase money mortgages.

Sec. 21.75.150. DETERMINATION OF FINANCIAL CONDITION. In determining the financial condition of a reciprocal insurer the director shall apply the following rules:

- (1) the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis shall be charged as liabilities;
- (2) the surplus deposits of subscribers shall be allowed as assets, except the premium deposits delinquent for 90 days shall first be charged against

the surplus deposit;

(3) the surplus deposits of subscribers may not be charged as a liability;

(4) all premium deposits delinquent less than 90 days shall be allowed as assets;

(5) an assessment levied upon subscribers, and not collected, may not be allowed as an asset;

(6) the contingent liability of subscribers may not be allowed as an asset;

(7) the computation of reserves shall be based upon premium deposits other than membership fees and without deductions for expenses and the compensation of the attorney-in-fact.

3. Fair Trade Acts and Practices

Chapter 21.36. TRADE PRACTICES AND FRAUDS

Sec. 21.36.010. Purpose.

Sec. 21.36.020. Unfair methods, deceptive acts prohibited.

Sec. 21.36.025. Unfair marketing practices prohibited.

Sec. 21.36.030. Misrepresentation and false advertising of insurance policies.

Sec. 21.36.035. Prohibited advertisements and representations.

Sec. 21.36.040. False information, advertising.

Sec. 21.36.050. Twisting prohibited.

Sec. 21.36.060. False financial statements.

Sec. 21.36.070. Defamation.

Sec. 21.36.080. Boycott, coercion, and intimidation.

Sec. 21.36.090. Unfair discrimination.

Sec. 21.36.120. Unfair discrimination and rebates prohibited in property and casualty insurance.

Sec. 21.36.125. Unfair claim settlement practices.

Sec. 21.36.130. Stock operations and advisory board contracts.

Sec. 21.36.150. Procedures as to undefined practices.

Sec. 21.36.165. Favored agent or insurer; coercion of debtors.

Sec. 21.36.170. Interlocking ownership, management.

Sec. 21.36.190. Fictitious groups.

Sec. 21.36.220. Notice of cancellation.

Sec. 21.36.235. Notice of premium or coverage changes upon renewal.

Sec. 21.36.240. Failure to renew.

Sec. 21.36.255. Premium return or credit.

Sec. 21.36.260. Proof and method of mailing notice.

Sec. 21.36.270. Effect of failure to comply.

Sec. 21.36.280. Immunity of insurer, director, and informer.

Sec. 21.36.290. Policy period.

ok

- Sec. 21.36.320. Hearings and order on violation.
- Sec. 21.36.330. Injunctive relief.
- Sec. 21.36.340. Provisions of this chapter additional to other law.
- Sec. 21.36.360. Fraudulent or criminal insurance acts.
- Sec. 21.36.365. Immunity for reports on fraud.
- Sec. 21.36.380. Notice on claim form.
- Sec. 21.36.390. Notice to director.
- Sec. 21.36.400. Confidentiality.
- Sec. 21.36.410. Out-of-state investigations.

4. Standardized Reporting Practices

Sec. 21.75.130. Annual statement. (a) The annual statement of a reciprocal insurer shall be made by its attorney-in-fact and filed with the director, as provided in AS 21.09.200.

(b) The statement shall be supplemented by information that may be required by the director relative to the affairs and transactions of the attorney-in-fact insofar as they relate to the reciprocal insurer.

Sec. 21.09.200. ANNUAL STATEMENT. (a) Each authorized insurer shall annually, before March 2, file with the director a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31. The reporting format for a given year is the most recently approved National Association of Insurance Commissioners' annual financial statement blank form and instructions, supplemented for additional information as required by the director. The director may require the statement to be filed on electronic media. The statement shall be verified by the oath of the insurer's president or vice-president, and secretary, or, if a reciprocal insurer, by oath of the attorney-in-fact or its like officers if a corporation unless verification is waived by the director of insurance.

(b) The statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the director requires otherwise. If the director requires a statement concerning an alien insurer's affairs throughout the world, the insurer shall file the statement with the director as soon as is reasonably possible. The statement shall be verified by the insurer's United States manager or other authorized officer.

(c) The director may refuse to accept a fee for continuance of the insurer's certificate of authority, as provided in AS 21.09.130 , or may suspend or revoke the certificate of authority of an insurer failing to file its annual statement when due.

(d) At the time of filing, the insurer shall pay to the director a fee for filing its statement, set under AS 21.06.250 .

(e) An insurer shall pay to the division \$100 for each day the insurer fails to file the annual statement in the form required and within the time established in (a) of this section. The authority of the insurer to enter into new obligations or issue new or renewal policies of insurance in this state may be suspended by the director if the annual statement has not been filed by March 1.

(f) In addition to the requirements of (a) of this section, an authorized insurer shall file its annual statement with the National Association of Insurance Commissioners on electronic media acceptable to the association by the due date established by the association, and shall pay the applicable filing fee. The director may waive the filing requirement if the insurer only transacts business in this state and only accepts risks relative to a subject resident, located, or to be performed in this state. An insurer that fails to comply with this subsection is subject to the penalties specified in (e) of this section, calculated from the filing and fee due date established by the National Association of Insurance Commissioners.

Sec. 21.75.135. QUARTERLY STATEMENTS. (a) The director may require a reciprocal insurer's attorney-in-fact to file a quarterly financial statement as provided in AS 21.09.205 . ok

(b) A statement required under (a) of this section shall be supplemented by information that may be required by the director relative to the affairs and transactions of the attorney-in-fact that relate to the reciprocal insurer.

Sec. 21.09.205. QUARTERLY STATEMENT. (a) The director may require an insurer to file quarterly financial statements. If required, the statements must follow for a given quarter the reporting format specified in the quarterly financial statement blank form and instructions most recently approved by the National Association of Insurance Commissioners.

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

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

(d) In addition to the requirements of (a) of this section, an authorized insurer shall file its quarterly statement with the National Association of Insurance Commissioners on electronic media acceptable to the association by the due date established by the association, and shall pay the applicable filing fee. The director may waive the filing requirement if the insurer only transacts business in this state and only accepts risks relative to a subject resident, located, or to be performed in this state. An insurer that fails to comply with this subsection is subject to the penalties specified in (c) of this section, calculated from the filing and fee due date established

by the National Association of Insurance Commissioners.

5. **Fair Examination Practices**

Sec. 21.75.115. EXAMINATION OF AN ATTORNEY-IN-FACT. An attorney-in-fact of a reciprocal insurer is subject to examination by order of the director under AS 21.06.120 and 21.06.140 - 21.06.160 for the purpose of determining compliance with this title relating to the operations of the reciprocal insurer or its attorney-in-fact that the director determines cannot be obtained by examination of the reciprocal insurer. The cost of the examination shall be paid by the attorney-in-fact. OK

Sec. 21.06.120. EXAMINATION OF INSURERS. (a) The director may examine the affairs, transactions, accounts, records, and assets of each authorized and formerly authorized insurer and each licensed and formerly licensed managing general agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus lines broker, and surplus lines association as often as the director considers advisable. In scheduling and determining the nature, scope, and frequency of examinations, the director may consider any factor or material that the director determines is appropriate, including the results of financial statement analysis and ratios, competency of management or change of ownership, actuarial opinions, reports of independent certified public accountants, number and nature of consumer complaints, results of prior examinations, frequency of prior violations of statute and regulation, and criteria set out in the Examiners' Handbook most recently approved by the National Association of Insurance Commissioners and in effect when the director conducts an examination. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States. Examination of a reciprocal insurer may also include examination of its attorney-in-fact to the extent that the transactions of the attorney-in-fact relate to the insurer.

(b) The director shall in like manner examine each insurer applying for an initial certificate of authority to do business in this state.

(c) In place of an examination by the director, the director may accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of another state, territory, commonwealth, or district of the United States. The director may require that the

(1) insurance regulatory agency conducting the examination be, at the time of the examination, accredited by the National Association of Insurance Commissioners;

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5. **Fair Examination Practices**

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Sec. 21.06.120. EXAMINATION OF INSURERS. (a) The director may examine the affairs, transactions, accounts, records, and assets of each authorized and formerly authorized insurer and each licensed and formerly licensed managing general agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus lines broker, and surplus lines association as often as the director considers advisable. In scheduling and determining the nature, scope, and frequency of examinations, the director may consider any factor or material that the director determines is appropriate, including the results of financial statement analysis and ratios, competency of management or change of ownership, actuarial opinions, reports of independent certified public accountants, number and nature of consumer complaints, results of prior examinations, frequency of prior violations of statute and regulation, and criteria set out in the Examiners' Handbook most recently approved by the National Association of Insurance Commissioners and in effect when the director conducts an examination. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States. Examination of a reciprocal insurer may also include examination of its attorney-in-fact to the extent that the transactions of the attorney-in-fact relate to the insurer.

(b) The director shall in like manner examine each insurer applying for an initial certificate of authority to do business in this state.

(c) In place of an examination by the director, the director may accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of another state, territory, commonwealth, or district of the United States. The director may require that the

(1) insurance regulatory agency conducting the examination be, at the time of the examination, accredited by the National Association of Insurance Commissioners;

(2) examination be performed under the supervision of an insurance regulatory agency accredited by the National Association of Insurance Commissioners; and the supervising examiner, after a review of the examination work papers and report, state under oath that the examination and report comply with the standards and procedures required by their accredited state insurance regulatory agency; or

(3) examiner conducting the examination be employed by an insurance regulatory agency accredited at the time of the examination by the National Association of Insurance Commissioners and that the examiner, after review of the examination work papers and report, state under oath that the examination and report comply with the standards and procedures required by the accredited insurance regulatory agency.

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

(e) The director may use a contract examiner to carry out the functions of this section. The selection of a contract examiner and the award of a contract is subject to AS 36.30 (State Procurement Code), except when the director makes a written determination that an emergency selection and contract award is necessary.

(f) For the purpose of completing an examination of a person under this title, the director may examine or investigate any person, or the business of any person, if the director determines that the examination or investigation is necessary or material to the examination of the person.

(g) The director shall examine a domestic insurer at least once every three years. The director may examine a domestic insurer at any time when the director determines that an examination or investigation is necessary. Unless the director determines an insurer is in danger of becoming impaired, when the director intends to conduct an interim examination of a domestic insurer covering the same subjects that were included in the scope of the last examination report, the director shall give at least 10 days prior written notice stating the scope and purpose of the examination. In this subsection, "interim examination" means an examination of a domestic insurer that occurs within three years after the start of the domestic insurer's last examination.

Sec. 21.06.140. CONDUCT OF EXAMINATION. (a) The director shall conduct the examination at the home office of a domestic, foreign, or Canadian insurer, or the United States branch office of an alien insurer, or in any of its branch or agency offices; or with respect to persons other than insurers, at the office or other place or places where the records are kept.

(b) Every person being examined, or from whom information is

sought, and its officers, employees, agents, and representatives shall provide to the director timely, convenient, and free access, at all reasonable hours at its office, the books, accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination including all computer or other recordings relating to the property, assets, business, and affairs of the person being examined, and shall facilitate and aid the examination as far as it is in their power to do so, including providing to the director, at the expense of the person being examined, a copy of any document requested during the examination. The director may suspend, revoke, or refuse to issue or renew a license or authority of a person engaging in the business of insurance or other business under the jurisdiction of the director if the person or an officer, director, employee, or agent of the person refuses to submit to examination or to comply with a reasonable written request of an examiner.

(c) If the director finds financial or other records to be inadequate or inadequately kept or posted or if an insurer's financial records are not kept as required by the Accounting Practices and Procedures Manual currently approved by the National Association of Insurance Commissioners after the director has issued an order citing the inadequacy of the accounts and given a reasonable opportunity to complete or correct the accounting, the director may employ experts to rewrite, post, or balance them at the expense of the person being examined.

(d) When conducting an examination under this section, the director may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be paid by the person being examined under AS 21.06.160 (a).

(e) As far as practical the director shall conduct the examination of a foreign or alien insurer in cooperation with the insurance supervisory officials of other states in which the insurer transacts business, and for this purpose the director may participate in joint examinations of insurers or be represented at an examination by an examiner of another state.

(f) In conducting an examination under this section, the examiner shall observe at a minimum those guidelines and procedures set out in the Examiners' Handbook currently approved by the National Association of Insurance Commissioners that are consistent with this title.

(g) An examiner may not be appointed by the director if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in a person subject to examination under this title. This section may not be construed to automatically preclude an examiner from being, in

the ordinary course of business,

(1) a policyholder or claimant under an insurance policy;
(2) a grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if obtained under customary terms;

(3) an investment owner in shares of regulated mutual fund companies; or

(4) a settlor or beneficiary of a blind trust into which otherwise impermissible holdings have been placed.

(h) The director may terminate or suspend an examination in order to pursue other legal or regulatory action under this title.

(i) In a judicial or administrative proceeding a factual determination made in an examination report approved under AS 21.06.150 (b)(1) is prima facie evidence of the fact.

Sec. 21.06.150. EXAMINATION REPORTS. (a) An examination report may only consist of facts appearing upon the books, records, or other documents of the examined person, the person's agents, or other persons examined, or facts determined from the testimony of officers, agents, or other persons examined concerning the person's affairs, and the conclusions and recommendations that the examiners find reasonably warranted from the facts.

(b) The examiner shall file with the division a written report of an examination, signed by the examiner under oath, not later than 60 days following the last day of examination field work. The period for filing the report may be extended for 60 additional days upon approval of the director. Upon receipt of the report, the division shall transmit the report to the person being examined, together with a notice that gives the person being examined a period of 30 days to make a written submission or rebuttal with respect to matters contained in the examination report. Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the director shall fully consider and review the report, together with any written submissions or rebuttals, and any relevant portions of the examiner's work papers and enter an order

(1) approving the examination report as filed or approving the examination report with modification or corrections;

(2) rejecting the examination report with directions to the examiners to reopen the examination for the purpose of obtaining additional data, documentation, or information and refile the report under this section; or

(3) setting an investigatory hearing under the procedures of AS 21.06.200 and 21.06.210(a) - (d) for purposes of obtaining additional information and testimony.

(c) In the event the director determines that regulatory action is appropriate as a result of an examination, the director may enter

orders and initiate proceedings as provided by law. The director may use an examination report, work papers or other documents, the testimony of the examiners, or other information discovered or developed during the course of an examination in a judicial or administrative proceeding, whether or not a written report of the examination at the time has been made, transmitted, or approved by the director.

(d) The director may disclose the content of an examination report, preliminary examination report or results, or a matter relating to it to the insurance division of this or another state or country and to law enforcement officers of this or another jurisdiction. Except as allowed by this section or other provision of law, the director may not disclose the contents of a preliminary examination report before the report is filed in the office of the director under AS 21.06.060 .

(e) An order entered under (b)(1) of this section must be accompanied by findings of fact and conclusions of law resulting from the director's consideration and review of the examination report, relevant examiner work papers, and written submissions or rebuttals.

(f) Within 30 days of the receipt of the approved report, the person examined shall file affidavits executed by each director and the chief executive officer or equivalent officer stating under oath that they have received and reviewed a copy of the approved report and related orders.

(g) The director may withhold a document, information, account, record, examination, or report from the public inspection for as long as the director finds the withholding is necessary to protect a person against unwarranted injury or is in the public interest. The director may close an examination hearing to the public when the director finds the closure is necessary to protect a person against unwarranted injury or is in the public interest. The director may publish the examination report or a summary of it in a newspaper in the state if the director determines that the publication is in the public interest.

Sec. 21.06.160. EXAMINATION EXPENSE. (a) Each person examined, other than as to examinations under AS 21.06.130, shall pay a reasonable rate calculated on salary and benefit costs, and estimated division overhead for time spent directly or indirectly related to the examination. Each person examined, other than examinations under AS 21.03.130, shall actual out-of-pocket business expenses, including travel expenses, incurred by division staff examiners and shall pay the compensation of a contract examiner, to be set at a reasonable customary rate, for conducting the examination, upon presentation of a detailed account of the charges and expenses by the director or under an order of the director. The

accounting may either be presented periodically during the course of the examination or at the termination of the examination. A person may not pay and an examiner may not accept additional compensation for an examination.

(b) The director shall pay into the general fund of the state all money received under (a) of this section. Instead of charging and collecting the costs and expenses of the examination under (a) of this section, the director may give written authorization for the person examined to make direct payment to the contract examiner for all or part of the contract examiner's compensation or expenses. The contract between the state and a contract examiner who will receive direct payment under this subsection must require that the examiner provide the director with a copy of each billing for the examination.

(c) In addition to other penalties provided by this title, if the person fails to pay the charges and expenses prescribed in (a) of this section, the amount may be recovered by suit by the attorney general on behalf of the state and restored to the general fund. The amount due shall be a first lien upon all of the assets and property of the person in this state.

6. Comprehensive Receivership Procedures

Sec. 21.75.270. FINANCIAL IMPAIRMENT; DETERMINATION OF INSOLVENCY. (a) If the assets of a reciprocal insurer are at any time insufficient to discharge its liabilities, other than a liability on account of funds contributed by the attorney-in-fact or others, and to maintain the required surplus, its attorney-in-fact shall immediately make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency; but subject to the limitation set out in the subscriber's agreement. ok

(b) If the attorney-in-fact fails to make up the deficiency or to make the assessment within 30 days after the director orders the attorney-in-fact to do so, or if the deficiency is not fully made up within 60 days after the date the assessment was made, the insurer shall be considered insolvent and shall be proceeded against as authorized by this title.

(c) If liquidation of an insurer is ordered, an assessment shall be levied upon the subscriber for an amount, subject to limits as provided by this chapter, that the director determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney-in-fact or other persons, but including the reasonable cost of the liquidation.

(d) If liquidation of a domestic reciprocal insurer is ordered, the receiver appointed under the order has a right to recover on behalf of the reciprocal insurer a payment in the form of a bonus, termination settlement, or extraordinary lump-sum compensation adjustment made by the reciprocal insurer or its subscribers to the attorney-in-fact if the distribution or payment is made during

the 12 months preceding the order of liquidation, unless it can be shown that the payment was lawful and reasonable and that the reciprocal insurer did not know and, using due diligence, could not have known that the distribution might adversely affect the ability of the reciprocal insurer to fulfill its subscriber's contractual obligation.

Chapter 21.78. REHABILITATION AND LIQUIDATION ok

- Sec. 21.78.010. Jurisdiction of delinquency proceedings.
- Sec. 21.78.020. Commencement of delinquency proceedings.
- Sec. 21.78.030. Injunctions and orders.
- Sec. 21.78.040. Grounds for rehabilitation.
- Sec. 21.78.050. Grounds for liquidation.
- Sec. 21.78.090. Order of rehabilitation.
- Sec. 21.78.100. Order of liquidation, domestic insurers.
- Sec. 21.78.130. Conduct of delinquency proceedings against domestic and alien insurers.
- Sec. 21.78.150. Claims of nonresidents against domestic insurers.
- Sec. 21.78.170. Form of claim.
- Sec. 21.78.180. Priority of certain claims.
- Sec. 21.78.190. Attachment and garnishment of assets.
- Sec. 21.78.200. Uniform Insurers Liquidation Act.
- Sec. 21.78.210. Deposit of money collected.
- Sec. 21.78.220. Exemption from fees.
- Sec. 21.78.230. Borrowing on pledge of assets.
- Sec. 21.78.240. Date rights fixed on liquidation.
- Sec. 21.78.250. Fraudulent transfers before petition.
- Sec. 21.78.251. Fraudulent transfer after petition.
- Sec. 21.78.252. Voidable preferences and liens.
- Sec. 21.78.253. Claims of holders of void or voidable rights.
- Sec. 21.78.260. Priority of distribution.
- Sec. 21.78.270. Setoffs and counterclaims.
- Sec. 21.78.271. Recovery of premiums owed.
- Sec. 21.78.272. Reinsurer's liability.
- Sec. 21.78.280. Special claims.
- Sec. 21.78.281. Special provisions for third-party claims.
- Sec. 21.78.290. Notice to creditors and others.
- Sec. 21.78.291. Duties of agents.
- Sec. 21.78.292. Filing of claims.
- Sec. 21.78.293. Receiver's recommendation to the court.
- Sec. 21.78.294. Distribution of assets.
- Sec. 21.78.295. Unclaimed and withheld money.
- Sec. 21.78.296. Termination of proceedings.
- Sec. 21.78.297. Reopening liquidation.
- Sec. 21.78.298. Disposition of records during and after termination of liquidation.

- Sec. 21.78.300. Report and petition for assessment.
- Sec. 21.78.310. Order and levy of assessment.
- Sec. 21.78.320. Assessment prima facie correct.
- Sec. 21.78.325. Recovery from affiliates.

7. Standard Trust Administration.

Chapter 21.24. ADMINISTRATION OF DEPOSITS

- Sec. 21.24.010. Authorized deposits of insurers.
- Sec. 21.24.020. Purpose of deposit.
- Sec. 21.24.030. Securities eligible for deposit. *OK*
- Sec. 21.24.040. Depositary or custodian.
- Sec. 21.24.050. Record of deposits.
- Sec. 21.24.060. Liability of director and state.
- Sec. 21.24.070. Assignment, conveyance of assets or securities. *OK*
- Sec. 21.24.080. Appraisal.
- Sec. 21.24.090. Rights of insurer during solvency.
- Sec. 21.24.100. Excess deposits.
- Sec. 21.24.120. Deficiency of deposit.
- Sec. 21.24.130. Duration and release of deposit.

8. Due Process Protections for Insurers

Chapter 21.09. AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS *OK*

- Sec. 21.09.010. Certificate of authority required.
- Sec. 21.09.040. General eligibility of insurers.
- Sec. 21.09.050. Name of insurer.
- Sec. 21.09.060. Combinations of insuring powers in one insurer.
- Sec. 21.09.070. Capital funds required of foreign insurers and new domestic insurers.
- Sec. 21.09.090. Deposit requirement.
- Sec. 21.09.100. Management and affiliations.
- Sec. 21.09.110. Application for certificate of authority
- Sec. 21.09.120. Issuance, refusal, and ownership of certificate.
- Sec. 21.09.130. Continuance, expiration, reinstatement, and amendment of certificate.
- Sec. 21.09.135. Voluntary surrender of certificate of authority.
- Sec. 21.09.140. Mandatory revocation or suspension of certificate.
- Sec. 21.09.150. Suspension or revocation for violations and special grounds.
- Sec. 21.09.160. Notice of suspension or revocation and effect upon

agent's authority.

Sec. 21.09.170. Duration of suspension, insurer's obligations, and reinstatement.

Sec. 21.09.175. Determination of impairment.

Sec. 21.09.180. Director attorney for service of process.

Sec. 21.09.190. Service of process.

Sec. 21.09.250. Prohibited acts.

Sec. 21.09.260. Penalties.

Sec. 21.27.405. HEARING AND ORDER ON VIOLATION. (a)

On the complaint of a person or on the motion of the director, the director may conduct an investigation to determine whether a person has violated this chapter.

(b) If the director determines that a person has violated this chapter, the director shall serve an order upon the person charged requiring that person to cease and desist from engaging in the act or practice. Service required under this subsection shall be by mail with a certificate of mailing from the United States Postal Service. A person aggrieved by the cease and desist order may demand a hearing under AS 21.06.170 - 21.06.240.

(c) If the director believes that a person has violated a cease and desist order issued under (b) of this section, the director may certify the relevant facts to the superior court for proceedings under AS 44.62.590. In addition to the penalties and remedies provided for in AS 44.62.590, the superior court, upon finding that the cease and desist order has been violated, may order the violator to comply with the order, pay a penalty of not more than \$100,000 for each violation, revoke or suspend the violator's license, and bar the violator from transacting the business of insurance in the future.

Sec. 21.27.410. DENIAL, NONRENEWAL, SUSPENSION, OR REVOCATION OF LICENSES. (a) The director may deny issuance of or not renew a license, or may suspend or revoke a license issued under this chapter for any of the following:

(1) a cause for which issuance of the license or its renewal could have been denied had it then existed and been known to the director;

(2) a violation or participation in a violation of a provision of this title;

(3) wilful misrepresentation or fraud by the licensee or applicant to obtain or attempt to obtain a license;

(4) misappropriation, conversion to personal use, or illegally withholding money required to be held in a fiduciary capacity by a licensee or applicant;

(5) with intent to deceive, material misrepresentation of the terms or effect of an insurance contract by a licensee or applicant;

- (6) twisting in violation of AS 21.36.050 or rebating in violation of AS 21.36.100 by a licensee or applicant;
- (7) conviction of a felony;
- (8) the conduct of affairs under a license if the licensee exhibits conduct considered by the director to reflect incompetence or untrustworthiness, or to be a source of potential injury and loss to the public;
- (9) the licensee or applicant dealing with, or attempting to deal with, or to exercise a power relative to, insurance outside the scope of the license of the licensee or applicant;
- (10) failure to surrender a license as required by this chapter, or revocation of a license within the 12 months preceding the date a new application is received;
- (11) failure to pass an examination required under this chapter;
- (12) cheating on an examination required under this title;
- (13) a licensee or applicant engaging in or about to engage in an unfair or fraudulent insurance transaction;
- (14) suspension or revocation of a license in another jurisdiction;
- (15) forgery of another's name to an application for insurance by a licensee or applicant;
- (16) accepting insurance business from a person not licensed as required by this title if the applicant or licensee knew or should have known that the person was unlicensed.

(b) The license of a firm and its principal or manager may be denied, nonrenewed, suspended, or revoked for a violation or cause that relates to a person representing or acting on behalf of the firm.

Sec. 21.27.420. PROCEDURE FOR SUSPENDING, REVOKING, OR CONDITIONING A LICENSE. (a) After a hearing under AS 21.06.170 - 21.06.240, if the director determines that a person has violated a provision of this title and that the person's license should be suspended or revoked, the director shall issue an order effective 10 days after the date of issuing that the license is suspended or revoked.

(b) After a hearing under AS 21.06.170 - 21.06.240, if the director determines the person has violated a provision of this title, the director may place conditions on a person's license if the director finds that the conditions will protect the public from injury or potential injury.

(c) With the consent of an applicant or licensee, the director may issue or renew a license with restrictions upon the scope of the person's license or may otherwise restrict or condition the activities of the licensee if the director determines that the person has violated

the provisions of this title or to protect the public from injury or potential injury.

Sec. 21.27.430. SUSPENSIONS AND REVOCATIONS. (a) An order suspending a license shall specify the period during which the license is suspended. A period of suspension may not exceed 12 months.

(b) An order revoking a license shall specify the period during which the person may not seek to be licensed in this state or licensed relative to a subject resident, located, or to be performed in this state.

(c) In addition to any other penalty provided by law, a person whose license has been suspended or revoked shall pay a penalty equal to all or a portion of the compensation received during the suspension or revocation relating to the transaction of insurance.

Sec. 21.27.440. PENALTIES. (a) In addition to any other penalty provided by law, a person that the director determines under AS 21.06.170 - 21.06.240 has violated the provisions of this chapter is subject to

(1) a civil penalty equal to the compensation promised, paid, or to be paid, directly or indirectly, to a licensee in regard to each violation;

(2) either a civil penalty of not more than \$10,000 for each violation or a civil penalty of not more than \$25,000 for each violation if the director determines that the person wilfully violated the provisions of this chapter; and

(3) denial, nonrenewal, suspension, or revocation of a license.

(b) An order issued by the director that levies a civil penalty shall specify the time period within which the civil penalty must be fully paid. The period may not be less than 15 days or more than one year after the date of the order. Upon failure to pay a civil penalty when due, the director shall revoke, without further hearing, all licenses of the licensee not already revoked.

Sec. 21.27.450. Fine in lieu of action against the license. *alt*
[Repealed, sec. 223 ch 67 SLA 1992]. Repealed or Renumbered

Sec. 21.27.460. RETURN OF LICENSE. (a) A license issued *alt*
under this chapter is the property of the state. Within 10 days of an order or notice of nonrenewal, suspension, or revocation of the license, the licensee or other person having possession or custody of the license shall deliver it to the director either personally or by certified mail.

(b) If a license is lost, stolen, or destroyed while in the possession of the licensee or person, the director may accept, in lieu of

the return of the license, an affidavit of the licensee or other person responsible for or involved in the safekeeping of the license concerning the facts of the loss, theft, or destruction.

(c) Upon a change in the state of residence, a place of business, a mailing address, or in the principal or manager of a firm, a license subject to the change shall be surrendered to the director within 10 days either personally or by certified mail and the division shall reissue the license reflecting the changes if the licensee continues to satisfy the qualifications under this chapter.

9. Use of an Attorney-in-Fact Approach

Sec. 21.75.040. ATTORNEY-IN-FACT. (a) [Repealed, sec. 223 ch 67 SLA 1992].

(b) The attorney-in-fact of a foreign or alien reciprocal insurer, that is authorized to transact insurance in this state, may not, by virtue of discharge of its duties as the attorney-in-fact with respect to the insurer's transactions in this state, be considered to be doing business in this state within the meaning of a law of this state applying to foreign firms or corporations.

Sec. 21.75.045. LICENSING OF ATTORNEYS-IN-FACT. (a) A person may not act in the capacity of attorney-in-fact for a subscriber regarding a subject that is resident, located, or to be performed in this state or for a reciprocal insurer licensed to do business in this state unless the person is licensed under this chapter. The director may adopt regulations that establish qualifications for being licensed as an attorney-in-fact. The attorney-in-fact for a domestic reciprocal insurer transacting all of its insurance activities on a subject resident, located, and to be performed in this state is exempt from licensing under this title if the attorney-in-fact

(1) is a wholly-owned subsidiary of the reciprocal; and

(2) does not act as attorney-in-fact for another unaffiliated reciprocal insurer.

(b) The director may not issue or renew a license under this chapter to a person, or to be exercised by a person, found by the director to be untrustworthy, incompetent, financially irresponsible, or who has not established to the satisfaction of the director that the person is qualified under this chapter.

(c) To qualify for issuance or renewal of a license under this chapter, an applicant or licensee shall comply with this title and

(1) be a trustworthy person;

(2) have active working experience in administrative functions that, in the director's opinion, exhibits the ability to competently perform the administrative functions of an attorney-in-fact;

(3) not have committed an act that is a cause for denial, nonrenewal, suspension, or revocation of a license in this state or another jurisdiction;

(4) have and maintain a lawfully established place of business physically accessible to the public where the attorney-in-fact principally conducts transactions under the license in this state, or if for a foreign reciprocal, in the state of domicile;

(5) disclose to the director all officers, directors, partners, principals, or managers and whether or not they are licensed in this state or another jurisdiction;

(6) designate an officer, partner, or principal responsible for the firm's compliance with the insurance statutes and regulations of this state;

(7) provide certified financial statements for the prior two years prepared by an independent certified public accountant that establish that the applicant is solvent, that the applicant's system of accounting, internal control, and procedure is operating effectively to provide reasonable assurance that money is promptly accounted for and paid to the person entitled to the money, and any other information that the director may require to review the current financial condition of the applicant;

(8) provide to the director documents necessary to verify statements contained in or in connection with the application; and

(9) notify the director within 30 days in writing by certified mail of a change in officer, director, partner, principal, or manager; place of business; mailing address; telephone number; suspension or revocation of an insurance license by another state or jurisdiction; or a conviction of a misdemeanor or felony of the attorney-in-fact, its officers, directors, partners, owners, or employees.

(d) The director may adopt regulations establishing education requirements, experience requirements, or examination requirements for applicants or licensees under this chapter.

(e) The director may require that an attorney-in-fact maintain an errors and omissions insurance policy acceptable to the director.

(f) If the director finds that the applicant or licensee is qualified and that application, license, or renewal fees set under AS 21.06.250 have been paid, the director may issue or renew the license.

(g) A license issued under this chapter shall be renewed each year by the attorney-in-fact when the annual statement is filed under AS 21.75.130.

(h) An attorney-in-fact shall be subject to hearings and orders on violations; denial, nonrenewal, suspension, or revocation of license; penalties; and surrender of a license under the procedures of AS 21.27.405 - 21.27.460.

Sec. 21.75.050. SURPLUS FUNDS REQUIRED. (a) A domestic reciprocal insurer formed in accordance with the provisions of this chapter shall have and maintain a surplus no less than an amount equal to the total of the capital and one-half of the surplus that would be required of a domestic stock insurer writing the same lines for which the reciprocal insurer seeks to be authorized.

(b) A foreign reciprocal insurer shall have and maintain a surplus no less than an amount equal to the total capital and surplus that would be required of a domestic stock insurer writing the same lines for which the reciprocal seeks to be authorized.

(c) A domestic reciprocal insurer formed under this chapter by and insuring only 10 or more municipalities shall

(1) comply with (a) of this section or post a bond for an amount equal to the capital that would be required of a domestic stock insurer writing the same lines of insurance for which the reciprocal insurer seeks to be authorized; and

(2) maintain a surplus of \$250,000 in admitted assets or a surplus sufficient to operate the reciprocal insurer for one year, whichever is greater.

(d) Notwithstanding (a) and (c) of this section, or AS 21.09.080, domestic reciprocal insurers duly licensed and capitalized on December 31, 1984, shall have and maintain the capital and surplus required at the date of their original license.

(e) Notwithstanding (a) - (c) of this section, the director shall establish by regulation the level of surplus to be maintained by a reciprocal insurer providing marine insurance.

Sec. 21.75.060. ORGANIZATION OF RECIPROCAL INSURER. (a) Ten or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the director for a certificate of authority to transact insurance.

(b) The proposed attorney-in-fact shall fulfill the requirements of and shall execute and file with the director when applying for a certificate of authority, a declaration setting out

(1) the name of the insurer;

(2) the location of the insurer's principal office, which shall be the same as that of the attorney-in-fact and shall be maintained in this state;

(3) the kinds of insurance proposed to be transacted;

(4) the names and addresses of the original subscribers;

(5) the designation and appointment of the proposed attorney-in-fact and a copy of the power of attorney;

(6) the names and addresses of the officers and directors of the attorney-in-fact, if a corporation, or its members, if a firm;

(7) the powers of the subscribers' advisory committee, and the names and terms of office of the members;

(8) that all money paid to the reciprocal insurer shall, after deducting any sum payable to the attorney-in-fact, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;

(9) a copy of the subscribers' agreement;

(10) a statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six months at an adequate rate filed with and approved by the director;

(11) a statement of the financial condition of the insurer, a schedule

of its assets, and a statement that the surplus as required by AS 21.75.050 is on hand;

(12) a copy of each policy, endorsement, and application form it then proposes to issue or use.

(c) The declaration shall be acknowledged by the attorney-in-fact in the manner required for the acknowledgment of deeds.

(d) The director may provide financial and technical assistance to persons who wish to establish a reciprocal insurer to provide marine insurance under this chapter.

(e) The areas the director may assist the person with under (d) of this section include

- (1) preparing the documentation necessary to form the reciprocal insurer;
- (2) obtaining reinsurers for the reciprocal insurer;
- (3) preparing subscriber rules and management procedures for the reciprocal insurer;
- (4) financing the formation expenses of the reciprocal insurer;
- (5) managing the reciprocal insurer.

Sec. 21.75.070. CERTIFICATE OF AUTHORITY. (a) The certificate of authority of a reciprocal insurer shall be issued to its attorney-in-fact in the name of the insurer.

(b) The director may refuse, suspend, or revoke the certificate of authority, in addition to other grounds, for failure of the attorney-in-fact to comply with a provision of this title.

Sec. 21.75.080. AUTHORITY OF ATTORNEY-IN-FACT. (a) A subscriber's agreement providing for an advisory committee consistent with AS 21.75.170 shall be executed by each subscriber and shall grant authority to the attorney-in-fact to manage the affairs of the reciprocal insurer.

(b) The duties of the attorney-in-fact shall be specified in the subscriber's agreement. The agreement shall be approved by the director and amendments shall be approved by the director and the advisory committee. The agreement must, at a minimum, provide that

(1) the attorney-in-fact shall provide written notice of and make the necessary arrangements for the election, in person or by proxy, of the members of the advisory committee; the cost of notice, ballot, or proxy for a meeting and the cost of a meeting that may be called for an election shall be paid by the reciprocal insurer;

(2) the attorney-in-fact shall provide written notice to the members of the advisory committee of not less than 10 business days for a regular meeting or a special meeting called under AS 21.75.170 (e); the cost of notice shall be paid by the reciprocal insurer;

(3) the advisory committee may, upon majority vote of its members at a regular or special meeting and upon written notice of the vote to the director and the attorney-in-fact, recommend termination of the attorney-in-fact for a

stated cause and the appointment of a new attorney-in-fact;

(4) termination of the attorney-in-fact shall require the approval of a two-thirds majority of the subscribers present in person or by proxy at a meeting called for that purpose; the attorney-in-fact shall provide written notice to all subscribers by certified mail not less than 30 days before the meeting; the notice must include the recommendation of termination and replacement drafted by the advisory committee and other appropriate documents drafted by the attorney-in-fact; a copy of all documents mailed and certification of mailing to all subscribers must be provided to all members of the advisory committee; the cost of notice and proxy for the meeting shall be paid by the reciprocal insurer; at least 25 percent of all subscribers shall constitute a quorum for reciprocal insurers with less than 10,000 subscribers; 2,500 subscribers or five percent of all subscribers, whichever is greater, shall constitute a quorum for all other reciprocals;

(5) the assets of the reciprocal insurer and its subscribers shall be invested under AS 21.21; investment guidelines shall be approved by the advisory committee and shall be properly accounted for on the financial records of the reciprocal insurer as being held for or on behalf of the subscribers; the cash assets of the reciprocal insurer and its subscribers not otherwise invested in short-term securities, covering policy obligations arising out of policies issued, or issued for delivery in the United States shall be held in one or more appropriately identified accounts in banks that are members of the Federal Reserve System; these accounts shall be drawn on by the attorney-in-fact or by employees or representatives of the reciprocal insurer authorized by the attorney-in-fact for payments on behalf of the reciprocal insurer;

(6) if the attorney-in-fact is acting for more than one reciprocal insurer, separate records and accounts shall be maintained for each reciprocal;

(7) the attorney-in-fact may not assign responsibilities detailed in the subscriber's agreement in whole or in part without prior approval of the advisory committee and the director;

(8) the attorney-in-fact shall

(A) establish and maintain underwriting procedures and manuals that state the rates and conditions for the acceptance or rejection of risks;

(B) make a report to the advisory committee at each regular meeting of the committee on the financial condition of the reciprocal insurer and all material transactions entered into during the period since the last meeting;

(C) annually provide to each member of the advisory committee

(i) on or before March 2, a copy of the reciprocal insurer's annual statement and the accompanying statement of actuarial opinion filed with the director under AS 21.75.130 ; and

(ii) on or before June 1, a copy of a statement prepared by an independent certified public accountant addressing the financial condition and solvency of the attorney-in-fact;

(D) maintain a financially solvent condition;

(9) the forms, amounts, and formulas of compensation the

attorney-in-fact will receive for services rendered are specified;

(10) the books, accounts, and records of the reciprocal insurer, its subscribers, and the attorney-in-fact are maintained to clearly and accurately disclose the nature and details of each transaction, including all notes, workpapers, documents, and similar material in sufficient detail that relevant events, dates, and persons participating can be identified and information necessary to determine that the compensation received by or owing to the attorney-in-fact conforms to the subscriber's agreement; the books, accounts, and records of the reciprocal insurer are the sole property of the reciprocal insurer;

(11) if the subscriber's agreement provides that any of the attorney-in-fact's compensation is contingent upon the reciprocal insurer's profits, that compensation may not be determined and paid until at least five years after the premiums on casualty insurance are earned, at least one year after the premiums are earned on any other kind of insurance, and not until the adequacy of loss reserves on the remaining claims, known and unknown, have been verified under (8) of this subsection; and

(12) the attorney-in-fact shall conduct the affairs of the reciprocal insurer as required under this title.

(c) Unless subject to AS 21.22, a material transaction between the reciprocal insurer, its subscribers, the attorney-in-fact, and an affiliate of the attorney-in-fact may not be entered into unless it has been filed with the director of the reciprocal insurer's state of domicile, if accredited by the National Association of Insurance Commissioners, or with the director of this state, if not accredited, at least 30 days before its effective date and the director of the accredited state has not disapproved it; however, a transaction involving five percent or more of admitted assets is subject to prior approval of the director of the reciprocal insurer's state of domicile and the transaction must meet the following standards:

(1) the terms shall be fair and equitable;

(2) charges or fees for services performed shall be reasonable;

(3) expenses incurred and payments received shall be allocated to the reciprocal insurer on an equitable basis in conformity with statutory insurance accounting practices being consistently applied; and

(4) the books, accounts, and records of each party shall be maintained to disclose clearly and accurately the precise nature and details of the transaction, including accounting information that is necessary to support the reasonableness of the charges or fees to the respective parties.

(d) A subscriber's agreement containing the duties of the attorney-in-fact shall be provided by the attorney-in-fact to all subscribers. Renewing subscribers shall be informed that their failure to return a signed rejection of the subscriber's agreement within 30 days after the renewal date will be considered acceptance of the subscriber's agreement.

Sec. 21.75.090. MODIFICATIONS. Modifications of the terms of the subscribers' agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney-in-fact and the subscribers' advisory committee. A modification may not be effective retroactively, or apply to an

insurance contract issued before the modification.

Sec. 21.75.100. ATTORNEY-IN-FACT'S BOND. (a) Concurrently with the filing of the declaration provided in AS 21.75.060, the attorney-in-fact of a domestic reciprocal insurer shall file with the director a bond in favor of this state for the benefit of all persons damaged as a result of a breach by the attorney-in-fact of the conditions of the bond as set out in (b) of this section. The bond shall be executed by the attorney-in-fact and by an authorized corporate surety, shall meet the requirements established under AS 21.27.190 and shall be subject to the director's approval.

(b) The bond shall be in the sum of \$100,000, aggregate in form, conditioned that the attorney-in-fact will faithfully account for all money and other property of the insurer coming into the hands of the attorney-in-fact and that the attorney-in-fact will not withdraw or appropriate to personal use from the funds of the insurer, money or property to which the attorney-in-fact is not entitled under the subscriber's agreement.

(c) [Repealed, sec. 223 ch 67 SLA 1992].

(d) The director may require the attorney-in-fact, unless wholly owned by the reciprocal insurer, to maintain an errors and omissions policy issued by an admitted insurer acceptable to the director providing coverage in an amount and issued by an insurer approved by the director. This requirement is satisfied if the attorney-in-fact maintains an errors and omissions policy to satisfy the laws of another state in an amount approved by the director.

Sec. 21.75.110. Action on bond. Action on the attorney-in-fact's bond or to recover against a deposit made in lieu of the bond may be brought at any time by one or more subscribers suffering loss through a violation of its conditions, or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of the penalty of the bond.

Sec. 21.75.115. EXAMINATION OF AN ATTORNEY-IN-FACT. An attorney-in-fact of a reciprocal insurer is subject to examination by order of the director under AS 21.06.120 and 21.06.140 - 21.06.160 for the purpose of determining compliance with this title relating to the operations of the reciprocal insurer or its attorney-in-fact that the director determines cannot be obtained by examination of the reciprocal insurer. The cost of the examination shall be paid by the attorney-in-fact.

Sec. 21.75.120. SERVICE OF PROCESS. (a) Legal process shall be served upon a domestic reciprocal insurer by serving the insurer's attorney-in-fact at the principal offices of the attorney-in-fact or by serving the director as the insurer's process agent under AS 21.09.180 and 21.09.190.

(b) A judgment based upon legal process so served shall be binding upon each of the insurer's subscribers as their respective interests may appear but in an amount not exceeding their respective contingent liabilities, if any, the same as

though personal service of process was had upon each subscriber.

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

TONY KNOWLES, GOVERNOR

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March 5, 1997

The Honorable Loren Leman
Alaska State Senate
State Capitol, Room 113
Juneau, AK 99801-1182

Dear Senator Leman:

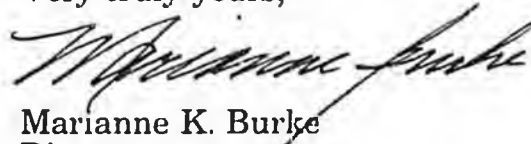
Re: Testimony on Senate Bill 95

Enclosed is a copy of my notes for the testimony from the February 27, 1997, hearing on SB 95.

There are approximately 131 insurers writing workers' compensation business in Alaska, with the top 20 companies consisting of 90.89 percent of the market. As I testified to, the Alaska market is healthy and competition is helping all Alaskans. Market disruption is, however, always a possibility. If large portions of the premium dollars leave the market to go "self insured," current writers may decide that their share of the market is not large enough to be profitable. This is a big concern to the division. Loss of competition has disrupted the market in the past in Alaska and in many other states. We hope to avoid recurrences.

If you need any further information, please contact me.

Very truly yours,



Marianne K. Burke
Director

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Enclosure

TESTIMONY OF HB 116 AND SB 95

The Division of Insurance with the Division of Workers' Compensation met with the Homebuilders Association last year to discuss some of the concerns with the proposed legislation. This year's bill has addressed some of the issues we discussed, but several items of concern remain. Four essential issues that are outstanding are solvency, guaranty protection, safeguards against unfair trade practices, such as discrimination and cancelation, and a mechanism for complaint resolution.

Solvency

The \$1 million combined net worth of all members does not provide adequate protection since there is no requirement regarding the liquidity of the net worth. Net worth measures the difference between assets and liabilities; it does not measure cash. Also, the minimum net worth is based on the individual net worth of the members of the group; it is not the net worth of the group entity. No authority is given for the director to examine the individual members of the group.

This bill provides for a security bond and excess insurance as a means of solvency protection. These are not adequate since the security bond will be available only after the group has become insolvent, and is not available to protect against insolvency. The division cannot guarantee that excess insurance coverage will be available to any self-insured group that wants to purchase it. Excess insurance coverage will only cover losses that exceed a maximum amount agreed upon between the group and the excess insurer. If an individual loss is less than this agreed upon amount, the excess coverage does not apply; the group is responsible for the amount of each claim up to the limit determined in advance with the insurer, even if the group does not have the funds to pay the loss. The group may have many small losses that deplete its reserves, but if each of those losses is less than the excess insurance amount, there will be no coverage.

There is no provision for oversight and regulation of the investments that a self-insured group will make. All other insurers are subject to such regulation.

The joint and several arrangement may result in adverse selection. A group member with good experience may decide he is no longer interested in belonging to a group with poor experience. Even though individual members will still be liable for losses incurred while they were members, the group may end up consisting of those members with poorer experience, and this will hasten the insolvency of the troubled group.

The premium required for the first year is not sufficient to provide for start-up costs and fund a reserve for any losses that occur in the first year. Of the \$250,000 estimated annual premium, only 25 percent, or \$62,000, is paid at the time the group is issued a certificate of approval. Seventy percent, or \$43,750, of this is set aside for claims, and the remaining 30 percent is used for administrative costs. Forty thousand dollars will not fund very many losses, and if the first loss is large, the group may be insolvent before it has opportunity to become established.

This bill does not give the director any discretion in deciding whether or not a group receives approval. The director is required to issue a certificate if the group meets the minimum qualifications.

Guaranty Protection

Every insurer contributes to the state guaranty fund. This fund is used to pay any claims that remain when an insurance company becomes insolvent. This bill exempts a self-insured group from this protection.

The director has not been given the authority to intervene until a group has become insolvent. A process should be developed so that the director can intervene before the group becomes insolvent. Providing a financial statement 18 months after year end does not provide information in a timely manner for the director to determine the financial status of a group. Other insurers are required to provide this information two months after year end.

Since this entity is not an insurer, an insolvent situation may be regulated under federal bankruptcy laws, rather than state insolvency laws. If bankruptcy standards are applied, benefit payments to injured workers will likely be delayed and there will be no guarantee that funds will be available to make any benefit payments.

Rates

The bill requires that each self-insured group adhere to the uniform classification, manual rates and rules, and experience rating plans designated by the director. This is currently the method by which every employer's premium is determined.

The manual rates this bill requires a self-insured group to use are determined on a statistical basis using five years of experience from all employers in a specific classification. This experience includes actual and anticipated expenses such as frequency and severity of losses, medical expenses, retraining costs and legal costs. This manual rate is the same for everyone. Under the current system, the manual rate is modified to reflect the experience of individual employers. The approach specified in this legislation is the approach used under the current system.

Employers already have the opportunity and responsibility to directly control their workers' compensation premiums by providing safe working conditions for their employees. Fewer accidents reduce premiums as determined by the manual rates. Also, every employer's premium is currently adjusted to reflect the individual experience of the particular employer. If an employer's experience is better than the average experience contemplated in the manual rates, a credit is applied to the premium. If an employer's experience is worse than the average experience, his premium will be deleted. This procedure which applies a debit or credit to an individual policy premium is called experience modification.

After five years a self-insured group may use its own experience to develop rates. There is no guarantee that rates based on the group's experience will be lower than the manual rates developed from the experience of all employers in the same classification as members of the group. Basing rate calculations on smaller groups frequently increases the rate rather than decreasing it.

These are other costs that a self-insured group will incur in addition to premium costs. These costs include excess insurance costs and exam costs. Total costs under this proposal are very likely to be higher than an employer will have under the current system.

Alaska's workers' compensation marketplace is healthy and competitive. The rate filing approved for 1997 requested an average 10.3 percent decrease in workers' compensation rates. This continues the downward trend that began in 1988 when the workers' compensation reforms were implemented.

Missing Issues

The remaining items of concern, safeguards against unfair trade practices and complaint resolution, have not been addressed in this proposal.

Premium Tax

Except for an initial filing fee of \$500, there is no provision for fees to cover the division's costs in regulating self-insured groups. This proposal requires the division to participate in some administrative functions for self-insured groups, a function the division does not perform for any other insurer, without specifying how the costs will be paid. All other insurers are subject to a statutory 2.7 percent premium tax. A self-insured group should be subject to the same tax so that all insurance entities are treated equally.

Alaska has had excellent experience, under existing statute, for groups that wanted to pool this risk. Alaska Timber Exchange and ARECA formed reciprocal insurers as provided in AS 21.75. A reciprocal arrangement has advantages for group members that are not available in this proposal. Group members do not need to be jointly and severally responsible. The reciprocal is responsible for the risk. The net worth of individual members of the group does not need to be pledged to the reciprocal. The statutory capital to form a reciprocal must be liquid (as defined by statutes) and it belongs to the reciprocal, not the individual group members. A reciprocal pays premium tax, participates in the guaranty fund and is subject to the trade practices act. No new statutes or regulations are needed.

*Written testimony from
Linda Hall 2/27/97*

AIIB POSITION PAPER - SENATE BILL 95

The Alaska Independent Insurance Agents & Brokers, Inc. opposes Senate Bill 95 which would allow the formation of self-insurance groups. There are two broad areas of concern with this concept: 1) the effect on the insurance market in general and 2) the actual provisions of Senate Bill 95.

The current worker's compensation market in Alaska is very strong and very competitive. There are increasing numbers of new, financially stable insurance companies writing coverage in the State. Worker's Compensation rates overall have decreased 40.1% since worker's compensation reforms were enacted in 1988 (See Attachment A). Currently, employers who institute adequate safety procedures and have acceptable loss records can obtain credits ranging from 10% to 40% for these practices. These market conditions have benefited all Alaskan employers. There is no reason to initiate new schemes that might destroy an effectively functioning system.

The overall worker's compensation premium in Alaska is not large when considered on a national level. If we begin withdrawing premium dollars from this market, insurance companies will begin to debate whether the market size justifies a commitment of their resources and efforts. If insurance companies begin to withdraw from the Alaska marketplace, the cost of coverage for all Alaskan employers will increase as competition is reduced.

The goal of any insurance legislation should be to create a climate stability and competition in the insurance marketplace. A viable insurance industry is the most effective tool for consumer protection.

Additionally, there are several specific provisions in SB 95 that cause concern. The bill creates a new chapter - Chapter 47 Worker's Compensation Self-Insurance Groups. Sec. 21.47.010 Scope states that a self-insurance group "is not subject to the provisions of the insurance laws of this title except as provided in this chapter". This means that:

1. The self-insurance groups are not subject to premium taxes. Premium taxes from insurance are the fourth largest source of income to the general fund. In addition to reducing revenues to the State, the exemption from premium taxes provides an unfair financial advantage for certain groups and creates a distinct disadvantage for the rest of the industry. There will be substantial additional costs to the Division of Insurance to implement and regulate these new entities and these additional costs will have to be absorbed from the general fund.
2. Protection from unfair trade practices, such as misrepresentation and unfair discrimination, and protection against unfair claim settlement practices will not be afforded to the members of the new groups.

Another area of concern is with the financial solvency of the self-insurance group. The ability to pay claims is critical for injured workers. Current Alaska statute requires a self-insured individual employer to have a net worth of \$5,000,000. 21.47.030 would require a combined net worth of all members of the group of only \$1,000,000. This is not a requirement of a claims reserve fund and is only a requirement to qualify for a certificate of approval. There is no liquidity requirement - just a net worth requirement. While a bond is required, this applies only after a period of failure to pay the required benefits and meanwhile there is a potential of significant time delays in the compensation of the injured worker. The financial requirement in this chapter is not nearly sufficient for a group composed of multiple employers, as the worker's compensation obligations could well exceed this net worth of \$1,000,000 in a single year with only a few serious injuries.

One of the frequently heard reasons for the formation of a self-insurance group is that the employers cannot afford the current worker's compensation premiums. As required by most group self-insurance mechanisms, the bill includes provision for an indemnity agreement which "jointly and severally bind(s) the group....to meet the worker's compensation obligations of each member". If affordability is an issue, it makes little sense to think that members are willing and able to bear responsibility for the worker's compensation obligations of other competitors in their industry.

The chapter provides for the use of "a uniform classification system, uniform experience rating plan, and manual rules....and manual rates". In addition to paying claims, the other expenses detailed in the bill include 1) the expense of examination by the director, 2) specific and aggregate excess insurance, 3) reinsurance, 4) annual audits of classifications, experience rating, payroll and rates, 5) the services of a service company, 6) an annual CPA audit, 7) various surety bonds, and 8) administrative costs. It is difficult to imagine how there can be any premium savings to group members that are being charged manual rates and whose expenses must include all the listed obligations.

In conclusion - Please consider in your deliberations on this bill the potential impact of an insolvent group. Where would the funds be found to pay the legal obligations to injured workers? What agency would oversee the process of compensating the injured workers? If a group is given special status by statute, will the State of Alaska be responsible for the financial impact of a failure of that group? The insurance marketplace is functioning smoothly and there does not appear to be a reason for the creation of new special interest entities that would compete unfairly in the same arena.

WORKERS COMPENSATION RATE CHANGES

RATE DATE CHANGE	OVERALL RATE
1-1-97	-10.3%
1-1-96	- 7.1%
1-1-95	+ 2.6%
1-1-94	+ 2.4%
1-1-93	- 8.5%
1-1-92	- 3.2%
1-1-91	- 6.2%
1-1-90	- 4.1%
7-1-88	- 5.7%
Total Change	-40.1

Worker's Compensation reforms were enacted in 1988

HAPCO CONSTRUCTION
PO Box 1501
SOLDOTNA, AK 99669
907-262-9515

FEB 25 1997

February 14, 1997

Senator Loren Leman, Chairman Senate Labor & Commerce
Room 113, State Capitol
Juneau, Alaska 99801-1182

Dear Senator Leman and Committee Members:

The Alaska State Home Builders Association has been working with the state legislature and the governor to pass legislation that will allow our association and other associations in the state to self insure for workers' compensation insurance through pooling arrangements.

This type of legislation has been enacted in over forty other states with fourteen of these states utilizing the pooling process. As a result, workers' compensation costs have decreased dramatically for those members of state home building associations utilizing this type of legislation. Experience has shown that when an association self insures for workers' compensation, the members of the association tend to focus on fraud and safety issues more closely than their previous for profit insurance companies, causing rates to dramatically decrease.

Workers' compensation costs are a substantial portion of the cost of building a new house in Alaska; the average workers' compensation cost for a new home in Alaska is in the area of \$4,000 to \$6,000. This cost places a burden on both the consumer and the builder of that new house. New housing is expensive in Alaska, anything we can do to reduce the cost will benefit both the consumer and the new home builders in our state. As mentioned, the workers' compensation pooling legislation we support has shown to decrease these costs through reduction in fraud, improvement in safety efforts and peer pressure.

I and hundreds of others in the home building and associated industries support this legislation. I am writing to ask that you also support this legislation. Thank you for your help on this issue of critical importance to the economic health and diversification of our great state.

Sincerely,

A handwritten signature in black ink, appearing to read "Loren Leman", with a long horizontal flourish extending to the right.



First National Bank
of Anchorage

February 20, 1997

Senator Loren Lemam, Chairman Senate Labor & Commerce
Room 113, State Capitol
Juneau, Alaska 99801-1182

FEB 24 1997

Dear Senator Lemam and Committee Members:

The Alaska State Home Builders Association has been working with the state legislature and the governor to pass legislation that will allow our association and other associations in the state to self insure for workers' compensation insurance through pooling arrangements.

This type of legislation has been enacted in over forty other states with fourteen of these states utilizing the pooling process. As a result, workers' compensation costs have decreased dramatically for those members of state home building associations utilizing this type of legislation. Experience has shown that when an association self insures for workers' compensation, the members of the association tend to focus on fraud and safety issues more closely than their previous for profit insurance companies, causing rates to dramatically decrease.

Workers' compensation costs are a substantial portion of the cost of building a new house in Alaska; the average workers' compensation cost for a new home in Alaska is in the area of \$4,000 to \$6,000. This cost places a burden on both the consumer and the builder of that new house. New housing is expensive in Alaska, anything we can do to reduce the cost will benefit both the consumer and the new home builders in our state. As mentioned, the workers' compensation pooling legislation we support has shown to decrease these costs through reduction in fraud, improvement in safety efforts and peer pressure.

I and hundreds of others in the home building and associated industries support this legislation. I am writing to ask that you also support this legislation. Thank you for your help on this issue of critical importance to the economic health and diversification of our great state.

Sincerely,

ALASKA BEST PLUMBING & HEATING

1845 Caribou Way
Fairbanks, AK 99709

(907) 455-6506

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FEB 24 1997

2/20/97

Chair of the Senate
Labor and Commerce Committee

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Thank you for your help on this issue of *critical importance* to the economic health and diversification of our great state.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeff Boe".

Complete Act

**PRESENTATION TO
ALASKA STATE LEGISLATURE
RE: HB 116/SB 95**

I am here on behalf of Alaska National Insurance Company to testify in opposition to this legislation.

Alaska National Insurance Company

Alaska National Insurance Company has been writing workers compensation insurance in Alaska since 1980 and during the past sixteen years has provided a consistent, and financially sound market for workers' compensation insurance upon which most of Alaska's significant industries have been relying and most of the state's insurance producers have come to know as a reliable business partner for their clients.

Richard Block

You should also know my own background. I am an attorney and risk management consultant having worked in the insurance industry in one capacity or another for twenty nine years, twenty two years in Alaska. I was for three years the Director of Insurance for the state, for six years the President of Alaska National, for twelve years, a risk management consultant. In that capacity I advised individual large commercial risks such as Alyeska Pipeline, Veco and SKW on a wide variety of risk management issues, advised groups such as Alaska Rural Electric Cooperative Association and advised some entities that were considering groups, such as The Associated General Contractors and some municipalities, about the implications of their participation in group programs. Prior to becoming Director of Insurance and throughout my tenure in that office, I advised the Medical Malpractice Commission formed by then Governor Hammond, and the Medical Indemnity Corporation of Alaska, the state entity formed by the legislature in response to recommendations of that Commission that provided group insurance to the medical community until approximately 1987.¹

I provide this background because I want to make it clear that I have an understanding of the problems faced by groups, their desire to solve what they see as their insurance market problems and the ramifications of several possible solutions to those problems.

What is the Problem?

¹ A.S. 21.88 adopted 1976, repealed 1991 because the original legislation served its purpose and the program was terminated as private traditional medical malpractice insurance became available.

It is important, before we begin crafting a solution, that we have a good understanding of the problem. We are being told that the solution being proposed has an antecedent in North Carolina where a similar program was adopted and has allegedly worked for homebuilders there. I am told that at the time the plan was initiated there, there was a serious problem of insurance availability. Almost any plan would have been considered a success if it provided a way for homebuilders to get any insurance.

There is no crisis of availability in Alaska. Every homebuilder, every employer, has workers' compensation insurance available to them--no exceptions. If a private commercial carrier will not write the coverage voluntarily, the workers' compensation assigned risk plan must write the risk and at rates controlled by the Division of Insurance. In 1995, 176 employers whose predominant class of workers were in the homebuilders classification were provided coverage by the workers' compensation assigned risk pool.²

So there is no problem of availability.

There are two kinds of risk that find their way to the assigned risk pool: those that are considered too small or too new to be written in the voluntary market, and those with a history of losses that make them undesirable from an exposure standpoint. For either of these kinds of risks, the problem is price. The larger risks with poor loss histories are paying a higher price because they are not controlling the safety of their workers. The small risks are paying a high price because of minimum premiums, assigned risk surcharges and other factors that affect small employers in every industry.

It is our view that the homebuilders are looking for a way to reduce their workers' compensation costs and they have embraced the scheme in this bill to do that.

The fundamental thrust of this bill, the way they wish to reduce premium, is to avoid paying the costs associated with traditional insurance by creating an insuring mechanism and calling it group self-insurance.

What is group self-insurance?

There is no such thing as group self-insurance.

A study of the history of insurance will reveal that, in the early days, those who had mutual interests or a common industrial pursuit, banded together to enter into agreements for the mutual or reciprocal exchange of indemnities. "We all have boats. Let us agree among ourselves that if one of our boats goes down, all of us will chip in to replace that boat." This was the shifting of one person's

² Data provided by National Council on Compensation Insurance

loss to the financial resources of others. From that early institution of spreading risk sprang the insurance industry we know today.

A regime for the regulation of insurance grew up primarily to assure that the financial resources upon which the contracts of indemnity depend, would always be available when the person suffered the loss.

On the other hand, self-insurance means there is no sharing of risk. There is no pooling. It is a single entity deciding that, if there is a loss, it will not be catastrophic to that entity and thus it does not choose to engage in any pooling of risk mechanism. They do not have insurance.

That is why it is so deceiving to see the term "self-insurance group" in this bill. The bill provides a mechanism for pooling of risk, for the exchange of a somewhat more determinable expense to each participant for an indeterminable, and potentially, catastrophic loss to one or more of the participants. It shifts one participant's loss to the financial resources of others. It is classic insurance.

Substantive Objection

Is our objection merely semantic, or does this confusion, borne of trying to call an insurance plan a non-insurance plan, carry with it more consequential implications?

The substantive implications of what is proposed in this bill are extremely and adversely consequential to many different constituencies in this state. Calling it "self-insurance" has not avoided the problems attendant to poorly regulated or unregulated insurance plans. Study these implications carefully and, when you do, you will come to the same conclusion as did we, that the whole concept must be rejected.

Volatile Program

This bill deals with workers' compensation insurance. Of all the lines of insurance that a pooling scheme like this could underwrite, workers' compensation is one of the most volatile and runs the risk of shifting the burden of loss to the most vulnerable constituency in the state and the one least able to protect themselves; the injured workers who would be covered by contracts issued by this pooling scheme.

Any actuary will tell you, and this will likely be confirmed by the State Division of Insurance, workers' compensation carries one of the greatest risks of fluctuation in the valuation of loss reserves, and has the longest tail, i.e. claims can be paid out over more than ten years and the circumstances of an individual claim can change so that a reserve set after, say, five years is not sufficient after ten years. Also, in the case of latent exposures, a claim may be unknown for many years.

Unlike the example of the boats owned by the people who exchange indemnities, the loss here, if there is a failure of the plan, falls not on the employers or the participants, it falls potentially on the injured workers.

Financial Integrity of the Program

The first, and probably the most significant implication deals with financial security behind the indemnity.

One of the underlying premises of all insurance regulation is that the contract upon which so many rely must be backed with sound financial resources so that when the obligations come due, which could be anywhere from one year to twenty years after the date of the contract, the financial resources will be in place to honor those obligations.

The regulatory regime in this and most other states requires minimum capitalization of all insurance enterprises, whether stock³, mutual⁴ or reciprocal⁵. This legislation attempts to exempt these pooling arrangements from the capital requirements of licensed insurance entities and establish much lower, if not non-existent capital requirements⁶.

Experience has demonstrated over the years that the current minimum capital allowed today for insuring entities is probably inadequate, or at least bare minimum. There is no justification for allowing any entity insuring these kinds of exposures to have lower capital requirements than what is now in the statute.

Proponents of this measure would have you believe that because of the mutual exchange of indemnities by the participants in these programs there is adequate capital in the combined net worth of the participants. How do we know? There is no requirement that the financial statements of the participants be audited. There is no requirement that any one participant have a minimum net worth. The requirements of this bill would be met, for example, if the \$1,000,000 net worth were made up of 50 participants each with a \$20,000 net worth, a net worth which could be in the form of raw land, tools and equipment, airplanes or whatever the participant's firm may have as its assets, most of which, incidentally, would not be allowable assets under law for a workers' compensation insurer.

³ A.S. 21.09.070 requires stock companies to have \$2,750,000 to begin writing workers' compensation insurance.

⁴ A.S. 21.69.220 requires mutual insurers to have \$2,000,000 to begin writing workers' compensation and imposes minimum initial subscribers and premium.

⁵ A.S. 21.75.050 requires reciprocal insurers to have \$1,875,000 plus such additional amount as may be set by the director to begin writing workers' compensation.

⁶ HB 116 sec. 1 re: 21.47.030(b)(1) p. 2 l. 29. The requirement is \$1,000,000 of aggregated net worth of the participants. There is no requirement that the pooling entity itself have its own net worth.

Of even more concern, the net worth of the group offered to support the insuring program is also supporting the members' current business operations and is subject to their general business risks. Any insuring mechanism must have segregated and unfettered capital to support the underwriting program.

The proponents then might suggest that they are purchasing excess and aggregate stop loss insurance to minimize their exposure. Indeed this would be sound insurance pooling management. Unfortunately, however, this is fraught with risks. Let me list a few which I learned the hard way during my tenure as President of Alaska National.

First, underwriters of excess and aggregate stop loss insurance are in the business of providing that coverage only so long as the risks to them are acceptable. There is no assurance that over the long haul coverage will always be available or that the contract terms will provide long term, irrevocable protection for the pool. There is nothing that would prevent an excess carrier providing cover this year from saying they will not write the program next year and leaving the employer/participants scrambling to find workers' compensation coverages back in the traditional markets. Were that to happen, the participants, in this case, the homebuilders, would be paying for traditional workers' compensation insurance for the current year and exposed to possible assessments for all prior years they were in the program.

Second, much to my dismay, many of the reinsurers we had protecting Alaska National during our early years got into financial difficulty, some even becoming insolvent. Some were very large and well respected names in the industry when we purchased the reinsurance. It was our capital and our financial resources that ultimately filled the gap left when these securities failed us. Had we had only the barest minimum capital, or even less as proposed here, the resources would not have been in place to fill the gap left by those reinsurers who failed us. Despite the best intentions of the creators or managers of the plan proposed here, who will be required to fill the gap if one of the excess or aggregate stop loss carriers fails? As I see it, it will be primarily the homebuilders, ultimately, the injured workers!!

A program similar to what is proposed in this bill was adopted in California, only mindful of the very problems I have recited here, the California legislature required adherence to some very imposing requirements. Included is the requirement for \$5,000,000 net worth of initial participants and a security deposit equal to approximately two times estimated annual premium.⁷

⁷ Hunt, Robert M., "Group Self-Insurance in California: a Feasible Option?" Underwriters Report, October 20, 1994, p. 20

Third, and I will cover this point more fully further in my presentation, the more excess and aggregate stop loss protection is purchased, i.e. the lower the amount of risk retained in the pool to be shared by the participants, the less this is an insuring program and the more it is a cooperative insurance purchasing plan and the more the ultimate cost to the participants will approximate the costs of standard group workers' compensation insurance, which, incidentally, is legal and available now without any legislation.⁸

Will it solve the pricing concern?

Let me now deal with the issue of pricing.

It would appear that the motive behind this bill is to permit an industry group to have favorable pricing because they can circumvent some of the traditional mechanisms that regulate pricing under normal circumstances. It might be argued that the insurance carriers' profit and several insurance system expenses can be avoided by the group members.

The rate law and the practice in this state provides the employers with a rate determination mechanism that causes all risks to pay roughly what the risk is worth. I know this legislature has considered the rate plan many times and knows that it reflects, albeit slowly, the actual value of losses for the state, for the industry, for the work classification and for the risk. The mechanism for rate making managed by the National Council for Compensation Insurance is complex, often confusing, occasionally unfair to particular classifications and always unpopular. The fact is, though, that it does respond over time to the actual experience, the actual frequency and severity of losses in the relevant classification.

In addition, there is sufficient flexibility allowed in Alaska in determining price, and sufficient markets eager to sell their products, that the force of competition in an open market place with zealous agents and brokers, assures the price paid overall for any single industry, will never be higher than costs plus reasonable profit.

Unless some carrier can be found that is willing to write the excess coverage or the aggregate stop loss coverage at less than true cost, the total program cost to the industry establishing one of these groups will not be significantly less than what that industry will pay without such a program. Moreover, if a carrier can be found that will write at less than true cost, it is a danger to the program and to the injured workers depending upon the program.

⁸ A.S. 21.36.190(d)

What is even more curious about this legislation is the requirement that the loss fund be maintained at 70%⁹. To generate premium sufficient to cover losses with a 70% loss fund, rates will have to be at least as high as they are now in commercial carriers.

We are not unmindful of the savings which are purported to be generated in the plans similar to the proposed plan in other states. However, as just mentioned, they were formed in the midst of an insurance crisis. Such savings could not be achieved in today's competitive market. I am sure that the Director of Insurance will confirm the health of the workers' compensation insurance market from the standpoint of the purchaser.

We have not closely examined these other plans but would ask whether the accounting for these plans are on the same basis as all insurers report their results, i.e. including present and all future losses. We would ask if these plans are being subsidized, that is, the sponsoring trade association picking up costs which otherwise would be charged to the insuring entity. We would ask if these programs are being faithfully supported by the majority of the membership of the sponsoring trade association. Our information indicates that, as a result of the competitive insurance market nationwide, some programs in other states are being terminated, either converted into insurance companies or, sold or absorbed into insurance companies as the members begin to find that the total true cost of the program is not sufficiently different from the cost to purchase traditional insurance to warrant the exposure for unlimited liability for the losses of their competitors.

In a recent study completed in Chicago, Washington, D.C. and Los Angeles, it was found that residential construction contractors are "calculated risk-takers" and that safety is not a high priority.¹⁰ This may explain the high population of homebuilders in the assigned risk pool, but it is not a sound basis upon which to build a cost saving underwriting program.

Having said that, however, it should be noted that the overall rate level in Alaska has been coming down because of savings statewide and the rates for the homebuilders' classification in Alaska has also been coming down because of

⁹ HB 116 sec. 1, re: 21.47.060(b)(1) p. 6 l. 3.

¹⁰ Sylvestre, John, CR., "Playing it Safe", Remodeling, February, 1997, p. 90.

This article, referring to a study by B/R/S Group, Inc., a market research firm in Chicago, further noted: "Contractors tend to resist authority, taking issue with OSHA, insurance companies—even supervisors at times. This may be because they have their own way of doing things—their own standards—and they want to make their own decisions, especially when it comes to safety. They are constantly challenging the line between productivity and time saved. Sacrificing safety is, in their opinion, at odds with creativity and accomplishment." At p. 90

recent good experience in the class. This may be indicating that the best solution for the homebuilders is to take advantage of the continuing lowering rates their own improving experience has generated.

Marketing Scheme

This bill is being presented to you as a unique solution for the special problems of a single industry. In fact, the legislation is not limited to a single industry. In fact, there is no special problem facing the homebuilders, just the usual problem that they do not want to pay what they are paying for workers' compensation insurance. Finally, and most significantly, this legislation opens the way for any clever marketer to present a program in Alaska which can be marketed to unsuspecting employers as a cost saving mechanism without the proper safeguards concerning the employers' unlimited exposure to the net losses of the operation.

Given the very competitive market, we imagine that the less desirable and small premium risks will be attracted to the promise of savings. Those employers whose business is sought by insurers would surely not wish to take on the financial risks associated with joint and several liability, for little or no cost savings. Therefore, we believe that businesses that under any analysis should not assume joint and several liability will be the best target for the marketers

About twenty years ago, a similar idea was presented to the Congress and Congress responded with a statute allowing Multiple Employer Welfare Arrangements (MEWA) or Multiple Employer Trusts (MET). These were not insurance companies, they were trust pools. They were intended to allow specific industries to pool their obligations for medical and life insurance benefits for their employees free of regulation by state insurance regulators. They shared the risk among the pool participants but there was to be protection from excess and aggregate stop loss reinsurance. In structure, the plans were very similar to what is proposed in this legislation.

What happened?

At first, Multiple Employer Trusts were marketed to the specific industries as intended and most employers were informed of the risks. Then they were marketed to almost anyone who would listen by marketers, not experienced local agents or brokers, who were not quick to inform the employers that there was significant contingent exposure for the losses in these MET's if they failed. Then they began to fail. Employers were stuck with serious liabilities for the medical costs of their sick employees plus the liability for the sick employees of

other employers in the trust¹¹. Later, through Department of Labor rulings and otherwise, some regulation by the state insurance regulators has been imposed on these pools.

This legislation lacks any safeguards against that happening in Alaska.

Let me point out one specific problem in this area. The bill provides for a refund if the losses and other costs for any year are less than the premium collected that year. The refund is payable "not less than 12 months after the end of the fiscal year."¹²

The promise, or even the slightest suggestion, that at the end of one year there will be refunds is a cruel incentive to hold before employers banking on cost savings. There is no way any workers' compensation plan can ever hope to know for at least five years after a policy year what the true cost of their losses are likely to be.

The only restriction on the formation of these groups is that there be a sponsoring trade association that has been in existence five years¹³. Does this mean that any trade association of small merchants or service providers can be used as a market vehicle for promoting under capitalized protection for injured workers? Can the any Chamber of Commerce or the National Association of Business be used as the sponsoring organization for a widely marketed plan to excuse employers from the current system relying, instead, on the financial strength of other employers in the state.

Lastly, the wording of this bill allows the excess and aggregate stop loss coverages to be purchased from non-admitted carriers, carriers that are not regulated by the state to the same degree as licensed and admitted carriers.

Unfair Competitive Advantage

¹¹ See Aspinwall, David, "Fraudulent Practices Involving the Underwriting of Group Health Plans", Defense Counsel Journal, Vol. 62, No. 2, April, 1995 p. 249

Aspinwall said; "Many of these operations are legitimate, but others organize in ways intended to avoid state requirements regarding licensing and the posting of reserves that protect the financial integrity of the plans. Because of the lack of oversight, disreputable persons use these arrangements as the basis of creating what amount to Ponzi schemes....These Fraudulent practices create serious problems. Employees who believe they are covered face financial devastation from the non-payment of medical claims. Employers who have paid premiums to MEWA's lose their money and then must face their employees when the fraud is exposed....Schemes involving this sort of fraud take advantage of small employers' dilemmas in providing health benefits. The purveyors of fraud will attempt to pool the health benefit plans of many employers by forming MEWA's with promises of lower costs and less red tape." At p. 249.

¹² HB116, sec. 1, re: 21.47.150 (a) p. 10 l. 1.

¹³ HB116, sec. 1 re: 21.47.500 (6) p. 13 l. 7.

Finally, this bill proposes some exceptions from employer obligations that are totally unjustified.

First, this plan is exempt from premium tax. Why? Why are those employers who buy insurance from the plan any less obligated to pay their fair share of the cost of government than their competitors who are not in the plan, or employers who are in other industries?

Second, even though these groups are exempted from a large portion of the regulatory regime, this plan puts significant costs on the Division of Insurance to provide oversight, financial review, rate regulation and so forth. For a similar review, a new insurance company would pay \$2,500. This legislation calls for a fee of \$500.

Third, all employers in this state indirectly pay for the residual market mechanism, the workers' compensation assigned risk plan. It is paid by participating insurers as a cost passed on to employers in the rate. The proposed bill would exempt the plan, and thus its insureds, from making its fair contribution to the residual market mechanism and increase the costs for those purchasing traditional workers' compensation coverage. Is this fair?

Fourth, if, notwithstanding all the safeguards in place, an insurance carrier becomes insolvent, claims are paid by the Guarantee Association which is ultimately funded by all policyholders of the healthy carriers in the state. Under this bill, a 'group self insured' pool would not contribute.

The significance of these points is that the proponents of this legislation want a legislated competitive advantage. We think that all industries should pay their fair share of governmentally imposed costs and that it is an obligation of the legislature to maintain a level playing field, to assure that no segment of the economy can, by legislative manipulation, get a competitive advantage by being allowed to circumvent systems that the legislature either mandates or sanctions for carefully thought out good reasons.

Who Pays The Injured Worker If A Group Fails?

So far I have highlighted that the full and timely payment of workers' compensation benefits to injured workers is at risk with this legislation. However, the language in this bill could be interpreted so that the state is the ultimate guarantor of payment of benefits, as the security deposit is for the 'benefit of the state'. If this interpretation is correct, this means that the employees of the members and the members themselves would, in the event of plan failure, be dependent upon legislative appropriation to make up a deficiency.

Available Alternatives.

Any association of employers engaged in a common industry has available alternatives that will accomplish the legitimate goal of reducing expense by engaging in common efforts at loss control and creating buying power through grouping. There are also ways groups of employers may avoid paying a lot of discretionary administrative and marketing expenses.

Under the current statute, a trade association can create a purchasing group. It can aggregate its members into a single group policy, pooling their experience and sharing the ultimate costs of their losses. They put up no capital to do this. There is the significant added protection that there is a licensed insurer providing the financial security and there is no liability, beyond the premium, that falls back on the employers.¹⁴

Under the current statute, a group of employers may establish a mechanism for the mutual exchange of indemnity agreements and operate the program themselves.¹⁵ This is called a reciprocal. It requires the dedication of a substantial amount of capital to the enterprise, but it is their enterprise and they may take advantage of the investment income, determine what administrative, marketing or operating expenses it wishes to incur and set their own underwriting standards. There are two such entities already in the state, the Alaska Timber Insurance Exchange and one operated by the Alaska Rural Electrical Cooperative.

Under the current statute, an enterprising producer might obtain a commitment from a licensed carrier to pass on reduced marketing and administrative costs if a large number of employers in a single industry will commit to place their workers' compensation coverage with that carrier. Several groups have been successful with such programs for liability insurance. One carrier in Alaska is providing workers' compensation insurance for such a program to the National Electrical Contractors Association.

Conclusion

All employers are looking to reduce their costs of doing business and the proponents of this legislation have latched onto a scheme that, from outward appearances, could reduce their costs. In fact, they accomplish this not by reducing the true costs of industrial injury in their industry, which is what ultimately drives the premium rates, but by trying to excuse themselves from the obligations which this legislature has imposed on all employers as a matter of public policy. They try to do this with a plan that denies themselves and their injured employees whom the legislature requires them to protect, the benefits of a regulatory regime that has proven over time to be useful in minimizing the loss

¹⁴ A.S. 21.36.190 (d)

¹⁵ A.S. 21. 75.