

HB

99

April 12, 1973

Representative Keith Specking ←  
Hope  
Alaska 99605

Dear Keith:

In preparing the session laws for publication in the Alaska Statutes, I find that your guide-licensing Act, ch. 17, SLA 1973 (copy enclosed), raises some questions which should be taken care of by legislative action next session.

- (1) Joel tells me that it was the intent in the final versions of the bill (HB 1) to have the occupational licensing division of the Department of Commerce handle administrative matters for the Guide Licensing and Control Board, under AS 08.01 (the chapter on centralized licensing). However, the bill (and now, Act) makes no provision for this, and in the absence of this board from the list in AS 08.01.010 the Department of Commerce has no authority and no obligation with regard to this board. If that was in fact the intent, the following amendment should be offered:

"AS 08.01.010 is amended by adding a new paragraph to read:

(19) Guide Licensing and Control Board."

- (2) In AS 08.54.210(b) ("Unlawful Acts"), in this Act, there are three inaccurate citations of "sec. 200(e) of this chapter". As you know, your bill this session (HB 1) was based on last legislature's FCCS SCS CSMB 185. The language containing the erroneous citations was added as a Senate floor amendment to SCS CSMB 185 (see 1972 Senate Journal, pages 741 -- 742, 4/24/72), in which version of the bill sec. 200(e) was a provision quite different from the final version. The free conference committee on that 185 changed sec. 200(e) but did not the citations in sec. 210(b). That error was then perpetuated in your bill this year. (I don't think those citations were altogether accurate at the time that amendment

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was adopted either, but when the FCC made its change in sec. 200(e) the citations became completely inaccurate. [In SCS CSHB 185, that subsec. (e) read: "No person who is disciplined under this section may engage in outfitting or guiding activity during the period of disciplinary action."]]

Therefore I am requesting the publisher to put the following note under AS 08.54.210:

"Revisor's note (1973). AS 08.54 was enacted by ch. 17 SLA 1973, which was derived from the Eighth Alaska State Legislature's CSHB 1 am S which in turn was based on a portion of the Seventh Legislature's FCCS SCS CSHB 185. AS 08.54.210(b)'s inaccurate references to sec. 200(e) can be traced back to a 1972 Senate amendment to the Seventh Legislature's SCS CSHB 185, in which bill sec. 200(e) was a different provision. In FCCS SCS CSHB 185, sec. 200(e) was changed but these references to it were not."

AS 08.54.210(b) should be amended next year and then this revisor's note deleted. Taking something of a wild guess, I believe the following amendment would be appropriate (but be sure to let Joel or me know if you would prefer some other amendment):

"AS 08.54.210(b) is amended to read:

(b) A person who violates this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or by both, and may have his license revoked for a period up to five years. However, a person who engages in [OUTFITTING OR] guiding activity during the period his license is suspended or revoked under [OF DISCIPLINARY ACTION UNDER SEC. 200(e) OF] of this chapter is guilty of a felony punishable, upon conviction, by a fine of not more than \$5,000 or [AND] by imprisonment for not less than one year nor more than three years, or by both fine and imprisonment. In addition to punishment for a felony [UNDER SEC. 200(e) OF THIS CHAPTER], all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding activity engaged in during the period of suspension or revocation [A VIOLATION OF SEC. 200(e) OF THIS CHAPTER] shall be confiscated by persons authorized to enforce this chapter."

I am not sure exactly what that Senate amendment (adding the second sentence of what is now AS 08.54.210(b)) intended. Since the first sentence of sec. 210(b) makes violation of "this section" a misdemeanor, and sec. 210(a)(3) lists guiding without a guide

license as an unlawful act, it would appear that the only conduct to be regarded as felonious under this chapter (AS 08.54) is guiding during the period of suspension or revocation, and the amendment proposed here makes that interpretation clear. (Perhaps it would be suggested that the reference to "period of disciplinary action" in the present language of the second sentence of sec. 210(b) was intended to include sec. 200(b)'s denial of renewal. But what would the period of "denial of renewal" be? If the intent is to treat as a felony guiding without a license any time after renewal of the license was denied, then language to that effect should be inserted. But if such language were interpreted as applying a long time after the date of denial you might run in to constitutional problems of equal protection, due process, and cruel and unusual punishment; and setting a time period for such cases might be impractical.)

*also see  
§ 200(d)*

Note that the amendment proposed here also deletes the now inappropriate reference to outfitting, and puts the basic felony penalty statement in Alaska's standard form. It also makes clear that guiding during a period of revocation is felonious whether the license is revoked by the board, under sec. 200(b) or (c), or by the court, under the first sentence of sec. 210(b).

- (3) AS 08.54.220 (Injunction Against Unlawful Action), in this Act, contains a questionable reference to "secs. 100 -- 200 of this chapter" and a clearly inaccurate reference to "sec. 210 of this chapter". With regard to the latter, I plan to change (under AS 01.05.031(b)(8)) the reference to read "sec. 50 of this chapter" and request the publisher to put the following note under AS 08.54.220:

"Revisor's note (1973). In ch. 17 SLA 1973, AS 08.54.-220 referred to 'regulations promulgated under sec. 210'. Since sec. 210 does not provide for promulgating regulations, and sec. 50 does, the citation has been corrected here. (This correction makes this provision comparable in this respect to the former AS 16.50.225, upon which it is based.)"

However, I cannot handle the other citation similarly; there is no clear error to point to. But the following should be considered by those persons interested in the operation of this Act and in determining exactly what action may be enjoined under AS 08.54.220: (a) By citing secs. 100 -- 200,

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the section listing conduct which is grounds for discipline (sec. 200) is included but the section listing unlawful acts (sec. 210) is not. In the old AS 16.50, upon which this new AS 08.54 is more or less based, just the opposite obtains -- the section on unlawful acts is included and the one on grounds for discipline is not. (See the former AS 16.50.225.) (b) By citing sec. 100 -- 200, we are not merely citing a complete article (in conformity with Alaska drafting style), because that article continues on through sec. 220, but we are including the sections (170 -- 190) which merely set out fees and specify renewal periods.

The present citation of secs. 100 -- 200 may accurately reflect the intent, but I wonder if the matter has been considered.

If you have any question on this, don't hesitate to write. If you would like to pre-file a bill making these corrections or other changes, let us know.

Yours truly,

Arthur H. Peterson  
Revisor of Statutes

AHP:lmk

cc: Joel F. Bennett  
Legislative Counsel