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886



Opte. introduced 2-16-82

" Rec'd. 2-18-82

Referrals - none

Comm. hearing - 3-17-82 closed - sent to chief clerk's office @ 3: P. M.

" active

Atty. Wilkerson F.N. - Boston  
will obtain 7 papers

3/17/82 Spenser notified

**Alaska State Legislature**  
*House of Representatives*

Albert P. Adams  
Chairman  
Committee on Finance

WHILE IN SESSION  
Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3706  
HOME - DISTRICT 21  
P.O. Box 271  
Kotzebue, Alaska 99752  
(907) 442-3320

Official Business

TO: Representative Terry Martin, Chairman  
House Labor and Commerce Committee

FROM: Representative Albert P. Adams, Chairman  
House Finance Committee

DATE: March 17, 1982

SUBJ: HB 886, "An Act relating to financial statements  
of corporations"

The phrase, "financial statements of the corporation," found in the Alaska State Business Corporation statutes (AS 10.05), needs to be defined to protect the directors, creditors, and shareholders of corporations from any liability associated with payment of excessive dividends. AS 10.05.219 (1) protects directors of Alaska business corporations from such liability, both jointly and severally, only if he relied in good faith on the financial statements of the corporation for his analysis in determining a legal dividend. Confusion exists in the present phrase "financial statement of the corporation," upon which the directors rely when determining dividend amounts. Under AS 10.15.216 (a), directors become liable to the corporation when excessive dividends are made.

Therefore HB 886 amends and adds a new subsection to AS 10.15.825, defining the phrase "financial statements of the corporation." The clarification and legal definition of the phrase would not only protect the directors, creditors and shareholders, but would also alleviate common concerns and fears of possible liability if excessive dividends were disposed according to the directors determination.

This concept has also been incorporated by the Code Revision Commission, in its working draft of the corporation statutes. The American Institute of Certified Public Accountants, the SEC and the Code Revision Commission, all endorse this concept because they produce economically meaningful data. Also, it protects the shareholders and creditors from the manipulation of financial data.

I urge your support for HB 886. Thank you.

Bristol  
Bay  
Native  
Corporation

445 E. 5TH AVENUE / P. O. BOX 220 / ANCHORAGE / ALASKA 99510 / PH. (907) 278-3602

March 10, 1982

Honorable Terry Martin  
House of Representatives  
Chairman - Labor and Commerce Committee  
State of Alaska  
Pouch V, Mail Stop 3100  
Juneau, Alaska 99811

Dear Mr. Martin:

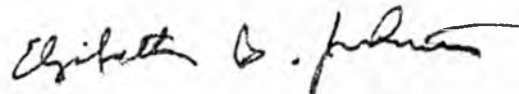
I am writing to you in support of House Bill 886. House Bill 886 amends the profit corporation statutes to specifically define the phrase "financial statements of the corporation." Why is this definition needed?

"Financial statements of the corporation" is a key phrase in determining a director's defense against personal liability for dividend payments. AS 10.05.219(1). Yet the phrase is ambiguous. This ambiguity creates unnecessary risks for directors attempting to comply with statutory requirements. Clarity would serve to protect directors from ex post facto definitions and liability.

The definition of "financial statements of the corporation" in House Bill 886 contains two basic concepts. The first is that the financial statements will be prepared according to generally accepted accounting principles then applicable. The second is that the statements will be consolidated, where appropriate. Both of these concepts are basic to the published financial statements required by the Securities Exchange Commission to be sent to all shareholders. Both concepts have also been incorporated by the Code Revision Commission, in its working draft of the corporation statutes. The American Institute of Certified Public Accountants, the SEC and the Code Revision Commission, all endorse these concepts because they produce economically meaningful data and because they protect shareholders and creditors from the manipulation of financial data.

In short, I support the definition because it will protect directors and it will protect creditors and shareholders as well.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Elizabeth B. Johnston".

Elizabeth B. Johnston  
General Counsel

cc: Representative Al Adams

HOUSE BILL 886

Alaska corporate law makes directors of a profit corporation jointly and severally liable for excessive dividend payments. AS 10.05.216(a). However, this same law also provides a defense or a safe harbor. A director is not liable for excessive dividends if he in good faith relied on the financial statements of the corporation for his analysis of a legal dividend source. AS 10.05.219(1).

The problem is that the scope of this defense is ambiguous. The meaning of "financial statements" is unclear and therefore, creates unnecessary risks for directors as they try to comply with dividend requirements.

The solution is to define the "financial statements of the corporation." The definition proposed in House Bill 886 includes, where appropriate, consolidated balance sheets and income statements prepared according to generally accepted accounting principles. While other financial documents are useful for other corporate purposes, only the preceding are useful for an analysis of a legal source for dividends under AS 10.05.219(1).

TARGET: LNH2 SUBJ: POM

TO: POM, JUNEAU INFO

PAGE 0005

TO: REPRESENTATIVES BYLSMA, GARDINER, MARTIN, RANDOLPH AND ROGERS

FROM JOHN HOPKINS  
431 MELLOW PL  
ANCHORAGE 99504 (H) 338-4447

THE I.B.E.W. SUPPORTS HB 866 FOR THE HEALTH OF THE WORKING MAN.

*Re: Hazardous or toxic substances*

## MONDAY BRIEFING

### National

#### Joint space labs possible

Cocoa, Fla. — The administrator of the American space program says the United States may join with Japan and Europe within the next five years to build an orbiting space station. James Beggs of the National Aeronautics and Space Administration told the newspaper Cocoa TODAY in an interview published Sunday that the station would use European Space Agency technology in building spacelabs and Japanese computer expertise. He said habitable modules connected by steel beams would be designed at the Johnson Space Center in Houston and launched piece-by-piece from the Kennedy Space Center in Florida.

#### Nuclear sub protest planned

Tacoma, Wash. — A Roman Catholic archbishop says he will take part in a blockade designed to prevent a Trident nuclear submarine, the USS Ohio, from reaching the Bangor Naval Base. Raymond Hunthausen, archbishop of Seattle, said at a rally Sunday he would participate this summer in the effort to keep the submarine out of the the Kitsap Peninsula base west of Seattle.

#### Boat house collapses

Gilford, N.H. — Boats drawn out of Lake Winnepesaukee to protect them from winter ice fell victim to heavy snow when a boathouse collapsed on 169 pleasure craft valued at \$3 mil-

lion. Gerald Fagan, owner of the Gilford Marina building which collapsed Friday night, said it would take up to six weeks to remove the boats that were stored five-high on racks. Damage to the 300-foot metal shed was estimated at \$700,000.

#### Car crashes into bus

Los Angeles — When a bus was struck in the rear by a car, bystanders in southwest Los Angeles jumped onto the Rapid Transit Authority vehicle and claimed to be injured, police say. The driver of the car, Shelton Eugene Knight, 32, was arrested Saturday for investigation of felony driving under the influence of drugs. Sgt. Roger Lindsay said the injury count, which jumped to 28 when bystanders jumped on the bus, dropped to nine when they found out the bus driver was not at fault.

#### Factories emit cancerous gas

Akron, Ohio — There are no regulations to stop tire manufacturers from emitting thousands of pounds a year of a cancer-causing gas, a lobbying group says. The National Clean Air Coalition said in a report Sunday that Goodyear and B.F. Goodrich plants in Akron release more than 350,000 pounds of acrylonitrile a year. The companies acknowledged the substance is emitted from their plants, but said they were in compliance with all federal, state and local law.