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COMMITTEE REPORT

HOUSE

FURTHER:

(5)

Date: April 6, 1982

Mr. Speaker:

The Committee on Rules has had SB 801

"An Act relating to financial statements of corporations"

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
- and recommends _____ new title
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

COMMITTEE REPORT

HOUSE

(5)

FURTHER:

3/24/82

Date: _____

Mr. Speaker:

The Committee on LABOR & COMMERCE has had SB 801

"An Act relating to financial statements of corporations."

under consideration and ~~(a majority of the committee)~~ ~~(the committee)~~ reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
- new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CH² AN

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

Ketchikan, 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

445E 5TH AVENUE P.O. BOX 2207 ANCHORAGE, ALASKA 99512 JFH (907) 278-3507

March 10, 1982

Mr. Chairman:

My name is Elizabeth Johnston, General Counsel for Bristol Bay Native Corporation. I am here to testify in support of Senate Bill 801.

Senate Bill 801 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 Senate Bill 801 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..

SENATE BILL 801

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 Senate Bill 801 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).

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING, SECURITIES AND CORPORATIONS

Position on SB 801 and ~~HB 866~~

This is a comprehensive definitio of a financial statement.
It is one that clearly defines what a financial statement
should be, yet is simplistic in both form and content.
Inasmuch as it is a definition only, I see no reason not to
use it in its present form.

E.W. Eboch

Edward W. Eboch 3/18/82
Deputy Commissioner

Willis F. Kirkpatrick

Willis F. Kirkpatrick 3/18/82
Director

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DIVISION OF BANKING, SECURITIES AND CORPORATIONS

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Edward W. Eboch 3/18/82
Deputy Commissioner

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Willis F. Kirkpatrick 3/18/82
Director

AMENDED TITLE:
AN ACT RELATING TO FINANCIAL STATEMENTS OF CORPORATIONS

PRIME SPONSOR: FERGUSON.
CO-SPONSORS:
CURRENT STATUS: 3/29/82 IN (H) RULES

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/16/82	01	0312	FIRST READING -- COMMITTEE REPORTS
03/18/82	02	0604	L&C -- 0P94
03/23/82	03	0655	RLS -- OTHER03 TAKEN UP IMMEDIATELY
03/23/82	04	0656	SECOND READING
03/23/82	05	0656	ADVANCED TO 3RD READING BY UNAN CONSENT
03/23/82	06	0656	THIRD READING
03/23/82	07	0656	PASSED BY DIV 10-01-1
***	***	***	*** *** ***

DATE	SEQ	PAGE	LEGISLATIVE ACTION
03/24/82	08	0992	FIRST READING -- COMMITTEE REPORTS
03/29/82	09	0972	MOVED FROM L&C TO RLS BY UNAN CONSENT RULES RULES
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