ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

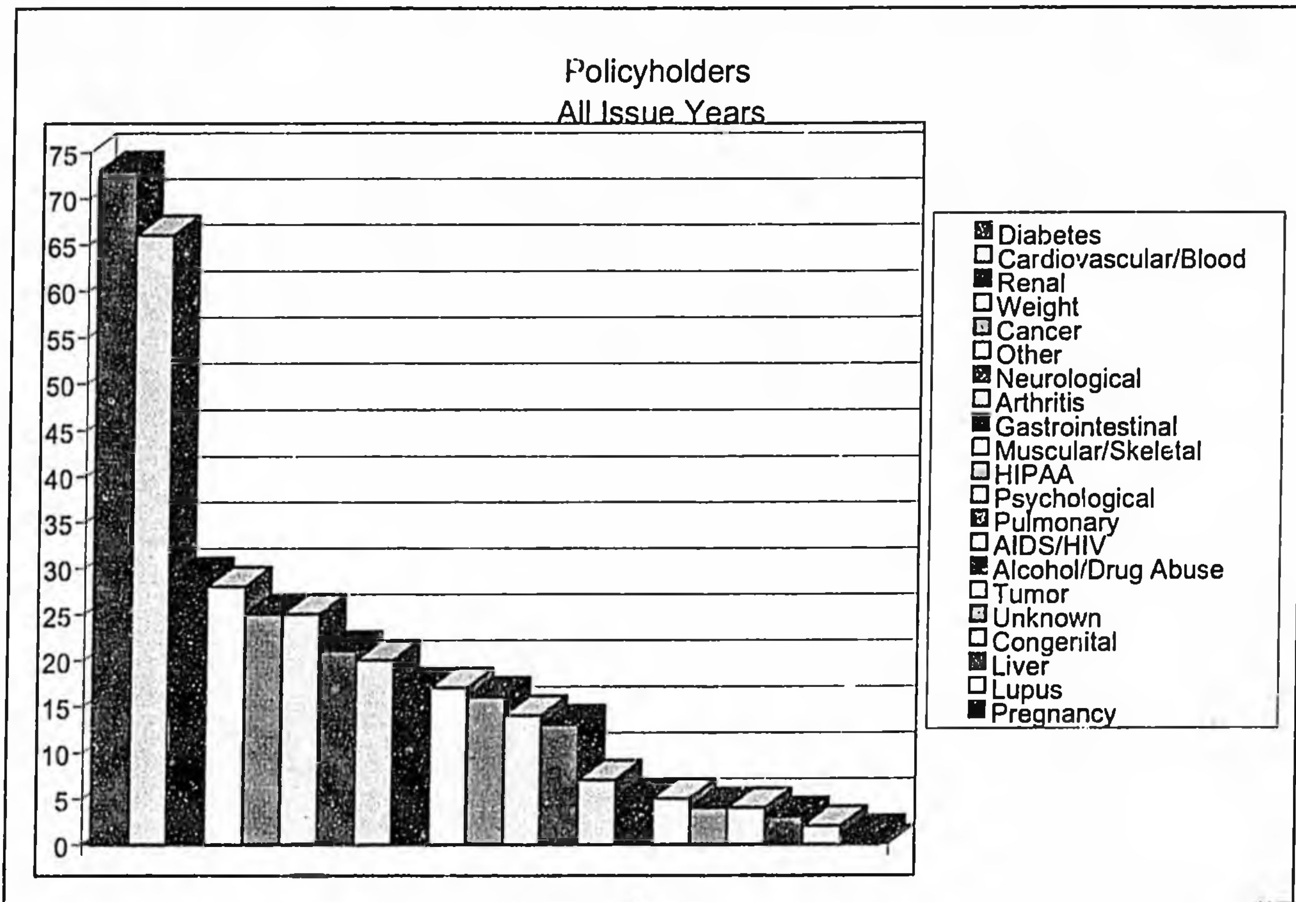
10341 HOUSE LABOR & COMMERCE

186

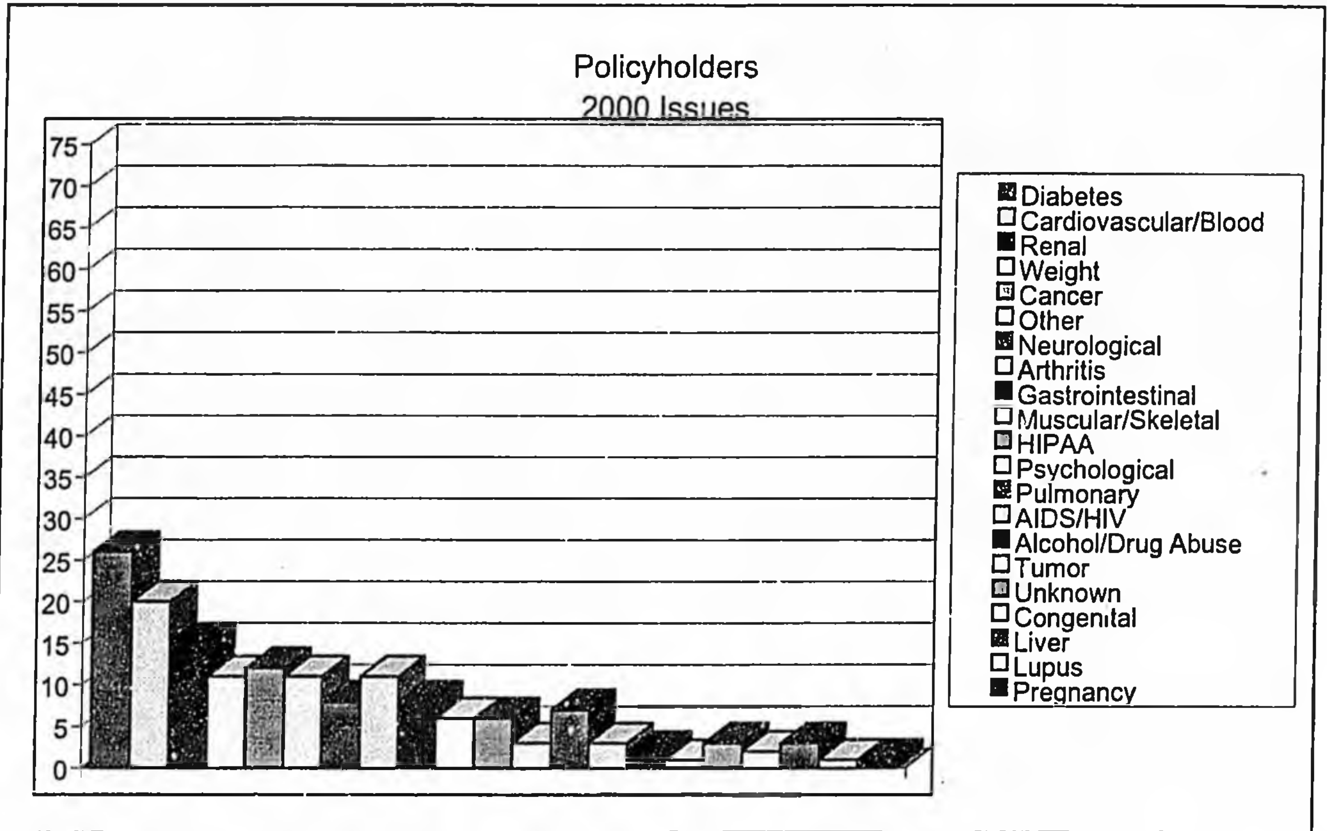
Primary Medical Condition

Applicants for ACHIA coverage are asked to identify their primary medical condition. The most frequently listed category includes conditions related to a history of cardiovascular conditions. The next most frequently listed conditions include diabetes, cancer, and weight problems, followed by pulmonary, renal, neurological, gastrointestinal, psychological, and arthritis conditions. These conditions, as well as experience from member companies, make up the list of specified conditions for which eligibility in ACHIA will be considered without the normal requirement that individuals have at least two rejections for coverage in the last six months. Insureds who qualified for ACHIA coverage through HIPAA eligibility provisions are counted in the tables and charts, including the primary medical condition chart.

In order as listed



In order as listed



Financial

This section details the policy year financial experience for ACHIA. Exhibit 1 is the ACHIA balance sheet for years ended 1999 and 2000. Exhibit 2 shows the revenues, expenses and changes in the fund balance. ACHIA began 2000 with a deficit of $38,293, and ended with a balance of $301,120. Revenues for the year were $4,560,594 and expenses were $4,297,767. Exhibit 3 shows the cash flow for 1999 and 2000.

Board of Directors

The Board of Directors for 2000 was:

Cecil D. Bykerk, Chair
Executive VP & Chief Actuary
Mutual of Omaha Insurance Company
Mutual of Omaha Plaza
Omaha, NE 68175
Phone: (402) 351-2534
Fax: (402) 351-2465
Email: cecil.bykerk@mutualofomaha.com

Chet Lozowski (Vice-Chair since 7/1/00)
Conseco Services
222 Merchandise Mart Plaza
Chicago, IL 60654-2001
Phone: (312) 396-7651
Fax: (312) 396-5903
Email: chet_lozowski@conseco.com

Robert Niebrugge, Vice-Chair 1/1/00-
Consumer Representative 6/30/00
3521 Sky Ranch Loop – Box 4187
Palmer, AK 99645

Ross Blaker through 3/31/01
Retired from Aetna Life & Casualty
711 H Street, Suite 150
Anchorage, AK 99501

Sandra Cole
Consumer Representative
2700 Teeland – Box 874165
Wasilla, AK 99687

Jeff Davis
Blue Cross/Blue Shield of Alaska
2550 Denali Street
Anchorage, AK 99503
Phone: (907) 258-5065 x304
Fax: (907) 258-1619
Email: jeff.davis@premera.com

Mona McAleese since 7/1/00
12321 Heritage Road
Anchorage, AK 99516

Heidi Randall since 4/1/01
Aetna Life & Casualty
P.O.Box 91032
Seattle, WA 98111-9132
Phone: (206) 701-8024
Fax: (206) 447-0390
Email: RandallH@aetna.com

Mark Wernicke
Humana
1100 Employers Blvd.
Green Bay, WI 54344
Phone: (920) 337-7656
Fax: (920) 337-5041
Email: rperock@humana.com

Katie Camp bell, Director's Designee
Ex-officio Member
State of Alaska Division of Insurance
333 Willoughby
Juneau, AK 99801
Phone: (907) 465-4607
Fax: (907) 465-3422
Email: katie.campbell@dced.state.ak.us

2000 COMMITTEES

ACTUARIAL COMMITTEE

Mark Wernicke, Chair
Cecil Bykerk
Katie Campbell
Chet Lozowski

ADVERTISING COMMITTEE

Sandra Cole, Chair
Gloria Chauvin
Mona McAleese
Ellen Vickrey
Susan White

AUDIT COMMITTEE

Chet Lozowski, Chair
Mark Wernicke

GRIEVANCE COMMITTEE

Jeff Davis, Chair
Cecil Bykerk
Sandra Cole

POLICY COMMITTEE

Jeff Davis, Chair
Katie Campbell
Heidi Randall
Mark Wernicke
Cecil Bykerk (ex-officio)

NOMINATING COMMITTEE

Chet Lozowski, Chair
Cecil Bykerk

Exhibit 1
BALANCE SHEETS

December 31, 1999 and 2000

Assets

	2000	1999
Cash	$ 325,122	$1,109,867
Assessments receivable (note 3)	1,248,066	84,745
	1,573,188	1,194,612

Liabilities and Fund Balance (Deficit)

	2000	1999
Reserve for claims and claim adjustment expenses	$ 902,000	$ 880, 000
Funds Due to administrator (note 4)	286,119	224,223
Unearned premiums	75,519	52,096
Other liabilities	8,430	
Total liabilities	1,272,068	1,156,319
Fund balance	301,120	38,293
Commitments and contingencies (note 5)		
	$1,573,188	$1,194,612

See accompanying notes to financial statements.

Exhibit 2
STATEMENTS OF REVENUES, EXPENSES
AND CHANGES IN FUND BALANCE (DEFICIT)

Years ended December 31, 2000 and 1999

	2000	1999
Revenues:		
Member assessments (note 3)	$3,301,779	$2,498,300
Premiums earned	1,223,291	863,966
Interest income (note 4)	35,524	25,328
	4,560,594	3,387,594
Expenses:		
Claims paid	3,941,682	2,519,170
Administrative services (note 4)	287,957	295,675
Change in claims and claim adjustment expense reserves	22,000	424,522
Accounting services	11,623	7,200
Board meetings	9,183	11,688
Interest paid to AETNA (note 4)	6,421	
Agent commissions	6,400	
Advertising	5,460	
Telephone	946	3,242
Other	6,095	7,186
	4,297,827	3,268,683
Excess (deficit) of revenues over expenses	262,827	118,911
Fund balance (deficit) at beginning of year	38,293)	(80,618)
Fund balance (deficit) at end of year	$ 301,120	$ 38,293

See accompanying notes to financial statements.

Exhibit 3
STATEMENTS OF CASH FLOWS

Years ended December 31, 2000 and 1999

	2000	1999
Cash flows from operating activities:		
Assessments collected from members	$2,138,458	$2,259,356
Premiums collected from insureds	1,246,714	888,085
Interest received	35,524	25,362
Claims expenses paid	(3,941,682)	(2,519,140)
Cash paid to administrators and suppliers	(332,055)	(324,991)
Cash advanced from administrators in excess of claims and other expenses paid by Administrator	61,896	422,277
Cash owed to agents for commissions	6,400	--
Net cash provided (used) by operating activities and net increase (decrease) in cash	(784,745)	750,915
Cash at beginning of year	1,109,867	358,953
Cash at end of year	325,122	1,109,867
Reconciliation of deficiency of revenues over expenses To net cash provided (used) by operating activities:		
Excess (deficiency) of revenues over expenses	262,827	118,911
Adjustments:		
Decrease in assessments receivable	(1,163,321)	(84,745)
Increase in funds held by administrator	61,896	422,277)
Increase in reserve for claims and claim adjustment expenses	22,000	424,552
Increase in unearned premiums	23,423	24,119
Decrease in assessments collected in advance	--	(154,199)
Increase in other liabilities	8,430	--
Total adjustments	(1,047,572)	632,004
Net cash provided (used) by operating activities	$ (784,745)	$ 750,915

See accompanying notes to financial statements.

Notes to Financial Statements

December 31, 2000 and 1999

(1) History

The Alaska Comprehensive Health Insurance Association (Association) was established by the Alaska State Health Insurance Act of 1992 (Act) to provide an individual state plan of health insurance to Alaska residents who are considered high risks and are otherwise unable to obtain health insurance.

The Association is a nonprofit organization whose membership consists by statute of all licensed hospital or medical service corporations in the state that offer subscriber contracts for major medical coverage, and all insurers licensed to transact health insurance in the state that offer policies for major medical coverage on an expense-incurred basis.

The Association is empowered by the statutes to assess its members amounts to cover underwriting losses of the state plans and amounts to cover the operating and administrative expenses incurred by the Association to conduct its affairs.

In preparing the financial statements, management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements and revenue and expenses for the period. Actual results could differ from those estimates. The more significant accounting and reporting policies and estimates applied in the preparation of the accompanying financial statements are discussed below.

(2) Summary of Significant Accounting Policies

(a) Income Taxes

The Association is nontaxable for state income tax purposes under the provisions of the Act.

Effective January 1, 1997, the Association was granted federal tax exempt status under section 501(c)(26) of the Internal Revenue Code. During 1997, the Association was also determined to be a federal taxable entity for the years prior to 1997. However, the Association had no net taxable income for 1996 and all prior years and does not anticipate that it will owe taxes for those years.

(b) Member Assessments

Assessments levied on all members are reported in the period for which such assessments are levied. Member assessments are charged to each member based on the ratio of the member's total fees for subscriber contracts or total health insurance premiums, received from or on behalf of state residents, as divided by the total subscriber fees and health insurance premiums received by all members from or on behalf of state residents.

(c) Reserve for Claims and Claims Adjustment Expense

The reserve for claims and claims adjustment expense represents management's estimate of the ultimate settlement of reported and unreported claims. Management believes that such reserves are adequate to cover the ultimate net cost of claims expense incurred; however, reserves are necessarily based on estimates and the amount ultimately paid may be more or less than such estimates. Adjustments to reserves are charged or credited to expense in the period in which they are made.

(d) Premiums

Premium income is recognized on a pro rata basis over the respective terms of the policies. Unearned premiums represent the portion of premiums written which relate to future periods.

(e) Reclassifications

The 1999 financial statements have been reclassified to conform with the current year projections.

(3) Member Assessments

In March 2000, the Association assessed members $1,800,000 to cover anticipated claims and expenses in 2000. In December 2000, the Association assessed its members an additional $1,500,000 to cover claims and expenses in 2000. Of this assessment, $251,934 was received prior to December 31, 2000.

In December 1998, the Association assessed its members $1,000,000 to cover anticipated claims and expenses in 1999. In November 1999, the Association assessed members an additional $1,500,000 to cover anticipated claims and expenses in 1999. During 2000 the Association received the remaining $84,745 of this assessment, which was uncollected as of December 31, 1999.

(4) Related Party Transactions

Board meeting expense consists partly of reimbursements to certain members of the Board of Directors of the Association for travel costs incurred on behalf of the Association.

Aetna Life Insurance Company (Aetna) administers the state plan by collecting the premium payments and adjusting and settling claims. Aetna is paid a fee by the Association for administering the plan. Total fees paid to Aetna were $287,957 in 2000 and $295,675 in 1999.

Funds owed to Aetna by the Association were $286,119 and $224,223 at December 31, 2000 and December 31, 1999 respectively. Aetna charges or pays interest to the Association on balances held by or owing to Aetna during the year. Interest charged by Aetna was $6,421 and interest paid by Aetna was $1,900 in 2000.

(5) Line of Credit

At December 31, 2000 and 1999, the Association had a line of credit with a bank which allowed the Association to borrow up to $1,000,000 as needed on a short-term basis. No borrowings were made in the line of credit during 2000 or 1999.

About ACHIA
Eligibility Requirements
Description of Benefits
ACHIA News and Updates
Rates- Applications- Inquiries

New Rate Changes as of February 1, 2002

RE: Premium Increase

Dear ACHIA Subscriber:

New rates for your Alaska Comprehensive Health Insurance Association ("ACHIA") health insurance coverage go into effect February 1, 2002. Your new rate is shown on the accompanying rate sheet. The ACHIA Board has worked very hard to find ways to minimize this rate increase. Except for changes due to age, ACHIA rates have not increased in 18 months. Alaskans with traditional health insurance are experiencing rate increases in excess of 40% annually. These are for the most part due to the high cost of medical care in the state of Alaska.

The rate increase for your coverage in 2002 is about 20%. There are some exceptions at higher ages on the $5000 and $10,000 deductible plans. Please note that out of pocket (stop-loss) limits have increased on all plans.

We appreciate that these changes may pose a financial hardship for some people. One option to consider is moving to a higher deductible plan, which you can do January 1st. Please call our office at 1-887-848-5837 for assistance.

The ACHIA Board will continue to work hard to contain costs and keep premiums as low as possible and to maintain the financial needs of the program. Insurance companies doing business in the state of Alaska subsidize the program by contributing about $3 for every $1 that ACHIA insureds pay in premium. We are working on other new sources of revenue to finance ACHIA. We welcome your interest and support of the program.

Sincerely,

Cecil D. Bykerk
Chairman
December 19, 2001

Note to insureds covered by the $500 deductible plan:

On January 1, 2002 your deductible will increase to $1000. However, your premium increase will only be 5% or less.

RE: Medicare Supplement Premium Increase

LEXSEE 833 f2d 85

Northern Group Services, Inc., Masco Industries, Inc. Employees Benefit Plan for Hourly Employees of Forming Technology; Masco Industries, Inc. Employees Benefit Plan for Salaried Employees; Masco Industries, Inc. Self-Funded Employee Benefits Plans; and Highland Appliance Companies Medical Benefit Plan, Plaintiffs-Appellees, v. Auto Owners Insurance Company; Citizens Insurance Company of America; Michigan Mutual Insurance Company; and Allstate Insurance Company (86-1614), State Farm Mutual Automobile Insurance Company (86-1615), Auto Club Insurance Association (86-1616), Defendants-Appellants

Nos. 86-1614, 86-1615, 86-1616

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

833 F.2d 85; 1987 U.S. App. LEXIS 15064; 9 E.B.C. 1038

June 9, 1987, Argued

November 13, 1987, Decided

November 13, 1987, Filed

SUBSEQUENT HISTORY:
[**1]

Petition for Rehearing and Petition for Rehearing En Banc Denied, December 30, 1987.

PRIOR HISTORY:
On Appeal from the United States District Court for the Eastern District of Michigan.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant auto insurers challenged the decision of the United States District Court for the Eastern District of Michigan, which granted plaintiff benefit plans' motion for summary judgement and granted injunctive relief from medical expenses paid under no fault insurance policies. The District court held that the Employee Retirement Income Security Act of 1974 (ERISA), *29 U.S.C. § 1001* et seq., preempted Mich. Comp. Laws § 500.3109a.

OVERVIEW: On appeal, auto insurers contended that the district court erred in determining that Mich. Comp. Laws. § 500.3109a, which required that no-fault automobile insurers offer coordination of benefits, was not preempted under by ERISA, specifically *29 U.S.C.S. § 1144*. The court agreed and reversed the district court's order. First, the coordination of benefits rule "related to" an ERISA plan within the meaning of § 1144(a). The rule imposed a continuing and predictable obligation to coordinate benefits with the other insurance coverage of all ERISA beneficiaries and it directly conflicted with the ERISA plans. However, under the "savings" clause, *29 U.S.C.S. § 1144*(b)(2)(A), the coordination of benefits rule clearly "regulated insurance" because the practice fell within the meaning of "business of insurance" covered by the McCarran-Ferguson Act, *15 U.S.C.S. § 1001* et seq. And finally, the court held that even the self-insured ERISA plans were not excluded from the "savings" clause by the "deemer" clause, *29 U.S.C.S. § 1144*(d) because there was no demonstrated interest in national uniformity.

OUTCOME: The court reversed the district court's grant of summary judgment in favor of benefit plans. The state's coordination of benefits rule was not preempted by ERISA because even though it related to ERISA plans, it was "saved" as a statute regulating insurance, and it was not barred by the "deemer" clause because benefits plans failed to show the need for national uniformity.

CORE CONCEPTS

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Federal Preemption
See *29 U.S.C.S. § 1144*(a).

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Federal Preemption
See *29 U.S.C.S. § 1144*(b)(2)(A).

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Federal Preemption
See *29 U.S.C.S. § 1144*(b)(2)(B).

Insurance Law : Motor Vehicle Insurance : No-Fault Coverage
Mich. Comp. Laws § 500.3109a mandates that no-fault carriers offer coordination of benefits at reduced premiums when the insured has other health and accident coverage. Section 500.3109a imposes primary liability on a health insurer when the insured also has a no-fault policy with a coordination of benefits clause and the no-fault insurer charged lower premium rates.

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Federal Preemption
A law "relates to" an employee benefit plan under the federal preemption provision of the Employee Retirement Income Security Act of 1974, *29 U.S.C.S. § 1001* et seq., specifically *29 U.S.C.S. § 1144*, if it has a connection or reference to such a plan.

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Federal Preemption
The preemption provision of the Employee Retirement Income Security Act of 1974, *29 U.S.C.S. § 1001* et seq., specifically *29 U.S.C.S. § 1144*, does not refer to state laws relating to "employee benefits," but to state laws relating to "employee benefit plans."

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Federal Preemption
Insurance Law : Regulation of Insurance : ERISA Preemption
After the preemption provision of the Employee Retirement Income Security Act of 1974, *29 U.S.C.S. § 1001* et seq., specifically *29 U.S.C.S. § 1144*, preempts state laws that "relate to" plans, the "savings" clause provides the qualification that preemption does not apply to a state law that regulates insurance, banking, or securities.

Insurance Law : Regulation of Insurance : ERISA Preemption
In order to satisfy a common sense understanding of the phrase "regulates insurance," a state law must have not merely an impact on the insurance industry, but must be specifi · directed toward that industry.

Insurance Law : Regulation of Insurance : ERISA Preemption
Three criteria have been identified as relevant to the McCarran-Ferguson Act, *15 U.S.C.S. § 1001* et seq., determination: (1) whether the practice has the effect of transferring or spreading a policyholder's risk; (2) whether the practice is an integral part of the policy relationship between the insurer and the insured; and (3) whether the practice is limited to entities within the insurance industry.

Insurance Law : Regulation of Insurance : ERISA Preemption
Although Congress declared its express intention to generally preempt state law in the preemption clause of the Employee Retirement Income Security Act of 1974 (ERISA), *29 U.S.C.S. § 1001* et seq., specifically *29 U.S.C.S. § 1144*(a), it equally expressly declared its intention to preserve state regulation of insurance in the savings clause, *29 U.S.C. § 1144*(b)(2)(A). Therefore, in determining the scope even of express ERISA preemption, the general principle still applies that a court must presume that Congress did not intend to preempt areas of traditional state regulation.

Insurance Law : Regulation of Insurance : ERISA Preemption
See *29 U.S.C.S. § 1144*(d).

Insurance Law : Regulation of Insurance : ERISA Preemption
29 U.S.C.S. § 1144(d) provides an independent source of protection to state insurance regulation by including in its coverage the McCarran-Ferguson Act, *15 U.S.C.S. § 1001* et seq., which says that the business of insurance, and every person engaged therein, shall be subject to the laws of the several states which relate to the regulation or taxation of such business, *15 U.S.C.S. § 1012*(a).

Insurance Law : Regulation of Insurance : ERISA Preemption
The Sixth Circuit Court of Appeal's reading of the savings and deemer clauses in the federal preemption provision of the Employee Retirement Income Security Act of 1974 (ERISA), *29 U.S.C.S. § 1001* et seq., specifically *29 U.S.C.S. § 1144*(b)(2)(A) and (d), requires at a minimum that, for the deemer clause to override the savings clause in a given case, there must be some ERISA interest in uniformity to outweigh the McCarran-Ferguson Act, *15 U.S.C.S. § 1011* et seq., interest in state regulation of insurance.

Insurance Law : Regulation of Insurance : ERISA Preemption
When there is no demonstrated interest in national uniformity and preemption of state law would substantially disrupt a state regulatory scheme generally applicable to both insured and self-insured plans under the Employee Retirement Income Security Act of 1974 (ERISA), *29 U.S.C.S. § 1001* et seq., as well as to insurers generally, the deemer clause, *29 U.S.C.S. § 1144*(d) does not bar regulation. To this limited degree, self-insured ERISA plans so regulated are not excluded from the savings clause, *29 U.S.C.S. § 1144*(b)(2)(A), by the deemer clause; they are thus subject to state insurance regulation pursuant to the savings clause.

Insurance Law : Regulation of Insurance : ERISA Preemption
The Michigan no-fault coordination of benefits rule, Mich. Comp. Laws § 500.3109a, is the type of insurance regulation of an the Employee Retirement Income Security Act of 1974, *29 U.S.C.S. § 1001* et seq., plan that is not barred by the deemer clause, *29 U.S.C.S. § 1144*(d).

COUNSEL:

Stephen E. Glazek (argued) of Barris, Sott, Denn & Driker and James L. Borin of Garan, Lucow, Miller, Stewars, Cooper & Becker, P.C., for Auto Owners Insurance Company; citizens Insurance Company of America; Michigan Mutual Insurance Company; and Allstate Insurance Company.

John A. Ashton (argued) of Draugelis, Ashton, Scully, Haynes, MacLean & Pollard, for State Farm Mutual Automobile Insurance Company.

David J. Lanctot (argued) of Dickinson, Brandt, Hanlon, Becker & Lanctot, for Auto Club Insurance Association.

Michael Shpiece of Honigan, Miller, Schwartz, and Miller, for Appellee.

JUDGES:

Merritt and Martin, Circuit Judges; and Brown, Senior Circuit Judge.

OPINIONBY:

MERRITT

OPINION:

[*86] MERRITT, Circuit Judge.

A group of automobile insurance companies challenge a ruling on summary judgment that the Employee Retirement Income Security Act of 1974 (ERISA), *29 U.S.C. § § 1001 et seq.*, preempted the Michigan No-Fault Automobile Insurance Act, Mich. Comp. Laws [**2] § 500.3109a, to the extent that the Michigan law allows policy provisions which conflict with ERISA plans. ERISA's preemption provision, *29 U.S.C. § 1144*(a), provides in relevant part:

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. ...

The Michigan statute requires that no-fault automobile insurers offer coordination of benefits provisions, and state court interpretation of that law makes the liability under such no-fault coverage secondary to other health and accident coverage. The plaintiff plans make no-fault liability primary and their own liability secondary and hence conflict with the Michigan insurance law. We reverse, holding that the Michigan [*87] law is saved from preemption by the ERISA "savings" clause, *29 U.S.C. § 1144*(b)(2)(A),

Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, [**3] banking, or securities,

and is not barred by the "deemer" clause, *29 U.S.C. § 1144*(b)(2)(B),

Neither an employee benefit plan ... nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer ... or to be engaged in the business of insurance ... for purposes of any law of any State purporting to regulate insurance companies [or] insurance contracts. ...

The questions of preemption analysis and interpretation under the first preemption clause, § 1144(a), and the savings clause are straightforward and not particularly difficult. The questions under the "deemer" clause are more complex.

I. *Proceedings Below*

Several ERISA plans that provide employee health and medical benefits brought this declaratory action in the District Court seeking injunctive relief from medical expenses paid under no fault insurance policies by those companies to those covered by the ERISA plans. The ERISA plans contain coordination of benefits provisions

that purport to make the liability of the plans secondary to state mandated no-fault automobile insurance. The Masco plan for salaried employees [**4] provides:

If your state has a no-fault motor vehicle law, the coverage required by the state is considered primary for motor vehicle related medical expenses. If you or a covered dependent incurs medical expenses as a result of a motor vehicle accident, those expenses should first be submitted to your motor vehicle insurance carrier. Any eligible expenses which are not paid by that carrier will then be considered for payment by the Masco Medical Plan. The Masco Medical Plan is considered secondary for no-fault motor vehicle expenses.

The automobile insurance companies defending the claims have issued no-fault automobile insurance contracts in accordance with Mich. Comp. Laws § 500.3109a. The Michigan law "mandates that no-fault carriers offer coordination of benefits at reduced premiums when the insured has 'other health and accident coverage.'" *Federal Kemper Insurance Co. v. Health Insurance Administration, Inc., 424 Mich. 537, 546, 383 N.W.2d 590, 594 (1986).* In *Federal Kemper* the Supreme Court of Michigan determined that section 3109a imposed primary liability on a health insurer when the insured also had a no-fault policy with a coordination [**5] of benefits clause and the no-fault insurer charged lower premium rates. Relying on section 3109a and *Federal Kemper*, the automobile insurance companies have made claims against the employee benefit plans for reimbursement, asserting that they, not the plans, are secondarily liable.

In order to settle this confusion over the coordination of benefits between the plans and the statutorily required no-fault coverage, the plans and a plan administrator brought a declaratory action. After discovery, the parties made cross motions for summary judgment. The District Court held that ERISA preempted the Michigan law because the Michigan law "relate[d] to" an employee benefit plan within the meaning of *29 U.S.C. § 1144*(a). *Northern Group Services v. State Farm Mutual Automobile Insurance Co., 644 F. Supp. 535 (E.D. Mich. 1986).* Further, the Michigan law was not protected by the savings clause, § 1144(b)(2)(A), because the plans were excluded by the deemer clause, § 1144(b)(2)(B). Because the plans were protected by ERISA, Michigan could not regulate the benefits they provided. The District Court concluded that "the Michigan No-Fault Automobile [**6] Insurance Act is preempted to the extent that it has an impact on the ERISA plans." *Id. at 538.* The Court granted plaintiffs' motion for summary judgment and denied defendants' cross motion.

II. *"Relate to"*

As was inevitable with such broadly phrased statutory language, the extent of [*88] the preemption provision has been the subject of much litigation.

Shaw v. Delta Air Lines, 463 U.S. 85, 96-98, 77 L. Ed. 2d 490, 103 S. Ct. 2890 (1983), made clear that a law "relates to" an employee benefit plan if it has "a connection or reference to such a plan." The Court based this reading not only on a plain meaning approach but on the expressed legislative intent giving the words "relate to" a broad scope. *Id. at 97-98. Metropolitan Life Insurance Co. v. Massachusetts, 471 U.S. 724, 85 L. Ed. 2d 728, 105 S. Ct. 2380 (1985),* held that a state law requiring that health insurers provide mental-health-care benefits "clearly" relates to ERISA welfare benefit plans. *Id. at 739.*

In *Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 107 S. Ct. 2211, 96 L. Ed. 2d 1 (1987),* [**7] the Supreme Court further considered the meaning of the phrase "relate to any employee benefit plan." In *Fort Halifax* a Maine official sought to enforce the state statute requiring employers, in the event of a plant closing, to provide a one-time severance payment to employees not covered by express contract agreements providing for severance pay. The Court held that the Maine severance pay statute did not "relate to any employee benefit plan" under the ERISA preemption provision, *29 U.S.C. § 1144*(a), and thus was not preempted. Relying on the meaning and underlying purpose of section 1144(a), the Court rejected Fort Halifax's argument that any state law pertaining to a type of employee benefit listed in ERISA, such as severance pay, necessarily regulates a plan and is preempted.

Section 1144(a), the Court noted, expressly states that state laws are superseded to the extent they "relate to any employee benefit *plan*." The Court said that the preemption provision "does not refer to state laws relating to 'employee benefits,' but to state laws relating to 'employee benefit *plans*'." *Id. 107 S. Ct. at 2215* (emphasis original). The [**8] Court observed that ERISA uses the words "benefit" and "plan" separately throughout and nowhere treats the two as synonymous. "Given the basic difference between a 'benefit ' and a 'plan,' Congress' choice of language is significant in its pre-emption of only the latter." *Id.* at 2216.

The Court identified the purpose of the preemption provision: to allow plans to adopt a uniform scheme for coordinating complex administrative activities, unaffected by divergent regulatory schemes in different states. Congress was aware of the administrative realities

faced by employee benefit plans, and sought to "eliminat[e] the threat of conflicting or inconsistent State and local regulation." *Id.* (*quoting* 120 Cong. Rec. 29197 (1974)(remarks of Rep. Dent)). The Court explained that an employer who undertakes systematically to pay certain benefits assumes a number of obligations such as ascertaining eligibility, determining benefits, making payments, monitoring the availability of funds for benefit payments, and keeping records in compliance with reporting requirements:

The most efficient way to meet these responsibilities is to establish a uniform administrative scheme, which [**9] provides a set of standard procedures to guide processing of claims and disbursement of benefits. Such a system is difficult to achieve, however, if a benefit plan is subject to differing regulatory requirements in differing States. A plan would be required to keep certain records in some States but not in others; to make certain benefits available in some States but not in others; to process claims in a certain way in some States but not in others; and to comply with certain fiduciary standards in some States but not in others.

Id. Thus, ERISA's preemption provision was designed generally to "ensure[] that the administrative practices of a benefit plan will be governed by only a single set of regulations." *Id.* at 2217.

The analysis in *Fort Halifax* does not affect the result here. *Fort Halifax* held that a Maine state law requiring a *one-time* severance payment when a plant is closed did not "relate to" any *plan* because it imposed no continuing administrative obligation. The Court described the state-law [*89] obligation as one "to do little more than write a check." Under the *Fort Halifax* circumstances, preempting state law to clear the [**10] way for exclusive federal regulations would "in no way serve the overall purpose of ERISA," because "there would be nothing to regulate." *Id.* at 2218, 2??).

By contrast, the Michigan coordination of-benefits law imposes not a one-time duty but rather a continuing and predictable obligation to coordinate benefits with the other insurance coverage of all ERISA beneficiaries. Affected ERISA administrators would be required to "foresee the need to make regular payments ... on an ongoing basis," *Fort Halifax, 107 S. Ct. at 2219 n.9,* and to make appropriate actuarial (and cost) adjustments.

In summary, the Michigan law conflicts directly n1 with the plan: it allocates obligations to make insurance payments contrary to the express coordination-of-benefits language of the plan. Holding that this state law does not "relate to" the plan would run contrary to the plain meaning of the text and to the relevant case law and legislative history.

n1 The exception for "too tenuous, remote, or peripheral" regulation created in *Shaw, 463 U.S. at 97 n.17,* thus is inapplicable here. *Cf. Firestone Tire & Rubber Co. v. Neusser, 810 F.2d 550, 553-56 (6th Cir. 1987).*

[11]**

Because this state law "relates to" ERISA plans, we must proceed to see what effect the "savings" and "deemer" clauses have on preemption.

III. *"Savings" and "Deemer" Clauses*

The difficult problem in interpreting the preemption portion of ERISA § 514, *29 U.S.C. § 1144* is defining the scope of each of the three critical clauses so that each has meaning and so that benefit obligations are governed by a rational system of state law and federal common law. Congress indicated its intention only in a very general way and left to the federal courts the problem of developing on a case-by-case basis principles of preemption of state law.

If the first preemption clause, § 1144(a), is read restrictively, the "savings" and "deemer" clauses become unnecessary. Compounding the difficulty is a tendency in the legislative history of ERISA to conflate and confuse the three clauses. For example, an oversight report issued three years after the enactment of ERISA cites the need "to insure uniformity of regulation" by legislating preemption but then says:

There was a recognition of the necessity for the preservation of some State activity in this [**12] field and certain limited exceptions were made to the broad preemption scheme. *In general these exemptions are designed to save State law as it applies to entities which are not employee benefit plans ..., to the extent that such regulation does not relate to employee benefit plans.* ... These exceptions are designed to delineate affirmatively the limits of the "field" preempted by section 514(a), and articulate a second, but distinctly subordinate, policy within the section of preserving state authority *insofar as it does not relate to any plan....*

ERISA Oversight Report of The Pension Task Force of the Subcommittee on Labor Standards, House Committee on Education and Labor, at 8-9 (1977) (emphasis added).

These subsequent legislators (or their staff) did not seem to recognize or consider the fact that the "savings" clause would not be necessary at all if it only saves state laws that do not "relate to" ERISA plans. The savings clause would not be necessary to save something that the preemption clause had not reached in the first instance. *See Metropolitan Life, 471 U.S. at 739-40.*

A. *"Savings" Clause*

After preempting [**13] state laws that "relate to" plans, the "savings" clause provides the qualification that preemption does not apply to a state law that "regulates insurance, banking, or securities." Like the mandated-benefits act at issue in *Metropolitan Life Insurance Co. v. Massachusetts*, the Michigan coordination of benefits law controls the terms of insurance contracts. [*90] The Michigan law clearly "regulates insurance" within the meaning of the savings clause. This conclusion comports both with a common sense view of the statutory language and with a more formal assessment that the practice falls within the meaning of "business of insurance" covered by the McCarran-Ferguson Act. *Metropolitan Life, 471 U.S. at 740-43.*

In order to satisfy a common sense understanding of the phrase "regulates insurance," a state law must have not merely an impact on the insurance industry, but must be specifically directed toward that industry. *Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41, 107 S. Ct. 1549, 1554, 95 L. Ed. 2d 39 (1987).* The Michigan coordination of benefits law obviously is principally directed at various types of other-insurance coverage held by [**14] all of its residents who elect the coordination of benefits option that is mandated by § 3109a. Mich. Comp. Laws 500.3109a.

Three criteria have been identified as relevant to the McCarran-Ferguson Act determination:

(1) whether the practice has the effect of transferring or spreading a policyholder's risk; (2) whether the practice is an integral part of the policy relationship between the insurer and the insured; and (3) whether the practice is limited to entities within the insurance industry.

Metropolitan Life, 471 U.S. at 743 (quoting *Union Labor Life Insurance Co. v. Pireno, 458 U.S. 119, 129, 73 L. Ed. 2d 647, 102 S. Ct. 3002 (1982)).* Like other courts that have applied these criteria to coordination-of-benefits or similar requirements, we find the first two of the three criteria easily satisfied. The practice of coordination of benefits spreads risk and regulates permissible terms of the insurance contract. *See, e.g., United Food & Commercial Workers v. Pacyga, 801 F.2d 1157, 1161 (9th Cir. 1986); State Farm Mutual Insurance Co. v. American Community Mutual Insurance Co., 659 F. Supp. 635, 637 n.2 (E.D. Mich. 1987).* [**15]

Although the scope of § 3109a extends beyond traditional insurance to encompass other types of "health and accident coverage" including Blue Cross and Blue Shield benefits and health maintenance organizations, n2 the third McCarran-Ferguson Act criterion also is substantially satisfied because coordination of benefits is aimed principally at different types of *insurance* coverage. *See LeBlanc v. State Farm Mutual Auto Insurance Co., 410 Mich. 173, 301 N.W.2d 775, 784-85 (1981).*

n2 *See, e.g., LeBlanc v. State Farm Mutual Automobile Insurance Co., 410 Mich 173, 301 N.W.2d 775 (1981)* (Medicare); *United States Fidelity & Guaranty Co. v. Group Health Plan, 131 Mich. App. 268, 345 N.W.2d 683 (1983)* (health maintenance organization); *Nyquist v. Aetna Insurance Co., 84 Mich. App. 589, 269 N.W.2d 687 (1978)* (Blue Cross & Blue Shield), *aff'd, 404 Mich. 817, 280 N.W.2d 79? (1979).*

B. *"Deemer" Clause*

The Michigan [**16] coordination of benefits law "regulates insurance" and therefore is encompassed by the savings clause. The final question becomes: what is the effect of the "deemer clause"?

1. *The Problem of Self-Insuring Plans*

Most judicial interpretation of the deemer clause as an exception to the savings clause has been confined to a distinction which makes the deemer clause applicable to self-insuring ERISA plans and makes it inapplicable to plans that purchase insurance. Even direct regulation of the content of insurance policies that an ERISA plan purchases is not barred by the deemer clause. Regulation of the insurance contract or of the insurer from which the plan buys its policy does not entail treating or deeming *the plan* as an insurer or as otherwise in the "business of insurance." *See Metropolitan Life, 471 U.S. at 735 n.14, 742 n.18; Michigan United Food & Commercial Workers Unions v. Baerwaldt, 767 F.2d 308, 312-13 (6th Cir. 1985) cert. denied, 474 U.S. 1059, 106 S. Ct. 801, 88 L. Ed. 2d 777 (1986).*

The *Metropolitan Life* Court appeared in dicta to assume that this distinction would leave insured plans "open [**17] to indirect regulation" [*91] by state insurance laws while leaving self-insured plans unregulated. In *Metropolitan Life*, the Court upheld

under the savings clause state laws which "mandate" that specific benefits be included in group health plans. No question was presented under the deemer clause. As an aside the Court observed:

We are aware that our decision results in a distinction between insured and uninsured plans, leaving the former open to indirect regulation while the latter are not. By so doing we merely give life to a distinction created by Congress in the "deemer clause," a distinction Congress is aware of and one it has chosen not to alter.

471 U.S. at 747. At that point the Court dropped the following footnote:

A 1977 Activity Report of the House Committee on Education and Labor recognized the difference in treatment between insured and non-insured plans: "To the extent that [certain programs selling insurance policies] fail to meet the definition of an 'employee benefit plan' [subject to the deemer clause], state regulation of them is not preempted by section 514, even though such state action is barred with respect to [**18] the plans which purchase these 'products.'" H. R. Rep. No. 94-1785, p. 48. A bill to amend the saving clause to specify that mandated-benefit laws are preempted by ERISA was reported to the Senate in 1981 but was not acted upon.

Id. at 747 n.25.

Our consideration of the deemer clause, thus, must answer two questions. First, are the plans at issue "insured"? Second, if a plan is not "insured," is state regulation of coordination of benefits under the plan totally barred by the deemer clause? In other words, is the deemer clause a total bar to state regulation of any insurance provision of a self-insured plan even though the deemer clause would not preempt state law if the plan is funded through the purchase of insurance?

There is no dispute that the Masco Plans are self-insured; the parties disagree about the status of the Highland plan, which is covered by stop-loss insurance. Appellee plans argue that the Highland Plan is "uninsured" because (1) the actual insured is the employer, Highland Appliance Co., and not the Plan; and (2) the insurer's liability comes into effect only when specified benefit ceilings are exceeded. Both arguments are without [**19] merit. Whether the actual insured is the employer or the ERISA plan, the stop-loss insurance is purchased to "provide benefits for plans subject to ERISA." *Metropolitan Life, 471 U.S. at 738 n.15.* That the Plan pays a deductible does not alter the fact that benefits payable above specified levels, either on an individual beneficiary or in the aggregate, are nonetheless insured. *See Baerwaldt, 676 F.2d at 313.*

The Masco plans, however, apparently are totally self-insured. Are they thereby totally immune from traditional state insurance regulation? Upon full consideration of the statutory scheme, we conclude that they are not.

Although Congress declared its express intention to generally preempt state law in the preemption clause, *29 U.S.C. § 1144*(a), it equally expressly declared its intention to preserve state regulation of insurance in the savings clause, *29 U.S.C. § 1144*(b)(2)(A). Therefore, in determining the scope even of express ERISA preemption, the general principle still applies that a court "must presume that Congress did not intend to preempt areas of traditional state regulation." [**20] *Metropolitan Life, 471 U.S. at 740* (citing *Jones v. Rath Packing Co., 430 U.S. 519, 525, 51 L. Ed. 2d 604, 97 S. Ct. 1305 (1977)).*

This presumption receives specific reinforcement from two subsections in § 514. ERISA section 514(d) says:

Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States. ...

29 U.S.C. § 1144(d). This subsection provides an independent source of protection to state insurance regulation by including [*92] in its coverage the McCarran-Ferguson Act, which says:

The business of insurance, and every person engaged therein, shall be subject to the laws of the several states which relate to the regulation or taxation of such business.

15 U.S.C. § 1012(a); *see Metropolitan Life, 471 U.S. at 744 n.21; see also Shaw, 463 U.S. at 101 n.22.*

Section 514(d) makes no specific reference to the McCarran-Ferguson Act. Section 514(b)(2)(B), however, by using the phrase of art, the "business of insurance," makes clear that the scope of [**21] state insurance regulation saved by the "savings" clause must include the "business of insurance" as defined by the McCarran-Ferguson Act.

In the face of this redoubled statutory preservation of the principle favoring state regulation of insurance, it appears contrary to the overall legislative purpose to read

the deemer clause broadly to bar all state regulation of self-insured plans. In this area of traditional state regulation, "the presumption is against pre-emption." *Metropolitan Life, 471 U.S. at 741; see also Wadsworth v. Whaland, 562 F.2d 70 (1st Cir. 1977), cert. denied, 435 U.S. 980, 435 U.S. 981, 56 L. Ed. 2d 72, 98 S. Ct. 1630 (1978).*

The legislative history behind the deemer clause is ambiguous. As the Court observed in *Metropolitan Life*, the preemption sections "are not a model of legislative drafting" because "while Congress occasionally decides to return to the States what it has previously taken away, it does not normally do both at the same time." *471 U.S. at 739-40.*

Before conference, the House and Senate versions of the bill preempted only those state laws that related to the "fiduciary, [**22] reporting and disclosure responsibilities" of the Act or that related to "the subject matter regulated" by the Act. Both versions saved state insurance regulation, but neither contained a "deemer" clause until the House substituted the text of H.R. 12906 for that of H.R. 2 just prior to passage of the pre-conference House bill. *See* Subcomm. on Labor of the House Comm. on Labor and Public Welfare, 94th Cong., 2d Sess., Legislative History of the Employee Retirement Income Security Act of 1974, at 2671, 2921. Before conference, the committee staff, noting the difference between the House and Senate versions on the "deemer" clause reported itself divided on whether "the House provision should be adopted" and recommended that, if it were, adoption be for only a limited period of time and subject to subsequent study. *Id.* at 5283. The conference version of the bill broadened preemption, retained the deemer clause without any time limit, and mandated Congressional study of "the effects and desirability of the Federal preemption of State and local law with respect to matters relating to pension and similar plans." *29 U.S.C. § 1222.*

In 1977, the Activity Report [**23] of the House Committee on Education and Labor expressed the opinion that

> the "deemed" language was utilized to create an irrebuttable presumption that these plans are not insurance, trust companies, etc. for purposes of state regulation. As a drafting technique the "deemed" is used in section 514(b) not to *bar* the use of a legal fiction by the states but to *create* what may amount to a legal fiction in a given circumstance. The irrebuttable presumption would not be overcome even if an employee benefit plan engages in activities which bring it within the insurance, trust, or securities activities generally regulated by a state.

ERISA Oversight Report of the Pension Task Force of the Subcommittee on Labor Standards, House Committee on Education and Labor, at 10 (1977) (emphasis in original). This *post hoc* explanation, while interesting, is entitled to little weight when it conflicts with a reasonable interpretation of a statute based on its text and its legislative history prior to enactment. *See Consumer Product Safety Commission v. GTE Sylvania, 447 U.S. 102, 117-18 & n.13, 64 L. Ed. 2d 766, 100 S. Ct. 2051 (1980).*

[*93] Certain [**24] aspects of the legislative history imply that a main concern of Congress in adopting the final broad version of section 514 that emerged from the conference committee was to avoid intentional -- and perhaps pretextual -- attempts by states to restrict the discretion of ERISA plans to engage in practices that otherwise would be permitted by federal law. n3 *See American Progressive Life & Health Insurance Co. v. Corcoran, 715 F.2d 784, 787 (2d Cir. 1983).* Neither intention nor pretext, however, is raised by the state regulation here.

n3 *See Metropolitan Life, 471 U.S. at 745-46 & nn.23-24.* This view is reinforced by the language of the deemer clause itself, which protects ERISA plans from being "deemed" insurers or otherwise in the business of insurance by any state "purporting" to regulate insurance. *29 U.S.C. § 1144*(b)(2)(B). Sponsoring senators expressed their satisfaction that states would be barred from frustrating Congressional intent by the "*guise* of state-enforced professional regulation" or by "state laws hastily *contrived* to deal with some particular aspect of private welfare or pension benefit plans not clearly connected to the federal regulatory scheme. *See* 12 Cong. Rec. 29,933 (Sen. Williams); 120 Cong. Rec. 29,942 (Sen. Javits) (emphases added).

[**25]

2. *State and Federal Interests*

A conflict between two coordination of benefits clauses, as here, invokes a large body of substantive law that has developed over time to resolve such conflicts, law based on principles of restitution as applied in the insurance context. *See, e.g.*, 8A Appleman, *Insurance Law & Practice* § § 4906-23; 44 Am Jur.2d, *Insurance* § § 1781-93. The Michigan legislature and courts simply have superimposed upon this body of law a reasonable policy judgment that a conflict between benefits

available under no-fault and other benefits should be resolved in favor of the no-fault insurer. This resolution eliminates duplication of recovery by the insured and furthers the twin purposes of § 3109a to contain both auto insurance costs and health insurance costs. *See Federal Kemper Insurance Co. v. Health Insurance Administration, Inc., 424 Mich. 537, 383 N.W.2d 590, 596 (1986).*

Neither the principal purpose nor the main effect of the Michigan coordination of benefits law is to restrict the range of options open to ERISA plans. The State legislature and its courts simply have decided that medical expenses resulting from an auto [**26] accident should be paid first by those who have specifically insured the medical risk in the form of health and hospitalization coverage rather than by the no-fault insurance liability carrier. Auto no-fault coverage is compulsory, and the State therefore has a strong, legitimate interest in keeping down the costs of this coverage. This interest is not likely to be exercised in a parochial or discriminatory way. When there is multiple coverage, loss simply is first spread to entities other than no-fault insurers. ERISA plans are treated no differently than other entities providing "coverage."

In the absence of a showing of state purpose specifically to regulate the content of welfare benefits provided by ERISA, the effect of the deemer clause should be assessed by a balancing of the interests in federal uniformity against those of state primacy in the regulation of insurance. Put another way, should interstate uniformity in the coordination of a plan's benefits with other insurance benefits override a state's traditional interest in a uniform rule for allocating comparative liability among all insurers? Which principle of uniformity is the least disruptive and the most likely to [**27] create the orderly system of reliable benefits that Congress had as its object in enacting ERISA?

Exemption of the Masco Plan and other self-insurers from the Michigan rule of *Federal Kemper* would disrupt the State's ability to administer a uniform scheme of "other-insurance" or "coordination of benefits" law. Not only would exemption frustrate the goal of cost containment, it would also create unpredictability and possibly undermine the financial stability of no-fault insurers.

Against this injury to the State scheme, we must weigh the federal interest in uniformity of administration of ERISA plans. The question is whether ERISA plan provisions [*94] for coordination of benefits should receive a uniform national construction.

3. *The Proper Role of Federal Common Law*

One "uniform rule" would be simply to defer willy nilly to the provisions of the ERISA plan, an obviously arbitrary result that would allow the plan trustees to decide every issue in their own favor without judicial review. The other alternative would be for the federal courts to develop an entire body of federal common law to resolve "other insurance" disputes between ERISA plans and other [**28] insurers on a case-by-case basis -- an approach that would be inefficient and uninformed by any well-defined independent federal interest.

Over the years states, including Michigan, have developed a substantial and complex body of common law and statutory principles to resolve questions of priority that arise when multiple coverage produces conflicts of the type presented in this case. This corpus of law embodies principles of restitution and risk allocation that have evolved from acquired state experience and expertise. Although these rules may be imperfect and display some minor variation from state to state, in the aggregate they nonetheless represent an interconnected and complex network of generally applicable laws with which the nation's insurers have grown familiar. *See, e.g.,* 8A Appleman, *Insurance Law & Practice* § § 4906-23.

Although the drafters of ERISA clearly contemplated and invited the development of federal common law n4 to fill gaps resulting from ERISA's broad preemption of state law outside the insurance field, it is less than clear that this would be a salutary development in an area that would overlap and inevitably conflict with established state insurance [**29] jurisprudence. In the absence of any particular federal interest in uniformity that would inform the development of federal common law on this issue, what federal common law we might develop surely would mostly parrot the principles already developed by the state courts. Moreover, application of a federal rule of common law here would trigger a substantial risk of "disrupt[ing] commercial relationships predicated on state law." *West Virginia v. United States, 479 U.S. 305, 107 S. Ct. 702, 705, 93 L. Ed. 2d 639 (1987)* (quoting *United States v. Kimbell Foods, Inc., 440 U.S. 715, 729, 59 L. Ed. 2d 711, 99 S. Ct. 1448 (1979)).*

n4 Sen. Javits remarked: "It is also intended that a body of Federal substantive law will be developed by the courts to deal with issues involving rights and obligations under private welfare and pension plans." 120 Cong. Rec. 29,942.

This entire scenario would undermine the general authority and autonomy the states now enjoy in their regulation of [**30] insurance. In view of the expressed intent of Congress and of the Supreme Court that ERISA should be read consistently with the policies underlying the McCarran-Ferguson Act, *15 U.S.C. § 1011 et seq.*, there is strong reason to respect the policy choice and expertise of the state of Michigan in the area of coordination of benefits.

Accordingly, we read the "deemer" clause no more broadly than the underlying purpose of § 514 and of ERISA as a whole -- the interests of national uniformity. n5

n5 *See* 120 Cong. Rec. 29,942 (remarks of Sen. Javits): "The emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required -- but for certain exceptions -- the displacement of State action in the field of private employee benefit programs."

This approach better reconciles the competing national policies favoring (1) comprehensive federal regulation of employee benefit plans and (2) state primacy in the regulation of [**31] insurance. Nor is this approach necessarily inconsistent with the dicta in *Metropolitan Life* concerning insured versus self-insuring plans. n6 *471 U.S. at 740-41, 747.* We [*95] preserve a distinction between insured and self-insuring plans. Insured plans would be *per se* "open to indirect regulation." *Id. at 747.* Self-insuring plans would be subject to state regulation only when no independent federal interest in national uniformity exists to inform and guide the creation of federal common law. *See Mardan Corp. v. C.G.C. Music, Ltd., 804 F.2d 1454, 1457-58 (9th Cir. 1986); Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 457, 1 L. Ed. 2d 972, 77 S. Ct. 912 (1957); cf. Wilson v. Garcia, 471 U.S. 261, 85 L. Ed. 2d 254, 105 S. Ct. 1938 (1985).*

n6 In *Pilot Life Insurance Co. v. Dedeaux, 107 S. Ct. at 1555,* the Court construed the sweep of the savings clause as a whole and in light of the object and policy underlying ERISA, thus going beyond the meaning imposed merely by application of the McCarran-Ferguson Act factors. We take the same approach here to reconciliation of both the savings and deemer clauses.

[**32]

Our reading of the savings and deemer clauses thus requires at a minimum that, for the deemer clause to override the savings clause in a given case, there must be some ERISA interest in uniformity to outweigh the McCarran-Ferguson interest in state regulation of insurance. When, as here, there is no demonstrated interest in national uniformity and preemption of state law would substantially disrupt a state regulatory scheme generally applicable to both insured and self-insured ERISA plans, as well as to insurers generally, the deemer clause does not bar regulation. To this limited degree, self-insured ERISA plans so regulated are not excluded from the savings clause by the deemer clause; they are thus subject to state insurance regulation pursuant to the savings clause. The Michigan no-fault coordination of benefits rule is the type of insurance regulation of an ERISA plan that is not barred by the deemer clause. We find support for this result in *Employers Association v. New Jersey, 601 F. Supp. 232* (D.N.J.) (state coordination of benefits not barred by the deemer clause), *aff'd mem., 774 F.2d 1151 (3d Cir. 1985)* (post-Metropolitan *Life); contra* [**33] *State Farm Mutual Insurance Co. v. American Community Mutual Insurance Co., 659 F. Supp. 635 (E.D. Mich. 1987).*

The judgment below is therefore reversed and the case remanded to the District Court for further proceedings not inconsistent with this opinion and with the Michigan law as enunciated in *Federal Kemper. See Federal Kemper, 424 Mich. 537, 383 N.W.2d at 596 n.10.*

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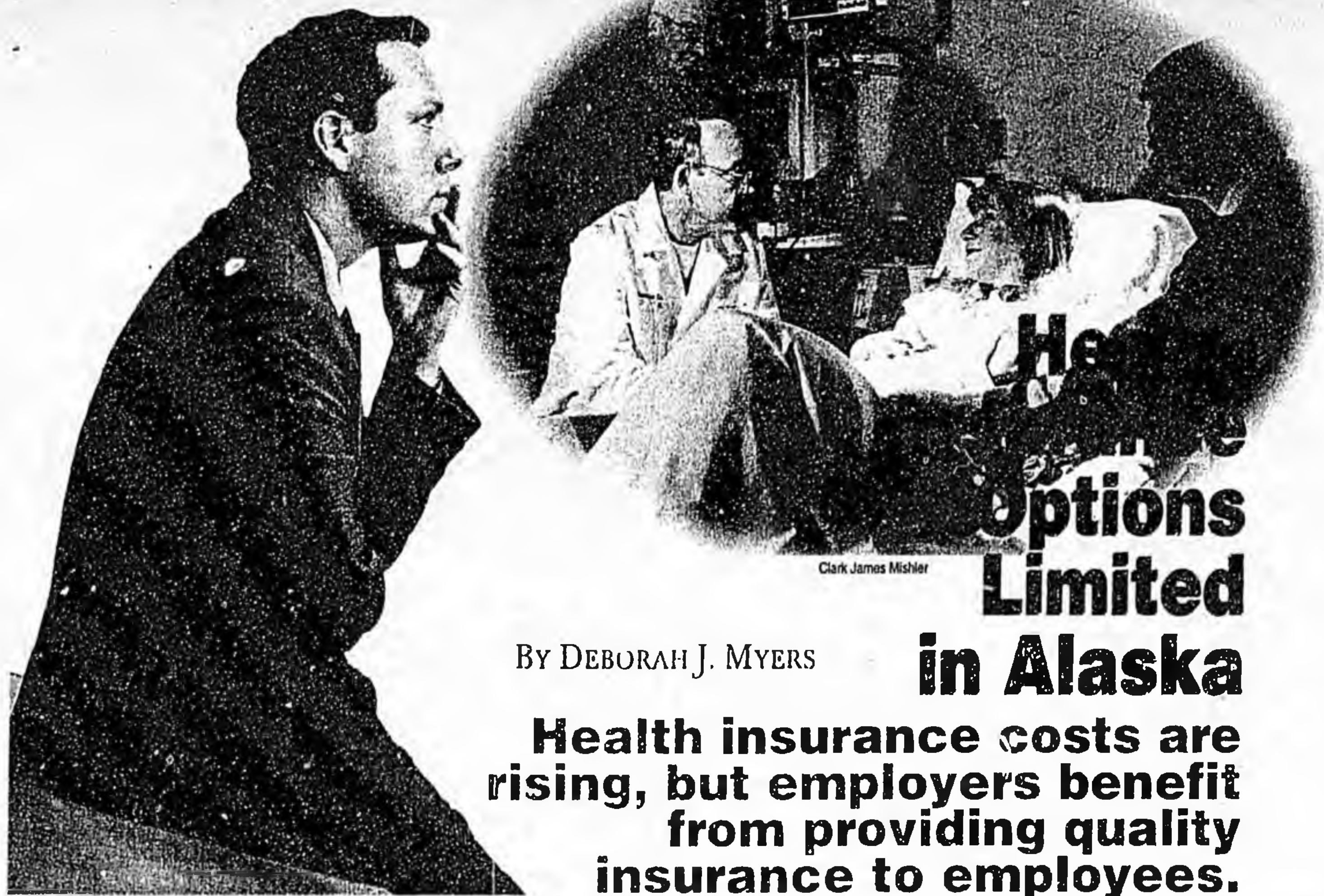

Clark James Mishler

Health Care Options Limited in Alaska

By Deborah J. Myers

Health insurance costs are rising, but employers benefit from providing quality insurance to employees.

No matter what the economic situation is, employee retention helps your business save money. Considering the cost of attracting, screening and interviewing applicants, plus the expensive downtime and potential mistakes while training, you'll save money if you keep the people you have.

Naturally, it helps to offer employees pleasant working conditions and adequate pay. However, benefits play an important role in keeping the grass lush on your side of the fence, so your employees don't seek other, greener pastures.

According to the 2000 Health Confidence Survey conducted by the Employee Benefit Research Institute (www.ebri.org), only 12 percent of people surveyed who have employer-provided health insurance said that they were extremely satisfied with their health insurance. The other 88 percent of people surveyed apparently feel they could do a little better elsewhere.

As an employer, it's in your best interest to offer a good health insurance package. As for insurance companies, their numbers have dwindled considerably, narrowing options.

"We generally have dealt with a number of companies," said Rick Johnson, a broker with Baldwin Financial Concepts in Anchorage and a board member of the National Association of Health Underwriters. "Anthem Health and Life has left the state, as has Humana Employer's Health and Guardian. Aetna has closed its marketing office (in Alaska).

"Other carriers have come in and undercut everyone else and then left the market. That leaves a sour taste with brokers and employers," he said.

At present, Blue Cross/Blue Shield of Alaska, Aetna, Principal, Starmark, United Healthcare and Great West Life offer coverage within the state.

"Blue Cross/Blue Shield of Alaska has the biggest network," Johnson said, "and they boast a pretty wide variety of physicians. We have a couple of carriers doing an outstanding job up here, but I also see employers frustrated at paying a lot for insurance."

Some employers are going online in search of discount health care benefits, but the promised deals aren't always a bargain.

"There are some Internet companies that do (provide insurance) from out of state," Johnson said. "I've been told by folks who have made inquiries that they're the same price or higher."

The basic plans available now are preferred provider options (PPOs) and indemnity plans.

Preferred Provider Options

PPOs are usually pretty inflexible. "(With PPOs), you're a little bit restricted on where you can go for care," Johnson said.

Employees must visit a care provider on a network list to receive full benefits. Depending upon the plan, visiting a doctor not on the list may reduce or eliminate the amount of coverage, leaving the employee to pay the difference out of pocket.

PPOs also offer advantages over the indemnity plan. A few PPOs require no deductible to pay before receiving coverage. The plan is less expensive for employers, according to Johnson.

"Generally, you can get a PPO plan and it's a reduction in premium for the employer," he said.

This also means a smaller premium for the employees, too. The cost of

Aaron Weaver

Johnson

care is less as well. Employees pay only a small co-payment for each doctor or hospital visit, and/or they meet a small deductible.

"People with young employees like those plans," said Jim Dunlap, owner of the Dunlap Agency in Fairbanks. "Employees only pay a $10 to $15 co-pay."

The quality of care is also an important factor for employees who need frequent medical care.

"Some of the chronic care and disease management programs are starting to move into PPOs," said Jeff Davis, executive director and general manager of Blue Cross/Blue Shield of Alaska.

"In the long run, quality care is cost-effective care," he said. "Cost and quality have been the perennial challenges of health care. Simply having a low premium isn't helpful if it doesn't provide the coverage you need."

Another type of PPO is a "hospital-preferred-provider network," Davis said.

These plans provide emergency room and planned inpatient and outpatient coverage once the deductible has been paid.

Like indemnity plans, the deductible is usually about $300 to $500 with 80 percent paid after the deductible has been met, according to Davis.

Indemnity Plans

Indemnity plans are about as popular as PPOs, according to Johnson of Baldwin Financial Concepts. "Fifty percent of my clients are on indemnity plans," he said.

Indemnity plans require employees to pay a deductible before receiving care. Employees who seldom require care may feel like they are paying for something they never use; however, if they do get seriously ill or injured, at least they have coverage. The benefits are more like fire insurance. You may never use it, but it's good to know it's there for you.

Indemnity plans also usually require employees to answer health questions, such as the occurrence of high blood pressure, cancer or diabetes in their family health history.

The good news is that indemnity plans are very flexible.

Indemnity plans let employees pick where they receive care and coverage is usually at a certain percentage once the deductible has been paid.

"There is a tremendous contingent of employers and employees who say they want to go where they want," Johnson said.

A Third Choice

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Photo courtesy of Dunlap Agency

Dunlap

"For businesses that don't offer group insurance, there is another option for employees," Davis said. "Namely, individual coverage."

Many make this decision because of rate increases, according to Johnson.

"They feel like they're being pressed," he said. "They don't feel like they can afford to pick up the rate increases."

Although rate increases are getting smaller (some are less than one percent, Johnson said), many smaller employers still feel the pinch.

Some employers who cancel company plans are still helping their employees with the cost of health insurance. They offer stipends to be applied toward individual coverage. Known loosely as cafeteria plans, employers pay a certain amount directly to the employees for their own use.

"There's a trend toward providing a basic benefit of so many dollars you can spend," Johnson said. "That's the trend of the future."

This leaves the decision and plan management up to the employees. Plans can include health, dental, life, vision or prescription drug coverage from various insurance companies. Like a mess hall, employees can pick and choose from a variety of options. In this way, the stipend scenario is like a formal cafeteria plan.

Unfortunately, employees don't always appropriate the funds that way and the cost to employees is higher.

"Most employers (who end their group plans) give their employees a couple hundred dollars and say, 'You can spend it on insurance,'" said Johnson, "but most (employees) spend it elsewhere."

One reason for this may be out-of-pocket expense.

"The cost (to employees) is higher for individual insurance," Davis said. "There's no employer contribution to the premium and typically premiums are not tax-deductible."

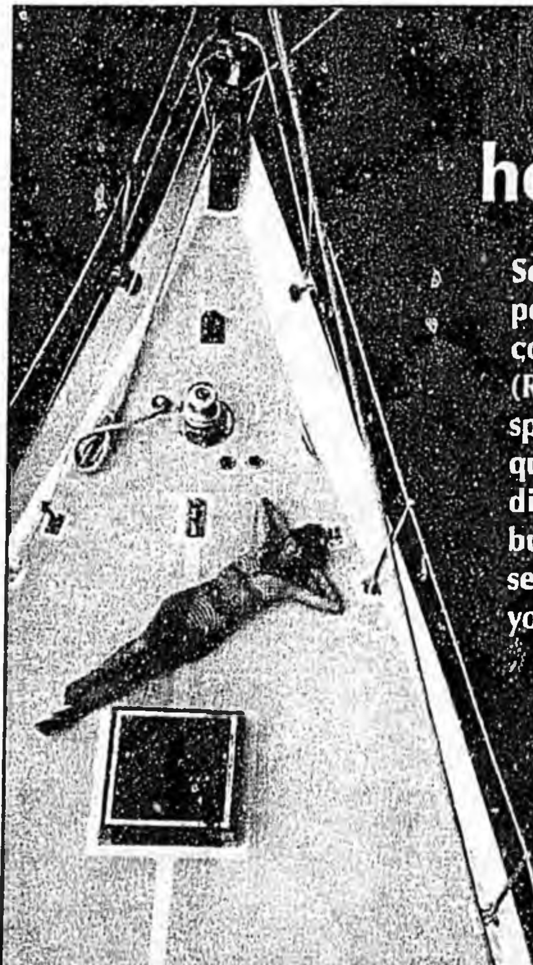
Formal cafeteria plans, officially known as Section 125 plans, are offered through insurance agencies and allow employers to pay the employees' portion of the premium tax-exempt. Most insurance companies give this option to only sizable groups.

Association Plans

Some employers have tried to form larger groups by associating with other employers in the same field.

"We have a couple association plans," Johnson said, "such as the Alaska Bar Association."

By mixing employees from different firms into one group, the employees, employers and insurance companies can



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Davis

benefit by better service, lower rates and more dependable payments, respectively.

It sounds like a dream come true for many small employers; however, Johnson warns that it can get tricky to form associations.

"The insurance companies tend to shy away from (association plans)," he said. "The Alaska State Medical Association (stipulates) that if we get together a certain number of employees, there are no restrictions, regardless of medical conditions."

In other words, for groups of fewer than 100, age and health questions can affect rates. If a company with 30 employees has a disproportionate number of employees over age 50, rates would be higher than a same-sized company comprised of 20 year olds.

Large employers with 100 or more receive a flat rate that does not vary because of the age and health conditions of the group. No matter who is added to or taken from the group, the rate remains the same as long as the group is large enough.

"The pool (of employees) in Alaska tends to be so small that if you want to come in with a guaranteed issue, the rates they initially set may not be correct because of medical conditions. Folks drop out of the plan because it's not cost effective."

There's no easy solution to the state's health care problems.

"If I had a crystal ball, I'd like to be able to solve this thing," Johnson said. "We need competition up here. There's almost a monopolistic situation with the carriers up here. They're overpriced and noncompetitive.

"There is a market here, if we had some insurance carriers who would come up and do business. We're so small compared to other states and it makes it awfully tough."

To cut costs, many carriers limit the types of plans available.

"We're 10 to 15 years behind the Lower 48 regarding network situations and managed care," Johnson said. "A lot of folks are leery about being restricted."

New Choices?

Although Health Maintenance Organizations (HMOs) are nonexistent and unpopular in Alaska, promising changes are dawning on the health care horizon that will include some of their best qualities without the unattractive parts.

"Some of the most progressive companies nationwide are realizing that some services are linked with HMOs that don't have to be," Davis said. "You're starting to see clinical quality

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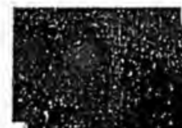
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improvement programs. It makes care better for patients and improves the quality of care."

Preventative care and screenings are becoming more popular, according to Davis.

"This is becoming availabl . to some of the more progressive plans without the referrals and expense traditional to HMOs," he said.

Preventative care includes cancer screening and diabetes testing, for example.

The type of health insurance plan you select can impact employees' decision to remain with the company or go elsewhere.

"Employers need to think about what employees value," Davis said. "The value of a local company makes a difference as does the access to and size of physicians' facilities. (Employees) need peace of mind from their health care coverage."

There's a simple way to find out what employees want: ask them. Objectively compare the plans you're considering

> **"There's almost a monopolistic situation with the carriers up here. They're overpriced and noncompetitive."**
>
> *—Rick Johnson, Broker Baldwin Financial Concepts*

on paper, and ask employees to vote on the plan they prefer. Select the plan the majority chooses.

Obtaining good health care coverage for employees will probably not be easy for the near future; however, by listening to employees' needs, you can select a plan that will keep them happy and working for your company. ❑

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RECEIVED
OCT 10 2001

October 4, 2001

Senator Norman Rokeberg
716 W 4th Ste 640
Anchorage, AK 99501-2107

Dear Senator Rokeberg:

WE'VE GOT AN INSURANCE CRISIS! I'm writing to you as a member of the Labor and Commerce committee. You are in one of the best positions to help Alaskans like myself who may be self-employed, RIFFED, retired, or work for small employers without health insurance and try to purchase it on the open market.

I am a self-employed person who, at the age of 56, is too young for Medicare and who can no longer afford to pay the premiums for my individual health insurance policy but cannot afford to be without it. My policy has entered a state known as a "death spiral." In my case, my premiums have risen from $263.56/month in June 1997 to $765.89/month in June 2001. My premium in 2000 was $554/ month, an increase of 138% in one year! **In just four years, they have increased 290% for a catastrophic policy with a deductible of $2500/year. The upshot is that before I realize one benefit from this policy, I must shell out $11,690.68 and I am not even a large medical consumer.** To my knowledge, there has not been a year that I have been covered by Mutual of Omaha in which my medical costs have exceeded the sum of my premiums plus deductible. If I pay my premiums, I can't afford to go to a physician. And I hear that another huge rate increase is in the making!

Principal Mutual suckered me into a particular pool at a reasonable rate in or about 1993. Then, Mutual of Omaha bought their book of business in 1997 and closed that particular pool. The next group of buyers went into a different pool. With no new blood coming in, my pool began to age. Average claims went up and pretty soon premiums went up, too. The healthier members of my pool, who had no pre-existing conditions, switched to cheaper policies with other insurers. The people who could find no alternative insurance companies willing to honor their pre-existing conditions, remained in my pool and so the pool had sicker people. Thus, average claims increased and premiums rose again. To show you how they culled us, Mutual of Omaha provided me statistics. In 1997, there were 12,591 policies in force. In 2000, there were 5,757 policyholders. Most of these policyholders must be suffering like myself.

My insurer cavalierly invited me to "shop in the open market" for other insurance. In Alaska, there is no "open market" for individual health insurance. No one will take me with my pre-existing conditions! We're in a crisis here and it not just confined to Alaska! (Please refer to the attached Internet article on a study

published by "The Commonwealth Fund's Task Force on the Future of Health Insurance," published in the July/August 2001 issue of the policy journal *Health Affairs* that I am attaching to this letter.)

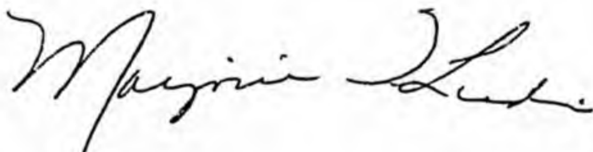
Thus, **my only recourse is to turn to the Alaska Comprehensive Health Insurance Association (ACHIA) for coverage.** I will have to wait six months, but ACHIA will eventually honor my pre-existing conditions! (I have my fingers crossed that I will not require expensive health care services in the interim.)

Now, I understand that the health of ACHIA is at risk, too. It has become the dumping ground for persons who are in my boat and age group and who are being priced out of the market. As I understand it, ACHIA operates on assessments on large insurance companies doing business in this state. Self-insured plans are exempted from these assessments.

ACHIA needs additional mechanisms for their funding. These mechanisms could include going after the tobacco money and assessing self-insured plans in the State. There may be other sources of income to infuse into ACHIA as well. But without ACHIA, people like me and others who have even more severe health problems will go bare. That would be a real catastrophe.

Please put preserving ACHIA on the front burner this legislative year! And do something about the price gouging of individual health insurers while you are at it. One idea is having a large pool of all individual policyholders that is not time-sensitive.

Yours truly,



Marjorie T. Linder

CC
Cecil Bykerk
Alaska Comprehensive Health Insurance Association
PO Box 240723
Anchorage, AK 99524-0723

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 290
() Publish Date:

Revision Date/Time (Note if correction): 01/30/2002
Title: An Act relating to membership in the Comprehensive Health Insurance Association
Sponsor: Representative Rokeberg
Requester: House Labor & Commerce

Dept. Affected: DCED
BRU: Insurance (116)
Component: Insurance Operations
Component No. 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill has no fiscal impact on the Division. This assumes that any data required of members to compute the assessments will be available.

Prepared by: Robert A. Lohr, Director
Division: Insurance
Phone: 907-269-7900
Date/Time: 1/30/02 12:19 PM

Approved by: Deborah B. Sedwick, Commissioner
Agency: Department of Community & Economic Development
Date: 1/30/2002

(Revised 9/2001 OMB)

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 290
() Publish Date:

Revision Date/Time
Title: Relating to membership in the CHIA
Sponsor: Rep. Rokeberg
Requester: (H) Labor & Commerce

Dept. Affected: Administration
BRU: Centralized Administrative Services
Component: Retirement & Benefits
Component No. 64

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	*	*	*	*	*	*
Travel	*	*	*	*	*	*
Contractual	*	*	*	*	*	*
Supplies	*	*	*	*	*	*
Equipment	*	*	*	*	*	*
Land & Structures	*	*	*	*	*	*
Grants & Claims	*	*	*	*	*	*
Miscellaneous	*	*	*	*	*	*
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						

CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	*	*	*	*	*	*
1003 GF Match	*	*	*	*	*	*
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts	*	*	*	*	*	*
1037 GF/Mental Health	*	*	*	*	*	*
Other (Specify Type--Do not abbreviate)	*	*	*	*	*	*
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill will add the self-insured plans sponsored by the State to the membership of the Comprehensive Health Insurance Association (CHIA).

Based on the total CHIA assessment in 2000, this bill would have assessed the Select Benefits Plan (approximately 5,000 state employees) $190,000. This would increase the active state employee health insurance premiums an additional $3.18 per month. Since the employer contribution for state employees is capped, any increase in active premiums will be borne by employees. .

The State would be the only self-insured member of the CHIA. State employees in union-sponsored, self-insured plans would not be part of the CHIA. There are approximately 8,400 state employees in union-sponsored, self-insured plans who would not be impacted by this bill.

Prepared by: Guy Bell   Phone 465-2292
Division: Retirement & Benefits   Date/Time 1/30/02
Approved by: Jim Duncan, Commissioner   Date 1/30/2002
Agency: Department of Administration

(Revised 9/2001 OMB)

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. HB 290

ANALYSIS CONTINUATION

The CHIA assessment against the retiree health insurance plans (approximately 23,200 retirees) would have been $1,010,050 in Year 2000. The retiree health insurance premiums would increase by $3.63 per retiree per month. That additional cost to the retirement systems would increase the employer contribution rates by .13%.

Examples of Impact on PERS and TRS employers

PERS	Salaries (in 000's)	Rate Increase	Annual Cost (in 000's)
State of Alaska	$ 640,906.2	0.0013	$ 833.2
Juneau Borough & School District	31,401.1	0.0013	40.8
Anchorage Municipality/School District	166,449.2	0.0013	216.4
University of Alaska	74,258.3	0.0013	96.5
Fairbanks Borough/School District	42,097.5	0.0013	54.7
North Slope Borough/School District	60,609.6	0.0013	78.8
Mat-Su Borough/School District	24,088.0	0.0013	31.3
All Other PERS employers	243,190.1	0.0013	316.1
Total	1,283,000.0	0.0013	1,667.9
TRS			
All School Districts TRS Salaries	$ 466,414.0	0.0013	$ 606.3
Total Annual Cost to PERS and TRS			$ 2,274.2 *

*The increased cost to employers is greater than the assessment because the retirement systems are prefunded and need to collect funds for those already retired as well as those who will retire in the future.

1/30/2002
Bob Lohr

HB 290 Talking Points

- CHIA provides a valuable benefit to Alaskans who are uninsurable
- 440 participants at the end of 2001, 50 additional participants since beginning of 2001
- Assessments as a percent of the total premium base have grown to 1% of premium or about $3 million per year and is expected to remain at this level for the next couple of years
- Assessments are passed on to insured Alaskans
- Finding additional sources of funding CHIA is important in order to keep the program viable and available to Alaskans
- HB 290 would add self insured employer health plans and the State of Alaska to the assessment base
- However, federal ERISA laws preempt state laws that attempt to regulate self-insured employer plans or union trust plans. Therefore, CHIA would not be allowed under ERISA to assess self-insured employers.
- As a result the legislation would have the effect of including only those state health plans that are not in union health trusts in the assessment base.
- The result of adding the State of Alaska employee/retiree health plan to the CHIA assessment base:
    1. Assessment base increases from $300 million to $510 million
    2. State of Alaska's portion of a $3 million assessment is 40% or $1.2 million per year or $45 per employee per year
    3. Insurance companies assessments would reduce from 1% of premium to .6% of premium
- One way to bring many self-insured and union trust plans into the CHIA assessment base without risking ERISA preemption is to modify the existing premium assessment formula to a covered lives formula.
- Under a covered lives approach stop loss insurers are assessed based on the number of lives covered under the underlying self-insured or union trust plans. Therefore stop loss insurers are assessed the same amount on a per covered life basis as other insurers, which is then presumably passed on to the insured and self-insured employer and union plans by the insurers.

committee

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-3697

February 1, 2002

VIA FACSIMILE & U.S. MAIL

The Honorable Norman Rokeberg
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Re: HB 290

Dear Representative Rokeberg:

The director for the division of insurance has asked me to respond to your letter dated November 8, 2001, which references advice from your legislative legal counsel regarding the application of ERISA preemption to self-funded health plans.

I respectfully disagree with the legislative legal counsel's conclusion that "some courts have held that even private self-insured benefit plans are subject to state laws regulating insurance." The United States Supreme Court has held unequivocally that the states may not regulate self-funded benefit plans. FMC Corporation v. Holliday, 498 U.S. 52, 61 (1990) makes that clear. This case effectively overrules the Sixth Circuit case, Northern Group Services, Inc. v. Auto Owners, Ins. Co, 833 F.2d 85 (6th Cir. 1987), cited by the legislative legal counsel in support of his conclusion. The Sixth Circuit later recognized this result in Auto Club Insurance Assoc. v. Health and Welfare Plans, Inc., 961 F.2d 588, 593 (6th Cir. 1992) ("[A]s we now hold, the FMC decision effectively has overruled Northern Group Services insofar as self-insured ERISA plans are concerned.").

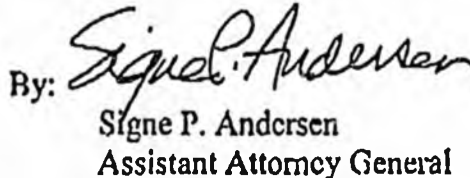
ERISA preempts state law that relates to an ERISA plan. 29 U.S.C. 1144(a). The U.S. Supreme Court has held that a state law "relates to" an ERISA plan if it has a connection with or reference to such a plan. Egelhoff v. Egelhoff, 121 S.Ct. 1322, 1327-1328 (2001). In this regard, the Court has found an impermissible connection with an ERISA plan if a state law attempts to bind plan administrators to a particular choice of

rules for paying benefits or if it interferes with nationally uniform plan administration. Id. In other words, ERISA will preempt any state law that conflicts with an ERISA plan's system for administering plans and paying benefits.

HB 290, on its face, does not directly regulate a self-funded ERISA plan and does not expressly treat such a plan as an insurer. Rather the employer is the one expressly regulated, albeit, only employers who have self-funded health plans. Accordingly, there may be an argument that the bill does not have an impermissible connection to an ERISA plan in the way that is prohibited by Supreme Court precedent. See, e.g., DeBuono v. NYSA-ILA Medical and Clinical Services Fund, 520 U.S. 806 (1997) (state tax on hospitals owned or operated by ERISA funds not preempted). This conclusion would depend on consideration of the actual operation of the law and whether it would interfere or conflict with the system of benefits and plan administration protected under ERISA.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Signe P. Andersen
Assistant Attorney General

SPA:jem

cc: Mike Abbott, Governor's Legislative Director
Jeff Bush, Deputy Commissioner,
Department of Community and Economic Development
Deborah Behr, Assistant Attorney General
Chrystal Smith, Legislative Liaison
Bob Lohr, Director, Division of Insurance

ALASKA STATE LEGISLATURE
House of Representatives

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website: http:\\www.akrepublicans.org\Rokeberg.htm

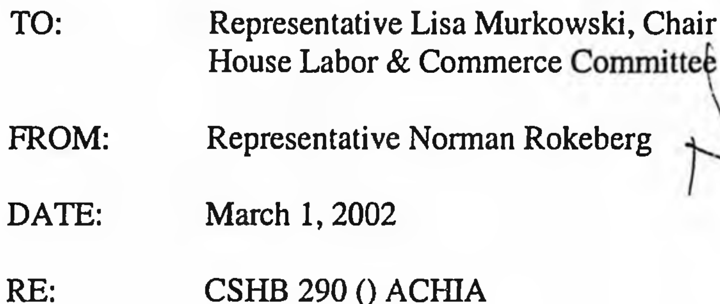
INTERIM:
716 WEST 4TH AVENUE, SUITE 350
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

MEMORANDUM



TO: Representative Lisa Murkowski, Chair
House Labor & Commerce Committee

FROM: Representative Norman Rokeberg

DATE: March 1, 2002

RE: CSHB 290 () ACHIA

Following is a work draft CS for HB 290. This changes the assessment formula from premium to number of covered lives basis. This policy change should lower costs and spread them in a more equitable manner. To accomplish this, the definition of "stop-loss" insurance has been expanded and a definition of "self-insured entity" has been developed. This definition should capture all self-insured employers including trusts, associations and other organizations that self-insure their health plans [including the State of Alaska as an employer].

A definition of "major medical" has also been included in this draft.

I have sent a copy of this work draft to the various individuals or entities that have expressed interest in the legislation including Aetna, Blue Cross, and John George. I would request that the Committee take this matter up again as soon as possible.

22-LS1150\J
Ford
2/28/02

CS FOR HOUSE BILL NO. 290( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE ROKEBERG

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to health care insurance and to the Comprehensive Health Insurance**
2 **Association."**

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

4 * **Section 1.** AS 21.12.050(c) is amended to read:
5 (c) In this section, "stop-loss insurance" means insurance **that protects a self-**
6 **insured entity from the risk of paying medical benefits in excess of a specified**
7 **amount** [PURCHASED BY A SELF-INSURED EMPLOYER TO COVER
8 BENEFITS THE EMPLOYER INCURS IN EXCESS OF A PRESET LIMIT].
9 * **Sec. 2.** AS 21.55.010 is repealed and reenacted to read:
10 **Sec. 21.55.010. Creation; membership.** (a) There is established a nonprofit
11 incorporated legal entity to be known as the Comprehensive Health Insurance
12 Association. Membership consists of (1) health care insurers licensed or required to
13 be licensed in this state that offer, issue for delivery, deliver, or renew major medical
14 insurance in this state; and (2) to the extent permitted under federal law, all self-

1 insured entities that provide major medical benefits. All members shall maintain
2 membership in the association and submit reports and provide information required by
3 the board or the director to implement this chapter as a condition of offering, issuing
4 for delivery, delivering, or renewing health insurance in this state.
5 (b) A health care insurer that offers, issues for delivery, delivers, or renews
6 health insurance and a self-insured entity that provides major medical benefits in this
7 state are members of the Comprehensive Health Insurance Association, unless the
8 health care insurer or self-insured entity demonstrates to the satisfaction of the director
9 that the health care insurer has not offered, insured for delivery, delivered, or renewed
10 major medical insurance or the self-insured entity has not provided major medical
11 benefits in the state during the year in which assessments under AS 21.55.220(d) are
12 imposed on members.
13 * **Sec. 3.** AS 21.55.020(c) is amended to read:
14 (c) In determining voting rights at association meetings, an association
15 member is entitled to vote in person or by proxy. The vote shall be a weighted vote
16 based on the association member's **share of assessments as determined under**
17 **AS 21.55.220** [PREMIUMS FOR HEALTH INSURANCE FOR MAJOR MEDICAL
18 COVERAGE ON AN EXPENSE INCURRED BASIS, OR THE ASSOCIATION
19 MEMBER'S SUBSCRIBER FEES, DERIVED FROM OR ON BEHALF OF STATE
20 RESIDENTS IN THE PREVICUS CALENDAR YEAR, AS DETERMINED BY
21 THE DIRECTOR].
22 * **Sec. 4.** AS 21.55.140(b) is amended to read:
23 (b) A state plan may not provide coverage for a person eligible for major
24 medical **benefits** [COVERAGE] under
25 (1) another state or federal law, including veterans' benefits, Native
26 health care, or Medicaid; or
27 (2) another health benefit program, including a self-insurance plan,
28 health care trust, or welfare trust.
29 * **Sec. 5.** AS 21.55.220(c) is repealed and reenacted to read:
30 (c) A member of the association is liable for its share of the claims, operating,
31 and administrative expenses of the state plans that exceed premium payments by

1 enrollees in the state plans, and the board shall assess each member its share. A
2 member's share equals, in the case of a health care insurer, the number of covered
3 lives for major medical insurance offered, issued for delivery, delivered, or renewed
4 by the health care insurer or, in the case of a self-insured entity, the number of covered
5 lives for major medical benefits provided by the self-insured entity in the state,
6 divided by the total number of covered lives for major medical insurance offered,
7 issued for delivery, delivered, or renewed by all health care insurers and for major
8 medical benefits provided by all self-insured entities.

9 * **Sec. 6.** AS 21.55.220 is amended by adding new subsections to read:

10 (f) A member shall, each year by April 1, file with the director a report of
11 major medical insurance and major medical benefits on a form prescribed by the
12 director. The report must include the number of covered lives at the beginning of the
13 prior year, the number of covered lives at the end of the prior year, and the amount of
14 premium reported for that type of major medical insurance in the state in the annual
15 statement filed under AS 21.09.200 for, in the case of a health care insurer, each type
16 of major medical insurance offered, issued for delivery, or delivered in the state in the
17 prior year or, in the case of a self-insured entity, each type of major medical benefits
18 provided in the state. A member shall exclude from the member's reported number of
19 covered lives those lives that have been reported by the member, in the case of a
20 health care insurer, under another type of major medical insurance or, in the case of a
21 self-insured entity, under another type of program that provides major medical
22 benefits. The director may require additional data to be filed as necessary for the
23 board to determine or verify the number of covered lives. A member who fails to file
24 the report as required in this subsection may have a civil penalty of $100 assessed
25 against it for each day the member fails to file the required report and may have the
26 member's certificate of authority revoked by the director.

27 (g) The board shall determine a member's share under (c) of this section based
28 on the data filed with the director under (f) of this section. The board may use any
29 reasonable method of estimating the number of covered lives if the specific number is
30 unknown. The board shall, to the extent practicable, count each covered life only once
31 with respect to an assessment.

1 * **Sec. 7.** AS 21.55.500(14) is repealed and reenacted to read:
2 (14) "major medical benefits" means hospital, surgical, or medical care
3 benefits on an expense incurred basis and includes stop-loss insurance benefits; "major
4 medical benefits" does not include medical benefits for dental only, vision only, long-
5 term care, nursing home care, home health care, community-based care, accident only,
6 disability income, hospital confinement indemnity, or credit insurance;
7 * **Sec. 8.** AS 21.90.900 is amended by adding a new paragraph to read:
8 (43) "self-insured entity" means an employer, union, association, or
9 other organization that provides medical care services or benefits to employees or
10 members in this state, either directly or indirectly through a trust or third-party
11 administrator, if the services or benefits are not provided by an insurance policy issued
12 by an insurer.

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

JUDICIARY COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT & TOURISM, MEMBER

website: http:\\www.akrepublicans.org\Rokeberg.htm

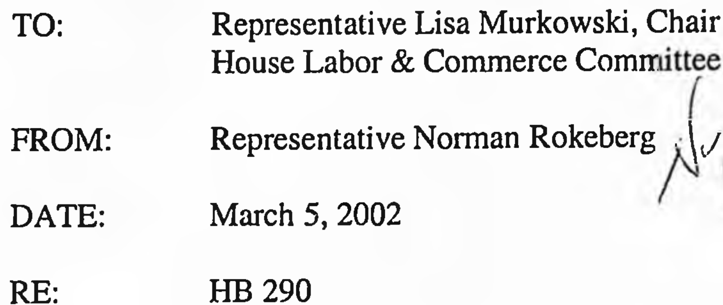
INTERIM:
716 WEST 4TH AVENUE, SUITE 350
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

MEMORANDUM



TO: Representative Lisa Murkowski, Chair
House Labor & Commerce Committee

FROM: Representative Norman Rokeberg

DATE: March 5, 2002

RE: HB 290

When we again discuss HB 290 and the work draft CS, I have an amendment I would like the committee to discuss.

Attached are the following:

1. Amendment 22-LS1150\J.1 – this is an amendment to the work draft document.
2. 2001-2002 Benefit Credits information

The J.1 amendment indicates that the State will pay the ACHIA contribution on behalf of its employees covered by this statute.

Thank you for your consideration of this matter.

22-LS1150\J.1
Ford
3/4/02

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG

TO: CSHB 290( ), Draft Version "J"

1 Page 4, following line 12:
2 Insert new bill sections to read:
3 "* **Sec. 9.** AS 39.30.095(b) is amended to read:
4 (b) After obtaining the advice of an actuary, the commissioner of
5 administration shall determine the amount necessary to provide benefits under
6 AS 39.30.090, 39.30.091, and 39.30.160 and, subject to (e) **and (g)** of this section,
7 shall set the rate of employer contribution and employee contribution, if any. With
8 money in the fund, the commissioner of administration shall pay premiums, claims,
9 and administrative costs required under the insurance policies in effect under
10 AS 39.30.090 and 39.30.160, or required under self-insurance arrangements in effect
11 under AS 39.30.091.
12 * **Sec. 10.** AS 39.30.095(e) is amended to read:
13 (e) Notwithstanding (b) of this section **and subject to (g) of this section**, the
14 rate of employer contribution to provide hospital, surgical, dental, audiovisual, and
15 other medical care benefits under AS 39.30.091 is $515 monthly beginning July 1,
16 2000; $575 monthly beginning July 1, 2001; and $630 monthly beginning July 1,
17 2002, for the following employees and officials:
18 (1) employees in the executive branch of the state government,
19 including the governor and lieutenant governor, who are not members of a collective
20 bargaining unit established under the authority of AS 23.40.070 - 23.40.260 (Public
21 Employment Relations Act);
22 (2) officials and employees of the legislative branch of state
23 government under AS 24;
24 (3) employees in the judicial branch of state government, including

1 magistrates and other judicial officers, who are not members of a collective bargaining
2 unit established under AS 23.40.070 - 23.40.260 (Public Employment Relations Act).
3 * **Sec. 11.** AS 39.30.095 is amended by adding a new subsection to read:
4 (g) In setting the rate of contribution by an employer and employee under (b)
5 and (e) of this section, the commissioner may increase the amount of the employer
6 contribution under (e) of this section and may exceed the amount set in that
7 subsection, but may not increase the amount of the employee contribution if the
8 amount necessary to provide benefits under AS 39.30.090 and 39.30.160, or for a self-
9 insurance arrangement under AS 39.30.091, increases as a result of an assessment
10 against the state as a member of the Comprehensive Health Insurance Association
11 under AS 21.55.220."

2001-2002 Benefit Credits

Bargaining Unit	Amount
Supervisory	$575
Correctional Officers	$575
Marine Engineers	$575
Unlicensed Vessel	$575
Confidential	$575
AVTECH	$575
Not Covered by Collective Bargaining	$575

*Part-time employees get one-half benefit credit if they elect health insurance.

6th Floor, State Office Building
PO Box 110203, Juneau, AK 99811-0203, Phone: (907) 465-4460, Fax: (907) 465-3086
[department of administration - state - state employees - r&b webmaster - office locations]

Since 8/14/2001
000354

March 13, 2002
Department of Community and Economic Development
Alaska Division of Insurance

CS HB 290 (Version J)
Analysis of Change in Assessment Formula

Current Assessment Formula (AS 21.55)
AS 21.09.200 requires each insurer that writes insurance in the state to submit to the Director a financial statement using NAIC forms and instructions. This financial statement includes a report that shows the amount of health insurance premiums the insurer has written in Alaska.

An insurer is a member of Alaska Comprehensive Health Insurance Association (ACHIA) if it offers major medical insurance on an expense-incurred basis in Alaska. Major medical is defined as a health insurance contract or subscriber contract that provides benefits for hospital and medical care with potential lifetime maximum benefits of at least $10,000. Major medical does not include a stop loss insurance policy, a fixed indemnity health insurance product, or a product with lifetime maximum benefits of less than $10,000. However, if an insurer offers major medical insurance on an expense-incurred basis in Alaska, then all health insurance premiums offered by that insurer, including stop loss insurance, fixed indemnity and other non-major medical health insurance premiums would be assessed.

ACHIA members are assessed based on the amount of health insurance premiums they report in their annual financial statement as written in Alaska. An insurer's share of ACHIA assessment is its health insurance premiums written in Alaska in the base year divided by the total health insurance premiums written in Alaska by all ACHIA members in the base year.

For example, assume that only the following 7 insurers write the health insurance in Alaska as shown.

	Major Medical Premiums	Stop Loss Premiums	Other Non-Major Medical Premiums
Insurer1	5,000	0	1,500,000
Insurer2	0	0	5,000,000
Insurer3	150,000,000	0	70,000
Insurer4	15,000,000	0	0
Insurer5	0	3,000,000	0
Insurer6	400,000	300,000	0
Insurer7	0	100,000	300,000

In this example Insurer2, Insurer5, and Insurer7 would not be members of ACHIA and subject to assessment, since they have not written any major medical insurance.

Assessment shares would be determined as follows:

	Major Medical Premiums	Stop Loss Premiums	Other Non-Major Medical Premiums	Total Premiums	Assessment Share* %
Insurer1	5,000	0	1,500,000	1,505,000	.90
Insurer3	150,000,000	0	70,000	150,070,000	89.72
Insurer4	15,000,000	0	0	15,000,000	8.96
Insurer6	400,000	300,000	0	700,000	.42
				167,275,000	100.00

* Assessment share = Each member's total premium / total premium for all members

If the total ACHIA assessment required is $3,000,000:

Insurer1 would pay	27,000	(.0090*3,000,000)
Insurer3 would pay	2,691,600	(.8972*3,000,000)
Insurer4 would pay	268,800	(.0896*3,000,000)
Insurer6 would pay	12,600	(.0042*3,000,000)
	3,000,000	

Proposed Assessment Formula (CS HB 290/J)
An insurer or self-insured entity is a member of ACHIA if it offers major medical insurance on an expense-incurred basis in Alaska. Major medical is defined to include stop loss insurance and exclude benefits such as dental, vision, accident, disability income and other benefits that are not true medical benefits. A self-insured employer that offers a major medical plan to their employees would be a member of ACHIA to the extent allowed under ERISA. This includes the State of Alaska, which is a governmental plan exempt from ERISA. Also, insurers that offer only stop loss insurance in Alaska would be members of ACHIA.

ACHIA members would be assessed on the number of lives they cover in Alaska under their major medical health plans instead of all health insurance premiums written in Alaska. Each member would be required to report the number of covered lives data to the director for purposes of determining the ACHIA assessment, because this information is not currently available.

Each member's share of the ACHIA assessment is the member's reported number of lives with major medical coverage in the base year divided by the total number of lives with major medical reported by all ACHIA members in the base year. Note that unlike the current assessment formula a member is assessed only on major medical coverage not other health coverage.

For example, assume that only the following 7 insurers write the health insurance in Alaska as shown.

	Stop Loss Number of Lives	Non-Stop Loss Major Medical Number of Lives
Insurer1	0	3
Insurer2*	0	0
Insurer3	0	65,000
Insurer4	0	6,500
Insurer5	11,000	0
Insurer6	200	150
Insurer7	350	0

*Insurer2 is not a member of ACHIA and therefore would not be assessed, since none of the coverage that Insurer2 wrote meets the definition of major medical.

Assessment shares would be determined as follows:

	Stop Loss Number of Lives	Non-Stop Loss Major Medical Number of Lives	Total Number of Lives	Share %*
Insurer1	0	3	3	0.00
Insurer3	0	65,000	65,000	78.12
Insurer4	0	6,500	6,500	7.82
Insurer5	11,000	0	11,000	13.22
Insurer6	200	150	350	.42
Insurer7	350	0	350	.42
			83,203	100

*Share % = Each insurer's total number of lives / total number of lives for all insurers

If the total assessment required is $3,000,000:

Insurer1 would pay	0	(.0000*3,000,000)
Insurer3 would pay	2,343,600	(.7812*3,000,000)
Insurer4 would pay	234,600	(.0782*3,000,000)
Insurer5 would pay	396,600	(.1322*3,000,000)
Insurer6 would pay	12,600	(.0042*3,000,000)
Insurer7 would pay	12,600	(.0042*3,000,000)
	3,000,000	

March 13, 2002
Department of Community and Economic Development
Alaska Division of Insurance

Estimated impact of change to ACHIA formula:

- This analysis uses the 2000 Health Insurance Survey Results, which may not include all members
- Under the current formula the estimated total premium base is **$305,000,000.**
- Under the proposed covered lives formula in CS HB 290 (Version J) the estimated total covered lives base is **260,000.**
- Under the current formula each member's share of assessment is that member's total premium divided by $305,000,000. Note that current formula would not include premiums from self-insured entities (such as State of Alaska) and insurers writing only stop loss insurance.
- Under the proposed covered lives formula each member's share of assessment is that member's total number of covered lives divided by 260,000.

Examples of estimated impact assuming a $3 million ACHIA assessment:

Member	Premium	Covered Lives	Share by Premium	Assessed Amount by Premium	Share by Covered Lives	Assessed Amount by Cov Lives
Premera Blue Cross	153,000,000	65,000	50.16%	$1,500,000	25.0%	$750,000
State of Alaska	190,000,000	60,000	0.00%	$0	23.0%	$690,000
United of Omaha*	5,000,000	18,500	1.64%	$49,000	7.1%	$210,000
Union Labor*	2,800,000	14,500	0.93%	$28,000	5.5%	$165,000
AFLAC	4,400,000	14,500	1.44%	$44,000	5.5%	$165,000
Hartford Life & Acc*	2,300,000	9,700	0.75%	$23,000	3.7%	$111,000
Principal Life	18,000,000	6,700	5.90%	$177,000	2.6%	$78,000
Aetna	18,000,000	6,500	5.90%	$177,000	2.5%	$75,000
Hartford Fire*	700,000	4,200	0.00%	$0	1.6%	$48,000

* Stop loss Insurers

AFLAC writes low premium limited benefit health insurance products that meet the new proposed definition of major medical such as certain medical expense, hospital expense and cancer coverage.

In this example "State of Alaska" does not include employees covered under union trust plans. Number of covered lives for union trust plans that purchase stop loss insurance is included in their stop loss insurers' numbers. For example, "Union Labor" is the stop loss insurer for the GGU union trust plan.

Committee

John L. George and Associates
3328 Fritz Cove Road
Juneau Alaska 99801
Tel.907 789-0172 Fax 907 789-6964

House Bill 290 Alaska Comprehensive Health Association

AFLAC is a major insurance underwriter of supplemental benefit insurance products in Alaska. AFLAC does not write policies generally understood to be "Major Medical Policies". Supplemental benefit policies are designed to fill gaps in coverage or to supplement the benefits of major medical policies. Supplemental benefit policies are generally low premium policies, with limited benefits, covering specified diseases or occurrences.

ACHIA was originally designed to allow persons who were otherwise unable to buy insurance in the voluntary health insurance market to have access to insurance if they could afford to pay for it. The premiums charged were initially designed to cover the cost of the self-supporting program. As a backstop, in the unlikely event that premiums did not cover the losses, provision was made for assessing health insurers to cover the shortfall. The current annual shortfall is about $3 million.

The current law provides for assessment only of insurers who write major medical insurance, but assesses them based upon a percentage of their entire volume of health insurance premium, which includes many non major medical medical medical medical types of insurance. The definition of "major medical insurance coverage" in the present law includes Medicare Supplement policies. In theory a company could write just one Medicare Supplement policy and no other major medical insurance and subject it's entire health insurance premium to assessment. AFLAC writes 4 Medicare Supplement policies in Alaska. The company cannot cancel these policies because they are guaranteed renewable. AFLAC's past ACHIA assessments have exceeded $25,000 per year. Had they not written these four policies more than five years ago, they would have avoided being assessed entirely.

HB290 recognizes the need to spread the cost of this socially important program beyond insurers. Large employers, labor unions and associations who self-insure are exempt from State regulation of insurance. They are not burdened by mandated coverage's, premium taxes, guaranty fund assessments or ACHIA assessments, all of which drive up the cost of traditional insurance. The small employer can choose not to provide his employees with insurance or must purchase traditional insurance. Small employers compete directly with large employers for employees and employee health insurance is a major factor in attracting good employees. Small employers and their employees have shared the burden in the past. HB290 reduces this burden by assessing based upon covered lives rather than premium.

HB290 is still unfair to AFLAC policyholders. Because AFLAC writes primarily low premium products for persons covered by other major medical insurers, an assessment of AFLAC imposes a duplicate assessment on individual policyholders. Because AFLAC

premiums are $250 - $350 per policy per year, the assessment is a greater percentage of premium for AFLAC policyholders than for Aetna or Blue Cross policyholders.

AFLAC fully supports the intent of HB290 to broaden the assessment base for ACHIA. We must however oppose the definition of "major medical insurance" contained in the bill because it is unfair to our policyholders.

HB 290

National
Association of Health
Underwriters
Serving the public by promoting the activities and ethical conduct of insurance professionals through communication, education and legislative representation

April 10, 2002

The Honorable Norman Rokeberg
Alaska House of Representatives
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Rokeberg:

The Alaska Association of Health Underwriters (AAHU) appreciates the opportunity to provide comment on your proposed draft of H.B. 290 concerning the assessment mechanism for the Alaska Comprehensive Health Insurance Association (ACHIA).

AAHU and our parent organization, the National Association of Health Underwriters (NAHU), are strong supporters of state-level high-risk health insurance pools, and we feel that ACHIA plays an important role in maintaining the "health" of the Alaska individual insurance market. NAHU has long felt that the "per head" assessment is the fairest way to account for premium losses and guarantee adequate pool funding, and we point to Mississippi and New Hampshire as examples of states that have successfully incorporated this funding mechanism into their state-level pools.

However, while we support the aim of H.B. 290, we have concerns that the legislation, as currently drafted, would not adequately capture the reinsurance carriers and fully self-funded plans (w/o reinsurance coverage) that you hope to include in the risk pool assessment process. We are also concerned that certain employers who do not have health plans or have corporate plans based outside of Alaska are not currently included in the risk pool assessment process.

The amendment to the definition of medical insurance to include stop-loss insurers is a welcome first-step, but we feel that the definition is too vague. We would suggest the use of the Mississippi definitions. Mississippi defines insurers in their risk-pool statute as follows:

> "Insurer" means any entity that is authorized in this state to write health insurance or that provides health insurance in this state or any third party administrator. For the purposes of Sections 83-9-201 through 83-9-222, insurer includes an insurance company, nonprofit health care services plan, fraternal benefit society, health maintenance organization, to the extent consistent with federal law any self-insurance arrangement covered by the Employee Retirement Income Security Act of 1974, as amended, that provides health care benefits in this state, any other entity providing a plan of health insurance or health benefits subject to state insurance regulation and any reinsurer reinsuring health insurance in this state.

Mississippi then goes on to clearly define reinsurers as follows:

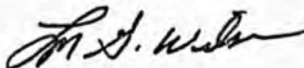
2000 N. 14th Street • Suite 450 • Arlington, VA 22201 • (703) 276-0220 • Fax (703) 841-7797 • www.nahu.org

"Reinsurer" means any insurer from whom any person providing health insurance for any Mississippi resident procures insurance for itself in the insurer, with respect to all or part of the health insurance risk of the person.

Secondly, we feel that the inclusion of section 21.55.010, (2) is both unnecessary and confusing. Directly assessing self-funded plans would be a violation of ERISA. While self-funded plans that purchase stop-loss insurance cannot themselves be assessed, their reinsurance carriers can be assessed on a "per head" basis, as provided in 21.55.010, (1). However, that is the extent to which the self-funded plans can be captured in the ACHIA assessment. Fully self-funded plans, that chose not to purchase stop-loss insurance, cannot be assessed according to current federal law. Section 21.55.010, (2) would seem to attempt to try and assess these plans, and we would recommend its deletion.

Again, thank you for the opportunity to comment on H.B. 290. If you have any questions about our views on this important issue, please do not hesitate to contact me at 907-277-1616. Also, please feel free to contact Jessica Waltman, the manager of state health policy for NAHU at either (703) 276-3817 or jwaltman@nahu.org, if you would like additional information about how other states have handled similar issues.

Sincerely,



Lon G. Wilson
Legislative Chair
Alaska Association of Health Underwritters

cc: Harry Crawford
Andrew Halcro
Joe Hayes
Pete Kott
Kevin Meyer
✓Lisa Murkowski
Tom Turner

HB

291

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

SPONSOR STATEMENT

HB 291

"An Act relating to residential contractor endorsements."

People who want to apply for a residential contractor license must do so within six months after successfully passing the residential contractor exam. House Bill 291 amends existing law by lengthening the timeline to apply for a residential contractor endorsement from six months to two years.

Currently, AS 08.18.025 does not allow flexibility for extenuating circumstances. If a person applying for a residential contractor endorsement misses the six-month deadline, the only recourse is to take the residential contractor exam again. The exam, four hours in length, is held four times a year. A fee of $75.00 is required each time the test is taken.

People who apply for residential contractor endorsement must first have a construction contractor license to which their residential contractor endorsement will be assigned. The Division of Occupational licensing has explained that a common cause for people missing the six-month deadline is because the process of starting a new construction business, whether it is a sole proprietorship or a corporation, can take longer than six months. Other examples include people with health or family emergencies that cause them to miss the application deadline.

By extending the timeline for which a person applies for a residential contractor license from six months to two years, the law will allow a longer window of opportunity for people who are trying to get their businesses and jobs in order.

***

Email: Representative_Kevin_Meyer@legis.state.ak.us • Toll Free: (866) 465-4945
Session: State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-4945 Fax: (907) 465-3476
Interim: 716 W. 4th Ave., #320, Anchorage, Alaska 99501-2133 • Phone: (907) 269-0199 Fax (907) 269-0197

Subject: **res endorsement**
Date: Thu, 24 Jan 2002 18:50:19 +0000
From: "Andrew Deves" <bluedragonfire3000@hotmail.com>
To: Representative_Kevin_Meyer@legis.state.ak.us

Representative Kevin Meyer January 24, 2002

House District 19

Dear Representative Meyer:

I am writing this letter in support on your efforts to amend AS 08.025 which deals with residential endorsements for home builders.

I had contacted your office in early May 2001 to intercede on my behalf as the 6 month limitation period for filing had almost expired. Prior to that time I had been out of State with my wife who had been diagnosed with cancer in February 2001. We spent a good part of the winter attending at the Mayo Clinic in Arizona and at the M.D. Anderson Clinic in Houston. I was not very focused on my business activities in Alaska during this period and time was running out to file.

I believe that your Bill to allow one full year to file will bring needed flexibility into the program and improve that aspect of the law.

Again, I am so thankful for you help in this matter.

Sincerely,

Don Devore

7408 Florence Circle

Anchorage, Alaska 99507

ALASKA STATE
HOMEBUILDERS ASSOCIATION

January 23, 2002

Representative Kevin Meyer
House district 19
FAX 907-465-3476

Dear Representative Meyer;

The Alaska State Home Builders Association members have been reviewing HB291, "An act relating to residential contractor endorsements". The existing law states that you must apply for a residential contractor license within six months after successfully passing the residential contractor exam. HB291 would lengthen the timeline from six months to two years.

We would propose to lengthen the timeline to one year. This provides flexibility for applicants that need extra time before actually applying for their residential endorsement. We appreciate your consideration of our proposal and look forward to the final outcome.

Sincerely,

Jimmy L. Ward Alan Wilson

Jim Ward
President
Alaska State Home Builders

Alan Wilson
Legislative Co-chair

Robin E Ward

Robin Ward
Legislative Co-chair

8301 SCHOON ST • SUITE 200 • ANCHORAGE, ALASKA • 99518
(907) 522-3931 • FAX (907) 522-3757

22-LS1158\C
Lauterbach
2/1/02

CS FOR HOUSE BILL NO. 291( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MEYER

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the requirements for obtaining a residential contractor**
2 **endorsement."**

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

4 * **Section 1.** AS 08.18.025(b) is amended to read:
5 (b) The department shall issue a residential contractor endorsement to a person
6 who
7 (1) has a certificate of registration as a general contractor;
8 (2) passes a residential contractor examination, which shall be offered
9 by the department at least once each year in each judicial district; the examination,
10 which may be written or practical, may test competence in relation to arctic structural
11 and thermal construction techniques and other matters as determined by the
12 department in consultation with representatives of the construction industry;
13 (3) applies for an endorsement within 12 [SIX] months after passing
14 the examination required under (2) of this subsection;

New Text Underlined [DELETED TEXT BRACKETED]

1 (4) within the two years preceding the date of application for the
2 endorsement, has satisfactorily completed either the Alaska craftsman home program
3 sponsored by the Department of Community and Economic Development, or its
4 equivalent, or a postsecondary course in arctic engineering, or its equivalent;
5 (5) within the seven years preceding the date of application, has not
6 been under a sentence for an offense related to forgery, theft in the first or second
7 degree, extortion, or conspiracy to defraud creditors or for a felony involving
8 dishonesty; and
9 (6) pays the appropriate fees.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 291
() Publish Date:

Revision Date/Time (Note if correction): 02/01/2002
Title: An Act relating to the requirements for obtaining a residential contractor endorsement
Sponsor: Representative Meyer
Requester: House Labor & Commerce

Dept. Affected: DCED
BRU: Occupational Licensing (117)
Component: Occupational Licensing
Component No. 2360

Expenditures/Revenues (Thousands of Doll‹ ·s)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 200L	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2003	FY 2004	FY 2005	FY 200L	FY 2007	FY 2008
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal: [ ]

POSITIONS

POSITIONS	FY 2003	FY 2004	FY 2005	FY 200L	FY 2007	FY 2008
Full-time						
Part-time						
Temporary						

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

HB 291 will require contractor residential endorsement applicants to apply for the endorsement within two years of taking the residential endorsement examination. New funds are not required to implement this change.

Prepared by: Jennifer Strickler, Administrative Manager
Division: Occupational Licensing
Phone (907) 465-2144
Date/Time 2/1/02 10:53 AM

Approved by: Deborah B. Sedwick, Commissioner
Agency: Department of Community and Economic Development
Date 2/1/2002

(Revised 9/2001 OMB)

HB
294

ALASKA STATE LEGISLATURE

INTERIM:
119 N. CUSHMAN ST. SUITE 211
FAIRBANKS, AK 99701
(907) 456-5081 - PHONE
(907) 456-8245 - FAX

SESSION:
STATE CAPITOL, ROOM 102
JUNEAU, AK 99801
(907) 465-3719 - PHONE
(907) 465-3258 - FAX

Representative John Coghill

SPONSOR STATEMENT: HOUSE BILL 294

"AN ACT REQUIRING CERTAIN BUSINESSES TO RECOGNIZE POSTMARK DATES A' THE DATE OF PAYMENT"

Many Alaskans have experienced all too often the event of receiving a bill in the mail only to find that their payment due date is alarmingly near, with little room for the payment to be received on time.

Mail delays from the continental United States, as well as within Alaska, result in many payment notices arriving late. This leaves conscientious bill payers an extremely small window of time to send their payment in and have it received by the due date.

These situations are especially true in Alaska's more rural areas where the arrival and departure of mail freight is frequently delayed by weather and other circumstances.

Through no fault of their own, Alaskans often pay the price of mail delays with the addition of late fees and interest charges to their bills, as well as adverse affects on their credit ratings.

HB 194 is a straightforward piece of legislation that simply requires that payments that are received by a creditor be posted as of the date of the postmark, not the date that the payment is received.

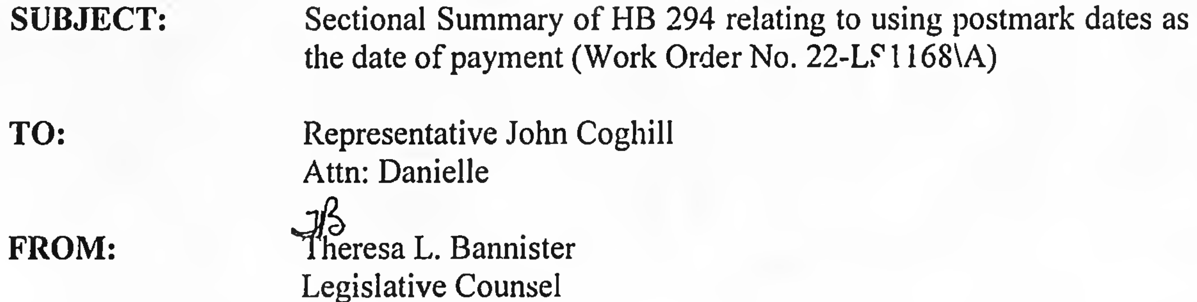
LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 6, 2002



SUBJECT: Sectional Summary of HB 294 relating to using postmark dates as the date of payment (Work Order No. 22-LS1168\A)

TO: Representative John Coghill
Attn: Danielle

FROM: Theresa L. Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Prohibits a provider of services from using a date later than the postmark date on a mailed payment as the date when the provider considers that the payment was made, unless otherwise required by federal law.

Section 2. Establishes that the bill does not apply to existing contracts with conflicting provisions.

If I may be of further assistance, please advise.

TLB:pjc
02-020.pjc

F
HB 294

Anchorage

Midtown
3400 LaTouche Street
Anchorage, AK 99508-4208
(907) 257-7200

400 West Benson Blvd.
Anchorage, AK 99503-3829
(907) 257-7200

Downtown
320 West First Avenue
Anchorage, AK 99501-1650
(907) 257-7200

632 West Sixth Avenue
Suite 100
Anchorage, AK 99501-2225
(907) 257-7200

South Anchorage
1501 East Huffman Road
Anchorage, AK 99515-3596
(907) 257-7200

Fairbanks
322 Old Steese Highway
Fairbanks, AK 99701-3126
(907) 452-4239

Juneau
9101 Glacier Highway
Juneau, AK 99801-8033
(907) 789-1350

Loans
(907) 257-7283
Fax (907) 276-5081

Real Estate Loan Dept.
400 West Benson Blvd.
Anchorage, AK 99503-3829
(907) 257-9416

Telephone Services
(907) 257-7209

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Administrative Office
(907) 257-7200
Fax (907) 278-0570

January 23, 2002

Representative Lisa Murkowski
State Capitol, Room 408
Juneau, AK 99801-1182

Subject: HOUSE BILL NO. 294 "An Act requiring certain businesses to recognize postmark dates as the date of payment."

Dear Representative Murkowski:

I am writing with regard to HB 294 on behalf of the Alaska Credit Union League in my capacity as Chair of the Governmental Affairs Committee. The Alaska Credit Union League is comprised of all the Alaska's state and federally chartered credit unions.

The Committee is opposed to adoption of this bill. The financial and operational burdens of this legislation are onerous, to say the least. The following are just some of the reasons we do not believe this legislation is good for Alaska and Alaskan consumers.

1. Businesses should not be penalized for the performance of the mail systems.
2. The proposal is ripe for abuse through manipulation of postage meters.
3. Auditing for compliance would be costly.
4. The practicality of the proposal is burdensome as it necessitates the retention of the mailing envelope to meet with record keeping requirements in case the institution is required to prove the posting date.
5. It would also significantly slow down automated processes for posting of payments, as it requires manual review of the envelope and key entry. The increased costs associated with these concerns would be passed on to the consumer in higher rates, which disproportionately affect those who accept responsibility for assuring timely payment of their obligations.
6. Most billers provide 15 to 30 days from date of invoice to due date, providing adequate time for consumers to remit in a timely fashion. Additionally, many financial institutions add an additional grace period prior to assessing late fees. A quick poll of Alaska credit unions indicated a six to twenty day grace period. This legislation, while superficially appearing pro-consumer, would rather serve to increase costs and could possibly result in more strict billing policies by many service providers.

We assume that a fiscal note outlining the cost of implementation will be prepared addressing the proposal.

Thank you for the opportunity to comment and I would appreciate being advised of hearings scheduled to consider this legislation. If you have any questions, please do not hesitate to contact me at 907-257-9408 or bobt@denalifcu.com.

Sincerely,

Robert M. Teachworth
President/CEO
Denali Alaskan Federal Credit Union

HB

298

ALASKA STATE LEGISLATURE

Chair:
Labor and Commerce

Member:
Military and Veterans Affairs
Community and Regional Affairs
Legislative Council
Joint Armed Services

Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-3783
Fax: (907) 465-2293
Representative_Lisa_Murkowski@legis.state.ak.us

Interim:
716 West 4th Avenue
Anchorage, AK 99501-2133
Phone: (907) 269-0174
Fax: (907) 269-0177

REPRESENTATIVE LISA MURKOWSKI
Government Hill • Elmendorf • East Anchorage

Sponsor Statement

HB 298
"An Act relating to authorizing the Alaska Railroad Corporation to lease land within certain terminal reserves for a period up to 55 years."

At the request of the Alaska Railroad Corporation, I have introduced House Bill 298, extending the length of time the Alaska Railroad Corporation (ARRC) can lease lands within its Anchorage, Fairbanks, Seward and Healy terminal reserves from the current 35 years to 55 years.

This change in statute will help cultivate economic development in communities along the Railbelt by making commercial and residential development on Alaska Railroad lands more viable. On any existing ARRC lease with a term longer than 35 years, an option to extend leases beyond that time includes a termination clause. This clause allows the ARRC to terminate any lease after 35 years in the event the land is needed for railroad purposes.

While the 35-year lease limit is adequate for most of ARRC's tenants, it is an obstacle in leasing lands to large commercial and residential developers who need to secure long-term financing for their investments. Financial lenders are reluctant to invest in large-scale projects requiring substantial equity participation when there is no guarantee the land will be available beyond 35 years. It will also make ARRC's leasing practices more consistent with other state agencies. Both the University of Alaska and the Department of Natural Resources can lease land for up to 55 years.

The proposed extension of allowable lease term is supported by the following businesses, individuals and organizations: Anchorage Historic Properties, Anchorage Neighborhood Housing Services, Mel Tipton (Ship Creek tenant and commercial developer), Seward Ship's Drydock, Inc., Dowl Engineers, Northrim Bank, AIDEA, Yukon Fuel, Kantishna Holdings, Inc., A&A Construction and Development, Inc., the Anchorage Chamber of Commerce, City of Seward, Anchorage Assembly, and Fairbanks Chamber of Commerce. I urge your support of this legislation.

22-LS1192\C
Utermohle
1/21/02

CS FOR HOUSE BILL NO. 298( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MURKOWSKI

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to authorizing the Alaska Railroad Corporation to lease land within**
2 **certain terminal reserves for a period of up to 55 years."**

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

4 * **Section 1.** AS 42.40.285 is amended to read:
5 **Sec. 42.40.285. Legislative approval required.** Unless the legislature
6 approves the action by law, the corporation may not
7 (1) exchange, donate, sell, or otherwise convey its entire interest in
8 land;
9 (2) issue bonds;
10 (3) extend railroad lines; this paragraph does not apply to a spur,
11 industrial, team, switching, or side track;
12 (4) lease land
13 **(A) within a terminal reserve located at Anchorage,**
14 **Fairbanks, Seward, or Healy for a period in excess of 55 years unless the**

1 **corporation reserves the right to terminate the lease if the land is needed**
2 **for railroad purposes; or**
3 **(B) outside of a terminal reserve listed under (A) of this**
4 **paragraph** for a period in excess of 35 years unless the corporation reserves
5 the right to terminate the lease if the land is needed for railroad purposes;
6 (5) apply for or accept a grant of federal land within a municipality;
7 before approving an action under this paragraph, the legislature must determine that
8 the federal land is required for essential railroad purposes; this paragraph does not
9 apply to the application for or acceptance of a grant of federal land associated with
10 (A) the Anchorage-Wasilla line change project on Elmendorf
11 Air Force Base and Fort Richardson;
12 (B) the Fairbanks intermodal rail yard expansion project;
13 (C) a conveyance of rail properties of the Alaska Railroad
14 under the original Alaska Railroad Transfer Act of 1982 as set out in Title VI,
15 P.L. 97-468; in this subparagraph, "rail properties of the Alaska Railroad" has
16 the meaning given in 45 U.S.C. 1202(10).

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 298
() Publish Date:

Revision Date/Time (Note if correction): 01/30/2002
Title: An Act relating to Legislative Approval of Railroad land leases
Sponsor: Representative Murkowski
Requester: House Transportation

Dept. Affected: ARRC
BRU
Component
Component No.

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type–Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
HB 298 will not have a fiscal impact on the State of Alaska. This change in statute will make large commercial and residential development on Alaska Railroad lands more viable by making it easier for the Railroad to lease lands that are currently underdeveloped in Seward, Anchorage, Healy and Fairbanks.

Prepared by: Wendy Lindskoog, Director of External Affairs — Phone 907-265-2498
Division: Alaska Railroad Corporation — Date/Time 1/30/02 10:59 AM
Approved by: Deborah B. Sedwick, Commissioner — Date 1/30/2002
Agency: Department of Community & Economic Development

(Revised 9/2001 OMB)

House Bill 298, Railroad Leasing Policy
Frequently Asked Questions

How much land does the Alaska Railroad own?

The Alaska Railroad Corporation (ARRC) owns approximately 36,000 acres of real estate.
Total right-of-way acres = 12,415
Total "reserve" acres = 23,813

Of the 23,813 acres of reserve land, 17,970 are available for lease, which represents about 49.6% of the land owned by the Railroad. The remaining 5,843 acres within the reserves is used for operating purposes including yards, tracks etc. The Railroad has approximately 260 tenants scattered from Fairbanks to Seward and even in Valdez.

Why are the Anchorage, Fairbanks, Seward, and Healy terminal Reserves the only lands subject to the lease extension?

While the Alaska Railroad would prefer the flexibility to lease all of its reserve lands for longer terms, the reserve lands identified in this legislation are those most apt to draw large commercial and residential projects, and therefore more deserving of legislative attention.

These four reserves represent about 36 percent of the Railroad's land available for lease.

What is considered reserve land?
"Reserve" is a federal term of art – in this case it refers to land originally set aside or "reserved" by the federal government for use of the Alaska Railroad. These lands are larger parcels (i.e. not a skinny right-of-way strip) sited in strategic locations for both operational and non-operational purposes. These uses have historically included rail, yards, railroad facilities and lease by third parties. Most of the railroad's lands available for lease lie in these contiguous land areas called reserves.

What are considered rail right-of-way and operating lands?

More than half of ARRC's land is dedicated to supporting and maintaining the corporation's primary activity – freight and passenger transportation services. These lands encompass the railroad's 200-foot right-of-way (100 feet on either side of the track) as well as lands containing spurs, industrial track, yard, dock, and depot facilities.

What is the total acreage of land affected by this legislation?

Approximate available acres available for lease in August 2001

Anchorage:	587 lease acres,	187 vacant
Fairbanks:	260 lease acres,	160 vacant
Healy:	5,541 lease acres,	4,097 vacant
Seward:	64 lease acres,	26 vacant

Does this legislation affect ROW leases?

This legislation does not affect right-of-way and other operating lands that lie within the reserve areas. Most operating lands are located in our reserves. Right-of-way lands are rarely leased, and even then are restricted to terms of less than 18 years to avoid triggering certain onerous provisions in the federal transfer act.

Why were the leases originally set at 35 years before being subject to a termination clause?

The answer is not clear. Discussions regarding the lease terms and rates took place in legislative work sessions that were not officially recorded meetings. These sessions took place during the time the Railroad was being transferred from the federal government to the State of Alaska and the Alaska Railroad Corporation enabling legislation was being drafted.

At the time of transfer there was much debate regarding the development of a consistent and reasonable policy for leasing railroad land. People involved in discussions during the transfer time don't remember a specific reason for reducing the maximum lease length for railroad land but said the decision could have been influenced by the following issues.

At the time of transfer, there was a pending lawsuit from the "Alaska Railroad Leaseholders Association" many who asserted that certain leases were sweetheart deals and others were not. There were concerns within the legislature and administration that the railroad's practice was to issue long-term leases at rental rates that were below Fair Market Value (FMV). Lastly, there was considerable sentiment in the legislature to privatize the railroad within a fairly short time, which might well have fueled the desire for shorter lease terms. Out of these concerns, came a statutory requirement for Fair Market Value leases and legislative approval for any lease longer than 35 years.

Who supports this bill?

The proposed extension of allowable lease terms to 55 years is supported by the following businesses, individuals and organizations:

Anchorage Historic Properties
Anchorage Neighborhood Housing
Mel Tipton *(Anchorage business man and Railroad lessee)*
Seward Ship's Drydock
Dowl Engineers
Northrim Bank
AIDEA
Yukon Fuel
Kantishna Holdings

A&A Construction and Development
Alaska State Chamber of Commerce
Anchorage Chamber of Commerce
City of Seward
Anchorage Assembly
Fairbanks Chamber of Commerce

Who opposes this bill?

As of December 2001, there has been no expressed opposition to this proposal.

What commercial and residential developments are driving this legislation?

- Ship Creek Development in Anchorage
- Chena Landings Development in Fairbanks
- Anchorage Neighborhood Housing project using HUD financing that requires a 50-year lease.
- Major hotel, restaurant, office space, retail space or commercial development such a convention center.

Wasn't legislation recently passed allowing for longer leases in Healy?

House Bill 344 was passed during the 2000 legislative session giving the Railroad flexibility to issue a lease in the Tri-Valley subdivision in excess of 35 years without reserving the right to terminate the lease if the land is needed for railroad purposes. The long-term lease affecting the Tri-Valley subdivision enabled families in Healy to qualify for more affordable loans. This bill applied only to the Tri-Valley subdivision area and not to the entire Railroad Healy Reserve.

How does a lease differ from a permit?

Leases give tenants the exclusive use of the property, precluding even railroad use. If for five or more years in length, they must be approved by the Alaska Railroad Corporation Board of Directors. Public notice must be given

before a lease is issued, and the Board's action approving or disapproving is taken at a public meeting.

Permits are a non-exclusive right to be on railroad land. They run the gamut from short-term entries by people like surveyors or customers needing temporary storage space, to longer, more intensive uses like utilities, roadways, pipelines or fiber optics facilities. Typically, more than half of our permits can be cancelled on short notice, are issued for less than five years, and are for uses not involving a significant investment of capital. These kinds of permits do not require Board approval or public notice. However, permits that represent a considerable investment by the permittee or are of a nature that makes them functionally irrevocable (such as a public utility line) do require public notice. The most significant of these are "corridor permits", where the user installs a longitudinal facility taking advantage of the right-of-way as a utility corridor. These not only require public notice and Board approval, but also are also longer term and charge a FMV rate of compensation.

How is the public assured proper input in the Railroad's long-term leasing decisions?

- All Alaska Railroad Board of Directors meetings are open to the public and offer an opportunity for public comment. These meetings are advertised at least five days in advance in at least three newspapers of general circulation along the Railbelt. The Railroad typically advertises in the Anchorage Daily News, Fairbanks News Miner and Seward Phoenix Log.

- All leases are subject to a public notice process: Previously issued leases that don't alter use are subject to a minimum 15-day public notice period. Property that has not been leased before or is being leased again but with changed zoning is subject to a minimum 30-day public notice period. The notice is published in a local newspaper (or posted in a public location if there is no newspaper). It invites comment up to the expected date of Board action.

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First National Bank Alaska
Flowline Alaska
Fort Knox Mine
Golden Heart Utilities
Golden Valley Electric Association
K. Janitorial
Key Bank of Alaska
Mt. McKinley Bank
North Star Computing
Northrim Bank
Phillips Alaska, Inc.
Sabina's Flowers & Gifts
Tanana Valley Clinic
Third Sector Technologies, Inc.
Totem Ocean Trailer Express
Usibelli Coal Mine
WebWeavers
Wells Fargo Bank Alaska
Wendy's
Westmark Fairbanks Hotel & Conference Center
Williams Alaska Petroleum

Introduced By: Governmental Affairs
Other Review: Transportation
Date Introduced: November 5, 2001
Date Passed: December 10, 2001
Date Transmitted: December 11, 2001

RESOLUTION 01-1210

A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF COMMERCE SUPPORTING LEGISLATION AUTHORIZING THE ALASKA RAILROAD TO LEASE LAND FOR 55 YEARS

WHEREAS legislation authorizing the Alaska Railroad Corporation (ARRC) to lease land for 55 years will cultivate economic development in Alaska communities along the railbelt by making commercial and residential development on ARRC lands more feasible; and

WHEREAS ARRC's current statutory limit is a 35-year lease. Proposed legislation would amend AS 42.40.285 (4) enabling the Alaska Railroad Corporation (ARRC) to lease lands within its Anchorage, Fairbanks, Seward and Healy Terminal Reserves for up to 55 years rather than 35 years without first gaining legislative approval; and

WHEREAS today, ARRC can extend leases beyond 35 years subject to a termination clause defined by AS 42.40.285 (4). The clause states ARRC can terminate any lease with a term in excess of 35 years in the event the land is needed for railroad purposes after the initial 35 years; and

WHEREAS financial lenders are reluctant to lend on large-scale projects requiring substantial equity when there is no guarantee the land will be available beyond 35 years; and

WHEREAS ARRC's statutory constraints limit the ability for developers of large-scale commercial and residential projects to secure financing because certain banking regulations require ground lease maturity to exceed loan maturity by 10 years; and

WHEREAS when developers provide significant infrastructure or operational improvements, it is beneficial to have a lengthened lease term allowing companies to amortize debt over a longer span of time; and

WHEREAS increasing the lease term to 55 years would increase financing options and, therefore, investor interest; and

GREATER ★ FAIRBANKS
CHAMBER
OF COMMERCE

250 Cushman St., Suite 2D, Fairbanks, AK 99701-4665
phone: (907) 452-1105, fax: (907) 456-6968
e-mail: staff@fairbankschamber.org
website: www.fairbankschamber.org

WHEREAS this change would result in increased business activity on railroad property by making improvements more attractive to investors/users. This also creates long term benefits to the surrounding communities by providing an economic and tax base; and

WHEREAS the proposed legislation would make ARRC's leasing practices more consistent with other state agencies. The University of Alaska and the Department of Natural Resources can both lease land for up to 55 years:

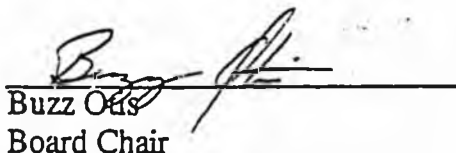
NOW THEREFORE BE IT RESOLVED that the Greater Fairbanks Chamber of Commerce views legislation authorizing ARRC to lease land for 55 years as an important step toward promoting economic development in railbelt communities where certain high value Railroad lands are currently underdeveloped.

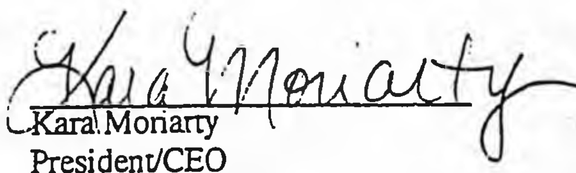
BE IT FURTHER RESOLVED that the Greater Fairbanks Chamber of Commerce supports and seeks to assist ARRC in obtaining legislative approval to lease land for up to 55 years in its Seward, Anchorage, Healy and Fairbanks Reserve Lands.

BE IT FURTHER RESOLVED that this resolution be distributed to:

Governor Tony Knowles
Interior Delegation
Senator Loren Leman
Alaska Railroad Corporation

PASSED in Fairbanks, Alaska this 10th day of December, 2001 by the Greater Fairbanks Chamber of Commerce Board of Directors.


Buzz Otis
Board Chair


Kara Moriarty
President/CEO

Benefactors
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Alaska Communications Systems
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Fort Knox Mine
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Golden Valley Electric Association
K Janitorial
Key Bank of Alaska
Mt. McKinley Bank
North Star Computing
Northrim Bank
Phillips Alaska, Inc.
Sabina's Flowers & Gifts
Tanana Valley Clinic
Third Sector Technologies, Inc.
Totem Ocean Trailer Express
Usibelli Coal Mine
WebWeavers
Wells Fargo Bank Alaska
Wendy's
Westmark Fairbanks Hotel & Conference Center
Williams Alaska Petroleum

Alaska State Chamber of Commerce

Priority 2002 - 32

Authorization for the Alaska Railroad to lease land

The Alaska State Chamber of Commerce urges the Administration and Legislature to support a change allowing authorization of the Alaska Railroad to lease land for 55 years within its Anchorage, Fairbanks, Seward and Healy Terminal Reserves. The Alaska Railroad needs the flexibility to offer 55-year lease terms on a variety of Railroad properties to promote economic development in railbelt communities where certain high value Railroad lands are currently underdeveloped.

Rationale:
The Alaska Railroad Corporation's (ARRC) current statutory limit is a 35-year lease. The ARRC can extend leases beyond 35 years subject to a termination clause defined by AS 42.40.285 (4). The clause states the ARRC can terminate any lease with a term in excess of 35 years in the event the land is needed for railroad purposes after the initial 35 years.

Financial lenders are reluctant to lend on large-scale projects requiring substantial equity when there is no guarantee the land will be available beyond 35 years. Increasing the lease term to 55 years would allow companies to amortize debt over a longer span of time and increase financing options.

The ARRC's statutory constraints limit the ability for developers of large-scale commercial and residential projects to secure financing because certain banking regulations require ground lease maturity to exceed loan maturity by 10 years. The change to 55 year leases from 35 also creates long-term benefits to surrounding communities by providing an economic and tax base.

ADOPTED

November 1, 2001

BY Pamela La Bolle
Pamela La Bolle
President

BY Helvi K. Sandvik
Helvi Sandvik
Chair

A Resolution Supporting Legislation Authorizing the Alaska Railroad to Lease Land for 55 years
Resolution 01/02 - 04

WHEREAS, legislation authorizing the Alaska Railroad Corporation (ARRC) to lease land for 55 years will cultivate economic development in Alaska communities along the railbelt by making commercial and residential development on ARRC lands more feasible; and

WHEREAS, ARRC's current statutory limit is a 35-year lease. Proposed legislation would amend AS 42.40.285 (4) enabling the Alaska Railroad Corporation (ARRC) to lease lands within its Anchorage, Fairbanks, Seward and Healy Terminal Reserves for up to 55 years rather than 35 years without first gaining legislative approval; and

WHEREAS, the Alaska Railroad owns 36,000 acres of land. Of that, the proposed legislation would apply to approximately 8,000 acres of reserve land: some 300 acres in Seward, 1000 acres in Anchorage, 6,000 acres in Healy and 450 acres in Fairbanks; and

WHEREAS, today, ARRC can extend leases beyond 35 years only if it subjects the lessee to a termination clause defined by AS 42.40.285 (4). The clause states ARRC can terminate any lease with a term in excess of 35 years in the event the land is needed for railroad purposes after the initial 35 years; and

WHEREAS, financial lenders are reluctant to lend on large-scale projects requiring substantial equity when there is no guarantee the land will be available beyond 35 years; and

WHEREAS, ARRC's statutory constraints limit the ability for developers of large-scale commercial and residential projects to secure financing because certain banking regulations require ground lease maturity to exceed loan maturity by 10 years; and

441 West 5th Avenue, Suite 300, Anchorage, Alaska 99501-2309 (907) 272-2401 FAX (907) 272-4117
email: info@anchoragechamber.org www.anchoragechamber.org

WHEREAS, when developers provide significant infrastructure or operational improvements, it is beneficial to have a lengthened lease term allowing companies to amortize debt over a longer span of time; and

WHEREAS, increasing the lease term to 55 years would increase financing options and, therefore, investor interest; and

WHEREAS, this change would result in increased business activity on railroad property by making improvements more attractive to investor/users. This also creates long term benefits to the surrounding communities by providing an economic and tax base; and

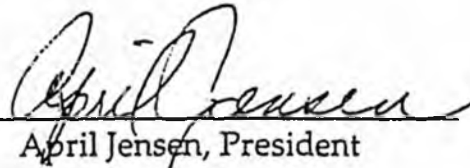
WHEREAS, the proposed legislation would make ARRC's leasing practices more consistent with other state agencies. The University of Alaska and the Department of Natural Resources can both lease land for up to 55 years; and

NOW THEREFORE BE IT RESOLVED, that the Anchorage Chamber of Commerce views legislation authorizing ARRC to lease land for 55 years as an important step toward promoting economic development in railbelt communities where certain high value Railroad lands are currently underdeveloped.

BE IT RESOLVED, that the Anchorage Chamber of Commerce supports and seeks to assist ARRC in obtaining legislative approval to lease land for up to 55 years in its Seward, Anchorage, Healy and Fairbanks Reserve Lands.

Approved this 2nd day of November 2001.

Eric Britten, 2001-2002 Chair



April Jensen, President

Sponsored by: Janke

CITY OF SEWARD, ALASKA
RESOLUTION 2001-136

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEWARD, ALASKA, SUPPORTING LEGISLATION AUTHORIZING THE ALASKA RAILROAD TO LEASE LAND FOR 55 YEARS

WHEREAS, legislation authorizing the Alaska Railroad Corporation (ARRC) to lease land for 55 years will cultivate economic development in Alaska communities along the railbelt by making commercial and residential development on ARRC lands more feasible; and

WHEREAS, ARRC's current statutory limit is a 35-year lease. Proposed legislation would amend AS 42.40.285 (4) enabling the ARRC to lease lands within its Anchorage, Fairbanks, Seward and Healy Terminal Reserves for up to 55 years rather than 35 years without first gaining legislative approval; and

WHEREAS, today, ARRC can extend leases beyond 35 years subject to a termination clause defined by AS 42.40.285 (4). The clause states ARRC can terminate any lease with a term in excess of 35 years in the event the land is needed for railroad purposes after the initial 35 years; and

WHEREAS, financial lenders are reluctant to lend on large-scale projects requiring substantial equity when there is no guarantee the land will be available beyond 35 years; and

WHEREAS, ARRC's statutory constraints limit the ability for developers of large-scale commercial and residential projects to secure financing because certain banking regulations require ground lease maturity to exceed loan maturity by 10 years; and

WHEREAS, when developers provide significant infrastructure or operational improvements, it is beneficial to have a lengthened lease term allowing companies to amortize debt over a longer span of time; and

WHEREAS, increasing the lease term to 55 years would increase financing options and, therefore, investor interest; and

WHEREAS, this change would result in increased business activity on railroad property by making improvements more attractive to investor/users. This also creates long term benefits to the surrounding communities by providing an economic and tax base; and

WHEREAS, the proposed legislation would make ARRC's leasing practices more consistent with other state agencies. The University of Alaska and the Department of Natural Resources can both lease land for up to 55 years.

CITY OF SEWARD, ALASKA
RESOLUTION 2001-136

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEWARD, ALASKA, that:

Section 1. The City of Seward views legislation authorizing ARRC to lease land for 55 years as an important step toward promoting economic development in railbelt communities where certain high value railroad lands are currently underdeveloped.

Section 2. The City of Seward supports and seeks to assist ARRC in obtaining legislative approval to lease land for up to 55 years in its Seward, Anchorage, Healy and Fairbanks Reserve Lands.

Section . This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Seward, Alaska, this 22nd day of October, 2001

THE CITY OF SEWARD, ALASKA

Edgar Blatchford, Mayor

AYES: Blatchford, Brossow, Branson, Calhoon, Clark, Orr, Shafer
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

Patrick Reilly
City Clerk

(City Seal)

Yukon Fuel Company
*7941 Sandlewood Pl
Anchorage, AK 99507
Tel: (907) 777-5505
Fax: (907) 777-5550
www.yukonfuel.com*

Monday, April 23, 2001

Mr. James Kubitz, Vice President Real Estate
Alaska Railroad
327 W Ship Creek Ave
P.O. Box 107500
Anchorage, AK 99510-7500

Dear Mr. Kubitz:

We support the Alaska Railroad plan to seek the ability to offer longer-term real-estate leases. As you know we have been working with the Railroad to develop some new industrial areas.

Longer terms would be more attractive to our company because we will be able to amortize our investments over a longer span.

Please feel free to use this letter if this will help to allow the Railroad to extend its lease contracts beyond the current levels.

Yours truly,

Clayton Shelver
VP Assistant General Manager

A & A CONSTRUCTION & DEVELOPMENT, INC.

202 East Trent Avenue, Suite 400, Spokane, Washington 99202 (509) 624-1170 fax (509) 624-1255

April 25, 2001

Alaska Railroad Corporation
Attn: Karen Morrissey
Real Estate Department
Fax: 907-265-2450

Ladies and Gentlemen:

A & A Construction & Development, Inc. has developed and built four (4) hotels in the state of Alaska. Three of those are in Anchorage and one is in Fairbanks. The Anchorage Comfort Inn and the Fairbanks Comfort Inn are both on land leased from the Alaska Railroad Corporation pursuant to a ground lease.

When these leases were negotiated, the maximum initial term which we were told was available was only 35 years. Building a major improvement such as a hotel on a parcel of leased ground with only a 35 year duration presents significant problems. These include realizing the rate of return necessary to amortize the necessary debt over the term of the lease while at the same time providing an internal rate of return necessary to attract investors.

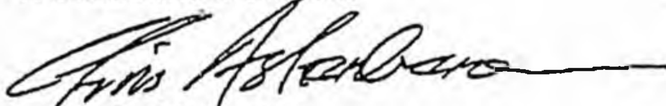
Although agreements can be reached for an extension of the original term, our experience has been that such extensions are difficult to obtain because of the mind set that the initial maximum turn should be sufficient. Additional concerns arise with the potential failure to give notice for any extension that is typically required even when an extension is available.

There would seem to be little justification in limiting a ground lease for a major improvement to 35 years. The presumption would almost seem to be that the owner of the ground, as Lessor, would hope to receive a windfall by an early termination of the lease with the improvements then vesting in the Lessor.

My partner and I would very much like to construct further improvements on ground owned by the Alaska Railroad Corporation. We are reluctant to do so, however, unless the lease term can be increased.

Very Truly Yours,

A & A Construction & Dev., Inc.



Christopher R. Ashenbrener
CORPORATE COUNSEL

CRA:sf

April 26, 2001

Chris Anderson
Leasing Supervisor
Alaska Railroad Corporation
PO Box 107500
Anchorage, Alaska 00510-7500

VIA FACSIMILE 265-2450

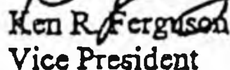
Dear Chris:

I am writing to support your efforts to amend AS 42.40.285(4) allowing Alaska Railroad Corporation (ARC) to lease land for 55 years.

This change would allow greater flexibility for lenders as regulations require ground lease maturity exceed loan maturity by 10 years. It will also make purchase and improvement more attractive to investor/users, which should result in increased business activity on railroad property.

Longer-term ground leases will increase financing options, investor interest and business development. Northrim Bank fully supports and commends your efforts.

Sincerely,



Ken R. Ferguson
Vice President

3111 C Street • P.O. Box 241489
Anchorage, Alaska 99524-1489
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PHONE: 907/562-0062
800/478/2265
FAX: 907/562-1758

Bayview Commercial Building, LLC
619 E. Ship Creek Ave., Suite 250
Anchorage, Alaska 99501
Phone 907-279-7654
Fax 907-278-0685

April 23, 2001

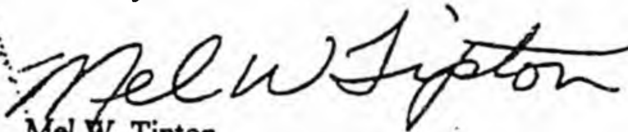
Jim Kubitz, Vice President Real Estate
Alaska Railroad Corporation
327 W. Ship Creek Avenue
Anchorage, Alaska 99510-7500

Dear Mr. Kubitz:

As the owner of the Bayview Commercial Building located at 619 E. Ship Creek Avenue, I want to support the efforts you have been making to eliminate obstacles to create a more developer friendly process in leasing Alaska Railroad land. One of the obstacles still remaining is the restriction you have to leasing land beyond 35 years. Businesses and developers need to have a longer-term lease available in order to reinvest and find the financing to make major investments on railroad land. We support your efforts to extend your lease term from 35 to 55 years.

If you have any questions or would like to discuss this further, please call me at 279-7654. Thank you.

Sincerely,



Mel W. Tipton
Manager