

H B

354

COMMITTEE REPORT  
SENATE

FURTHER:

1/26/84

Date: March 9 1984

Mr. President:

HLSS

HM 354 am

The Committee on \_\_\_\_\_ has had \_\_\_\_\_  
relating to physicians' staff privileges in hospitals.

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 HM 354 am  same title  
 new title
- and recommends do pass
- 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:

Poppy M. ...  
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CHAIRMAN



# Alaska State Legislature

Representative Niilo Koponen

HB 354

FAIRBANKS  
Box 252  
Fairbanks, Alaska 99707  
479-6782

JUNEAU  
Pouch V  
Juneau, Alaska 99811  
465-4992

April 25, 1983

## SPONSOR & COSPONSOR STATEMENT ON HB 354

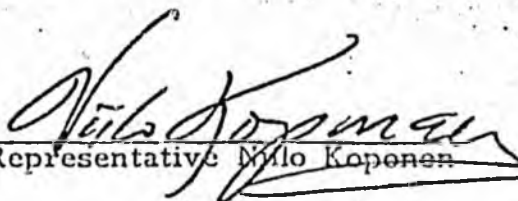
Subsequent testimony has shown that not all hospitals would be able to comply with the requirements of the original bill in all cases. Therefore, the following amendments would be acceptable to us:

page 1, line 11 - delete [seven days], insert ten working days,  
after "suspending", insert for more than thirty  
days

The line will now read:

"Within ten working days after suspending for more than thirty  
working days or revoking the staff privileges of a physician..."

Sponsor

  
Representative Niilo Koponen

Cosponsor

Representative Milo Fritz

**Revisor's notes.** — This section is derived from AS 11.15.060 and was renumbered by the revisor of statutes pursuant to § 22, ch. 166, SLA 1978 (revision of the criminal code).

**Cross references.** — For power of the State Medical Board to regulate abortion procedures, see AS 08.64.105.

**Legislative history reports.** — For

report on ch. 103, SLA 1970 (CSSB 527 (HWE)), see 1970 Senate Journal Supplement No. 10; 1970 Journal Supplements Nos. 12 and 13. Also refer to the following relevant reports on abortion bills: 1970 Senate Journal Supplements Nos. 1 and 4 (re SB 411); 1970 House Journal Supplement No. 11 (re CSHB 776).

## Chapter 20. Hospitals.

### Article

1. Regulation of Hospitals (§§ 18.20.010 — 18.20.130)
2. Alaska Hospital and Medical Facilities Survey and Construction Act (§§ 18.20.140 — 18.20.220)
3. Payment of Hospital Charges (§§ 18.20.230 — 18.20.260)

### Article 1. Regulation of Hospitals.

#### Section

10. Purpose
20. License required
30. Application and fees
40. Issuance and renewal of license and posting
45. [Repealed]
50. Denial, suspension or revocation of license
60. Regulations and standards
70. Compliance with regulations
75. Risk management

#### Section

80. Inspection and consultation for alterations
85. Hospital records retention
90. Information confidential
100. Annual report of department
110. Misdemeanor to establish or conduct hospital without license
120. Injunction or other process to prevent establishment or operation without a license
130. Definitions

**Collateral references.** — 40 Am. Jur. 2d, Hospitals and Asylums, § 1 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 4 et seq.

41 C.J.S., Hospitals, § 1 et seq.  
Pesthouse or contagious disease hospital as nuisance. 4 ALR 995; 18 ALR 122; 48 ALR 518.

Liability of hospital maintained at expense of state or a political subdivision for torts of its officers or employees. 25 ALR2d 203.

Nonprofit charitable institutions as within operation of labor statutes. 26 ALR2d 1020.

Tax exemption of Blue Cross, Blue Shield, or other hospital or medical service corporation. 88 ALR2d 1414.

Applicability, to negligence action against hospital, of statute of limitations applicable to malpractice and related actions against physicians, surgeons, or the like. 89 ALR2d 1180.

Liability of hospital for refusal to admit or treat patient. 35 ALR3d 841.

Exclusion of or discrimination against physician or surgeon by hospital. 37 ALR3d 645.

Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered. 52 ALR3d 1118.

Power of court to order or authorize discontinuation of extraordinary medical means of sustaining human life. 79 ALR3d 237.

What statute of limitations governs physician's action for wrongful denial of hospital privileges. 3 ALR4th 1214.

False imprisonment in connection with confinement in nursing home or hospital. 4 ALR4th 449.

Governmental tort liability for injuries caused by negligently released individual. 6 ALR4th 1155.

Propriety of hospital's conditioning physician's staff privileges on his carrying professional liability or malpractice insurance. 7 ALR4th 1238.

**Sec. 18.20.010. Purpose.** The purpose of AS 18.20.010 — 18.20.130 is to provide for the development, establishment, and enforcement of standards for (1) the care and treatment of individuals in hospitals, convalescent homes, nursing homes and public health centers, community mental health centers and facilities for the mentally retarded; and (2) the construction, maintenance, and operation of hospitals which will promote safe and adequate treatment of individuals in hospitals. (§ 40-6-2 ACLA 1949; am § 1 ch 112 SLA 1957; am § 1 ch 63 SLA 1964)

**Collateral references.** — Liability for injury by X-ray by hospital, 13 ALR 1414; 26 ALR 732; 57 ALR 268; 60 ALR 259.

Liability of private, noncharitable hospital or sanitarium for improper care of treatment of patients. 22 ALR 341; 39 ALR 1431; 124 ALR 186.

Hospital's liability for exposing patient to contagious disease. 22 ALR 352; 39 ALR 1434; 124 ALR 199.

Hospital's liability for mistake in diagnosis. 22 ALR 354; 39 ALR 1435; 124 ALR 202.

Liability for medical or surgical services rendered inmates of pesthouse or county hospitals. 44 ALR 1290.

Liability of hospital for personal injury due to slippery condition of floor. 118 ALR 434.

Applicability of res ipsa loquitur rule to injuries received by hospital patient. 173 ALR 535.

Exclusion of, or discrimination against, physician or surgeon by authorities of hospital. 24 ALR2d 850.

Liability of hospital for injury or death of patient through defective bed. 31 ALR2d 1128.

Liability of hospital to patient injured through defective wheel chair or similar furniture or appliance. 31 ALR2d 1148.

Hospital's liability for injury or death in obstetrical case. 37 ALR2d 1284.

Liability of hospital for injury by X-ray. 41 ALR2d 338.

Liability of hospital for injury or death from blood transfusions. 59 ALR2d 785.

Liability of hospital or sanitarium for negligence of physician or surgeon. 69 ALR2d 305.

Liability of hospital or sanitarium for injury or death of patient as result of escape or attempted escape. 70 ALR2d 347.

Hospital's liability to visitor injured as result of condition of exterior walks, steps or grounds. 71 ALR2d 427.

Hospital's liability to visitor injured by slippery, obstructed or defective interior floors or steps. 71 ALR2d 436.

Hospital's liability for injury to patient from heat lamp or pad or hot water bottle. 72 ALR2d 408.

Hospital's liability for exposing patient to extraneous infection or contagion. 96 ALR2d 1205.

Hospital's liability for personal injury or death of doctor, nurse, or attendant. 1 ALR3d 1036.

Malpractice in connection with intravenors or other forced or involuntary feeding of patient. 6 ALR3d 668.

Validity and construction of contract exempting hospital or doctor from liability for negligence to patient. 6 ALR3d 704.

Hospital's liability for negligence in connection with preparation, storage, or dispensing of drug or medicine. 9 ALR3d 579.

Hospital's liability for negligence in failing to review or supervise treatment given by individual doctor, or to require consultation. 14 ALR3d 873.

Hospital's liability to patient for injury sustained from defective equipment furnished by hospital for use in diagnosis or treatment of patient. 14 ALR3d 1254.

Hospital's liability to patient or prospective patient injured as result of physical condition of premises. 16 ALR3d 1237.

Malpractice liability of physician or hospital where patient suffers heart attack or the like while undergoing unrelated medical procedure. 17 ALR3d 796.

Malpractice in diagnosis and treatment of diseases or condition of the heart or vascular system. 19 ALR3d 825.

Hospital's liability for injuries sustained by patient as a result of restraints imposed on movement. 25 ALR3d 1450.

Malpractice in diagnosis and treatment of tetanus. 28 ALR3d 1364.

Liability of hospital for negligence of nurse assisting operating surgeon. 29 ALR3d 1065.

Hospital's liability for injury or death to patient resulting from or connected with administration of anesthetic. 31 ALR3d 1114.

Liability of hospital for refusal to admit or treat patient. 35 ALR3d 841.

Attending physician's liability for injury caused by equipment furnished by hospital. 35 ALR3d 1068.

Hospital's liability to patient injured going to or using bathroom or toilet facilities. 36 ALR3d 1235.

Liability for negligence in diagnosing or treating aspirin poisoning. 36 ALR3d 1359.

Liability of one releasing institutionalized mental patient for harm he causes. 38 ALR3d 699.

Medical malpractice in connection with diagnosis, care, or treatment of diabetes. 42 ALR3d 482.

Hospital's liability for injury allegedly caused by improper diet or feeding of patient. 42 ALR3d 736.

Liability for injury allegedly resulting from negligence in making hypodermic injection. 45 ALR3d 731.

Liability for injury or death from blood transfusion. 45 ALR3d 1364.

Liability of hospital for injury caused through assault by a patient. 48 ALR3d 1288.

Hospital's liability to patient for injury allegedly sustained from absence of particular equipment used in diagnosis or treatment of patient. 50 ALR3d 1141.

Hospital's liability for negligence in

selection or appointment of staff physician or surgeon. 51 ALR3d 981.

Liability for injuries or death resulting from physical therapy. 53 ALR3d 1250.

Liability of hospital, or medical practitioner, under doctrine of strict liability in tort, or breach of warranty, for harm caused by drug, medical instrument, or similar device used in treating patients. 54 ALR3d 258.

Liability of physician or hospital in the performance of cosmetic surgery upon the face. 54 ALR3d 1255.

Liability of hospital, other than mental institution, for suicide of patient. 60 ALR3d 880.

Validity and construction of contract between hospital and physician providing for exclusive medical services. 74 ALR3d 1268.

Tort liability of physician or hospital in connection with organ or tissue transplant procedures. 76 ALR3d 890.

Recovery for mental or emotional distress resulting from injury to, or death of, member of plaintiff's family arising from physician's or hospital's wrongful conduct. 77 ALR3d 447.

Malpractice in connection with diagnosis of cancer. 79 ALR3d 915.

Patient tort liability of rest, convalescent, or nursing homes. 83 ALR3d 871.

Arbitration of medical malpractice claim. 84 ALR3d 375.

Malpractice in connection with electroshock treatment. 94 ALR3d 317.

Application of rule of strict liability in tort to person or entity rendering medical services. 100 ALR3d 1205.

**Sec. 18.20.020. License required.** No person or government unit, except the federal government, acting severally or jointly with another person or governmental unit may establish, conduct or maintain a hospital in the state without a license. (§ 40-6-3 ACLA 1949; am § 3 ch 112 SLA 1957)

**Cross references.** — As to requirement for certificate of need to construct or alter a health care facility, see AS 18.07.011 — 18.07.111.

**Opinions of attorney general.** — A nursing home is considered a hospital for the purpose of the licensing provisions. 1963 Op. Att'y Gen., No. 7.

If a person establishes a hospital which gives general and medical treatment and in addition provides nursing service, both

aspects of hospital operation are nonetheless within the same hospital, and there is no justification for breaking up the operations of one hospital into separable units for licensing purposes; therefore, one license should be required for the entire hospital operation. 1963 Op. Att'y Gen., No. 7.

**Collateral references.** — Licensing and regulation of nursing or rest homes. 97 ALR2d 1187.

**Sec. 18.20.030. Application and fees.** Application for a license shall be made to the department upon a form provided by it, and shall contain the information the department requires, which may include affirmative evidence of ability to comply with the reasonable standards, rules and regulations prescribed under AS 18.20.060 — 18.20.080. Each application for a license shall be accompanied by a license fee of \$10. The department shall deposit all fees received in the state treasury. (§ 40-6-4 ACLA 1949)

**Sec. 18.20.040. Issuance and renewal of license and posting.** Upon receipt of an application for license and the license fee, the department shall issue a license if the applicant meets the requirements established under AS 18.20.060 — 18.20.080. If the applicant does not meet the requirements established under AS 18.20.060 — 18.20.080 but makes continued efforts to comply with them, the department may grant him a temporary or provisional license for a reasonable period of time. A license, unless suspended or revoked, is renewable annually without charge upon filing by the licensee, and approval by the department of an annual report on the uniform date and containing the information in the form the department prescribes by regulation. Each license issued is for the premises and person or governmental unit named in the application and is not transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises. (§ 40-6-5 ACLA 1949; am § 4 ch 112 SLA 1957)

**Sec. 18.20.045. Insurance required.**

Repealed by § 40 ch 177 SLA 1978.

**Editor's notes.** — The repealed section ch. 177, SLA 1978 in the 1978 Temporary and Special Acts and Resolves. derived from § 39, ch. 102, SLA 1976. As to purpose of repealing act, see § 1,

**Sec. 18.20.050. Denial, suspension or revocation of license.** The department may deny, suspend or revoke a license in a case in which it finds that there has been a substantial failure to comply with the requirements established under AS 18.20.060 — 18.20.080. (§ 40-6-6 ACLA 1949)

**Sec. 18.20.060. Regulations and standards.** The department shall adopt, amend, and enforce rules, regulations and standards for all hospitals designed to further the accomplishment of the purposes of AS 18.20.010 — 18.20.130 in promoting safe and adequate treatment of individuals in hospitals in the interest of public health, safety and welfare. (§ 40-6-7 ACLA 1949)

**Sec. 18.20.070. Compliance with regulations.** Each hospital in operation at the time the department adopts rules and regulations or

minimum standards under AS 18.20.010 — 18.20.130 has a reasonable time, under the particular circumstances, not exceeding one year from the date of adoption within which to comply with them. (§ 40-6-8 ACLA 1949)

**Sec. 18.20.075. Risk management.** (a) To be eligible for a license each hospital shall have in operation an internal risk management program which shall

(1) investigate the frequency and causes of incidents in hospitals which cause injury to patients;

(2) develop and implement measures to minimize the risk of injury to patients; in developing these measures each hospital shall take into account recommendations of its medical staff, the Medical Indemnity Corporation of Alaska, private underwriters, industry standards, experience of other hospitals, and recommendations of licensing boards of other health care providers; and

(3) analyze patient grievances which relate to patient care.

(b) The department shall adopt by regulation standards for the risk management programs in hospitals in the state which may vary according to the size of the hospital, the type of care offered by the hospital, and other factors found relevant by the department. Regulations adopted under this subsection are subject to the Administrative Procedure Act (AS 44.62). (§ 39 ch 102 SLA 1976)

**Cross references.** — As to the Medical Indemnity Corporation of Alaska, see AS 21.88.020 et seq. As to constitutionality of ch. 102, SLA 1976, see notes to AS 09.55.536 and Alas. Const., art. II, § 14.

**Sec. 18.20.080. Inspection and consultation for alterations.** (a) The department shall make annual inspections and investigations of hospital facilities.

(b) The department may by regulation require that a licensee or applicant desiring to make a specified type of alteration or addition to its facilities or to construct new facilities shall, before commencing the alteration, addition or new construction, submit plans and specifications to the department for preliminary inspection and approval or recommendations with respect to compliance with its regulations and standards. (§ 40-6-9 ACLA 1949; am § 5 ch 112 SLA 1957)

**Cross references.** — As to requirement for certificate of need to construct or alter a health care facility, see AS 18.07.011 — 18.07.111.

**Sec. 18.20.085. Hospital records retention.** (a) Unless specified otherwise by the department a hospital shall retain and preserve records which relate directly to the care and treatment of a patient for a period of seven years following the discharge of the patient. However, the records of a patient under 19 years of age shall be kept until at least

two years after the patient has reached the age of 19 years or until seven years following the discharge of the patient, whichever is longer. Records consisting of X-ray film are required to be retained for five years.

(b) The department shall by regulation define the types of records and the information required to be included in the records retained and preserved under (a) of this section. The department may by regulation specify records and information to be retained for longer periods than those set out in (a) of this section.

(c) If a hospital ceases operation, it shall make immediate arrangements, as approved by the department, for the preservation of its records.

(d) In this section, "hospital" includes those facilities defined as hospitals under AS 18.20.130(1) and 18.20.210(3). (§ 1 ch 41 SLA 1970)

**Collateral references.** — Admissibility on issue of sanity of expert opinion based partly on medical, psychological or hospital reports. 55 ALR3d 551.

Admissibility under business entry statutes of hospital records in criminal cases. 69 ALR3d 22.

Admissibility under Uniform Business Records as Evidence Act or similar statute of medical report made by consulting phy-

sician to treating physician. 69 ALR3d 104.

Admissibility under state law of hospital record relating to intoxication or sobriety of patient. 80 ALR3d 456.

Discovery of hospital's internal records or communications as to qualifications or evaluations of individual physician. 81 ALR3d 944.

**Sec. 18.20.090. Information confidential.** The department may not publicly disclose information received by it in a manner identifying an individual or hospital except in a proceeding involving the question of licensing. (§ 40-6-11 ACLA 1949)

**Sec. 18.20.100. Annual report of department.** The department shall prepare and publish an annual report of its activities and operations under AS 18.20.020 — 18.20.130. (§ 40-6-12 ACLA 1949)

**Sec. 18.20.110. Misdemeanor to establish or conduct hospital without license.** A person establishing, conducting, managing, or operating a hospital without a license is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500. (§ 40-6-14 ACLA 1949)

**Cross references.** — As to sentences for misdemeanors, see AS 12.55.135.

**Sec. 18.20.120. Injunction or other process to prevent establishment or operation without a license.** Upon the advice of the attorney general, the department may maintain an action for injunction or other process against a person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license. (§ 40-6-15 ACLA 1949)

**Sec. 18.20.130. Definitions.** In AS 18.20.010 — 18.20.130

(1) "hospital" means an institution or establishment, public or private, devoted primarily to providing diagnosis, treatment, or care over a continuous period of 24 hours each day for two or more nonrelated individuals suffering from illness, physical or mental disease, injury or deformity, or any other condition for which medical or surgical services would be appropriate;

(2) "governmental unit" means the state, a municipality, or other political subdivision, or a department, division, board or other agency of any of them;

(3) "department" means the Department of Health and Social Services. (§ 40-6-1 ACLA 1949; am § 2 ch 112 SLA 1957; am § 2 ch 63 SLA 1964; am § 6 ch 104 SLA 1971; am § 1 ch 72 SLA 1978)

**Effect of amendments.** — The 1978 amendment rewrote paragraph (1).

**Article 2. Alaska Hospital and Medical Facilities Survey and Construction Act.**

**Section**

- 140. Purpose
- 141. Department functions
- 150. Duties of department
- 160. Priority of projects
- 170. Application for construction projects

**Section**

- 180. Approval of applications
- 190. Inspection of projects
- 200. Acceptance of grants
- 210. Definitions
- 220. Short title

**Collateral references.** — 40 Am. Jur. 2d, Hospital and Asylums, §§ 3, 4.  
41 C.J.S., Hospitals, § 5.

Depreciation of property by the erection of a hospital by a municipality as a "taking" or "damaging" within the constitutional provision. 4 ALR 1012.

Power of municipal corporation to provide hospital. 25 ALR 612.

Hospital as within tax exemption provision not specifically naming hospitals. 144 ALR 1483.

Licensing and regulation of nursing or rest homes. 97 ALR2d 1187.

Validity and construction of zoning regulations expressly referring to hospitals, sanitariums, nursing homes. 27 ALR3d 1022.

Validity and construction of statute requiring establishment of "need" as precondition to operation of hospital or other facilities for the care of sick people. 61 ALR3d 278.

Housing facilities for former patients of mental hospital as violating zoning restrictions. 100 ALR3d 876.

**Sec. 18.20.140. Purpose.** The purpose of AS 18.20.140 — 18.20.220 is to make an inventory of existing hospitals and medical facilities, community mental health centers and facilities for the mentally retarded, to survey the need for construction of hospitals and medical facilities, community mental health centers and facilities for the mentally retarded, and to develop a program and plan of construction for each. (§ 2 ch 87 SLA 1955; am § 3 ch 63 SLA 1964)

**NOTES TO DECISIONS**

The moneys used to construct the Ketchikan hospital were spent for a public purpose. *Lien v. City of Ketchikan*, Sup. Ct. Op. No. 146 (File No. 275), 383 P.2d 721 (1963).

And that purpose does not become nonpublic when the hospital is turned over to a charitable, nonprofit corporation for operation, rather than being operated by the city itself. The public purpose remains unchanged. *Lien v. City*

of Ketchikan, Sup. Ct. Op. No. 146 (File No. 275), 383 P.2d 721 (1963).

As public purpose depends on character of use. — The test of whether a public purpose is being served does not depend on the religious or nonreligious nature of the agency that will operate the leased property, but upon the character of the use to which the property will be put. *Lien v. City of Ketchikan*, Sup. Ct. Op. No. 146 (File No. 275), 383 P.2d 721 (1963).

**Sec. 18.20.141. Department functions.** The department shall be the sole agency for the administration of the plan as required by the federal act. The department shall develop and administer any programs necessary for compliance with the federal act. (§ 4 ch 63 SLA 1964)

**Sec. 18.20.150. Duties of department.** The department shall (1) for each of the following groups of facilities: Group 1. Hospital and medical facilities; Group 2. Community mental health center; Group 3. Facilities for the mentally retarded;

(A) make a statewide inventory of existing public, nonprofit and proprietary facilities;

(B) survey the need for construction of these facilities;

(C) on the basis of the inventory and survey, develop a program for the construction of public and other nonprofit facilities for each of these groups which will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate facility services to all residents of the state;

(2) prepare and submit to the surgeon general a state plan, including the hospital and medical facilities, community mental health center and facilities for the mentally retarded construction program developed under (1) of this section. The plan will provide for the establishment, administration, and operation of hospital and medical facilities, community mental health centers and facilities for the mentally retarded, and construction activities in accordance with the requirements of the federal act and the regulations promulgated under it; before the submission of the plan to the surgeon general, the department shall give adequate publicity to a general description of the provisions proposed to be included, and hold a public hearing where persons or organizations with a legitimate interest in the plan may express their views. After approval of the plan by the surgeon general, the department shall publish a brief summary of the provisions in at least one newspaper of general circulation in the state, and shall make copies of the plan available upon request to interested persons, and from time to time but not less often than annually, the commission shall review the construction program and submit to the surgeon gen

STATE OF ALASKA  
FISCAL NOTE

Revision Date                     , 1983

I. REQUEST

Bill/Resolution No.: HB No. 354  
 Title: "Physicians - staff privileges"  
 Sponsor: Rep. Koponen  
 Requestor: H.E.S.S.

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.  
 Program Category Affected: Pub. Prot.  
 BRU, Program of Subprogram(s) Affected: Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No fiscal impact would be incurred with this bill.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Darrell Miller  
 Division: Occupational Licensing

Phone: 465-2535  
 Date: April 25, 1983

Approved by Commissioner: Richard A. Lyon  
 Department: Commerce and Economic Development

Date: 4/25/83

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