

SENATE BILL NO. 189

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE BY REQUEST

Introduced: 4/25/97

Referred: HES, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to eligibility for and default, collection, and repayment of
2 student loans; relating to nonrenewal of certain occupational licenses for default
3 on a student loan; and providing for an effective date."

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

5 * **Section 1.** AS 14.42.200(10) is amended to read:

6 (10) gather information on student loans available to residents of
7 Alaska and disseminate the information to reasonably assure that qualified residents
8 are aware of financial resources available to those attending or desiring to attend
9 institutions for which loans may be made under AS 14.43.090 - 14.43.325, 14.43.600 -
10 14.43.700, or 14.43.710 - 14.43.750 [14.43.710 - 14.43.790];

11 * **Sec. 2.** AS 14.42.210(a) is amended to read:

12 (a) The student loan fund is established in the corporation. The student loan
13 fund is a trust fund to be used to carry out the purposes of AS 14.42.100 - 14.42.390,
14 AS 14.43.090 - 14.43.325, 14.43.600 - 14.43.700, and 14.43.710 - 14.43.750

1 [14.43.710 - 14.43.790]. The fund consists of money or assets appropriated or
 2 transferred to the corporation for the fund and money or assets deposited in it by the
 3 corporation. The corporation may establish separate accounts in the fund.

4 * **Sec. 3.** AS 14.42.210(b) is amended to read:

5 (b) Money and other assets of the student loan fund may be used to secure
 6 bonds of the corporation, invested in student loans and investments under
 7 AS 37.10.071 and used to purchase loans approved under AS 14.43.090 - 14.43.325,
 8 14.43.600 - 14.43.700, or **14.43.710 - 14.43.750** [14.43.710 - 14.43.790].

9 * **Sec. 4.** AS 14.43.120(v) is amended to read:

10 (v) In determining a rate of interest under (f)(2) of this section,

11 (1) the commission shall use a method that ensures that the rate of
 12 interest is as low as possible without precluding the ability of the commission to
 13 administer loans made under AS 14.43.090 - 14.43.160; and

14 (2) the total amount charged for administrative costs of the student loan
 15 program may not exceed **three** [TWO AND ONE-HALF] percent above the amount
 16 determined under (f)(1) of this section.

17 * **Sec. 5.** AS 14.43.125(a) is amended to read:

18 (a) A person **is eligible for a** [MAY APPLY FOR AND OBTAIN A
 19 SCHOLARSHIP] loan if the person

20 (1) is

21 (A) enrolled as a full-time student in a career education,
 22 associate, baccalaureate, or graduate degree program;

23 (B) enrolled as a half-time student in a career education,
 24 associate, baccalaureate, or graduate degree program

25 (i) in the state; or

26 (ii) out of the state and is physically present in this state
 27 while attending that program; or

28 (C) a graduate of a high school or the equivalent, or scheduled
 29 for graduation from a high school within six months, **who, at the time of loan**
 30 **disbursement, will be enrolled in compliance with (A) or (B) of this**
 31 **paragraph** [WITH SUFFICIENT CREDITS TO BE ADMITTED TO A

1 CAREER EDUCATION PROGRAM OR TO AN ACCREDITED COLLEGE
2 OR UNIVERSITY];

3 (2) is not delinquent **and has never been** [OR] in default on a
4 [PREVIOUSLY AWARDED SCHOLARSHIP] loan **previously awarded by the**
5 **commission**; [AND]

6 (3) is a resident of the state at the time of application for the loan; for
7 purposes of this section, a person qualifies as a resident of the state if at the time of
8 application for the loan the person

9 (A) has been physically present in the state for at least one year
10 immediately before the time of application for the loan **with the intent to**
11 **remain indefinitely**;

12 (B) is dependent on a parent or guardian for care, the parent or
13 guardian has been present in the state for at least one year immediately before
14 the time of application for the loan **with the intent to remain indefinitely**, and
15 the person has been present in the state for at least one year of the immediately
16 preceding five years except that the commission may by a two-thirds vote,
17 acting upon a written appeal by the person, grant an exemption to the
18 requirement that the person has been present in the state for one year of the
19 immediately preceding five years;

20 (C) has been physically present in the state for at least one year
21 immediately before the applicant was absent from the state, **the person intends**
22 **to return permanently to the state**, and the absence is due solely to

23 (i) serving an initial period of up to three years on active
24 duty as a member of the armed forces of the United States;

25 (ii) serving for up to three years as a full-time volunteer
26 under the Peace Corps Act;

27 (iii) serving for up to three years as a full-time volunteer
28 under the Domestic Volunteer Service Act of 1973;

29 (iv) required medical care for the applicant or the
30 applicant's immediate family;

31 (v) being a person who otherwise qualifies as a resident

1 and is accompanying a spouse who qualifies as a resident under (i) -
2 (iv) of this paragraph;

3 (vi) an absence allowed under (D)(i) - (iv) of this
4 paragraph; or

5 (D) is a dependent of a parent or guardian who has been
6 physically present in the state for at least one year immediately before the
7 parent or guardian was absent from the state, **the parent or guardian intends**
8 **to return permanently to the state**, and the absence is due solely to

9 (i) participating in a foreign exchange student program
10 recognized by the commission;

11 (ii) attending a school as a full-time student;

12 (iii) full-time employment by the state;

13 (iv) being a member of or employed full-time by the
14 state's congressional delegation;

15 (v) being a person who otherwise qualifies as a resident
16 and is accompanying a spouse who qualifies as a resident under (i) -
17 (iv) of this paragraph;

18 (4) does not have a past due child support obligation established by
19 court order or by the child support enforcement division under AS 25.27.160 -
20 25.27.220 at the time of application **or loan disbursement**; [AND]

21 (5) has not, within the previous five years, had a [SCHOLARSHIP]
22 loan discharged or written off by the commission for any reason;

23 **(6) does not have a status, at the time of the application for a loan**
24 **or disbursement of loan funds, that would prevent the person from repaying the**
25 **loan as it becomes due;**

26 **(7) has not within the previous seven years defaulted on another**
27 **loan made to the person by a lending entity unless the person can show good faith**
28 **efforts to repay the loan and extraordinary circumstances that led to the default;**
29 **and**

30 **(8) does not have a credit history, at the time of application for a**
31 **loan, that demonstrates chronic inability or unwillingness to pay an extension of**

1 credit or loan as it becomes due.

2 * **Sec. 6.** AS 14.43.125 is amended by adding new sections to read:

3 (d) Notwithstanding (a)(6) - (8) of this section, the commission may issue a
4 loan to a person if another person who satisfies the requirements of (a)(2) and (a)(4) -
5 (8) of this section cosigns the loan.

6 (e) The commission may withhold disbursement of a loan if the borrower
7 becomes ineligible under this section.

8 * **Sec. 7.** AS 43.43 is amended by adding new sections to read:

9 **Sec. 14.43.145. Default.** (a) For the purposes of this chapter, a loan is in
10 default if a loan payment has become 180 or more days past due. Upon default,

11 (1) repayment of the remaining balance is accelerated and due;

12 (2) the commission may take the borrower's permanent fund dividend
13 under AS 43.23.067;

14 (3) the commission may issue an order to withhold and deliver under
15 AS 14.43.147; and

16 (4) the commission may provide notice of the default to a licensing
17 entity for nonrenewal of the license under AS 14.43.148.

18 (b) The commission shall notify the borrower of the default, and the
19 consequences of default imposed under (a) of this section, by mailing a notice to the
20 borrower's most recent address provided to the commission by the borrower or
21 obtained by the commission.

22 (c) A borrower may appeal a notice of default by filing a statement with the
23 executive director, within 30 days after the date of the notice, requesting that the loan
24 status be reviewed. AS 44.62 (Administrative Procedure Act) does not apply to the
25 review of default under this section. The borrower has the burden to show that, at the
26 time of the notice of default, no loan payment was more than 180 days past due or that
27 the borrower entered into, and was in compliance with, a default forbearance
28 agreement with the commission. The decision of the executive director is a final
29 decision that may be appealed to the superior court under the Alaska Rules of
30 Appellate Procedure.

31 **Sec. 14.43.147. Order to withhold and deliver.** (a) Thirty days after the

1 date a notice of default under AS 14.43.145(b) is mailed or the date of the decision of
2 the executive director under AS 14.43.145(c), whichever is later, the commission may
3 issue an order to withhold and deliver property to a person, or agency or political
4 subdivision of the state, who the commission has reason to believe possesses property
5 due, owing, or belonging to the borrower.

6 (b) The order to withhold and deliver shall be served personally or by certified
7 mail, return receipt requested, upon the person, or agency or political subdivision of
8 the state, possessing the property. The order must state the amount of the borrower's
9 liability and include notice of the terms of this section. All real and personal property,
10 including earnings, that are due, owing, or belonging to the borrower are subject to an
11 order to withhold and deliver.

12 (c) A person, or agency or political subdivision of the state, served with an
13 order to withhold and deliver, is required to make true answers under oath and in
14 writing to inquiries contained in the order within three weeks after service of the order
15 and to all inquiries subsequently made.

16 (d) Upon receipt of the order, the person, or agency or political subdivision of
17 the state, shall immediately withhold property due, owing, or belonging to the
18 borrower and shall deliver the property to the commission after three weeks have
19 expired from the date of the service of the order. Money shall be delivered by
20 remittance payable to the order of the commission.

21 (e) An employer shall withhold the earnings of a borrower subject to an order
22 at each succeeding interval of payment until the entire amount of the debt stated in the
23 order has been withheld. An employer may, for each payment made under an order
24 to withhold and deliver, deduct \$5 from other wages or salary owed to the borrower.

25 (f) If a borrower who is subject to an order terminates employment, the
26 employer shall promptly notify the commission and provide the borrower's last known
27 home address and the name and address of the borrower's new employer, if known.
28 The employer shall keep a record of the order for two years after the borrower
29 terminates employment. If the employer reemploys the borrower within that two-year
30 period, the employer shall immediately reimplement the order unless the employer has
31 received notice of satisfaction under (j) of this section.

1 (g) An employer may not discharge, discipline, or refuse to employ a borrower
2 on the basis of an order issued under this section. A person who violates this
3 subsection or a regulation adopted to implement it is liable for a civil penalty of not
4 more than \$10,000. The employee may seek restitution or reinstatement from the
5 employer.

6 (h) A person, or agency or political subdivision of the state, who complies
7 with an order to withhold and deliver that is regular on its face is not subject to civil
8 liability to an individual or agency for conduct in compliance with the notice. A state
9 agency that complies with an order to withhold and deliver that is regular on its face
10 is not required to pay interest under AS 37.05.285 for failure to make timely payment
11 to the borrower.

12 (i) An order to withhold and deliver under this section is subject to the
13 exemptions under AS 09.38.

14 (j) Upon satisfaction of a loan obligation, the commission shall, within 15
15 working days, notify all persons served with an order under this section that the order
16 is no longer in force. If the commission receives money under an order after
17 satisfaction of the loan, the commission shall within 15 working days return the
18 overpayment to the borrower. If the commission fails to return an overpayment as
19 required under this subsection, the commission is liable to the borrower for the amount
20 of the overpayment, plus legal interest under AS 45.45.010.

21 (k) If a person, or agency or political subdivision of the state, knowingly fails
22 to make an answer to an order under this section within the time prescribed, or
23 knowingly fails to honor an order under this section, the person, or agency or political
24 subdivision of the state, is liable to the commission in an amount equal to 100 percent
25 of the amount that is the basis of the order, together with costs, interest, and
26 reasonable attorney fees. In this subsection, "knowingly" has the meaning given in
27 AS 11.81.900.

28 (l) A borrower against whom an order has been served under this section may
29 apply for relief to the superior court.

30 **Sec. 14.43.148. Nonrenewal of license.** (a) Notwithstanding any other
31 provision of law, a licensing entity may not renew a license issued to a borrower if the

1 licensing entity has received notice from the commission that the licensee is in default
2 on a loan made by the commission. If the licensee has appealed the determination of
3 default status, the commission shall notify the licensing entity and renewal may not be
4 denied under this section unless and until the appeal has been concluded and the
5 default status affirmed. Unless a temporary license is issued under (c) of this section,
6 the denial of renewal is effective at the beginning of that renewal period. Denial of
7 renewal of a license shall continue until the licensing entity receives notice of a release
8 from the commission. If a license is denied under this section, the licensing entity
9 shall refund the renewal fee less the temporary license fee, if any.

10 (b) The licensing entity shall provide written notice of the denial of renewal
11 of the license by giving written notice to the licensee or sending the notice to the
12 licensee's last known mailing address on file with the licensing entity. The licensing
13 agency shall include with the notice a form to request review under (d) of this section;
14 the form must include the commission's address and telephone number. The notice
15 must inform the licensee of the temporary license granted under (c) of this section if
16 the applicant is otherwise eligible and that, upon expiration of that time period,
17 renewal of the license will be denied unless the licensing entity receives a notice of
18 release under (f) of this section from the commission.

19 (c) A licensing entity shall issue a temporary license valid for the first 150
20 days of the renewal period to a licensee whose license renewal is denied under this
21 section if the licensee is otherwise eligible for renewal. Only one temporary license
22 may be issued during a renewal period. The licensing entity shall adopt by regulation
23 a fee for issuance of a temporary license under this section; the amount of the fee shall
24 be set so that the fees collected under this section, to the extent reasonable, cover the
25 costs of implementing and administering this section.

26 (d) Within 30 days after receiving the notice under (b) of this section, the
27 licensee may request review by the commission. AS 44.62 (Administrative Procedure
28 Act) does not apply to the denial of renewal of a license under this section. Within
29 30 days after receiving a written request for review, the executive director shall inform
30 the applicant in writing of the executive director's findings. The executive director's
31 finding is a final decision that may be appealed to the superior court under the Alaska

1 Rules of Appellate Procedure.

2 (e) For the purpose of review under (d) of this section, the licensee has the
3 burden to show that

4 (1) the commission has not sent a notice of default in compliance with
5 AS 14.43.145(b);

6 (2) the notice of default has been rescinded after review under
7 AS 14.43.145(c); or

8 (3) the licensee has met the requirements of (f) of this section.

9 (f) The commission shall provide a notice of release to the licensing entity if
10 the licensee

11 (1) pays all costs of collection and the interest and principal that would
12 have been due if the loan had not been accelerated; or

13 (2) has negotiated a payment schedule with the commission after the
14 loan is in default and has made complete and timely payments under the negotiated
15 agreement for the four most recent and consecutive months.

16 (g) Notwithstanding (a) of this section, the denial of renewal of a teacher's
17 certificate is effective not sooner than the end of the contract year after the commission
18 has notified the teacher of the default status of the loan as provided under
19 AS 14.43.145.

20 (h) In this section,

21 (1) "license" means,

22 (A) except as provided in (B) of this paragraph, a license,
23 certificate, permit, registration, or other authorization that, at the time of
24 issuance, will be valid for more than 150 days and that may be acquired from
25 a state agency to perform an occupation, including the following:

26 (i) license relating to boxing or wrestling under
27 AS 05.10;

28 (ii) authorization to perform an occupation regulated
29 under AS 08;

30 (iii) teacher certificate under AS 14.20;

31 (iv) authorization under AS 18.08 to perform emergency

- 1 medical services;
- 2 (v) asbestos worker certification under AS 18.31;
- 3 (vi) boiler operator's license under AS 18.60.395;
- 4 (vii) certificate of fitness under AS 18.62;
- 5 (viii) hazardous painting certification under AS 18.63;
- 6 (ix) certification as a correctional, probation, or parole
- 7 officer under AS 18.65.245;
- 8 (x) security guard license under AS 18.65.400 -
- 9 18.65.490;
- 10 (xi) license relating to insurance under AS 21.27;
- 11 (xii) employment agency permit under AS 23.15.330 -
- 12 23.15.520;
- 13 (xiii) registration as a broker-dealer, agent, or investment
- 14 adviser under AS 45.55.030;
- 15 (xiv) certification as a pesticide applicator under
- 16 AS 46.03.320;
- 17 (xv) certification as a storage tank worker or contractor
- 18 under AS 46.03.375;
- 19 (xvi) certification as a water and wastewater works
- 20 operator under AS 46.30; and
- 21 (B) does not include
- 22 (i) a commercial fishing license under AS 16.05.480,
- 23 including a crewmember fishing license;
- 24 (ii) a vessel license issued under AS 16.05.490 or
- 25 16.05.530;
- 26 (iii) a license issued under AS 47.35;
- 27 (iv) a business license issued under AS 43.70;
- 28 (v) an entry permit or interim-use permit issued under
- 29 AS 16.43; or
- 30 (vi) a driver's license issued under AS 28.15;
- 31 (2) "licensee" means a person holding a license or applying to renew

1 a license;

2 (3) "licensing entity" means the state agency that issues or renews a
3 license; in the case of a license issued or renewed by the Department of Commerce
4 and Economic Development after an applicant's qualifications are determined by
5 another agency, "licensing entity" means the Department of Commerce and Economic
6 Development;

7 * **Sec. 8.** AS 14.43.640(a) is repealed and reenacted to read:

8 (a) To the extent that they are not in conflict with the provisions of
9 AS 14.43.600 - 14.43.700, the provisions of AS 14.43.100 - 14.43.160 are applicable
10 to loans made under AS 14.43.600 - 14.43.700.

11 * **Sec. 9.** AS 14.43.720(a) is amended to read:

12 (a) The family education loan account is created within the scholarship
13 revolving loan fund (AS 14.43.090). The account shall be used to make family
14 education loans to families selected under AS 14.43.710 - 14.43.750 [AS 14.43.710 -
15 14.43.790], to pay the costs of collecting family education loans that are in default if
16 those costs are not recovered from the family, and to pay the costs of administering
17 the account. Unless the instrument evidencing the family education loan has been sold
18 or assigned to the Alaska Student Loan Corporation, repayments of principal and
19 interest on family education loans shall be paid into the family education loan account.
20 If estimated funds available from family education loan repayments are inadequate to
21 fully fund estimated family education loans in a fiscal year, additional funding from
22 the general fund may be requested and appropriated for that year.

23 * **Sec. 10.** AS 14.43.740(a) is amended to read:

24 (a) The provisions of AS 14.43.100, 14.43.110, 14.43.120(a) - (d), [(i),] (m),
25 and (r) - (u), [AND] 14.43.135, 14.43.145 - 14.43.150, and 14.43.910 - 14.43.990
26 apply to a loan made under AS 14.43.710 - 14.43.750 [AS 14.43.710 - 14.43.790].

27 * **Sec. 11.** AS 14.43.740(c) is amended to read:

28 (c) Interest on a loan made under AS 14.43.710 - 14.43.750 [AS 14.43.710 -
29 14.43.790] is at a rate of five percent a year unless the loan is in default. Interest on
30 a loan that is in default is 10 percent a year.

31 * **Sec. 12.** AS 14.43.740(d) is amended to read:

1 (d) Repayment of the principal and interest on a loan made under
 2 **AS 14.43.710 - 14.43.750** [AS 14.43.710 - 14.43.790] begins on the first of the month
 3 immediately following loan disbursement. The loan may be cancelled without
 4 prejudice at any time before actual disbursement. The loan shall provide for
 5 repayment of the total amount owed in periodic installments in not more than 10 years
 6 from the commencement of repayment. If the commission and the borrower agree to
 7 a different repayment schedule, the borrower shall repay the loan in accordance with
 8 the agreement.

9 * **Sec. 13.** AS 14.43.740 is amended by adding a new subsection to read:

10 (f) The commission may withhold disbursement of a loan if the borrower or
 11 family member is no longer eligible under AS 14.43.750.

12 * **Sec. 14.** AS 14.43.750(a) is amended to read:

13 (a) A person may apply for and obtain a family education loan on behalf of
 14 a family member if

15 (1) the borrower

16 (A) is a resident of the state at the time of application for the
 17 loan; for purposes of this paragraph, a borrower qualifies as a resident of the
 18 state if the borrower has been physically present in the state for at least one
 19 year immediately before the time of application for the loan **with the intent**
 20 **to remain indefinitely or, if not physically present in the state, the**
 21 **borrower has not declared or established residency in another state,**
 22 **intends to return permanently to the state, and the absence meets the**
 23 **requirements imposed under AS 14.43.125(a)(3)(C)(i) - (vi);**

24 (B) **satisfies the requirements of AS 14.43.125(a)(6) - (8);**

25 (2) the family member

26 (A) is enrolled as a full-time student in a career education,
 27 associate, baccalaureate, or graduate degree program; or

28 (B) is a graduate of a high school or the equivalent, or
 29 scheduled for graduation from a high school within six months, **who, at the**
 30 **time of loan disbursement, will be enrolled in compliance with (A) of this**
 31 **paragraph** [WITH SUFFICIENT CREDITS TO BE ADMITTED TO A

1 CAREER EDUCATION PROGRAM OR TO AN ACCREDITED COLLEGE
2 OR UNIVERSITY]; and

3 (3) neither the borrower nor the family member

4 (A) is delinquent **or has ever been** [OR] in default on a
5 [PREVIOUSLY AWARDED STUDENT] loan **previously awarded by the**
6 **commission;**

7 (B) is past due on a child support obligation established by
8 court order or by the child support enforcement division under
9 AS 25.27.160 - 25.27.220 at the time of application or loan disbursement;

10 (C) has, within the previous five years, had a loan
11 discharged or written off by the commission for any reason [FROM THE
12 STATE].

13 * **Sec. 15.** AS 21.27.390 is amended by adding a new subsection to read:

14 (d) This section does not apply to a temporary license issued under
15 AS 14.43.148.

16 * **Sec. 16.** AS 43.23.067 is repealed and reenacted to read:

17 **Sec. 43.23.067. Claims of defaulted education loans.** (a) AS 09.38 does not
18 apply to a permanent fund dividend taken under AS 14.43.145. Notwithstanding
19 AS 09.35, the Alaska Commission on Postsecondary Education may take a permanent
20 fund dividend under AS 14.43.145 by delivering a claim to the department certifying
21 the following information:

22 (1) the name and social security number of the individual whose
23 dividend is being claimed;

24 (2) the amount the individual owes on a loan awarded under AS 14.43;
25 and

26 (3) a statement that the loan is in default under AS 14.43.145, or, if the
27 individual has requested review of the status of the loan under AS 14.43.145(c), that
28 a final determination has been made that the loan is in default.

29 (b) The Alaska Commission on Postsecondary Education shall notify the
30 individual of a claim under (a) of this section. The notice shall be sent to the address
31 provided in the individual's permanent fund dividend application and must provide the

1 following information:

2 (1) the amount of the claim;

3 (2) notice that the amount of the permanent fund dividend up to the
4 amount of the claim shall be paid to the Alaska Commission on Postsecondary
5 Education to be credited against the individual's loan balance; and

6 (3) the individual's right to a hearing under (c) of this section.

7 (c) Within 30 days after the date of the notice under (b) of this section, the
8 individual may request a hearing. AS 44.62.330 - 44.62.630 apply to a hearing under
9 this section. At the hearing, the borrower has the burden to show that

10 (1) the commission has not sent a notice of default in compliance with
11 AS 14.43.145(b);

12 (2) the notice of default has been rescinded after review under
13 AS 14.43.145(c); or

14 (3) the amount owed by the borrower is less than the amount claimed
15 from the permanent fund dividend.

16 (d) If the amount owed by the borrower is determined under (c) of this section
17 to be some amount greater than \$0, but less than the amount claimed, the commission
18 may amend its claim to the amount determined to be owing.

19 * **Sec. 17.** AS 08.02.025; AS 14.43.120(i), 14.43.120(q), 14.43.740(b), and 14.43.790 are
20 repealed.

21 * **Sec. 18.** Notwithstanding sec. 20 of this Act, the Alaska Commission on Postsecondary
22 Education may immediately proceed to adopt regulations necessary to implement the changes
23 made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act),
24 but not before the effective date of sec. 1 of this Act.

25 * **Sec. 19.** Section 18 of this Act takes effect immediately under AS 01.10.070(c).

26 * **Sec. 20.** Except as provided in sec. 19 of this Act, this Act takes effect July 1, 1997.