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COMMITTEE REPORT
SENATE

1/14/81

FURTHER: None

Date: February 7 1981

Mr. President:

The Committee on JUDICIARY has had SB 80
relating to oath, affirmation, acknowledgment, notarization and verifia-
tion and adopting the Uniform Recognition of Acknowledgments Act

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

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

[Signature]
CHAIRMAN

SENATE JUDICIARY COMMITTEE

Bill Number SB-80 Original Sponser(s) RULES FOR LEGISLATIVE COUNCIL

Title RELATING TO OATH, AFFIRMATION, ACKNOWLEDGEMENT, NOTARIZATION AND VERIFICATION AND ADOPTING THE UNIFORM RECOGNITION OF ACKNOWLEDGEMENTS
Originally Recieved From _____

Contact ABBOTT / WALSH #4878 Date 1-14-81

Committee Recommendation (MAJORITY) _____

Report Attached yes no) Supporters _____

MINORITY _____

Report Attached yes no) Supporters _____

Object of Bill _____

Committee Amendments _____

Fiscal Impact _____

LAA Legal/Research Contact _____

Research/Information _____

Concerned Parties:

Supporting

Opposing

Code Revision Commission

DICK REGAN - CONTRACTOR TO COMMISSION

CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
SUSAN A. BURKE - VICE CHAIRMAN
PATRICK M. RODEY
FRED E. BROWN
L.S. KURTZ, JR.
WM. GRANT CALLOW

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

January 19, 1981

The Honorable Patrick M. Rodey
Chairman, Judiciary Committee
Alaska State Senate
Pouch V, State Capitol
Juneau, Alaska 99811

Re: SB 80--Oath, affirmation, acknowledgment,
notarization and verification

Dear Chairman Rodey:

The Alaska Code Revision Commission has submitted SB 80 regarding oath, affirmation, acknowledgment, notarization and verification. The commission is extremely interested in securing passage of the bill during this legislative session, if possible. Further, a member of the commission will be available to present testimony on behalf of the bill upon notification.

In an effort to be of assistance, I am enclosing a copy of the commission's transmittal memorandum which briefly sets out the need for this revision along with a copy of the commentary outlining the differences between existing law and proposed changes.

Commission secretary, Catherine Walsh, can be contacted at extension 4878 in order to coordinate testimony in the event hearings are scheduled in the near future.

We appreciate your attention to this matter and any assistance you can provide in securing SB 80's passage.

Very truly yours,

John W. Abbott
by: chw

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosures

COMMISSIONERS
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ALASKA STATE LEGISLATURE
FOURTH FLOOR, STATE CAPITOL
JUNEAU, ALASKA 99901
1987 466-4573

EXECUTIVE SECRETARY
BILLY G. BERRIE

MEMORANDUM

TO: Chairman, Alaska Legislative Council

FROM: John W. Abbott, Chairman *John W. Abbott*
Alaska Code Revision Commission

DATE: January 9, 1981

RE: Bill on oath, affirmation, acknowledgment,
notarization and verification

Pursuant to the authority granted in AS 24.20.075(c), the Alaska Code Revision Commission has prepared the attached bill on oath, affirmation, acknowledgment, notarization and verification and asks that it be introduced in the legislature.

The need for statutory treatment of these subjects became apparent during the commission's consideration of the state's recording law. The terms are frequently encountered in Alaska Statutes, but neither a clear definition nor recommended forms are provided. The enclosed bill would take care of the deficiency.

Much of the attached bill is the Uniform Recognition of Acknowledgments Act, drafted by the National Conference of Commissioners on Uniform State Laws. The history of this Act and the Uniform Acknowledgments Act is set out in the attached comments. The last Alaska uniform legislation in this general area was enacted in 1915.

This bill was submitted to the council on February 21, 1980.

JWA:dr:chw

cc: Hon. Jay S. Hammond, Governor
Hon. Jay A. Rabinowitz, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

Enclosures

Uniform Recog. of Acknowledgments Act SENATE BILL NO. 80, by the Rules Committee by request of the Legislative Council (for the Code Revision Commission). Relates to oaths, affirmations, acknowledgments, notarization, and verification. Adopts the Uniform Recognition of Acknowledgments Act.

Adds new chapter to AS 09 entitled "Oath, Acknowledgment and Other Proof." Outlines who may take an oath, affirmation, and acknowledgment in Alaska; the procedure for certification of documents; procedures for notarizing documents; verification of documents (person has read it and believes it to be true); recognition of notarial acts performed outside the state; authentication of the authority of an officer to perform a notarial act; what is to be certified by a person taking acknowledgment; recognition of the cert. of acknowledgment; the contents and meaning of a cert. of acknowledgment; and acceptable forms for notarizing, verifying and making acknowledgments. Defines "notarial acts" as "acts which the laws of regulations of the state authorize notaries public of the state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgment of instruments, and attesting documents." Chapter to be cited as the Uniform Recog. of Acknowledgments Act.

Amends AS 34.15.150(a), 34.15.160, and 34.15.180 relating to the executing of conveyances to require that conveyances be acknowledged under the provisions of the Uniform Recognition of Acknowledgments Act. Repeals: AS 09.65.010-020 (Foreign Commissioners for Acknowledgment); AS 34.15.170 (Cert. of Acknowledgment); 34.15.190-200 (relating to acknowledgments); AS 40.10 (Uniform Foreign Acknowledgment Act); and AS 44.53 (Foreign Commissioners for Acknowledgment). Does not provide for effective date.

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COMMENTARY TO ACCOMPANY
BILL ON
OATH, AFFIRMATION, ACKNOWLEDGMENT,
NOTARIZATION AND VERIFICATION

For general background, following is a brief history of uniform laws on acknowledgment. It is followed by a section analysis of the attached bill.

General Background

Although acknowledgments have long been recognized as an ideal subject for uniformity among the states, Alaska has lagged far behind in this area.

In 1892 the Conference of Commissioners on Uniform State Laws adopted an Act for the acknowledgment and execution of written instruments, the Uniform Acknowledgment Act. It was generally revised in 1939 and was further revised in 1942, 1949 and 1960. Alaska has never adopted it.

In 1914 the Conference adopted an Act for the acknowledgment of written instruments taken outside the United States, the Uniform Foreign Acknowledgments Act, which was enacted in Alaska as ch. 66, SLA 1915 and now is codified as AS 40.10. Although the Uniform Foreign Acknowledgments Act was withdrawn by the Conference in 1943, it still is retained in Alaska law.

In 1968 the conference brought out a new act called the "Uniform Recognition of Acknowledgments Act". The act covers most of the same ground as the "Uniform Acknowledgment Act", dealing both with in-state and out-of-state acknowledgments.

When the conference put out its most recent "Summaries of Uniform Acts Currently Recommended for Adoption", it listed the "Recognition" Act for adoption but categorized the "Uniform Acknowledgment Act" as "being revised or considered for revision at this time".

There is reason to believe the two uniform acts will merge into one, using the general format of the 1968 "Recognition" Act.

Organization of the bill

In this bill the overlapping subject matter of the two uniform acts is covered by a section on who can acknowledge in the state (see Sec. 010) coupled with adoption of the entire "Recognition" Act (see Sec. 050 - 130).

The sections between 020 - 040 extend the subject matter of the bill beyond acknowledgments, serve to perpetuate existing "under penalty of perjury" certification of certain documents and clarify what is an acceptable form of "notarization" and "verification", terms that are used throughout Alaska Statutes.

Section analysis

Sec. 010 lists who can acknowledge in Alaska. To the persons who can take an acknowledgment in Alaska is added a commissioned officer. This category is not in the "Uniform Acknowledgment Act" but is in the "Recognition" Act.

Sec. 020 is an existing section (AS 09.65.020) which permits substitution of a signature "under penalty of perjury" for an oath given before a notary in some limited circumstances.

Sections 030 and 040 are definitions of notarization and verification based upon the common meanings of the terms.

Sections 050 - 130 are the Uniform Recognition of Acknowledgments Act. Sec. 050 recognizes foreign acknowledgments and covers the general area covered by the 1914 Uniform Foreign Acknowledgments Act, AS 40.10, which would be superceded by this uniform act section.

Sec. 060(a), (b) and (c) provide what will suffice to prove the authority of a designated office holder to take an acknowledgment. A final sentence in (a) reading "Further proof of his authority is not required" is omitted in this bill because it is surplusage. No substantive effect is intended by the omission. (d) of the subsection distinguishes proof of the authority of the holder of the office from proof of the genuineness of the signature and the genuineness of the claim that the person is an officer.

Form requirements, which are generally minimal, are covered by sections 070 and 080.

Sec. 090 defines what is meant by the short-form phrase, "acknowledged before me". The general treatment is the same as the treatment of statutory short forms of deeds under AS 34.15.040.

Sec. 100 provides the statutory short form for acknowledgments made by persons acting in various capacities.

Sections 110 - 130 are the savings clause, uniformity, and

title sections expected in uniform acts.

Bill sections 2, 3 and 4 near the end of the bill are technical amendments to correct references and avoid duplication in the real property title.

The repeal of AS 09.65.010 - 09.65.020 at the end of the draft is needed to remove the subject matter of oaths to this new chapter.

Repeal of AS 34.15.170 is to avoid duplication with AS 09.63.060 in section 1 of the bill. (The section being repealed is erroneously titled; it covers authentication, not acknowledgment.) Repeal of AS 34.15.190 is to avoid retention of a section on acknowledgment by married persons that is no longer necessary. Repeal of AS 34.15.200 is to avoid duplication with AS 09.63.070 in section 1 of the bill; for notaries the section is also duplicated by existing AS 44.50.070. In a separate bill on recording the commission is proposing more far reaching amendments and repeals in these and other sections of AS 34.15. However, the treatment of AS 34.15 here is minimal, encompassing only what is necessary in order to make this bill a complete unit not dependant upon passage of any other bill.

The repeal of AS 40.10 is a repeal of the 1914 version of the Uniform Foreign Acknowledgments Act which is superceded by this bill.

AS 44.53 also is repealed. It is a chapter permitting the governor to appoint commissioners to serve as Alaska notaries in other states. The chapter is not necessary when foreign acknowledgments are recognized, as they are under existing AS 40.10 and would be under this bill. The governor's office can find no record of commissioners having been appointed under AS 44.53.

S.B. 80 (notes from tape)

"Acknowledgment is the statement under oath that ^{the signing} a person ~~signed~~ the document before ~~the~~ person making the certification, and is a form of approving a document."

"What is the difference between authentication and bonding(?). Why did you repeal this?"

- An authentication ~~might be, well, it~~ is just one of the various terms in the Alaska Statutes and it can be a certificate of authenticity or it doesn't have as defined, a meaning as most of the other terms that are used here.

In your paper, it says it repeals a section on acknowledgment by married persons is no longer necessary--that's the second one you repeal--the only reason I'm interested in repeal, is that that is when we get in serious trouble is by repealing something.

--As to the acknowledgment of a married woman, although it is now a year ago that we worked up this bill, the acknowledgment of a married woman is now, in our judgment, superseded by general law on equality of sexes, and the section simply says that acknowledgment of a married woman is good without any participation of her husband in the acknowledgment.

Where does the penalty for false notarization-----.

knowledge
"Officers ~~must know~~ of grantor's identity; no acknowledgment of an executed conveyance may be taken by an officer unless he knows or has satisfactory evidence that the person making the acknowledgment

Repeal of Married Act

unless he knows or has satisfactory evidence that the person making the acknowledgment is the individual described in the executed conveyance--?

--The reason that is repealed is that it is covered in the existing bill. Where is it covered in the existing bill? --"Acknowledged before me-- 09630702--the person acknowledging is known to the person taking the acknowledgment-----

Senator Rodey: Background of Bill

This was discussed Monday in my absence and I appreciate Senator Bennett conducting the meeting in my absence and appreciate the work the Judiciary Committee while I was gone. This is, Senate Bill 80, is relating to oath, affirmation, and acknowledgment, notarization, verification-----The reason for this, essentially, is to ensure that the State of Alaska, for purposes of commerce, is uniform with other states throughout the Union. It has been a problem _____ the Federation of States, essentially, and there have been a variety of different forms of oaths and acknowledgments and notarizations throughout the United States and the Act that is presented here seeks to remedy a significant number of those problems and that is the policy reason behind it and the reason the Code Commission has considered it. There was testimony on it, Mr. _____ I believe you testified Monday. Are there any additional comments you can make about it? Quite frankly,, it is a dry topic and not very exciting but it is important in terms of having uniformity in authenticity of documents, particularly for the purposes of commerce; it is much like the UCC in that regard.

Senator Parr: If a notary public does not personally know a person, what actually happens? Driver's license or some form of identification?

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