SB

221

MAR 1 5 1985

Bill No. Senate Bill No. 221

Date March 15, 1985

Title "An Act relating to payment of a building material supplier; and providing for an effective date."

Contact: Eileen Plate
465-2700
Bob Bacolas
465-4870

Senate Bill No. 221 provides remedies to the state, political subdivisions of the state, and certain other persons when material suppliers fail to timely provide building materials for public construction projects.

Inasmuch as persons who supply building materials on public construction projects fall outside of the Department's authority or responsibility with respect to collection of monies due them, the Department has no comments on these particular provisions. Neither does the Department have occasion to contract with material suppliers to provide materials for public construction projects; therefore, the provisions of Senate Bill No. 221 would not impact the Department from a contracting agency standpoint either.

The Department's position on Senate Bill No. 221 is neutral. It will not have a fiscal impact on the Department.

APPROVED:

Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 221

Title: "An Act relating to payment of a building material supplier..."

Sponsor: Ferguson

Requestor: Senate Labor & Commerce

Date of Request: 3/14/85

FISCAL DETAIL

Agency Affected: Labor

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

Wage & Hour Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: RB Robert J. Bacolas, Sr. Phone: 465-4870

Division: Labor Standards & Safety Date: 3/14/85

Approved by Commissioner: RB Jim Robison Date: 3/14/85

Agency: Labor

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

7/1/84

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4182 SLAB SB 238 - SB 247

1062

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

238

APR 19 1985

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* DELIVER TO: JPOM                                                   *
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* ORIGINAL                                                           *
* SENT:          04/18/85  TIME: 10:31                               *
* FROM:          LIOKOD                                              *
* SUBJECT:       KODIAK POM                                          *
* PRINT DATE:    04/18/85  TIME: 10:31                               *
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TO: SENATOR [redacted] ZHAROFF

FR: BRYCE GORDON
1215 ISMAILOV
HM: 486-6350 WK: 486-5736

RE: HB 63 - SB 238 PLUMBLING CODE

LAST YEAR I TALKED WITH YOU ABOUT ADOPTING THE PLUMBING CODE WITH NO CHANGES. I WOULD LIKE HB 63 ADOPTED WITH NO CHANGES. IF LOCAL DEPARTMENTS NEED TO CHANGE THE CODE FOR LOCAL CONDITIONS THEY CAN WITHOUT EFFECTING OTHER AREAS. DON'T EVEN THINK ABOUT SB 238. IT WOULD BE IMPOSSIBLE TO USE.

EOM

MAR 25 1985

City of Valdez

VALDEZ FIRE DEPARTMENT
OFFICE OF THE CHIEF
March 19, 1985

The Honorable Fred F. Zharoff
Labor and Commerce Committee
The Senate of Alaska
[illegible]uch V
[illegible]eau, Alaska 99811

Dear Senator Zharoff:

I am not in favor of Senate Bill 238 as written. I am in favor of House Bill 63 as written without amendment.

In 1984 thirty-five persons died in Alaska by fire. Thirty-two of these died in private dwellings. Most of these could be prevented by installation of sprinkler systems. The use of plastic pipe for sprinkler systems makes these systems cost effective and affordable not only for dwellings but also certain commercial buildings.

Firefighters are very much aware of toxicity in burning buildings and the use of breathing apparatus is mandatory.

It is my firm belief that smoke detectors and low cost sprinkler systems are the only way that we are going to reduce the fire loss and fatalities in our state.

Sincerely,

Thomas W. McAlister

Thomas W. McAlister
Fire Chief

P. O. BOX 307 . . . VALDEZ, ALASKA 99686 . . . TELEPHONE (907) 835-4313

MAR 13 1985

DELIVER TO: JPOM

ORIGINAL
SENT: 03/18/85 TIME: 15:50
FROM: LIOKOD
SUBJECT: KODIAK POM'S
PRINT DATE: 03/18/85 TIME: 15:50

6

TO: SENATORS ZHAROFF, ELIASON, BENNETT, RAY AND SACKETT

FROM: JOHN SULLIVAN
BOX 1397
KODIAK, AK. 99615
HM: 486-6482 WK: 486-5731

RE: SB 238 PLUMBING CODE

WE WOULD URG E THE ADOPTION OF THE 1985 UNIFORM PLUMBING CODE SPECIFICALLY INCLUDING THE PROVISIONS ALLOWING THE EXPANDED USE OF PLASTIC PIPING.

FROM: JAMES M. WHEELER
BOX 417
KODIAK, AK. 99615
HM: 486-8446 WK: 486-3707

RE: SB 238 - PLUMBING CODE

I URGE THE DEFEAT OF SB 238. IT IS COMMON KNOWLEDGE THAT PLASTIC PIPING WORKS, IN A HIGH PERCENTAGE OF CASES IT IS SUPERIOR TO THE ALTERNATIVE MATERIALS AVAILABLE. THE TOXIDITY EMITTED BY PLASTIC PIPE WHILE BURNING IN A STRUCTURE WOULD HAVE TO BE INSIGNIFICANT CONSIDERING THE WHOLE STRUCTURE AND IT'S CONTENTS.

EOM

Introduced: 1/16/85
Referred: Labor & Commerce

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 63

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the plumbing code."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 18.60.705 is amended to read:

Sec. 18.60.705. PLUMBING CODE. The following publications are adopted [DEPARTMENT OF LABOR SHALL ADOPT,] as the official minimum plumbing code for the state,

(1) the Uniform Plumbing Code, 1985 [1979] edition, adopted at the 54th [49TH] Annual Conference, September, 1983 [1978], International Association of Plumbing and Mechanical Officials, chs. 1 -- 13 and appendices, Useful Tables, and Installation Standards, but excluding Part I, Administration, pages 1a -- 6a, and subject to AS 18.60.710 -- 18.60.740;

(2) the Uniform Solar Energy Code, 1985 edition, adopted at the 54th Annual Conference, September, 1983, International Association of Plumbing and Mechanical Officials; and

(3) the Uniform Swimming Pool, Spa and Hot Tub Code, 1985 edition, adopted at the 54th Annual Conference, September, 1983, International Association of Plumbing and Mechanical Officials.

* Sec. 2. AS 18.60.740(1) is amended to read:

(1) "code" means the 1985 editions of the Uniform Plumbing Code, the Uniform Solar Energy Code, and the Uniform Swimming Pool, Spa and Hot Tub Code [1979 EDITION], adopted at the 54th [49th] Annual Conference, September 1983 [1978], International Association of Plumbing and Mechanical Officials;

Introduced: 3/18/85
Referred: Labor & Commerce

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

SENATE BILL NO. 238

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the plumbing code."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 18.60.705 is amended to read:

Sec. 18.60.705. PLUMBING CODE. The following publications are adopted [DEPARTMENT OF LABOR SHALL ADOPT,] as the official minimum plumbing code for the state,

(1) the Uniform Plumbing Code, 1985 [1979] edition, adopted at the 54th [49TH] Annual Conference, September 1983 [,1978], International Association of Plumbing and Mechanical Officials, chs. 1 - 13 and appendices, Useful Tables, and Installation Standards, but excluding Part I, Administration, pages 1a - 6a, and subject to AS 18.60.710 - 18.60.740 and the changes specified in (b) of this section;

(2) the Uniform Solar Energy Code, 1985 edition, adopted at the 54th Annual Conference, September, 1983, International Association of Plumbing and Mechanical Officials; and

(3) the Uniform Swimming Pool, Spa and Hot Tub Code, 1985 edition, adopted at the 54th Annual Conference, September, 1983, International Association of Plumbing and Mechanical Officials.

* Sec. 2. AS 18.60.705 is amended by adding a new subsection to read:

(b) The 1985 edition of the Uniform Plumbing Code adopted under (a)(1) of this section is adopted with the following changes:

(1) On Page 37, Chapter 4, Drainage Systems, 401, Materials, Subsection (a), Sub-subsection (1), all material is excluded and the following language is adopted:

"(1) Galvanized, wrought iron, galvanized steel, ABS, or PVC pipe may not be used underground and must be kept at least six (6) inches above ground."

(2) On Page 37, Chapter 4, Drainage Systems, Section 401, Materials, Subsection (a), Sub-subsection (2), all material is excluded and the following language is adopted:

"(2) ABS or PVC installations are limited to type VN residential construction of not more than 35 feet in stack height. ABS and PVC pipe may not be less than schedule 40 (IPS) standard steel pipe thickness."

(3) On Page 45, Chapter 5, Vents and Venting, Section 503, Materials, Subsection (a), Sub-subsection (2), all material is excluded and the following language is adopted:

"(2) ABS or PVC installations are limited to type VN residential construction of not more than 35 feet in stack height. ABS and PVC pipe may not be less than schedule 40 (IPS) standard steel pipe thickness."

(4) On Page 45, Chapter 5, Vents and Venting, Section 503, Materials, Subsection (b), all material is excluded and the following language is adopted:

"(b) A person shall use cast iron, galvanized malleable iron or galvanized steel, lead, copper, brass, ABS, PVC, or other approved materials for vent fittings, and galvanized malleable iron, galvanized steel. ABS or PVC may not be used underground and must be kept at least six (6) inches above ground."

(5) On Page 75, Chapter 10, Water Distribution, Section 1004, Materials, Subsection (a), the second and third sentences are not adopted.

(6) On Page 75, Chapter 10, Water Distribution, Section (e) is not adopted.

* Sec. 3. AS 18.60.740(1) is amended to read:

(1) "code" means the 1985 editions of the Uniform Plumbing Code, the Uniform Solar Energy Code, and the Uniform Swimming Pool, Spa and Hot Tub Code [1979 EDITION], adopted at the 54th [49th] Annual Conference, September 1983 [1978], International Association of Plumbing and Mechanical Officials, as modified and adopted in AS 18.60.705;

STATUS REPORT: PLASTIC PIPE EIR

PRELIMINARY STUDY CONFIRMS HAZARDS AND RECOMMENDS TESTING

STATUS REPORT: PLASTIC PIPE EIR

PRELIMINARY STUDY CONFIRMS HAZARDS AND RECOMMENDS TESTING

Plumbers' and Steamfitters' Union
Local 467
1519 Rollins Road
Burlingame, California 94010
Thomas J. Hunter, Business Manager

May, 1983

Prepared by:

Adams, Broadwell & Russell
400 South El Camino Real, Suite 370
San Mateo, California 94402

©

INTRODUCTION

SRI International has concluded that plastic pipe is a fire hazard when used for drain, waste and vent pipe and that its use should not be approved unless safe mitigation measures can be proposed, tested and approved. SRI has also recommended that CPVC and PB pipe should not be approved for drinking water until they are subject to further leaching tests. Prior leaching tests have shown carcinogenic chemicals leaching from CPVC pipe.

SRI International also concluded that use of plastic pipe does not save a significant amount of money in home construction and that metal pipe is generally safe. SRI recommends testing of the solvents which are used to glue together pieces of plastic pipe. Those solvents may be harmful to workers who install pipe and breathe the solvent fumes or get the solvents on their hands.

This Status Report reviews the key issues and provides excerpts from SRI's "Environmental Review Document" (ERD) of March, 1983. The ERD is the first stage of a three-stage process culminating in an Environmental Impact Report on plastic pipe. The California Department of Housing and Community Development is proposing to approve the expanded use of plastic pipe for drinking water and drain, waste and vent pipe. The Department has hired SRI International, as its consultant, to prepare the ERD. The second stage of the process will consist of performing the testing recommended by SRI. The third stage of the process will be preparation of an EIR based on the ERD and on the test results.

DRINKING WATER CONTAMINATION

One of the key issues is how much toxic chemicals leach from plastic pipe into drinking water. The ERD carefully analyzed the few tests that have been performed on plastic pipe. The plastics industry submitted several of its own tests for review by SRI. The industry claimed their tests proved the safety of plastic pipe. After examination of the industry tests, the ERD found that industry tests did not prove much at all. The ERD describes these tests with such phrases as: "Unfortunately, little can be inferred from the data;..." (p. IV A-37); "These data have limited use, however because of the lack of quality assurance..." (p. IV A-48); and "This report suffers from serious limitations." (p. IV A-50).

However, the ERD does confirm leaching of carcinogens from plastic pipe into water and recommends further testing. SRI states:

> "Scores of chemicals have been reported as leaching from plastic pipe and solvent cements into drinking water, but substantial disagreement exists about both the validity of the findings and the interpretation of the concentrations found. Existing data are adequate to establish substantial leaching for only a few chemicals. Of these, carbon tetrachloride, perchloroethylene, and trichloroethylene appear to have sufficient toxicity to be of possible cumulative concern at the levels suspected. However, we recommend additional water quality testing to clarify both the levels of those substances and those of other suspected and as yet unknown ones." (p. 2)

With respect to CPVC, a type of plastic pipe, the ERD confirmed the presence of a number of cancer-causing substances:

"...chloroform, dichloromethane, carbon tetrachloride, tetrachloroethene, trichloroethene, and toluene were found to have significantly higher concentrations in the test samples than in the controls." (p. IV A-26)

With respect to carbon tetrachloride, the ERD expressed significant concerns:

"The health effect of primary concern for carbon tetrachloride is cancer. (p. IV B-41)

"...the plausible risk limit from exposure to carbon tetrachloride alone from CPVC pipe is at the commonly accepted threshold of regulatory significance." (p. IV B-43)

The ERD confirmed the presence of some toxic chemicals, and stated that the presence of other toxic chemicals could not be ruled out. More testing is recommended to try to determine whether additional carcinogens might be leached into the water from CPVC:

"Finally, because of the inadequacies of existing leaching data, it is unclear that these are the only carcinogens that may leach into drinking water from CPVC pipe or that the reported leachate concentrations are representative of values that would be obtained in real life situations." (p. IV B-74)

With respect to Pb, another type of plastic pipe, the existing data was so poor that more testing was needed to resolve legitimate health concerns:

"The leachability studies of Pb were generally lower in quality than those of CPVC." (p. IV A-56)

Thus, the ERD demonstrates that there is real concern about the addition of toxic and carcinogenic chemicals to drinking water from plastic pipe and that further testing is needed before such pipe can be evaluated for safety.

Toxic chemicals in the soil can penetrate buried plastic pipe. The ERD noted that several of the tested compounds are carcinogens and that further testing was needed. (pp. IV B-76 to B-77) Surprisingly, the ERD does not recommend specific testing to resolve these questions. Testing plastic pipe for permeation by toxic chemicals in the soil is critically important. It is a major unresolved issue at this stage of the plastic pipe EIR.

FIRE HAZARDS

Because plastic pipe burns easily, an important issue is whether the web of plastic drain, waste and vent (DWV) pipe running through the walls and ceilings of fire-rated construction is safe. The ERD concluded that plastic pipe cannot be safely substituted for metal pipe in fire-rated construction:

> "Fire safety is a very real concern with plastic DWV pipe; ABS is combustible, and PVC and CPVC will at least soften and slump in lines. If these plastics are installed as direct substitutes for metal, as they already are in non-fire-rated residences, they will degrade the fire resistance of structures. (p. V-3)
>
> "A fire test conducted in late 1982 (Warnock-Hersey, 1982) illustrated quite effectively that plastic DWV systems can drastically reduce the fire resistance of a wall when the penetrations are not protected. In this test, metal plumbing was replaced with plastic counterparts, including the pipes that penetrated the gypsum-board wall to support plastic traps directly exposed to the test fires. Although the report makes no mention of sealing the penetration, this detail is probably of little consequence because the large amount of exposed plastic soon caught fire and carried the flames into and through the wall. Plastic pipe cannot be installed in such a fashion without destroying the fire endurance of the wall." (p. IV D-8; emphasis added)

Measures to reduce or mitigate fire hazards are absolutely necessary. However, the ERD observes that there are no proven mitigation measures:

> "Special and as yet undeveloped or unproven construction measures involving additional cost and care are needed to satisfy code performance standards [with plastic pipe]. (p. IV D-3)

> "Suitable fire-stopping systems have not been demonstrated for [plastic] pipe materials, sizes, and orientations; particularly of concern are large pipes and vertical penetrations." (p. IV D-22)

Not only are these measures unproven, but they are also likely to create serious problems for building inspectors who will need to insure that plastic pipe has been safely installed:

> "However, at present there do not appear to be specific observable features that would assure a fire inspector that a fire wall would retain its rating with plastic plumbing. (p. III-50)

> "Code enforcement is likely to be a significant problem with plastic pipes, and the resources for enforcement must be carefully weighed in developing code provisions." (p. IV D-4)

New mitigation measures and more inspection time will almost certainly lead to increased costs:

> "In view of the more stringent design and inspection requirements that are needed to achieve an equivalent level of fire safety, the difference in cost of plastic, compared to metal, systems may be less than some believe." (p. IV D-27)

SMOKE TOXICITY

Not only does plastic pipe create openings for flame spread when it burns, but it also produces toxic smoke. The ERD repeatedly notes both the potential toxic smoke hazards from plastic pipe and the need for further testing of the

smoke toxicity. For example, the ERD describes the hazard from plastic pipe in just one dwelling unit:

> "However, if the plastic pipe components were about equally divided between ABS and PVC, we would expect between 10 and 15 pounds of HCl to be generated [in a fire]. This represents a serious toxicant load...10 to 15 pounds of HCl could poison the air of 1,500 rooms." (p. IV E-14)

That amount of toxic gas released into the ventilation system of a multi-unit, multi-story building would increase deaths in the event of a serious fire.

Lethal exposure to toxic gas is not the only concern from combustion effects. Long-term risks, such as cancer, are also possible:

> "There have been concerns expressed that, in addition to acute, potentially lethal effects of toxic gases, long-term irreversible effects, including cancer, may result from exposure to combustion products (Autian, 1970; PRC, 1980). Such effects might arise from exposure to one fire or to many, as in the case of fire fighters.... Some components given off during degradation of PVC plastics, such as benzene and vinyl chloride, are known carcinogens;..." (p. IV E-19)

ABS produces hydrogen cyanide (HCN) gas when it burns. (ABS is the most common plastic used for drain, waste and vent.) The ERD describes hydrogen cyanide as follows:

> "Without question, HCN is one of the most lethal substances known. The gas produces a type of anoxia referred to as histotoxic.... Other sources indicate that between 300 and 350 ppm can cause death within 10 minutes.... The short-term exposure limit for HCN is 15 ppm." (p. IV E-20)

Of course, in fires individuals may be exposed to smoke other than from plastic pipe, and it is extremely difficult to estimate the specific role of toxic gas from plastic pipe.

Nevertheless, the ERD estimates that these chemicals may contribute to 10 or 20 percent of the deaths:

> "Epidemiological data from real fires are insufficient for concluding anything other than that CO is the major cause of fire death, and that HCN or other toxic gases may contribute to death to some currently unquantifiable extent, but certainly no more than 20%--and probably on the order of 10% or less, based on currently available information." (p. IV E-26)

The ERD concludes its analysis of the fire issue by indicating that a standardized testing technique for smoke toxicity is required. Until that is accomplished, conservative countermeasures are recommended. These include closing off wall penetrations or using combined metal and plastic systems. The ERD indicates that all countermeasures need to be subjected to full-scale tests before they are adopted. (p. IV E-35)

WORKER HEALTH HAZARDS

Another important issue in the plastic pipe controversy is the exposure of workers to toxic substances used in the glues and solvents used to join plastic pipe. Workers include not only professional plumbers, but the do-it-yourself homeowners as well.

The ERD recommends further testing of the hazards to plumbers. The glues used to join plastic pipe pose a health hazard:

> "The solvent of greatest concern is DMF, which though relatively nonvolatile, is readily absorbed through the intact skin. Reports available to date indicate that DMF is neither mutagenic nor carcinogenic, but human exposures have resulted in liver damage, pancreatitis, skin sensitization, and alcohol intolerance. DMF is metabolized to two compounds that have been teratogenic in animal tests: formamide and N-methyl formamide. There is also concern that these compounds might affect male fertility, although adequate testing has not yet been conducted." (p. IV C-28)

Inhaling solvents is dangerous, particularly when working in small spaces. The ERD observed that a plumber working under floors may sometimes install pipe with his nose right under the pipe joints. (p. IV C-10) Under these circumstances, inhalation of high doses can be expected. In addition to inhalation, the solvents are absorbed through the plumber's skin:

> "On a site where plastic is used, the journeyman or advanced apprentice usually doing the actual installation would have relatively intimate and constant contact with the cement throughout the day. This exposure would result not only from the vapor exposure as he cemented the joints, but also from the residual cement on his hands (or gloves) and clothing." (pp. IV C-10 to 11)

The ERD also recommends further testing on the exposure of plumbers to vapor from one of the solders used with metal pipe (lead based solder). However, with plastic pipe, the plumbers are at risk not just from inhalation but also through absorption of chemical contaminates through the skin. Thus, the testing needs in the area of worker safety are substantial:

"There can be no doubt that the widespread introduction of plastic pipe in California will affect occupational health and safety. Unfortunately, for the purposes of this environmental review, a reasonable judgment of the net impact of that introduction cannot be made at this time. Insufficient information is available to evaluate the impact on any of the occupational groups that might be affected. This is true even for the group with the greatest potential for exposure--the plumbers." (p. IV C-51)

In addition, the ERD recommended several changes in current practice in order to improve worker safety such as the elimination of n-hexane and benzene from solvents, new disclosure requirements on solvent labels and possibly ventilation requirements.

NO ECONOMIC ADVANTAGE

The industry defends itself with a single, consistent theme: the battle over plastic pipe is an economic issue, not a health or environmental issue. The ERD completely disposes of this myth. Not only does the ERD substantiate the potential health and environmental hazards of plastic pipe, but it also concludes that there will be virtually no economic benefit from approval of plastic pipe:

"First, the reduction in the cost of housing construction that would result from use of the newly permitted plastics in place of currently approved plumbing materials is so small that it would have virtually no effect on the sales price or rent of dwelling units in the state....

"Second, the plumbing material substitutions that are likely to result from the proposed code change would not significantly affect employment opportunities in the state..." (p. V-13)

SAFETY OF METAL PIPE

Numerous plastics industry public relations statements attack the safety of metal pipe. The ERD puts this issue to rest as well. Copper is the most common form of drinking pipe in use. Despite the plastics industry's scare tactics regarding copper, the ERD finds as follows:

> "...[C]opper is an essential nutrient for which people have evolved adequate homeostatic mechanisms that handle occasional excesses and deficiencies. While the metal can be toxic at high doses, SRI concurs with the assessment of the National Academy of Sciences that, 'the potential for toxicity (from copper in drinking water at observed levels) is virtually nonexistent for humans' (NAS, 1977)." (p. IV B-62 to 63)

The same finding applies to zinc which is commonly used in metal drinking water pipe:

> "While zinc does produce chronic toxic effects at high doses (e.g., several thousand ppm in the diet), it is unlikely to present a significant risk of chronic toxicity in drinking water from either copper or galvanized iron pipe. It is essential for human nutrition, and homeostatic controls have evolved to regulate absorption and excretion. Zinc levels in drinking water are a small fraction of those in food. In general, zinc deficiency is a more serious health problem than zinc toxicity. The National Academy of Sciences recently concluded that, '[t]he possibility of detrimental health effects arising from zinc consumed in food and drinking water is extremely remote' (1980)." (p. IV B-64 to 65)

The ERD does recommend further testing of lead that may be present in one type of solder which is used to join copper pipe. The ERD describes commonly available alternative solders that have no adverse health effects. The most common is tin antimony solder. <u>With the single qualification that there should be more examination of one type of solder, the</u>

ERD substantiates the long recognized safety of metal pipe.

Thus the report states:

> "In view of the results of the leaching data and the current state of knowledge about the toxicity of leachates from both copper and galvanized steel pipes, there appears to be little likelihood of any significant health risk from either of these kinds of pipe, with the possible exception of lead leachates from lead/tin solder." (p. IV B-75)

In addition, it is clear that cast iron DWV poses no fire hazard.

CONCLUSION

Why are Californians being asked to approve plastic pipe? It is not to make housing more affordable. The ERD confirms that approval of plastic pipe will have virtually no effect on housing prices or rents. It is not because of problems with current materials. The ERD confirms the general safety and adequacy of existing materials. Approval of plastic pipe is being pursued for one reason and one reason only: the plastics industry wants to expand its market. No one opposes the introduction of new products. The industry that proposes a new product should pay for the testing to prove its safety. The plastics industry bears the burden of proof and they can afford it. According to the ERD, the plastic pipe industry had gross sales revenue in 1980 of $1.5 billion.

Despite the need for testing, despite the revenue to pay for testing, the plastics industry continues to resist testing. Instead, they have launched a multi-million dollar public relations campaign to distort the facts and avoid their

responsibility. Their position is clear: a fortune for public relations and barely a dollar for testing.

It is a position which has been demonstrated as bad public policy. Asbestos was permitted in schools and homes without testing. Now that its hazards are understood, it represents a built-in danger that cannot be economically removed.

The ERD recommends additional testing before plastic pipe is approved. That testing should be fair and thorough. The industry that advocates a product's use must be prepared to pay for the tests to demonstrate its safety.

MIDNIGHT SUN CONTRACTORS

General Contractors - Homebuilders

SRA 6614, Wasilla, Alaska 99687
(907) 745-2875

March 20, 1985

Senator Fred Zharoff, Chair
Senate Labor and Commerce
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Fred Zharoff:

I feel very strongly that the 1985 Uniform Plumbing Code should be adopted with no amendments regarding materials, especially restricting plastic pipe.

Unfortunately even though every plumbing contractor I have talked to agrees that the 1985 Uniform Plumbing Code should be adopted as is, very few of them show an interest in writing a letter in support of it.

I have enclosed enough copies of my letter for each of your committee members. Please make these available to them.

Sincerely,

Lester Hawkins

Lester Hawkins

LH;jf

MIDNIGHT SUN CONTRACTORS

General Contractors - Homebuilders

SRA 6614, Wasilla, Alaska 99687
(907) 745-2875

March 20, 1985

Senator Fred Zharoff, Chair
Senate Labor and Commerce
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Commitee Members: Senator Fred Zharoff, Chair
Senator Richard I. Eliason, Vice-Chair
Senator John C. Sackett
Senator Don Bennett
Senator Bill Ray

As a General Contractor in the Mat-Su Borough since 1982, I have personally built thirty three single or multi family structures. In talking with plumbing contractors of the Mat-Su Borough, I find they all agree that there is no practical grounds for restricting the use of plastic pipe for any type of residential construction.

All of my construction since 1973, a total of about one hundred and fifty single and multi family buildings, and some commercial buildings, have ABS plastic pipe for drainage and vent systems. There has been absolutely no problems or complaints about the plumbing in any of these buildings from owners or occupants.

The stand special interest groups in Alaska are taking against the use of plastic plumbing pipes and fittings is without merit.

The homebuyers and real estate investors of Alaska are paying a minimum of $300 for a small single family home, up to $3,000 on a four plex, unnecessary additional costs for just one item, plumbing drain and vent piping due to an obsolete plumbing code. Add 12% interest for 30 years to this unnecessary extra cost and you have a substantial unnecessary financial burden for just this one item.

In the best interest of all of the people of Alaska, the 1985 Uniform Plumbing Code should be adopted with no amendments or exceptions to any sections regarding materials. The 1985 Uniform Plumbing Code allows for "state of the art" materials and plumbing practices that will bring the plumbing industry of Alaska up to date.

MIDNIGHT SUN CONTRACTORS

General Contractors - Homebuilders

SRA 6614, Wasilla, Alaska 99687
(907) 745-2875

I urge the legislators of the State of Alaska to act for the people and adopt HB 63.....or the 1985 Uniform Plumbing Code with no changes regarding approved materials and practices.

Sincerely,

Lester Hawkins

Lester Hawkins

LH:jf

MAR 2 1 1985

DELIVER TO: JPOM

ORIGINAL
SENT: 03/20/85 TIME: 13:31
FROM: LIOVAL
SUBJECT: P.O.M.-SB238
PRINT DATE: 03/20/85 TIME: 13:31

TO: SENATE LABOR AND COMMERCE COMMITTEE: SENS. FRED ZHAROFF, RICHARD ELIASON, DON BENNETT, BILL RAY AND JOHN SACKETT
SEN. EDNA DEVRIES AND JAY KERTTULA

FROM: CECIL FLEMINGS, BUILDING OFFICIAL
CITY OF VALDEZ, BOX 307, VALDEZ, AK 99686, 835-4313

RE: SB 238 - PLUMBING CODE

THE CITY OF VALDEZ, ON BEHALF OF ITS CONTRACTORS AND LOCAL PROPERTY OWNERS, EXPRESSES NON-SUPPORT FOR SENATE BILL 238. VALDEZ, ALONG WITH MANY OTHER ALASKAN COMMUNITIES, HAS HAD INPUT INTO THE 1985 UNIFORM PLUMBING CODE AND WE SUPPORT UNIFORM PLUMBING CODE ADOPTION IN ITS PRESENT FORM.

EOM

MAR 2 6 1985

FOR CONSIDERATION BEFORE THE ALASKA STATE LEGISLATURE
HB 63 & SB 238 "THE 1985 UNIFORM PLUMBING CODE"
March 26, 1985

During the House Labor and Commerce Committee teleconference on March 21. 1985 there was a common consensus among the many building officials from around the State who testified. I share their concerns and also urge you to adopt HB 63 unamended.

The UPC is a model code and companion to the Uniform Building, Mechanical and Fire codes. Definitions and requirements in one are directly interrelated to the others. Local specific conditions may dictate that some amendments be made to the Codes and historically this has been the case. The proposed amendments in SB 238 do not address any unique statewide conditions that would warrant amendment of the UPC to insure safe and sanitary plumbing systems.

The Uniform Building Code regulates the type of construction that is allowed (combustible or non combustible) based on the size, height and occupancy or use of a structure. The proposed amendments discard that analysis and substitute arbitrary and unfounded requirements for material use that we know from past experience will cause needless cost increases to consumers without justifiable benefits. In another amendment the use of PVC pipe underground would be prohibited, again our experience has shown this material can be a superior product both in terms of quality and cost in many underground applications.

The City and Borough of Juneau administers the 1982 UPC and allows plastic pipe in all combustible buildings. Mass confusion or havoc is the best way to describe the current plight of plumbers, estimators, inspectors and the general public in the Borough when such conflicting requirements of the City and State exist in the same area.

As a volunteer firefighter, it is well known to me that the single greatest deterrent to life and property loss in structures is the presence of a sprinkler system. With Alaska's loss statistics being the worst in the civilized world in this regard, it would also seem more fitting for the plumbers trade union to actively pursue low cost plastic pipe sprinkler systems than recommending the use of plastics in residences where the overwhelming majority of our fire deaths occur.

In summary, we ask for a modern and compatible Statewide plumbing code for our minimum standard. The 1985 Uniform Plumbing Code as written, in our opinion, will best serve that need. If specific local conditions exist and amendments are appropriate, then the administrative authority in that locale may adopt more stringent requirements as deemed necessary.

Sincerely,

Stephen O Shows

Steve Shows
City & Borough of Juneau
Building Division
Field Services Coordinator
Lynn Canal Volunteer Fireman
Board of Directors Member
Southeast Alaska Chapter,
ICBO

SS:gh

MIDNIGHT SUN CONTRACTORS

General Contractors - Homebuilders

SRA 6614, Wasilla, Alaska 99687
(907) 745-2875

March 21, 1985

MAR 2 6 1985

Senator Fred Zharoff, Chair
Senate Labor and Commerce
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Committee Members: Senator Fred Zharoff, Chair
Senator Richard I. Eliason, Vice-Chair
Senator John C. Sackett
Senator Don Bennett
Senator Bill Ray

House Bill Number 63 should become law. As HB 63 makes the 1985 Uniform Plumbing Code law, so shall the craftsmen and building officials of the State of Alaska use this new code in the best interests of the people of the State of Alaska.

As I testified from the Mat-Su legislative teleconference office in Wasilla, I have enclosed some cost information based on my current construction operations in support of House Bill Number 63.

I have always and plan to continue to build quality buildings. All of my customers are told that I personally guarantee my buildings against defects in materials and workmanship for as long as they own the building. I make no exceptions for plumbing in these buildings, and hope to continue this practice with adoption of the 1985 Uniform Plumbing Code as adopted by the International Association of Plumbing and Mechanical Officials.

Sincerely,

Lester Hawkins

Lester Hawkins

LH:jf

MIDNIGHT SUN CONTRACTORS

General Contractors - Homebuilders

SRA 6614, Wasilla, Alaska 99687
(907) 745-2875

In support of House Bill Number 63

Re: Additonal Cost of Construction if Senate Bill Number 238 is made into law. The costs reflected below pertain only to drainage systems as would be affected by Senate Bill Number 238 Page 1 line 24, *Section 2, through Page 2 line 26.

Ronald E. Hills of R & J Plumbing, Box 872787, Wasilla, Alaska 99687, has provided me with the following bids for additional cost to provide cast iron drain and vent pipe and fittings and extra labor for same. I have computed the additional cost to the homebuyer or investor, with the assumptions that the product will be financed for thirty years at today's average mortgage rate of 13%.

Average size split entry home:
Additional charge for cast iron waste and vent plumbing under slab....$300 at 13% interest for 30 years = $1,200.

A home with proper footing depth for frost bury, two stories above ground, and a 12 on 12 pitch roof could very likely have a stack height over 35 feet. This home would require cast iron waste and vent plumbing, at an additional cost above ABS pipe of at least $1,000. $1,000 at 13% interest for thirty year term becomes $4,000 additional cost.

I have experienced a demand for four plex type structures for investment properties. It is very possible for this type of building to require cast iron waste and vent plumbing, especially if it is to be built on a sloping lot. A minimum extra initial cost for plumbing this building would be $3,000. This $3,000 at 13% interest for a thirty year term becomes $12,000 expense.

Senate Bill Number 238 is not acceptable as written. I hope it is as clear to you who we count on to make our laws, as it is to me, after talking to twenty three plumbing contractors with extensive experience with ABS and other plastic pipes and fittings, and having listened to the teleconferences on HB 63 on March 18th and 21st, that House Bill Number 63 is the right bill for the people of the State of Alaska.

Sincerely,

Lester Hawkins

Lester Hawkins

LH:jf

Bill No. Senate Bill No. 238

Title "An Act relating to the Plumbing Code."

Date March 26, 1985

Contact: Eileen Plate
465-2700
Bob Bacolas
465-4870

MAR 27 1985

Senate Bill 238 provides for the adoption of the 1985 Uniform Plumbing Code, and amends certain sections in the code to restrict or prohibit the installation and use of plastic pipe. The bill also provides for the adoption of the 1985 Uniform Solar Energy Code and Uniform Swimming Pool, Spa and Hot Tub Code.

The International Association of Plumbing and Mechanical Officials revises its minimum standards for the installation of plumbing every three years to incorporate technological advances, and the 1985 edition is the most recent effort in this regard. The standards for the installation of solar energy and the spa and hot tub standards have not previously been adopted in Alaska (the minimum standards for swimming pools were formerly included in the Uniform Plumbing Code.) The 1979 code currently in effect in Alaska is outdated, and adoption of the 1985 version would bring Alaska's minimum standards int conformity with those adopted and used by the industry nationwide.

This bill also removes an anomalous provision that instructs the Department of Labor to adopt the specific publications that constitute the plumbing code. The current statute leaves no discretion in the department as to whether to adopt or as to what to adopt. Thus the actions of the department in going through the formal adoption procedures are unnecessary. Under the amendment in this bill, the statute will simply declare what constitutes the plumbing code. This is the approach already employed for the electrical code, for example; see AS 18.60.580.

The Department notes that the specific amendments proposed to 1985 plumbing code provisions restrict the use of ABS and PVC pipe in drainage and water distribution systems to a greater extent than does the 1979 code which is presently in effect. The plastic pipe issue arises from a number of water quality, worker safety and five safety questions which have been posed nationally concerning 1982 Uniform Plumbing Code provisions which expanded the use of plastic pipe. These provisions are also in the 1985 code (Section 401 of Chapter 4 dealing with drainage systems, Section 501 of Chapter 5 dealing with vents and venting and Section 1004 of Chapter 10 dealing with water distribution). The concern over the use of plastic pipe also exists in Alaska and no doubt the pros and cons of it will be brought out in the hearings on Senate Bill 238.

Although at this time the Department of Labor supports adoption of the 1985 code without amendment to Sections 401, 501, and 1004 as proposed in Senate Bill 238, should it be determined in the course of the hearings that there are compelling reasons to prohibit the use of plastic pipe, we would not have any strong objections to the provisions of Senate Bill 238. The Department would point out two punctuation errors that need to be corrected should Senate Bill 238 be favorably acted upon, as follows:

POSITION PAPER/Department of Labor

Senate Bill No. 238

Section 2, line 1, needs to be corrected to read:

"(1) Galvanized wrought iron, galvanized

Section 2, line 24 needs to be amended to read:

and galvanized malleable iron, galvanized steel, ABS

The Department would also request two more substantive amendments, as follows:

Section 1, line 20 needs to be amended to read:

of Plumbing and Mechanical Officials, chs. 1--9 and appendices, but excluding Part 1, Administration, pages 3--9; and

Section 1, line 23 needs to be amended to read:

International Association of Plumbing and Mechanical Officials, chs. 1--5 but excluding Part 1, Administration, pages 1--9.

The Solar Energy Code and Swimming Pool, Spa and Hot Tub Code both contain an Administration Section comparable to that in the Uniform Plumbing code which Alaska has never adopted.

Senate Bill 238 would not have a fiscal impact on the Department of Labor.

APPROVED:

Jim Robison, Commissioner
Department of Labor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 238

Title: "An Act relating to the plumbing code."

Sponsor: Labor & Commerce Committee

Requestor: Senate Labor & Commerce

Date of Request: 3/26/85

FISCAL DETAIL

Agency Affected: Labor

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Labor Standards & Safety Mechanical Inspection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870

Division: Labor Standards & Safety Date: 3/26/85

Approved by Commissioner: Jim Robison Date: 3/26/85

Agency: Labor

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

MIDNIGHT SUN CONTRACTORS
General Contractors - Homebuilders

SRA 6614, Wasilla, Alaska 99687
(907) 745-2875

MAR 22 1985

I agree O.K.

March 20, 1985

Senator Jay Kertula
Pouch V
Juneau, Alaska 99811

Dear Senator Kertula:

I feel very strongly that the State of Alaska should adopt the 1985 Uniform Plumbing Code without exceptions to the use of plastic pipe and fittings. The adoption of this code would bring the plumbing industry of Alaska up to date.

I have talked to many plumbing contractors in the Mat-Su Borough who are also in favor of adopting the 1985 Uniform Plumbing Code, unfortunately not all will take the time to write to their Senators and Representatives.

Please help us see that this code is adopted without amendments. Thank you.

Sincerely,

Lester Hawkins

Lester Hawkins

LH:jf

Copy the — Chair of comm the loc bill

APR 2 1985

CITY OF KODIAK
RESOLUTION NUMBER 25-85

A RESOLUTION OF THE CITY OF KODIAK SUPPORTING HOUSE BILL 63 AND OPPOSING SENATE BILL 238 RELATING TO THE PLUMBING CODE

WHEREAS, both House Bill 63 and Senate Bill 238 have been filed in the first session of the Fourteenth Legislature; and

WHEREAS, House Bill 63 would adopt the 1985 Plumbing Code and, as introduced, is responsive to our needs; and

WHEREAS, Senate Bill 238, which would also adopt the 1985 Plumbing Code, restricts the expanded use of plastic pipe as allowed in said Plumbing Code; and

WHEREAS, it is to the advantage of our community to adopt the 1985 Plumbing Code without amendments which would restrict the use of plastic pipe beyond the restrictions found in the Plumbing Code as published by the International Association of Plumbing and Mechanical Officials,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that the Fourteenth State Legislature is respectfully urged to pass House Bill 63 in its present form and to oppose Senate Bill 238.

BE IT FURTHER RESOLVED that copies of this resolution be sent to:

The Honorable Bill Sheffield, Governor of Alaska
The Honorable Fred Zharoff, Alaska State Senator
The Honorable Dave Thompson, Alaska State Representative

PASSED AND APPROVED this 28TH day of MARCH, 1985.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

F

MAY 7 1985

12099

NL FAIRBANKS ALASKA 50 5-06 305P ADT

FMS

SENATOR FRED ZHAROFF

0437

JUNEAU

THE MECHANICAL CONTRACTORS OF FAIRBANKS INC URGE YOU TO CAST AN AFFIRMATIVE VOTE FOR THE ADOPTION OF HOUSE BILL 63. THIS BILL IS A NECESSARY FIRST STEP TO STATEWIDE UNIFORMITY OF PLUMBING CODES.

EUGENE F RUTLAND

EXECUTIVE DIRECTOR

MECHANICAL CONTRACTORS OF FAIRBANKS

CITY OF KODIAK
RESOLUTION NUMBER 25-85

A RESOLUTION OF THE CITY OF KODIAK SUPPORTING HOUSE BILL 63 AND OPPOSING SENATE BILL 238 RELATING TO THE PLUMBING CODE

WHEREAS, both House Bill 63 and Senate Bill 238 have been filed in the first session of the Fourteenth Legislature; and

WHEREAS, House Bill 63 would adopt the 1985 Plumbing Code and, as introduced, is responsive to our needs; and

WHEREAS, Senate Bill 238, which would also adopt the 1985 Plumbing Code, restricts the expanded use of plastic pipe as allowed in said Plumbing Code; and

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BE IT FURTHER RESOLVED that copies of this resolution be sent to:

The Honorable Bill Sheffield, Governor of Alaska
The Honorable Fred Zharoff, Alaska State Senator
The Honorable Dave Thompson, Alaska State Representative

PASSED AND APPROVED this 28TH day of MARCH, 1985.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

A

ALASCOM

Telegram

NL ANCHORAGE ALASKA 55 04-15 1800 AST

PMS

APR 16 1985

SEN FRED ZHAROFF

POUCH V 0559

'85 APR 15 PM 9 00

JUNEAU AK 99811

ALASKA CHAPTER INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS RECOMMENDS DISAPPROVAL OF SB238 BY LABOR AND COMMERCE COMMITTEE. SB238 WOULD SEVERELY LIMIT AND RESTRICT IMPROVED METHODS AND MATERIALS FOR PLUMBING WORK IN ALASKA AND DISCOURAGE CONSTRUCTION ECONOMIES. ALASKA ICBO ENDORSES HB63 AND RECOMMENDS APPROVAL AND ADOPTION WITHOUT AMENDMENT.

EARL FULLINGIM, PRESIDENT 337-6315

7233 MADELYNNE DRIVE

ANCHORAGE AK 99504-4656

L-0167-0 1601876

APR 1 8 1985

SANDSTROM PLUMBING & HEATING
BOX 2414 FAIRBANKS, AK 99701
452-3050

April 9, 1985

Honorable Fred F. Zharoff
Alaska Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Zharoff:

Subject: Teleconference held on House Bill #63

On 3/12/85 I listened to testimony from Jack Lancaster, Marty O'Brien, and Dwight Perkins regarding the dangers of plastic pipe and plastic materials within a structure. The proposed amendments to House Bill #63, as reflected in Senate Bill #238, limit plastic pipe to two story residential class VN up to thirty-five feet in stack height. My comments to this testimony are as follows:

1. Most Alaska residences have No fire sprinkler systems or fire protection, systems in them. This leads me to believe that a higher priority and value is being placed on multi-story and commercial structures than those in residences (both single family and multi-family.

2. If one researched into most commercial fires where fatalities occur due to inhalation of toxic smoke or fumes, generated by pipe, wiring, furnishings, vinyl coverings, one would in fact show that at least one of the following occurred:

a. improper design of the ventilation system.

b. malfunction of properly designed ventilation system.

c. ventilation system fire wall sleeves for duct work or piping improperly installed or maintained.

d. fire wall sleeving and/or shaft penetrations were improperly designed.

3. In my opinion, Shell Chemical Co.'s Marty O'Brien said it all during this teleconference. This is the 1980's not

the Stone Age, plastics are here to stay and the problems of plastics need to be addressed as I have outlined above, whether they are commercial, residential, combustible or whatever.

To save lives I feel the following should be done:

Install fire prevention or fire suppression systems in all structures in Alaska, both commercial and residential.

Design and install ventilation and control systems that do not subject building occupants to toxic smoke and fumes during a fire. System design should not allow toxic smoke and fumes to travel, be blown, or carried throughout the building. A fire occuring in basement should not have its smoke and fumes carried to the upper floors via the ventilation system or shaft.

This is the 1980's, technology and expertise exist to insure the installation of mechanical systems that save lives not endanger them. System design is a most effective factor in life safety.

Ask yourselves.."what is the real killer in commercial structures and in combustible structures? All buildings contain combustibles". "Where do most fire deaths occur?". The answers to these questions may suggest answers to the problems raised during this teleconference.

If House Bill #63 is amended to restrict the use of plastic pipe from the 1985 Uniform Plumbing Code, we Alaskans will be working with an antiquated plumbing code and will have done little, if anything, to deal with true life/safety issues. Amendments limiting plastics to under thirty-five feet in stack height and class VN construction do NOT address this problem. The "traditional materials" themselves have many of these same problems and are in need of futher testing.

I, therefore, urge you to pass House Bill #63 unamended and allow Alaskans the use of 1980's technology, as our national and international counterparts, to solve, through the use of modern products and experience, the real problems facing life/safety.

Sincerely,

Wayne R. Sandstrom

Wayne.R. Sandstrom

MIDNIGHT SUN CONTRACTORS
General Contractors - Homebuilders

APR 1 9 1985

SRA 6614, Wasilla, Alaska 99687
(907) 745-2875

April 16, 1985

Senator Fred Zharoff
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Zharoff:

Regarding Support of House Bill 63.

Having attended both teleconferences on H.B. 63 and S.B. 238, I was very concerned with the attention some of our legislators paid to the Union opposition to progress. In the best interest of the "unselfish, unaware majority" of the people of Alaska, I was overcome with a feeling of urgency to gather unbiased professional opinions on the controversial sections of the 1985 Uniform Plumbing Code.

On April 11, 1985 the Alaska Chapter of the International Conference of Building Officials (I.C.B.O.) meeting topic was "Alaska State Plumbing Code". I attended as a Professional Member of the Alaska Chapter of I.C.B.O. By now you should have received a public opinion message from the Anchorage Chapter of the I.C.B.O. in support of H.B. 63. H.B. 63 and S.B. 238 were discussed by the fifty or so members present. A vote showed **unanimous** support for H.B. 63, as the superior bill without question.

Among those present were:

Earl Fullingim A.I.A., Architect, and Chairman, Board of Building Regulations Examiners and Appeals, Municipality of Anchorage and President of Alaska Chapter of the International Conference of Building Officials (I.C.B.O.).

Ron Watts, Chief of Building Inspection, Municipality of Anchorage, and Vice President of the Alaska Chapter of the International Conference of Building Officials.

Don Cather, Chief Mechanical Section, Alaska Department of Labor.

Ted Lodwig, Chief Fire Marshall, Municipality of Anchorage.

MIDNIGHT SUN CONTRACTORS

General Contractors - Homebuilders

SRA 6614, Wasilla, Alaska 99687
(907) 745-2875

Sam Neal, Director Division of Fire Prevention, State of Alaska.

Jack Mc Gray, Fire Inspector, State of Alaska, Division of Fire Prevention.

Larry Teague, Building Official, City of Palmer.

The building official from Kotzebue was present as were representatives from almost every populated area of the State of Alaska.

More specifically, Don Cather informed the group that there are lots of problems with the obsolete 1979 Uniform Plumbing Code that H.B. 63 would eliminate. Earl Fullingim instructed sub-committees appointed to examine municipal codes to get rid of any existing local amendments to Uniform Building, Plumbing, and Mechanical Codes that are not absolutely necessary due specifically to geographic or climatic conditions.

I have taken a great amount of time and effort to provide you with local facts, and local professional opinions that concur with international professional opinions regarding the 1985 Uniform Plumbing Code as written. Please serve the people of this great state by your immediate attention to, and support of, H.B. 63. We need it now!

Respectfully yours,

Lester Hawkins

LH:jf

APR 2 6 1985

DELIVER TO: JPOM

ORIGINAL
SENT: 04/26/85 TIME: 13:45
FROM: MICHELE MORSETH
SUBJECT: POM
PRINT DATE: 04/26/85 TIME: 13:45

18

TO: HOUSE & SENATE LABOR & COMMERCE COMMITTEES

REPS: NAVARRE, DAVIS, BOUCHER, KOPONEN, PEARCE, COLLINS, HANLEY

SENS: ZHAROFF, ELIASON, SACKETT, BENNETT, RAY

INTERIOR DELEGATION
REPS: M.W. MILLER, RINGSTAD, FRANK
SENS: FAHRENKAMP, COGHILL

FROM: FORREST & TERRY BRADBURY
5618 BRADBURY DR., NORTH POLE 99705
PHONE: 488-2035

RE: HB 63 & SB 238 - PLUMBING CODE

MSG: PLEASE ADVANCE AND PASS THESE BILLS THIS SESSION.

Interior Building Association Inc.

P.O. Box 80215 - Fairbanks, Alaska 99708

MAY 7 1985

April 12, 1985

Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear

I would like to take this opportunity to ask for your support of House Bill 63. Alaska needs to adopt the 1985 Uniform Plumbing Code, without ammendment, to keep pace with the ever changing construction practices. Affordable housing is still a mojor goal of Alaskans and the housing industry needs to take advantage of new technologies that keep housing affordable without compromising quality.

Thank you in advance for your attention to our concerns in getting House Bill 63 passed in the legislature.

Sincerely,

J. A. Pallotto

Member, Interior Building Association

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* DELIVER TO: JPOM
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* ORIGINAL
* SENT: 05/09/85 TIME: 11:35
* FROM: PAULA GRAY
* SUBJECT: POM-FAIRBANKS
* PRINT DATE: 05/09/85 TIME: 11:36
*
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TO: ALL MEMBERS OF THE HOUSE & SENATE

FROM: ERIC STENBERG, BX 135, FAIRBANKS, AK, 99707

PHONE: 488-3192-H 488-2141-W

RE: HB 63 & SB 238, PLUMBING CODE

MSG: I URGE PASSAGE OF THESE TWO BILLS SO THE STATE OF ALASKA DOES NOT END UP BEHIND THE REST OF THE COUNTRY WHEN IT COMES TO BUILDING CODES.

MAY 8 1985

MIDNIGHT SUN CONTRACTORS

General Contractors - Homebuilders

SRA 6614, Wasilla, Alaska 99687
(907) 745-2875

May 7, 1985

Senator Fred Zharoff
Senate Labor and Commerce
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Regarding: House Bill 63, Relating to the Plumbing Code

Dear Senator Zharoff:

I see in House Journal records of February 16, 1984, you voted in favor of House Bill 508. I was not in favor of Amendment No. 1 to House Bill 508 which you also favored. My views are shared by a majority of building officials throughout Alaska, also please remember House Bill 63, which is updated but similar legislation to House Bill 508, is the Governor's Bill. The Commissioner of Labor who must enforce the plumbing law supports it, a survey of 65 plumbers who do the majority of residential, single and multi-family plumbing in the state, showed 60 of 65 in favor of House Bill 63. The State Home Builders Association supports House Bill 63, the City of Fairbanks has found it necessary to resort to litigation in a City vs. State court action in an effort to upgrade their plumbing code.

Regarding the plumbing code, we, the people, have not been represented in Juneau, we have not been heard, if we have been heard, we have not been listened to. It's about time for the people to get some consideration and priority over the disgusting union political power that is destroying our economy.

House Bill 63 is a bill for the majority of the people, needed badly for the entire housing industry. Please do what you can to represent your people.

Sincerely,

Lester Hawkins

LH:jf

JAN 23 1986

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* DELIVER TO: JFOM
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*
* ORIGINAL
* SENT: 01/23/86 TIME: 08:22
* FROM: LIOKOD
* SUBJECT: KODIAK FOM
* PRINT DATE: 01/23/86 TIME: 08:22
*
****

JAN 23 1986

TO: SENATOR FRED ZHAROFF

TO: REPRESENTATIVES THOMPSON AND NAVARRE

FR: DOUGLAS I. MATHERS D.B.A
MATHERS PLUMBING AND HEATING
P.O. BOX 2916
KODIAK, AK. 99615
HM: 486-4591 WK: 486-4591

RE: HB 63 AND SB 238 PLUMBING CODE

I SUPPORT HB 63 AND OPPOSE SB 238. THERE ARE TWO THREE STORY HOUSES IN KODIAK AWAITING A DECISION. IT WOULD BE NICE TO AVOID THE ADDED EXPENSE OF COPPER OR CAST IRON. PLEASE ADVISE OF AN APPROXIMATE DATE OF DECISION ON THIS MATTER. LET'S GET THIS QUESTION OVER WITH. THANK YOU.

EOM

ALASCOM Telegram

RECD FEB 4, 1986

08CC1 ANCHORAGE AK 73 02-04 0915 AST 1986 FEB 4 10 12

PMS 465-4856

COMMISSIONER JIM ROBISON DEPARTMENT OF LABOR

BOX 1149

JUNEAU AK 99802

FEB 11 1986

Comm. JR
Deputy
Sp. Asst.
Info Off.
Admin. Serv.
Int. Aud.
Mea. Dir.
To: Bacalao
cc: Nevora
cc: Thurnell
cc:

SUBJECT: UNIFORM PLUMBING CODE COMPLIANCE

CONDO BUILDING AT GIRDWOOD USING PLASTIC PIPES. TOM WOOD PLUMBING AND HEATING IS CONTRACTOR.

SENIOR CITIZENS BUILDING IN NINILCHIK AND HOMER ALSO HAVING ABS PLASTIC INSTALLED OUT OF COMPLIANCE WITH STATE PLUMBING CODES.

OFFICERS AND MEMBERS OF LOCAL 367 INSIST THAT STATE PLUMBING CODE BE ENFORCED. STATE PLUMBING INSPECTORS TO CONDEMN WORK DONE THAT IS OUT OF COMPLIANCE.

LOCAL 367 SUPPORTS SB238.

LARRY GALLAGHER, BUSINESS REPRESENTATIVE

PLUMBERS AND STEAMFITTERS LOCAL 367

RECORDS
CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

247

Alaska Public Utilities Commission

POSITION PAPER
SENATE BILL 247

The Alaska Public Utilities Commission agrees with the following conclusion of the Performance Report of the Commission, completed by the Division of Legislative Audit on November 16, 1984:

> In our opinion, the Alaska Public Utilities Commission should continue to regulate public utilities and pipelines and pipeline carriers. We believe that the public interest is being served by requiring public utilities and pipeline carriers to be certificated by the Commission. This process stabilizes demand for the utility service by eliminating competition and thereby allowing economies of scale to operate. Economic regulation by the Commission, in place of that competition, ensures that the utilities provide adequate service at the lowest reasonable rates.

To the extent of its ability the Commission has implemented the four recommendations made by the audit team to improve the efficiency and effectiveness of the Commission's operations.

March 29, 1985

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

CS SB 247(L&C): "AN ACT EXTENDING THE TERMINATION DATE OF THE ALASKA PUBLIC UTILITIES COMMISSION; AND PROVIDING FOR AN EFFECTIVE DATE."

NOTE: CHAIRMAN NEEDS TO MOVE FOR THE ADOPTION OF THE L&C CS;

→ Letter of Intent

THIS LEGISLATION EXTENDS THE ALASKA PUBLIC UTILITIES COMMISSION UNTIL JUNE 30th, 1986. IT IS THE INTENTION OF THE COMMITTEE TO CONDUCT INTERIM RESEARCH ON THE REGULATORY PRACTICES OF THE ALASKA PUBLIC UTILITIES COMMISSION AND CONTINUE THE SUNSET PROCESS DURING THE SECOND SESSION OF THE 14th ALASKA LEGISLATURE.

NOTE: CHAIRMAN WILL NEED TO MOVE THE LETTER OF INTENT

Bennett's staff suggested you move Letter of Intent after motion to Adopt CS;

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

M E M O R A N D U M April 25, 1985

SUBJECT: Termination of APUC

TO: Senator Fred Zharoff, Chair
Senate Labor and Commerce Committee

Representative Mike Navarre, Chair
House Labor and Commerce Committee

FROM: Billy G. Berrier BGB
Director
Division of Legal Services

You have asked whether in our opinion if no legislation were enacted to extend the Alaska Public Utilities Commission under the sunset provision of AS 44.66.010(4) which provides for expiration of the Commission on June 30, 1985 would the operation of the Commission be impaired during the following year.

This question was examined in connection with the sunset of the Alaska Transportation Commission and opinions from the Ombudsman, the Department of Law and the Division of Legal Services were published in a report of the House Commerce Committee entitled Interim Report - Sunset In Alaska 1979-1980. Copies of the opinions are enclosed.

There has been nothing since which would clarify the question.

It is still my opinion that there is serious question concerning the power of the Alaska Public Utilities Commission to consider new matters in the year following the expiration date.

BGB:ojb
J14/044

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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BGB:ojb
J14/044

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

PROPOSED SENATE LABOR AND COMMERCE COMMITTEE LETTER OF INTENT
FOR CS SB 247(L&C)

DUE TO THE TIME CONSTRAINTS IMPOSED BY THE 120 DAY SESSION LIMIT, AND THE COMPLEXITIES OF UTILITY REGULATION, IT IS THE INTENT OF THE SENATE LABOR AND COMMERCE COMMITTEE TO CONDUCT RESEARCH DURING THE INTERIM TO EXAMINE THE REGULATORY PRACTICES OF THE ALASKA PUBLIC UTILITIES COMMISSION. PASSAGE OF CS SB 247(L&C) WILL EXTEND THE ALASKA PUBLIC UTILITIES COMMISSION UNTIL JUNE 30, 1986, AND IT IS THE INTENTION OF THE COMMITTEE TO CONTINUE THE MORE FORMAL SUNSET REVIEW DURING THE SECOND SESSION OF THE 14th LEGISLATURE.

Original sponsor: Ferguson

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 247 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act extending the termination date of the Alaska Public Utilities Commission; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 44.66.010(a)(4) is amended to read:

(4) Alaska Public Utilities Commission (AS 42.05.010) -- June 30, 1986 [1985];

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 3/21/85
Referred: Labor and Commerce

IN THE SENATE BY FERGUSON

SENATE BILL NO. 247

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act extending the termination date of the Alaska Public Utilities Commission; and providing for an effective date."

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* Section 1. AS 44.66.010(a)(4) is amended to read:

(4) Alaska Public Utilities Commission (AS 42.05.010) -- June 30, 1995 [1985];

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 247

Title: Extending the Alaska Public Utilities Commission

Sponsor: Ferguson

Requestor:

Date of Request: 3/21/85

FISCAL DETAIL

Agency Affected: Commerce & Ec Development

Program Category Affected: Consumer Prot.

BRU, Program or Subprogram(s) Affected: Alaska Public Utilities Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING	0	0	0	0	0	0
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 SUPPLIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS	0	0	0	0	0	0
800 MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

The intent of this "0" Fiscal note is to indicate that passage of legislation would not increase our funding requirements beyond what we have submitted and will submit as budget requests.

Prepared By: C. Guess, Chairman Phone: 276-6222

Division: Alaska Public Utilities Commission Date: 3/29/85

Approved by Commissioner: Date:

Agency:

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 0072

4183 SLAB SB 251 - SB 253

1863

RECORDS

CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

251

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MAR 12 1985

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M March 12, 1985

SUBJECT: Regulation of the practice of psychology (Work Order No. 14-0617)

TO: Senator Jalmar Kerttula

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have asked for a summary of the enclosed draft.

Section 1 amends AS 08.86.070(1) to require the board to establish objective examination requirements. The section also repeals paragraphs 10 and 11 as redundant because the board has authority to adopt regulation under AS 08.86.080.

Section 2 permits the board to accept applicants with degrees from schools whose program does not meet the requirements of the American Psychological Association Education and Credentialing Committee in Psychology if the program is approved by the board. The section also requires the board to accept applicants with degrees in subjects not now accepted.

Section 3 makes a technical change to the temporary licensing statute because of the amendment in section 2 adding examination requirements to AS 08.86.130.

Section 4 makes technical amendments to continue permitting the board to issue temporary licenses without examination. It clarifies that a licensed or certified psychologist may qualify for a license by credentials either through education and licensing by another licensing jurisdiction or by being a diplomate of the American Board of Professional Psychology.

Section 5 amends the statute on qualifications for psychological associates to reflect the expanded recognition of academic institutions contained in section 1 of the bill.

Barry M. Levit, M. Ed.
Psychological Associate
Psychological/Counseling Services
1867 Airport Way
Fairbanks, Alaska 99701
(907) 452-1761

APR 2 1985

March 29, 1985

The Honorable Fred F. Zharoff
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Senator Zharoff,

I would like to express my support for Senate Bill No. 251, introduced by Senators Kertulla and Josephson. The bill addresses the Regulation of Psychology.

I know that my colleagues join me in hoping that the bill is acted upon quickly and positively.

Thank you.

Sincerely,

Barry Levit, M.Ed.

Barry M. Levit, M.Ed.
Licensed Psychological Associate

BML:cmp

A REVIEW AND CRITIQUE OF THE ALASKA PSYCHOLOGISTS AND PSYCHOLOGICAL ASSOCIATES STATUTES AS 08.86, AND THE ALASKA ADMINISTRATIVE CODE 12 AAC 60

With Recommendations and Suggestions for Change

Robert M. Arvidson
Odiak Slough
Cordova, Alaska; March 1984

Abstract

A review of the Alaska Psychology Statutes and Administrative Code reveals rather advanced licensure requirements for two new frontiers (Psychology and Alaska). This review and critique is concerned with the restrictive nature (e.g., sanctions for psychoanalytic practice) of the statutes on the one hand and the somewhat arbitrary exemptions to the act on the other. Criticisms are also directed towards problems of definition and specialty designations, the adoption of the approved program concept and post-graduate experience requirements for psychologists, and to the entry examination. Recommendations are made for both technical and substantive statutory review by legislative committees and for an orientation towards primary prevention. General suggestions are cast towards the future need of mental health enhancement services in a culturally diverse great northland where population growth is expected to accelerate.

A REVIEW AND CRITIQUE OF THE ALASKA PSYCHOLOGISTS AND PSYCHOLOGICAL ASSOCIATES STATUTES AS 08.86, AND THE ALASKA ADMINISTRATIVE CODE 12 AAC 60

With Recommendations and Suggestions for Change

Robert M. Arvidson
Odiak Slough
Cordova, Alaska; March 1984
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In reviewing the enabling Acts for psychology in Alaska, one is struck by the complex licensing requirements for a young science[1,2] and profession in a new frontier (Alaska) where the delivery of psychological health services should be developed and oriented towards the needs of the people. One is also struck by the blurring of distinctions between the disciplines of psychology and psychoanalysis. In addition, a review of the Statutes and Code reveals confusion concerning the definition of critical terms, the lack of designations for appropriate psychological specialties, the exemptions of other professions from the statutes, and confusion concerning the required examination. These topics and others relating to the concept of "approved program" and post-graduate experience requirements are discussed. The distinctions between psychology and psychoanalysis are discussed first as a medium for presenting information relating to psychology's role in the mental health field, and for questioning the validity of various licensure requirements. A challenge is directed towards the concept that only licensed professionals are qualified to receive renumeration for the prevention of psychological problems.

(A). Psychology and Psychoanalysis

Psychology licensure has been in a condition of flux in Alaska since the first state law respecting the profession was enacted 17 years ago (1, ch 136, SLA 1967). Various amendments to the statutes have been approved by the legislature, and a recent amendment forestalled the scheduled termination (sunsetting)[3] of the Board of Psychologist and Psychological Associate Examiners (hereafter referred to as the board; am 1 ch 29 SLA 1983). In general, the nature of the amendments other than for clarification or continuation of the board has been to increase the restrictive structure of the statutes. However, it must be noted that some recognition and professional parity was gained by clinical social workers through a recent amendment which allows said workers to engage in the practice of psychotherapy (AS 08.86.180(d); am 5 ch 29 SLA 1983). It should be noted, however, that the above amendment is probably related to pending legislation concerning the licensing of social workers under Title 8 (SCS No. 303).

The restrictive nature of amendments to the psychology statutes (meaning AS 08.86 or Chapter 86) can be illustrated by reference to AS 08.86.180 (a), (Practice of Psychology). In 1979, sub-section (a) restricted the use of two terms, namely psychology and psychologist. In 1980, the list of restrictive terms

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[1] Young science is not being used in a pejorative sense. See Note 1 in NOTES.

or titles was increased to 13, including "psychoanalysis" and "psychoanalyst" (am 14 ch 58 SLA 1980). While this remarkable proliferation is of interest in itself, the particular concern at this point is with the psychoanalytic terms. It appears that an interpretation should be made to determine if Alaska psychology can restrict the practice of psychoanalysis by reserving the use of the above terms (assuming competence, 12 AAC 60.180; Alaska Administrative Code or Code) to those licensed to practice psychology (physicians licensed under AS 08.64 exempted).

As provided in AS 08.86.180(a) a person may not offer services of psychoanalysis or hold out to the public as a psychoanalyst unless he is licensed as a psychologist. The restricted use of these terms by psychology becomes presumptuous when the historical development of the mental health field is considered, and when attention is focused on the current content of "approved programs" (doctoral or their equivalent) in clinical, counseling and school psychology or professional-scientific which is a combination of the above programs [American Psychological Association (i.e., APA, see Note 2) 1983b, pp. 1379-1382].

Historically, and currently, distinctions have been and are made between the disciplines of psychiatry, psychoanalysis and psychology. The necessary and sufficient conditions of being or becoming a psychoanalyst do not specifically include nor preclude the training of or licensure as a psychologist. Similiarly a psychologist is not necessarily or usually a psychoanalyst. A psychoanalyst is not required to be a physician. In addition, most physicians are not psychiatrists and many psychiatrists are not psychoanalysts. However, physicians, psychiatrists and other medical specialists as well as psychologists and other lay persons can and have qualified as psychoanalysts (see Hilgard et al., 1979, p. 490).

Psychiatry by definition must be sanctioned by the medical profession; a psychiatrist must be a licensed physician. Psychoanalysis has also been dominated by the medical profesison, but it is possible to become a lay analyst. To obtain membership in either the American Psychoanalytic Association or the rival American Academy of Psychoanalysis, a candidate must usually be a graduate of an approved psychoanalytic institute such as the Freudian New York Psychoanalytic Institute or the neo-Freudian William Alanson White Institute [exceptions have been made as in the case of Helen Ross, who only held a bachelor's degree in education (Gross, 1978, p. 150)]. Personal analysis and the analysis of clients under supervision is also usually required both in the U.S. and elsewhere (Arvidson, 1969). This is not the type of program usually pursued by psychologists interested in the practice of (clinical or school) psychology.

As Gross (1978, p. 150) points out, there were only 39 Ph.D. psychologist members of the American Psychoanalytic Association (presumably in 1978) out of a total membership of about 3,700 analysts. Gross states that none of the analysts have found their way to Alaska. There were 60,691 members of the APA in 1982 (APA 1983(e). Alaska had less than 78 licensed psychologists in 1979 (Lindback, December 31, 1981) who represented only a fraction of the estimated 32,000 psychologist health service providers (PHSP) in the U.S. in 1979 (Vandenbos et al., 1981). A vast majority (67.8%) of the doctoral level PHSP listed clinical psychology as a specialty (see Vandenbos et al., 1981; Table 8, page 1400, lists 19 subfields of specialization for PHSP other than clinical psych[illegible] Psychoanalysis is not listed as a subfield.)

Since the used term "psychoanalyst" is restricted in AS 08.86.180(a), (b)(3), it could be assumed that some reference might be made in the statutes to the certification or recognition of psychoanalysts. This was certain by the case for another professional group when AS 08.86.180(b)(4) was amended to read "...a person describing himself as a 'social psychologist' if he is verified to be a social psychologist by the American Sociological Association" (am 10 ch 69 SLA 1970; repealed 16 ch 65 SLA 1973). However, the term is not defined in AS 08.86.230 or AS 08.64. It is interesting to note that AS 08.86.230(2) "to practice psychology" includes the term psychotherapy, but not psychoanalysis. Although psychotherapy is not defined in Chapter 86, psychotherapy must be distinguished from psychoanalysis since the terms are listed separately in AS 08.86.180(a), (b)(3). Psychotherapy is defined in the Standards for Providers of Psychological Services which contains guidelines for state licensing acts (APA, 1977, p. 12). However, the Standards does not contain a definition of psychoanalysis, nor does it restrict the use of the term in a suggested definition of psychology for licensing acts (p. 12). The Standards also counsels against the definition "of the work and scope of responsibility" of other disciplines by the psychological profession (APA, 1977, p. 14). It is also interesting that the APA Committee on Professional Standards lists psychotherapy and psychoanalysis as separate forms of intervention (APA, 1981b, p. 642).

To become a psychologist in Alaska other than by credentials (or exemption), an applicant must take an examination, and the only route to the examination includes the possession of a doctoral degree from an accredited school with an "approved program" (AS 08.86.130(2). The program must be approved by the American Psychological Association, not the American Psychoanalytic Association (AS 08.86.230(11)). A passing glance at the "APA-Accredited Doctoral Programs in Clinical, Counseling, and School Psychology: 1983" reveals no listing of psychoanalytic centers or institutes among the "approved programs" that may lead to licensure in Alaska (APA, 1983b, pp. 1379-82). Some of these programs probably offer course work in Freudian or neo-Freudian theory and techniques, but the point is made by the titles of the programs that these programs produce clinical, counseling or school psychologists, not psychoanalysts.

A brief consideration of the topics covered in the "Examination for Professional Practice in Psychology" (EPPP) can also be used for documenting the distinctions between psychonalysis and psychology. The EPPP, which is standardized and scored by the Professional Examination Service (PES) nationwide can be used by the Alaska board for evaluating applicants for licensure (American Association of State Psychology Boards, AASPB, (1979).[4] It can be assumed that it is used exclusively for the objective portion of the examination since+objective examination is listed in 12 AAC 60.110 or 130. The Information for Candidates* sheet does not contain any listed coverage of psychoanalytic theory or techniques among the 21 areas covered in the examination. The examination is, of course, for evaluating psychologists, not psychoanalysts. By way of analogy, it would seem that a test designed for selecting psychologists would be no more valid or reliable for identifying psychoanalysts than would a test designed for osteopaths be valid for certifying podiatrists. Psychoanalysts would not be expected to be conversant with techniques of school or industrial psychology, nor would podiatrists be required to master the field of osteopathic medication or manipulation. Fortunately, Chapter 64 (Title 8) makes a clear distinction between the latter two professions.

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* (AASPB, 1979) + (insert: no other)

(4) Recommended by revisor of statutes.

It is contended here that AS 08.86.180 is defective in not recognizing that psychoanalysis as a discipline is separate and distinct from both psychology on the one hand and medicine on the other, with its own prescribed course of study, training and professional affiliation, commonality notwithstanding. A license to practice psychology in the state should not grant a franchise on the term psychoanalyst or the use of the term psychoanalysis, nor should a license for the practice of non-psychiatric medicine. The most well known lay person to practice psychoanalysis was Anna Freud, the daughter of the founder of Psychoanalysis (she would not be able to practice psychoanalysis in Alaska without a license in psychology if she were still alive today).[5]

Whereas Chapter 64 (Medicine) of Title 8 does not include a section respecting the practice of psychoanalysis, and as Chapter 86 was enacted for psychologists, no psychoanalysts, it is hereby requested that the word psychoanalyst and the source term psychoanalysis be deleted from AS 08.86.180(a) and (b)(3).

It is also recommended that "approved program" be deleted from AS 08.86.130(2) and Chapter 86 in reference to psychologist licensing. The above discussion indicates that the Alaska psychology statutes are not dependent upon APA suggested guidelines or definitions (APA, 1977).

The statutory authority citations for these recommendations are contained in Section I of this paper.

(8). Exemptions

Several exemptions to Chapter 86 are provided to members of other professions through AS 08.86.180. A review of these exemptions suggests a need for clarification and revision. For example, AS 08.86.180(b)(3) can be interpreted to mean that a qualified member of another profession may hold himself out to the public by a title or description of services incorporating the words "psychological counseling", "psychological counselor", "psychotherapy", and "psychotherapeutic". The use of these terms is restricted (for those not specifically exempted from all or portions of AS 08.86.180) in AS 08.86.180(a), but the prohibition against the use of these terms is omitted from restriction in AS 08.86.180(b)(3). This appears to be contradictory since to allow the use of these terms is an indication of presumed endorsement of some qualification in the field of psychology. Yet, the same paragraph does not allow a qualified member of another profession to hold out "...to be trained, experienced, or qualified to render services in the field of psychology" (AS 08.86.180(b)(3). It would be assumed within the intent of this paragraph that a "psychological counselor" would have some training in psychology.

The contradiction notwithstanding, it appears that certain non-licensed psychologists (other than physicians and clinical social workers) can engage in independent private practice (including psychological counseling and psychotherapy) as long as they do not hold out to be psychologists, psychometrists or psychoanalysts. That is, they can offer psychotherapeutic services and services provided by psychological counselors since these services are not proscribed in AS 08.86.180(b)(3) (precedents are set in AS 08.86.180(b)(5) and (d) for qualified professionals to hold out or represent themselves as psychological specialists).

The confusion concerning the above exemption can also be illustrated by reference to AS 08.86.180(d) which allows clinical social workers (who are not defined in the statutes) to hold "...out to the public by a title or description of services incorporating the words psychotherapy , psychotherapist , or psychotherapeutic. Technically, clinical social workers are already entitled to use the terms psychotherapy and psychotherapeutic since these terms are omitted from the restricted list in AS 08.86.180(b)(3). One is best advised to seek legal help for interpretation of AS 08.86.180 which is certainly an imposition for a person who merely wants to know what is permitted or what is not permitted.[6]

The ambiguity of Section 180 canbe further documented by noting that it (the section) does not apply to"a physician engaged in the normal practice of medicine for which he is licensed under AS 08.64. (AS 08.86.180(b)(5). It would seem that ambiguity could be reduced by deleting the word "normal" and adding "or osteopathy" (or osteopathic medicine) after medicine, if the intent is to also exempt osteopathic physicians who are licensed to practice medicine under AS 08.64.

Some attention should be focused on the general exemptions granted to those licensed to practice medicine under AS 08.64. For example, it is unlikely that physicians engaged in the practice of nephrology, endrocrinology, or proctology would have any expertise in psychometry. There are 47 listings in the Physicians and Surgeons Medical Specialty Guide section of the February 1983 Anchorage phone book yellow pages [according to Shimberg (1981, p. 1138) there are 23 medical specialty boards for physicians]. Only a very few of these medical specialties such as psychiatry are relevant to specific psychological practice (this is not to suggest, however, that physicians do not provide important psychological intervention services in the general course of their practice). Perhaps physicians (and osteopathic physicians) could be exempted in a manner similar to the exemption extended other licensed professionals by the Medicine Act (AS 08.64.170(a)(4); i.e., exempt them "to engage in a practice that is authorized under that chapter."

AS Section 08.86.180 is perhaps discriminatory as it currently stands. Physicians are extended carte blanche exemption, but clinical social workers are only given a partial exemption, and qualified members of unnamed professions are given a highly restricted exemption. Ethical reminders are directed toward the latter group only (of course, ethical directives cannot be equated with legal sanction).

The conditions under which both licensed and non-licensed professionals are exempted under AS 08.86.180 should be more clearly identified and specified. One of the most serious defects in AS 08.86.180(b)(3) is that it actually prohibits nationally certified lay analysts (i.e., qualified members of other professions) from holding out to the Alaska public that they are what they were trained to be, namely psychoanalysts, unless they are first licensed as psychologists. It would make sense to exempt qualified psychoanalysts from AS 08.86 rather than restrict the use of the term. As it now reads, AS 08.86.180 could even be in violation of Federal Trade Commission anti-competetive regulations.

It is requested that AS 08.86.180 be revised and clarified. It is also recommended that definitions be provided for psychological terms such as counseling and psychotherapy (AS 08.86.180; AS 08.86.230). See Sections I and J for specific recommendations, authority citation and agency reference.

(C). Professional Designations and Psychological Specialties

This section can be introduced by reference to AS 47.30.915(11) where "clinical psychologist" is included in a list of mental health professionals. "Clinical" should be deleted in reference to "psychologist" since AS 08.86.230(1) statutorily defines only one term, namely "psychologist". AS 08.02 requires designation of specialties with titles, but Chapter 86 and the Code have completely avoided the use of "clinical" or other descriptive titles for psychologist even though applicants must be graduates of approved clinical, counseling, or school psychology programs.[7] The statutory use of "clinical" in AS 47.30.915(11) could lead to ambiguous descriptive titles for "psychologist." Standards (and presumably specialty designations) authorized by AS 08.86.707(4)* are not reflected in 12 AAC 60.

This is perplexing since the APA Committee on Professional Standards has developed and published specialty guidelines for clinical, counseling, school, and industrial/organizational psychologists (APA, 1981b).[8] It is interesting to note that a quick glance at current Alaska phone books reveals several listings which include the word "Clinical", such as Clinical Psychology or Licensed Clinical Psychologist. Assuming that these psychologists were trained in clinical psychology, it would be ethical for them to refer to themselves as clinical psychologists as long as it is legal, but if the state only bestows the title "psychologist", then it may be both illegal and slightly unethical to use the word "Clinical" in their titles. This may also apply to other professions licensed under Title 8.

Of course, there may be "grandperson" rights involved here, or policy statements by the board that have not yet been published in 12 AAC 60. However, diplomates of the American Board of Professional Psychology could also be in violation even if their diploma is issued for the specialty of clinical psychology. The lack of specialty designation in 12 AAC 60 is probably just an oversight and there is no suggestion being made here to impugn the character or reputation of any person.

The public does, however, have a right to know which psychological specialties are sanctioned by the board. Any specialties authorized by AS 08.02.010(a) should be articulated and included in 12 AAC 60 via the Administrative Register. Then, AS 44.62.030 (consistency between regulation and statute) could be invoked if necessary.

Reference is also made in AS 47.30.915(11) "to a psychological associate with a clinical or counseling specialty." According to AS 08.86.164, psychological associates can be licensed for specific activities, but only counseling and psychometrics are listed in either AS 08.86.170 or AS 08.86.190. Specialty designations for psychological associates are not prescribed in AS 08.02.010(a). The APA Committee on Professional Standards (APA 1981b, p. 642) cautions that psychological associates should not be referred to as clinical psychologists.

It was noted earlier that the APA certifies (or accredits) doctoral programs in Clinical, Counseling, and School psychology. The approval of clinical or even counseling specialties for psychological associates may violate the "approved

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* should read AS 08.86.070(a)(4)

program" concept established in AS 08.86.130(2). The only use of the term "clinical" in Chapter 86 is in describing "social worker" in AS 08.86.180(d). "Clinical" is not defined in AS 08.86.230, nor is social worker or clinical social worker (reference is made to social worker as a "mental health professional" in AS 47.30.915). The term clinical has been used in referring to "...non-medical professionals (clinical psychologists)...." in a Supreme Court Opinion [Allred v. State, 554 P2d 411, 418 (Alaska 1976)].

A clinical psychologist and a psychological associate with a clinical or counseling specialty are referred to as "mental health professional(s)" in AS 47.30.915(11) [Psychologists are defined as "health care provider(s)" in AS 09.55.560; the term "healing arts" is used in AS 08.02.010(a) in reference to psychologists and other professionals].

Some clarification or elaboration might be helpful at this point. The intent is not to criticize the practice of counseling by psychological associates licensed under Chapter 86. It would certainly be to the public good to sanction and to encourage this counseling activity. However, there are problems of definition and delineation concerning the terms clinical and counseling (particularly the distinction between counseling and psychotherapy) that have not been properly addressed in Chapter 86 or the Code. It is contended here that the "approved program" concept is responsible for much of the confusion since the "approved programs" refer specifically to doctoral programs in clinical, counseling and school psychology (AS 08.86.230; APA, 1983a). Yet the use of the terms clinical (in reference to psychologist) or clinical psychology in Chapter 86 or the Code has been avoided as was mentioned earlier and the term counseling is used as its meaning is self explanatory which may not be the case. While it is realized that statutory definition of certain terms has been avoided in other Chapters, it would be in the best interest of the profession of psychology (and the people of Alaska) to identify, define, or describe prime psychological terms, especially if the terms are generally misunderstood and are emotionally laden.

Some of the problems in defining who can do what could be resolved by deleting the "approved program" concept which the statutes sanction (AS 80.86.130(2). It is unlikely that the board could make a functional and meaningful construction of an "equivalent" program as provided by AS 08.86.230(11) due to the endorsement of APA programs in Paragraph (11) above. However, if the "approved program" concept is abandoned, then entry levels for both psychologist and psychological associate could be formulated in line with consumer need and the availability of psychological service providers.

The statutes may also have to be amended before the board can even "establish educational and training requirements for psychological associates" as provided by AS 08.86.070(3)(10), since these standards may be statutorily restricted by AS 08.86.162.

It must be noted that seven psychological specialties have already been established by the board, but these specialties have not been published in the Administrative Register nor included in 12 AAC 60 for public inspection. These seven specialties, including clinical and counseling psychology are listed on the "Associate Specialty and Supervision Documentation" form sheet that is included in the application packet for psychological associates [State of Alaska, Department

of Commerce and Economic Development (DECD), 1982]. The other specialties are applied experimental, developmental, industrial, psychometrics, and educational and school psychology. It was noted above that only counseling and psychometrics are referred to in Chapter 86 and the use of the term counseling is problematic with reference to the "approved program" concept, as is the clinical specialty. While the APA does accredit approved doctoral programs (and also awards diplomate status) in school psychology, Chapter 86 and the Code are silent with respect to school psychology as they are to the other specialties listed in the associate packet with the exception of psychometrics and counseling.[9] Clinical, counseling, and school programs were noted above as "approved programs" in psychology to show that the board may be violating the concept of "approved program" adopted in AS 08.86.130(2) by sanctioning approved doctoral program specialties for sub-doctoral psychological service providers.

As noted earlier, industrial/organizational, clinical, counseling, and school psychology are recognized as professional specialties by the APA (APA 1981b, p.640). Diplomas are granted in these four areas by the American Board of Professional Psychology. Diplomas are also issued for hypnosis by the American Board of Psychological Hypnosis. The above diplomas are not issued to psychological associates. It should be noted that even though diplomas are granted in industrial/organizational psychology, there is no "approved program" of industrial/organizational psychology.

Approved program in reference to AS 08.86.130(2) is defined in AS 08.86.230(11) but the definition itself is confusing. It states, "approved program means a program which meets the requirements established by the American Psychological Association Education and Credentialing Committee in Psychology for an approved program." To begin with, APA has been accrediting programs since the 1940's, but there is no date when the above requirements were established. Secondly, there is no Education and Credentialing Committee in Psychology, per se, listed in a recent tally of APA boards and committees (APA, 1983d, pp. 683-702). Thirdly, the APA Committee on Accreditation (APA 1983b) accredits programs based upon their Accreditation Handbook (APA 1983d). APA does have a Task Force on Education and Credentialing (APA 1983d), p. 685), but this task force is not cited in the APA Accreditation Handbook section on "Criteria for Accreditation" (APA 1983a, Appendix B, pp. 1-27, plus title pages). The APA does have an Education and Training Board (APA 1983d, p. 685) which is cited in the Handbook (Appendix B, p. 1). The latest criteria were evidently adopted in 1979 and amended in 1980. The Handbook was revised in 1983 (APA, 1983a). The criteria are formulated by the Committee on Accreditation, approved by the Education and Training Board, and adopted by the APA Council of Representatives (APA 1983a, Appendix B, pp. 1-27, plus title page).

In an attempt to understanding the meaning of approved program in AS 08.86.230(11), the author requested and received (February 19, 1984) from the Alaska DCED (Division of Occupational Licensing), information concerning the criteria used for evaluating doctoral programs in psychology. The information consisted of a single "guideline" sheet published by the Council For the National Register of Health Service Providers in Psychology (1977). The only documentation for the above "guideline" sheet states, "As developed by the Education and Credentialing in Psychology Meeting in 1977."[10] If this is the guideline for "approved program" in AS 08.86.230(11), it appears that it is published by the wrong organization,

for the wrong year, and refers to the wrong committee even if there are basic similarities with the criteria established in the APA Accreditation Handbook [see Northern Lights Motel, Inc. v. Sweaney, 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256, Alaska 1977)].

There is also some question concerning the use of the phrase "approved program" in AS 08.86.162(2) and 12 AAC 60.010(b)(4) in reference to psychological associate. While it is assumed that this must mean a program that has been approved by the institution granting the master's degree or a regional agency, a precedent has been set in defining "approved program" only at the doctoral level in AS 08.86.130 and AS 08.86.230(12). The equivalency provision in AS 08.86.230(12) would not apply to psychological associate. If on the off chance the use of "approved program" in reference to psychological associate means to obtain a master's degree from a school which has an "approved" doctoral program, this should be changed. Stevens et al. (1979) have identified 70 clinical programs at the masters-level in schools that do not have doctoral programs in clinical psychology. The same study also documented the national need for master-level clinicians, particularly for employment in agencies such as community mental health centers. Several recommendations can be made including the formulation of psychologist specialist designations and psychological associate specialties. These recommendations and others for the deletion of "approved program" for psychologist and the clarification of approved programs for psychological associates are contained in Sections I and J.

(D). Examinations

A few comments are also in order concerning the examinations authorized by AS 08.86.070(b)(2). The examination is both objective and essay (12 AAC 60.110(a). The board may use an objective examination provided and scored nationwide by the Professional Examination Service (PES, See AASPB, 1979), or it evidently may construct and administer its own examination for evaluating licensure candidates. If the PES is used, the areas covered in the examinaiton are made known to applicants through an Information for Candidates booklet (AASPB, 1979) and the passing scores for psychologist and psychological associate are specified in 12 AAC 60.140(a)(b). The Code, however, is silent with regard to the conditions or content areas of any locally constructed examination. The questions to be asked here are: Does the board use the PES exclusively for the objective examination? If there is another examination, what are the content areas and cutoff scores?

If the PES is used exclusively, then 12 AAC 60.110(d) which provides for examination questions concerning AS 08.86 should be declared null and void and deleted from the Code. There are two reasons for this, the first being that it is unlikely that a nationwide examination such as the PES would contain questions on Alaska's psychology statutes. The Alaska Statutes are not included in the PES list of 21 areas covered in the examination. Secondly, it is unlikely that questions on AS 08.86 could be included in the essay section of the examination since the essay section must "be based upon material contained in standard text books used in accredited educational institutions" (12 AAC 60.140(e). It is assumed here that the above means "psychology" text books used in "approved programs", at least for the psychologist applicants. Alaska does not have any approved doctoral programs in psychology and it is unlikely that AS 08.86 would be featured in programs outside the state. It is conceded that psychological associates might encounter AS 08.86 in standard text books in Alaskan universities.

The regulations should clarify how the written portion can contain questions on AS 08.86.

The code should specify whether there are both written and oral sections for the examinations. Reference is made to the "written portion" in 12 AAC 60.110(b) and to the "written examination" in 12 AAC 60.110(d). The board is authorized to conduct examinations by AS 08.86.070(2) but the nature of the examinations are not specified. The questions here are: Does the board conduct oral examinations? And what is the interpretation of 12 AAC 60.110(b)?

Recommendations for clarification of the examination in addition to those suggested above are listed in Section J.

(E). Experience

Several comments can be made concerning the nature of experience that is required for permission to sit for the examinations prescribed by AS 08.86. A first comment concerns AS 08.86.130(3) which reads "has at least one year's experience acceptable to the board." The words "at least" could be deleted if what is acceptable to the board is "one year's experience", which appears to be the case. This may also apply to AS 08.86.162(3). The Code refers to one year's experience and three year's experience for psychologist and psychological associate applicants respectively (12 AAC 60.070). As AS 08.86.130(3) and AS 08.86.162(3) now stand (since 1967 for psychologist applicants) the board can establish additional experience by regulation. It would seem to be that if the concept of "experience" requires statutory sanction, then the length of term of this experience requires statutory definition as well. The prospective nature of legislation notwithstanding, if qualification for examination as provided by AS 08.86.130 and AS 08.86.162 require statutory definition, then said definition should be categorical. In addition, it is suggested that AS 08.86.130(3) should specify the post-doctoral (or post graduate) nature of the experience (for psychologists), since this is the only experience acceptable to the board in 12 AAC 60.070(b).

It is not clear exactly how the above discussion applies to psychological associate experience as required in AS 08.86.162(3). AS 08.86.070(a)(10) authorizes the board to "adopt regulations establishing educational and training requirements for psychological associates licensed under this chapter." However, AS 08.86.162 provides for these same requirements by statute. A definition of supervised experience is also provided by statute (AS 08.86.230).

At this point, it can also be mentioned that there is some confusion between AS 08.86.162(3) and (4) and AS 08.86.230(11).* According to one interpretation of AS 08.86.230(11)* a non-licensed psychologist with a master's degree (or doctorate) could provide the supervision required in AS 08.86.162(3) for a psychological associate applicant in psychometry (12 AAC 60.70(c). However, the applicant could not offer the recommendation of this same supervisor to the board for satisfaction of the recommendation requirement specified in AS 08.86.162(4).

On the subject of supervision, it can also be asked, what does "appropriate supervision" refer to in 12 AAC 990(2)? Supervised experience is defined in AS 08.86.230(11)* and referred to in 12 AAC 60.010, 12 AAC 60.070 and 12 AAC 60 080, but the word "appropriate" is not used in reference to experience except in 12 AAC 990(2) where it defines itself.

* See AS 08.86.162(3) — Relocated by revisor of Statutes.

To return to the subject at hand, the required experience (i.e., post master's) for psychological associate is specified in AS 08.86.162(3). However, AS 08.86.162(3) might read better if it stated, "has at least three years experience within the past ten years after obtaining a master's degree." That is, of course, unless it is the legislative intent of AS 08.86.162 to require that the master's degree must have been obtained within the last ten years as the extant paragraph suggests. This, of course, would not say much for maturation, continuing education, life's experiences or the basic value of a master's degree once it has passed its first decade.

The above, of course, are technical matters. Other more germane questions concerning required experience, can be asked here. One such question concerns the validity of the post-doctoral experience requirement for psychologist applicants (for licensure). What criteria has been used for determining that one year of supervised doctoral (or post-graduate) experience will lead to the competency in the practice of psychology? While it is realized that this question is addressed to the statute, per se, (AS 08.86.130(3), presumably it can be answered by the board. For example, are there published studies to this effect?

In considering the post-graduate experience, it should be borne in mind that graduates of approved programs (just to use an example) have already obtained a year of supervised experience in pre-doctoral internship.

Only two other professions (involved in the healing arts) that are regulated in Alaska under Title 8 (medicine and pharmacists) require any form of post-graduate experience and these experiences are classified as internships. Physicians and osteopathics licensed under Chapter 64 complete their internships after graduation. These internships have traditionally been considered as an integral part of "medical education and training" as opposed to supervised experience, per se. The professional value or functional worth of a medical degree without an internship is considerably reduced. However, the functional utility of a doctorate in psychology should be considerable since internship and other requirements have been met prior to graduation. This, however, is not the case in Alaska due to AS 08.86.130(3). The conditions in the referenced paragraph are defined and restricted by 12 AAC 60.070 and 12 AAC 60.080.

Pharmacists licensed under Chapter 80 are required to complete 1500 hours of supervised experience (internship or clinical clerkship) of which 160 hours (one month) must be completed after graduation, which does not seem to be unreasonable (author's opinion).

On the other hand, the Alaska Statutes (Title 8) have not imposed post-graduate supervised experience requirements on various other professions that are relevant to this discussion. Thus, dentists licensed under Chapter 36 are allowed to operate on the gums or jaw and to extract teeth; optometrists licensed under Chapter 72 are permitted to examine eyes for correcting vision and detection of ocular disease; chiropractors licensed under Chapter 20 are allowed to practice therapeutic dietetics, and to correct interference to nerve energy transmission and expression, all of the above sanctioned without post-graduate supervised experience requirements. In addition, one can be defended or represented by attorneys licensed under Chapter 08, which does not prescribe post-graduate experience for the practice of law. The educational and training programs for these professions (and psychology) require from four to eight years of full time

study in universities and/or professional schools. In addition, post graduate internships are an integral part of medical (including pharmacy) education and training. This apparently gives educators and supervisors ample time and opportunity to assess the character and competence of aspirants in most professions, with the exception of psychology.

Of all the professions listed above, only psychology licensure (Chapter 86) imposes post-graduate supervised experience requirements other than specified internships. This in effect grants discretion to the board that may not be consistent with powers delegated to other boards that have been established in Title 8.

Clarification is requested concerning the appropriateness, validity and reliability of the post-graduate experience requirements in AS 08.86.130(3). Other recommendations and suggestions for this section are contained in Sections I and J of this paper.

(F). Prevention

One of the most puzzling features of the psychology statutes is that a person must be a licensed psychologist (or statutorily exempted) to receive "...a fee...for the...prevention...of psychological problems and emotional and mental disorders of individuals and groups..." (AS 08.86.230(1)(2). This is like passing a law requiring individuals to be medical specialists to engage in disposal enterprises or to sell vitamins, soaps, and disinfectants to the public for the prevention of physical illness or disease. In a remote way it also seems to suggest that there should be a law against preventing a crime unless licensed to do so.

It is interesting that the statutory definitions for the practice of medicine (psychiatry included) in Alaska do not prescribe any prohibitions, per se, against the prevention of physical and mental conditions (AS 08.64.380(2)(A).[11] It is also noted that the APA Committee on Professional Standards (APA, 1981b, p. 642) does not include "prevention" in their definitions of clinical psychological services. The orientation is toward assessment and intervention.

A similar orientation is found in the Standards for Providers of Psychological Services (APA, 1977, p. 4). However, the same publication does refer (by footnote) to a definition of psychological practice which does restrict prevention by non-psychologists (APA, 1977, p. 12). It is assumed that this is the definition used as a model for AS 08.86, but it is noted that the model does not place restrictions on the terms psychoanalysis and psychoanalyst. (The source for the definition referred to above is cited as APA, 1967, pp. 1098-1099; this article is listed in the reference section as resource material).

Prevention is certainly a vital function of both mental and physical health service providers. All health providers should be involved in prevention, but prevention should not be restricted to or by them.

The Alaska Division of Mental Health and Developmental Disabilities (Department of Health and Social Services) recognizes the value of prevention. Their description of services includes "...a comprehensive program for the prevention of mental illness,

the care of the mentally ill and assistance to developmentally disabled Alaskans" (Eppenbach and Foster, 1983, p. 40). The Division provides grant funds for prevention programs administered by a network of community mental health centers. The Alaska Division of Family and Youth Services also have a positive policy towards prevention as a priority. The State Office of Alcoholism and Drug Abuse also provides prevention programs as well as intervention services.

According to Miller, the prevention of psychological problems and the promotion of human welfare is what is important, not who provides these functions. Miller states, "We are not physicians, the secrets of our trade need not be reserved for highly trained specialists. Psychological facts should be passed out freely to all who need and can use them, (Miller, 1969, p. 1070). He also suggests, "that psychology must be practiced by non psychologists" [Miller's quotes are taken from a secondary source (Schneider, 1981). Miller is listed in the reference section as resource material].

Albee, (1982, p. 1044) suggests we should "...encourage paraprofessionals, workers who want to get out into the community." Albee's main contention is that a society's maximum effort must be orientated towards prevention, not intervention. According to studies cited by Albee (p. 1043) there are an estimated 33 million emotionally disturbed individuals in the United States, but mental health professionals only see about seven million of them in a given year.

Albee (1982, P. 1043) defines emotionally disturbed as "...persons with depression, alcoholic addiction, incapacitating neurotic anxiety, organic brain conditions associated with old age, and the several functional psychoses."

Using the percentage (15%) cited by Albee, this suggests (hypothetically) that there were as many as 65,295 emotionally disturbed individuals in Alaska in 1981 (based upon Alaska Blue Book 1983 population statistics; population of Alaska 435,300, 1981; (Eppenbach and Foster, 1983)].

According to Lindback (December 3, 1981) there were 78 licensed psychologists and 9 licensed psychological associates in the state as of March 6, 1981. This is a ratio of one licensed psychologist (associates included) for every 751 disturbed individuals and a ratio of one licensed psychologist per every 4,253[12] nondisturbed individuals who might have need of psychological services. It is noted that this ratio of psychologists to the disturbed segment is higher than the national ratio of 1/1031, but as Albee (1982, p. 1043) states, "...the mental health community actually sees fewer than one in five of the seriously disturbed people, and only a small proportion of the larger group of people with problems." According to U.S. Congressman Roybal (1984, p. 163), "older persons have greater needs for mental health services than the general public." Roybal (p. 163) states, "Seventy to eighty percent of all nursing home patients have either recognizable mental illness or conditions commonly referred to as "senility", and most receive no mental treatment."

It is realized there are other mental health practitioners in the state such as psychiatrists and social workers, but the concentration of professionals in the larger Alaskan cities probably results in an even less favorable mental health provider/client ratio in many rural and remote areas. There may also be a shortage of health service providers for indigents and for persons in correctional facilities. It is generally believed that Alaska's population will increase at an accelerated rate in the future, compounding existing mental health problems.

It is requested here and in Section I that the term "prevention" be deleted from AS 08.86.230(2). It is also requested that the phrase, "...or for conducting research on human behavior...." be clarified or deleted from AS 08.86.230(2). Research is needed to document the variables relating to the presence or absence of mental health. As Section 08.86.230(2) now reads, sociologists, anthropologists or other professionals conducting research on human behavior may be in violation, AS 08.86.180 notwithstanding.

The request for deletion of the term "prevention" does not seem untimely since the inclusion of the term "prevention" in AS 08.86.230 is recent in origin (am 18 ch 58 SLA 1980).

It is respectfully suggested that the inclusion of the term "prevention" in AS 08.86.230 may be at variance with Section 4, Article VII of the Constitution of the State of Alaska (as amended 1983).

(G). Other Provisions

Several areas of Chapter 86 and 12 AAC 60 are discussed in this section. The first concerns the prohibitions against psychologists practicing medicine as stated in AS 08.86.180(c). This paragraph may have to be revised due to various 1983 amendments (am 8, 18 ch 48 SLA 1983) to AS 08.64.380. The word "mental" is now included in AS 08.64.380(2)(A) and exemptions to Chapter 64 are provided in AS 08.64.170(a)(4). Without this exemption, psychologists licensed under Chapter 86 would not be authorized to practice psychology as defined in AS 08.86.230, which prescribes for the treatment of mental disorders, which in turn relates to "the practice of medicine as defined in the laws of the state."

While it might seem a minor point at first, the Statute and Code booklet (State of Alaska, 1983) provided to applicants by the department (Commerce and Economic Development) does not contain "Notes to Decisions" or any explanation of recent amendments contained in the Statutes. Notes such as those referring to liability or privileged information (e.g., see Notes to Decisions, AS 08.86.200) could serve to remind applicants of their responsibilities.

In introducing an article on psychology and the law, Swobo et al. (1978 p. 448) states, "This survey suggests that a significant proportion of mental health professionals are either ignorant of or ignore their legal obligations." Although both Chapter 86 and the Code have sections on confidentiality, neither section contains the detail suggested by the Standards For Providers (APA, 1977, p. 9, p. 13). Nor do the sections contain a statement on reporting threats of danger to others or child abuse [see AS 47.17.020; Swobo et al. (1978), Knapp (1980), APA 1981a, pp. 635-636, and Kazan, 1981]. It is recommended that the Statutes or Code for psychologists and psychological associates contain statements on reporting threats of danger to others and on reporting knowledge of child abuse. It is also recommended that AS 47.17.020 be amended to include required reporting of child abuse by psychologists and psychological associates. Information should also be included in the Code concerning a client's right to informed consent (see Noll, 1981).[13]

There may be a defect in the wording of 12 AAC 60.080(6) concerning evaluation of experience. Reference is made to "...or after the effective date of this section approved by the American Psychological Association...." In effect, this i:

stating that the board (and, therefore, Alaska) will legally accept whatever future sanctions are made in this area by the APA without even reviewing these sanctions. This appears to be a surrender of states rights for events yet to take place, to an organization (albeit a most respectable one) that does not have legal jurisdiction in the state or in the nation. Even with jurisdiction and state rights considerations taken into account, it would seem that regulations should be based upon known factors, the prescriptive nature of much legislation notwithstanding. As suggested earlier, there is already some confusion concerning the criteria used in AS 08.86.230(11). It is noted here that a precedent for dating regulations is reflected in 12 AAC 60.185. It can also be noted here that 12 AAC 60.080(6) does not define "specialty training in applied psychology." This might include industrial/organizational psychology, and it was noted earlier that there is no "approved doctoral program" for this specialty. This could lead to a violation of the approved program concept adopted in AS 08.86.130(2).

Another question concerns the nature of "authority" in AS 08.86.150. Does "authority" refer to legal "authority" such as another state or country or does it refer to diplomas awarded by the American Board of Professional Psychology, which basically "certifies" that an individual is a professional psychologist. It is, of course, assumed here that "authority" refers to another legal jurisdiction such as a state or country but here is some ambiguity in the wording. In addition, there could be some problem in the wording of AS 08.86.150(3). According to Koocher (1979) once diplomate status is achieved, the diplomate could resign from APA and still retain the diploma but not be subject to sanctions from APA. Thus, it would be difficult to determine if the diplomate is in "good standing." It can also be asked here why the term "good standing" is used in AS 08.86.150 in reference to diplomate, but not in 12 AAC 60.070, 12 AAC 60.010, or 12 AAC 60.080.

As the statutes are oriented towards the approved program concept, AS 08.86.130(2) could be revised to read "has graduated from an accredited school with an approved program." A "doctoral degree with primary emphasis on psychology" is a condition of graduation from an approved program. Any equivalent program determined by the board under AS 08.86.230(11) could not deviate substantially from the approved program concept. The above might also apply to AS 08.86.150(1).

Another point that can be considered here is whether both AS 08.86.070(a)(11) and AS 08.86.080 are necessary for authorizing the regulatory power of the board; i.e., what are the distinctions between "duties" and "purposes" concerning Chapter 86? It is noted that AS 08.86.080 is cited as the authority for 12 AAC 60.185 although AS 08.86.070(4) (amended 1983) specifically provides for the regulation of standards. The authority for 12 AAC 60.185(a) (Ethics) is vague. The reference to standards in 08.86.070(a)(4) may also be subject to interpretation.

Finally, the Code does not state what happens to the application of an applicant who has submitted the required forms but is denied permission to sit for the examination. Also, neither AS 08.01.090 or AS 08.86.100 stipulate any provisions for appeal for unsuccessful applicants, AS 08.01.087 and citation of AS 44.62 in AS 08.86.100 notwithstanding (see Swoboda, et al., 1978, p. 455).

The recommendations for this section include a request for clarification of AS 08.86.180(c) (practice of medicine prohibited) and a request for the adoption of an amendment to AS 47.17.020 requiring psychologists and psychological associates

to report knowledge of child abuse. These recommendations and others relating to topics such as dating of criteria, informed choice, and provisions for appeal are listed in Sections I and J [see Northern Lights Motel, Inc. v. Sweaney, 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (Alaska 1977).

(H). Concluding Remarks

Of all the sciences and arts, psychology is probably the most complex,[14] the least understood, and possibly the most vital. It is complex because of the incredible number of variables impinging on human behavior. It is misunderstood by both the public and the profession itself because of these variables and because of its recent development in the history of science. It has the additional disadvantage of being both the subject and object of its own inquiry, and it is difficult to gain perspective, particularly when the emphasis is on isolated individual behavior. Never-the-less, psychology is vital because it offers promise and hope for intra-personal, if not inter-personal, conflict resolution.

All societies have need of the services of identifiable individuals that other members of the society can turn to for counsel or advice with some degree of trust and confidence. In early stages of development some of these vital functions are performed by practitioners known by various names such as prophets and shamans. In transitional or industrial (nuclear) societies, these vital functions are portioned out to those known by various titles such as psychologists, psychiatrists, or clinical social workers who use acknowledged methods of science and empirical validation as a base for their expertise.

However, there is always a group of sub-professionals hovering in the background when the supply of sanctioned professionals is scarce, and even when the supply is purportedly adequate. There is no way to legislate against the questionable practices of these individuals directly. According to a recent edition of Harper's (Lapham, 1984), there are 10,000 astrologers in the United States. It is not known how many of these astrologers have found their way to Alaska, but it is known that it is much easier to become an astrologer in Alaska than it is to become a licensed psychologist. If psychology in Alaska wants to discourage any questionable practice of mental health healing arts (or sciences) then it is incumbent upon psychology (meaning the board and psychology advocates such as the Alaska Psychological Association (ALPA) to provide avenues for the entry of trained specialists into the field that would lessen the public's need or desire to turn elsewhere.

The position taken in this paper is that the licensing requirement for psychologist and psychological associate are so complex and demanding that the assumed need for psychological services cannot be adequately met. The position has also been taken that too much weight has been given to the American Psychological Association's suggested guidelines for identifying and licensing psychologists. No attempt has been made to denigrate the APA, but it has been pointed out that APA has no jurisdiction in Alaska. In fact, the APA Committee on Professional Standards (APA 1981b, p. 641) has issued a statement recognizing "...that admission to the practice of psychology is regulated by state statute." However

there is a current proposal to bring membership requirements of state affiliates into line with APA specifications (Abeles, 1983, p. 666). As it now stands, only "about 34% of the state associations follow APA member standards." From this is can be seen that a majority of the state associations have their own interpretation of what it means to be a psychologist and this is presumably reflected in local licensing requirements (some hints of local initiative are reflected in AS 08.86). However, the ALPA wants more APA staff visits to the states (Abeles, 1983, p. 666).

Alaska psychology should avail itself of the considerable services and expertise offered by the APA, but these services should be viewed and accepted as guidelines and suggestions, not mandates (see Ginsburg et al., 1983, concerning APA services).

The Alaska people are certainly part of the core of the human condition, but APA and ALPA should recognize some factors that are, if not unique, manifestly relevant to the Alaska condition. Some of these factors include the vast physical geography of the state, the remoteness of settlements, hostile weather conditions, problems of transportation, factors of social structure and economic fluctuations, minority considerations and a pronounced orientation towards personal liberty and independence.[15]

In establishing itself in Alaska, psychology should stop mimicking psychiatry for example, and should concern itself with the considerable services that its practitioners can offer that are not being offered on any large scale by other disciplines or specialties such as medicine or psychiatry. Instead of receiving directives from the American Psychological Association, Alaska Psychology (i.e., the board and ALPA) should conduct a review of the quality and availability of psychological services in the state (as suggested in AS 08.86.070(8) and should identify the special needs of the Alaska people.

The Alaska psychology licensing statutes should be oriented towards the promotion of psychological well being and the maximum efficiency of mental health delivery services based upon the unique physical, cultural, and social milieu of the Alaska experience. A concern with primary prevention certainly seems more important than a preoccupation with approved programs, per se, or with the qualifications of psychoanalysts who may wish to locate in Akiachak, Shatoolik, or for that matter, Cordova.

If it is permitted to say so here, the Alaska Board of Psychologist and Psychological Associate Examiners are commended for the recent publication of Continuing Education provisions in the Administrative Code (12 AAC 60, Article 6). It is also noted that the Alaska Psychological Association is currently involved in obtaining funds for public service announcements (Abeles, 1983, p. 666). Hopefully, funding will also be obtained for a wider distribution of their informative newsletter (ALPA, 1984).

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The following two sections of this paper are concerned with specific recommendations to the Alaska Code Revision Commission and to the Alaska Administrative Regulation Review Committee. The final text section contains general suggestions.

(I). Requests, Recommendations, or Suggestions to the Alaska Code Revision Commission

Submitted by Robert M. Arvidson

Authority reference:	AS 01.05 Alaska Statutes
(Title 24, Legislature)	AS 24.20 Agencies of the Legislature
(Title 44, State Government)	AS 24.20.075 Code Revision Commission
	AS 44.62 (Administrative Procedures Act)
Agency reference:	AS 08.01 (Centralized licensing)
(Title 8, Business and Profession)	AS 08.02 (Miscellaneous provisions)
(Department of Commerce and Economic Development)	AS 08.03 (Regulatory boards)
	AS 08.01.010 (Applicability of chapter)
(Title 47, Welfare Social Services and Institutions)	AS 08.01.080 (Department regulations)
	AS 08.01.090 (Applicability of the Administrative Procedures Act)
(Department of Health and Social Services)	
	AS 08.02.010 (Professional designation requirements)
	AS 47.17.020 (Persons required to report)
Board reference	AS 08.86 (Psychologists and Psychological Associates Statutes)
(Title 8)	
	AS 08.86.010 (Board of Psychologist and Psychological Associate Examiners)
	AS 08.86.070 (Duties of the board)
	AS 08.86.080 (Board regulations)
	AS 08.86.100 (Applicability of the Administrative Procedures Act)

The requests, recommendations, or suggestions are listed below for each section. They are:

A. Psychology and Psychoanalysis.

(1) Deletion (repeal) of the terms psychoanalyst and psychoanalysis from AS 08.86.180(a), (b)(3).

(2) Deletion (repeal) of "approved program" from AS 08.86.130(2) and Chapter 86 where it is used in reference to psychologist licensing.*

B. Exemptions.

(1) Revision of AS 08.86.180 for clarification of exemptions to both licensed (Title 8) and non-licensed professionals; (cf AS 08.64.170(a)(4).

(2) Definition of psychological terms such as counseling and psychotherapy; (AS 08.86.180; AS 08.86.230); clarification of the role of Standards for Providers of Psychological Services (APA, 1977) for definitions and applicability to AS 08.86 (12 AAC 60.185(b). Does the Standards have the force of law?

C. Professional Designations and Psychological Specialties.

(1) Formulation of Psychologist professional designations as provided in AS 08.02.010; publication of same in the Code.

(2) Clarification of AS 08.86.070(~~a~~)(10) vs. AS 08.~~8~~6.162; definition of psychological associate specialties and publication of same in the Code.

(3) Deletion (repeal) of "approved program" from AS 08.86.130(2), AS 08.86.150(1) and AS 08.86.230(~~11~~); cross-reference recommendation A(2).

(4) Clarification of "approved program" in AS 08.86.162(2) and 12 AAC 60.010(b)(4); compare with "approved program" in AS 08.86.130(2).

D. Examinations (see recommendations to Administrative Regulation Review Committee).

E. Experience.

(1) Clarification of the appropriateness, validity, and reliability of the post-graduate experience requirements in AS 08.86.130(3); (see Definitions, re Professional psychologists (APA 1977, p. 4, p. 11)].

(2) Delete "at least" and change "years" to "year" in AS 08.86.130(3).

(3) Specify nature of experience in AS 08.86.130(3), i.e., post-graduate.

(4) Clarify AS 08.86.070(~~a~~)(10) vs. As 08.86.162; training and education of psychological associates; cross reference: recommendations C(2) this paper.

(5) Clarify AS 08.86.162(3) and (4) ~~vs. AS 08.86.230(11)~~; psychological associate supervised experience and required recommendation.

(6) Clarify AS 08.86.162(3); i.e., whether a master's degree must be obtained within 10 years of application for license.

F. Prevention

(1) Delete term "prevention" from AS 08.86.230(2).

(2) Clarification (or deletion) of the phrase, "...or for conducting research on human behavior..." in AS 08.86.230(2).

G. Other Provisions.

(1) Clarificaiton of AS 08.86.180(c), (practice of medicine prohibited to psychologists) with respect to AS 08.64.380(2)(A) and AS 08.64.170(a)(4).

(2) Adoption of amendment to AS 47.17.020 requiring psychologists and psychological associates to report knowledge of child abuse; clarification of reporting knowledge of threats to do harm to others; AS 11.41.230(3) may be relevant; also see APA, 1981a, pp. 635-636.

(3) Dating of Criteria used in Statutes and regulations when appropriate; AS 08.86.230(11), 12 AAC 60.080(6), (reference 12 AAC 60.185). *

(4) Clarification of "authority" in AS 08.86.150 (ref. AS 01.10.060(13).

(5) Clarification of AS 08.86.070(8)(11) and AS 08.86.080; i.e., are both necessary for authorizing regulatory power.

(6) Recommend inclusion of statutory provisions for appeal by applicants (not authorized to sit for licensure examination) to board decisions (AS 44.62; cf. AS 08.86.100).

(7) Request profession reference to "naturopath" in AS 08.02.010.

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* Reference: Northern Lights Motel, Inc. vs. Sweaney, 651 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (Alaska 1977).

(J). Requests, Recommendations, or Suggestions to the Alaska Administrative Regulations Review Committee

Submitted by Robert M. Arvidson

Authority reference	AS 01.05 Alaska Statutes
(Title 24, Legislature)	AS 24.20 Agencies of the Legislature
(Title 44, State Government)	AS 24.20.400 (Administrative Regulation Review Committee Establishe
	AS 24.20.460 Powers
	AS 44.62 (Administrative Procedures Act)
	*AS 44.62.130 (Codification and Publication)
	AS 44.62.220 (Right to petition)
	AS 44.62.240 (Limitation on retroactive action)
Agency reference	AS 08.01 (Centralized licensing)
(Title 8, Business and Professions)	AS 08.02 (Miscellaneous provisions)
(Department of Commerce and Economic Development)	AS 08.03 (Regulatory boards)
	AS 08.01.010 (Applicability of chapter)
(Title 47, Welfare Social Services and Institutions)	AS 08.01.080 (Department regulations)
	AS 08.01.090 (Applicability of the Administrative Procedures Act)
(Department of Health and Social Services)	
	AS 08.02.010 (Professional designation requirements)
	AS 47.17.020 (Persons required to report
Board reference	AS 08.86 (Psychologists and Psychological Associates Statutes)
(Title 8)	
(Title 44)	12 AAC 60 (Administrative Code)
	AS 08.86.010 (Board of Psychologist and Psychological **Examiners
	AS 08.86.070 (Duties of the board)
	AS 08.86.080 (Board regulations)
	AS 08.86.100 (Applicability of the Administrative Procedures Act)

The requests, recommendations, or suggestions are listed below by section. They are:

A. Psychology and Psychoanalysis.

(1) See recommendations to Code Revision Commission.

B. Exemptions.

(1) Clarification of the role of Standards for Providers of Psychological Services (APA, 1977) for definitions and applicability to 12 AAC 60, (12 AAC 60.185(b). Does the Standards have the force of law?

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* AS 44.62.030 (Consistency); ** Associate

C. Professional Designations and Psychological Specialties.

(1) Clarification of "approved program" in 12 AAC 60.010(b)(4) and AS 08.86.162(2); compare with "approved program" in AS 08.86.130(2).

(2) Publication of psychologist specialty designations in 12 AAC 60 (AS 02.010(a).

(3) Publication of psychological associate specialties in 12 AAC 60 (AS 08.86.164; AS 08.86.170(b); AS 08.86.190(b).

D. Examinations.

(1) Clarification of the number and types of examinations used by the board (12 AAC 60.110; 12 AAC 60.140).

(2) Clarification of how questions concerning AS 08.86 can be included in the written examination (12 AAC 60.110(d).

(3) Clarification of the nature of the examination, i.e., is it both oral and written (12 AAC 60.110(a).

(4) Clarification of the word "written" as used in 12 AAC 60.110(b)(c)(d), and 12 AAC 60.150(b).

(5) Clarification of 12 AAC 60.150(b); assuming that "written examination" includes the essay examination, how can a score of more than one standard deviation below the mean be determined for an essay examination that is graded on a pass/fail basis? (12 AAC 60.140(c).

(6) Clarification of "textbooks" and "accredited educational institutions"; i.e., is the reference in 12 AAC 60.140(e) to psychology text books in approved programs?

E. Experience.

(1) Clarify the meaning of "appropriate supervision" (12 AAC 990(2) in reference to the Code (12 AAC 60) and Statutes (AS 08.86).

(2) Validation of experience requirements in 12 AAC 60.070 and 12 AAC 60.080 with respect to AS 08.86.130(3) as provided by AS 44.62.030; i.e., how is it known that the experience that is acceptable to the board is consistent with the assumed legislative intent that (at least) one year's post-graduate experience should qualify an applicant to sit for an examination for licensure as provided by AS 08.86.130(3).

(3) Clarification of "supervised professional experience" in 12 AAC 60.010(a)(7) and 12 AAC 60.080(b) v. 12 AAC 60.070. A plea for uniformity of language is being made here; as in No. E(1) above. Also, what standard or year will be used for defining "three years of board approved experience" in 12 AAC 60.080(5).

(4) Suggest deleting "minimum" which follows "following" and precedes "requirements" in 12 AAC 60.080(a); the requirements are requirements, not minimum requirements.

(5) Suggest the insertion of "Examiners" in 12 AAC 60.080(a)(4) between "Board of" and "Professional" or preferably deletion of "Examiners" in 12 AAC 60.010(a)(6), 12 AAC 60.070(b), and AS 08.86.150(3); See APA 1983d, p. 698, for current references. It is noted here, however, that "Examiners" may be used on the diploma itself.

(6) Clarification of adoption of future American Psychological Association approved training programs criteria (12 AAC 60.080(6)*

F. Prevention.

(1) See recommendations to Code Revision Committee.

G. Other Provisions.

(1) Recommend sections on Confidentiality in Code and Statutes (12AAC 60.200; AS 08.86.200) include statements on reporting knowledge of threats to others and child abuse; AS 47.17.020 and AS 11.41.230(3).

(2) Recommend section in 12 AAC 60 requiring psychologists and psychological associates to advise clients of their right to informed consent; i.e., informing clients of the possible risks to their careers by entering psychotherapy, particularly when records are kept in third party payment plans (see Noll, 1981).

(3) Adoption and publication in 12 AAC 60 of provisions for appeal (by candidates not qualifying to sit for the examination) to board decisions (AS 44.62; cf. AS 08.86.100).

(4) Recommend that Statute and Code booklet (State of Alaska, 1983) for applicants contain Notes to Decisions, collateral references, and explanation of amendments on vital topics such as privileged communication (information) (cf. AS 08.86.200, Notes to Decisions) and liability (cf. AS 09.55.520; collateral references to Article 5, Title 9). Also recommended correction ofreference to Statutes on title page of July 1983 booklet (State of Alaska, 1983).

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* Reference: Northern Lights Motel, Inc. v. Sweaney, 561, P.2d 1176, aff'd on rehearing 563 P.2d 256 (Alaska 1977).

(K). General Suggestions

After reviewing the Statutes and Code and consumer needs relevant to the delivery of mental health services, it appears there are several options available for the future development of professional psychology in Alaska. Some of these may or may not be:

1. To let well enough alone.
2. To terminate the board.[16]
3. To revise the psychology Statutes and Code.
4. To ask the American Psychological Association what to do.
5. To redefine the concept of normality.
6. To encourage psychoanalysts to practice in the state.
7. To pass certification laws for title control.
8. To develop a licensing test for Alaska.
9. To license or certify clinical social workers and marital counselors as psychotherapists.
10. To use the National Register of Health Service Providers in Psychology for identifying Psychologists.
11. To establish the validity of supervised experience requirements for Psychologist.
12. To license or certify counselors for the mentally retarded and handicapped (developmental disabilities).
13. To license or certify master-level psychologists as independent psychological counselors.
14. To encourage universities and colleges in Alaska to grant terminal master's degrees in psychology.
15. To encourage the development of a doctoral program in psychology or community mental health for the University of Alaska system.
16. To encourage the practice of psychology in Alaska by diplomates of the American Board of Professional Psychology.
17. To explore, formulate, and disseminate knowledge condusive to mental health.
18. To determine whether licensing is related to competence in the delivery of psychological services in Alaska.

19. To "...recognize that there are many skilled and competent mental health professionals who will not have the usual credentials, and we must seek to reduce unnecessarily rigid barriers to preclude members of the public from access to their services" (Koocher, 1979, p. 702).

20. To approve the concept of primary prevention.

21. To concentrate available resources on intervention.

22. To remove the terms psychoanalysis and psychoanalyst from the restricted list of terms referring to the practice of psychology.

23. To leave the mental health field to psychiatrists.

24. To inform the public about the nature and availability of mental health services.

25. To increase the number of public members (no direct financial interest in the health care industry) on the board.

26. To delete or revise experience requirements for psychologist applicants in AS 08.86 (see No. 11).

27. To clarify the specialties for psychological associate and publish them in the Code.

28. To permit qualified members of other professions (or the same profession) to represent themselves in terms of their psychological education, training, or competence; to revise exemptions for both licensed (Title 8) and non-licensed professionals.

29. To publish a list of counselors for women.

30. To formulate and publish (in 12 AAC 60) specialist designations for psychologist.

31. To license or certify psychometrists as independent practitioners.

32. To license or certify drug and alcohol abuse counselors.

33. To define terms such as psychotherapy and behavior modification.

34. To determine the efficacy of intervention services in Alaska.

35. To provide for the licensing or certification of minority and youth counselors.

36. To encourage research on human behavior by social psychologists, anthropologists, sociologists and other social and behavioral science professionals.

37. To encourage the concept of prevention in schools and in school psychology.

38. To provide information in the Code relating to appeal of procedures for applicants.

39. To provide information in the Code relating to privileged communication, informed consent, malpractice (liability) and limits to confidentiality.

40. To ensure for the availability of adequate numbers of mental health service providers for prevention and intervention needs.

41. To "review...the quality and availability of psychological services in the state" as provided by AS 08.070(a)(8)

42. To provide for the counseling of the elderly.

43. To encourage activities directed toward the prevention of psychological problems, not only by licensed and non-licensed professionals, but also by the public.

44. To re-evaluate the "approved program" concept used in licensing psychologists

45. To provide for more advertising for proposed changes to regulations (i.e., changes or additions to the Code via the Administrative Register).

46. To provide for licensing or certification of psychologists other than graduates of "approved programs" (e.g., social psychologist).

47. To provide for counseling of the indigent and persons in correctional facilities (in cooperation with the Department of Health and Social Services)

48. To adopt regulations relating to the reporting of threats of harm to others and child abuse.

49. To identify, define or describe what it means to be normal in the Great State of Alaska.

50. To remember William Blake, "Without Contraries is no progression."

Notes

1. According to Knapp (1980, p. 606; see Note 2 below for the citation system used here) the courts have referred to both psychology and psychiatry as infant sciences. Smith (1978, p. 489) states, "The oldest state board of examiners of psychologists has been in existence only 33 years (Connecticut), and it was not until 1977 that such legislation had been enacted in all 50 states and the District of Columbia."

2. Reference citations used in this paper are similar to those used in psychological journals. However, page numbers are often included, even in cases not involving direct quotes, as an aid for locating information. The dates in

parentheses refer to the date of publication for the studies listed in alphabetical order by author in the Reference Section. Initials (e.g., APA, 1983a) or abbreviated forms (e.g., board) are generally used in this paper once their reference connection has been established. As noted in the title, AS 08.86 refers to ALASKA STATUTES, TITLE 8, CHAPTER 86. Similarly 12 AAC 60 refers to the ALASKA ADMINISTRATIVE CODE, TITLE 12, CHAPTER 60. The notation system is extended in both cases by adding the appropriate section, sub-section, and paragraph by letter or numeral. While 12 AAC 60 (the Psychology Professional and Vocational Regulations) is abbreviated here as Code, it is sometimes referred to in writings as regulations, Alaska Regulations, Vocational Regulations, or as a specific number of the Alaska Administrative Register, which is a periodic supplement to the Code (see AS 44.62. 130). Other abbreviations are: SLA - Session Laws of Alaska; am - amendment, and ch - chapter.

3. See Kilburg and Ginsburg (1983) for a discussion of psychology and the sunset crisis (including Alaska).

4. See Carlson (1978) and Shimburg (1981) for discussions concerning the Examination for Professional Practice in Psychology. Also note the alternate reference note citation used by Carlson (1978, p. 495) for PES and AASPB.

5. Alaska Psychology's assumption of authority over psychoanalysis may have both Freudian and Dostoevskian implications. While a consideration of these implications is beyond the scope of this paper, readers are referred to the Grand Inquisitor episode in Fyodor Dostoevsky's The Brothers Karamazov.

6. It is again tempting to invoke Dostoevsky and modify Ivan Karamazov's famous statement to read, "If there is no clarity, then everything is permitted."

7. APA (1981b, p. 640) recommends generic licensing.

8. The APA specialty guidelines are suggested "as a means of self regulation" (APA 1981b, p.640), but this may be at variance with AS 08.02.010(a).

9. Dostoevesky cannot be invoked here since there are regulations and "everything is not permitted."

10. The reference is presumably to: [American Psychological Association. "Education and Credentialing in Psychology II." Report of a meeting June 4-5, 1977. Washington, D.C. American Psychological Association. Washington, D.C., 1977] (see APA, 1981b, p. 649, p. 651). However, one should not have to guess about references concerning criteria for statutory law, i.e., AS 08.86.230(12). also see Wellner, A.M., 1977, in Reference Section in Koocher (1979). There is even some question of how to list this Report in APA publications.

11. AS 08.64.380(2)(A) does include the phrase "prescribe for," but the meaning of this phrase could be subject to interpretation. In any case, the term "prevention" is not included in the definitions; thus no proscription concerning prevention can be established.

12. Compare the psychologist ratio with the U.S. ratio of one attorney for every 430 persons; disturbed and non-disturbed combined. (Source: general information); also see CSB #303 and SB No. 482 concerning proposed legislation allowing the entry of other professionals in the mental health field.

13. This is not meant to discourage persons from entering psychotherapy. It could promote mental health by requiring potential clients to question whether they need or desire psychotherapy.

14. Sociologists might not agree with this asseriton (cf. various works by Auguste Com. , Emile Durkheim, and Max Weber).

15. The Cabin Fever Syndrome may have characteristics unique to Alaska.

16. It is not the intent of this paper to request or encourage termination of the board. However, see Section 1 ch 149, SLA 1977. This paper is basically a plea for a psychology licensing, registration, or certification act appropriate to Alaska.

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* To Rose and Mary *

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ROBERT M. ARVIDSON
Box 258
Cordova, Alaska 99574
March 29, 1985

APR 2 1985

Senator Fred F. Zharoff
Ch: Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: SB 251, Regulation of Psychology

Dear Senator Zharoff,

This is a letter of support for SB 251. The proposed legislation will bring Alaska psychology licensure law in line with existing California licensing requirements and I believe this to be in the best interests of the State. The California licensing law has been developed over a period of time to maximize the delivery of psychological health services to a diverse and populous state(enclosure).

SB 251 is generally consistent with the Aug. 12, 1981 performance audit of the psychology board (Audit Control No. 08-121-1054-R), and I believe that the Bill will encourage qualified applicants to seek licensure in the State, and this should benefit Alaska.

The Bill expands recognition of academic institutions that offer doctoral degrees (also masters) in psychology. A recent survey indicates that there are 350 doctorate doctorate granting schools in the U. S. (enclosure). Only about one half of these schools have programs that are approved by the American Psychological Associatiion and because of this entry into professional psychology is unnecessarily restricted (under current law).

I am enclosing a recent paper of mine that gives greater detail concerning the need for SB 251. The paper was originally addressed to the Alaska Code Revision Commission.

With thanks,

Sincerely yours,

Robert M. Arvidson

Enc: As stated.
cc: Senators Kerttula and Josephson

will parallel that of the report of 1979 and 1980 surveys (Stapp & Fulcher, 1982). In addition to the data presented here, further detail on the results of the 1981 and 1982 surveys may be found in Wicherski, Stapp, and Fulcher (1984).[1]

Method

The 1981 and 1982 Doctorate Employment Surveys were conducted in an identical manner, using the same procedures as previous surveys. In the fall of 1981, we contacted 350 doctorate-granting departments and professional schools in the United States and Canada, requesting the names and addresses of individuals receiving a doctorate in psychology between July 1, 1980, and June 30, 1981 (i.e., 1981 doctorate recipients).[2] A total of 3,231 names and addresses were provided by the 323 departments responding to the request. Survey questionnaires were mailed to these individuals in February 1982. For the 1982 survey, we contacted 333 doctorate-granting departments and professional schools in the fall of 1982; 303 responded, providing a total of 3,080 names and addresses of individuals receiving doctorates in psychology between July 1, 1981, and June 30, 1982 (i.e., 1982 doctorate recipients). Survey questionnaires were mailed to these individuals in February 1983.

For each of the surveys, a second mailing of the questionnaire was done four weeks after the initial mailing, and a reminder postcard was sent four weeks after that. For the 1981 Doctorate Employment Survey, 2,316 usable questionnaires were returned—a response rate of 71.7%; for the 1982 survey, 2,164 questionnaires were returned—a response rate of 70.2%. For each year, approximately 8% of the survey questionnaires were returned by the U.S. Postal Service as undeliverable, and neither we nor the department where they received their degree were able to find a current address.

A four-page, optically scanned questionnaire was used for both surveys. The questionnaires were identical and consisted of five sections requesting information on: (a) doctoral training (e.g., subfield, type and date of degree sources of support); (b) employment (e.g., number and type of positions, employment settings, work activities, contract length, salary, income); (c) postdoctoral fellowship (e.g., postdoctoral subfield, source of support, duration of fellowship, reasons for postdoctoral study); (d) unemployment (e.g., if ever employed since receiving doctorate, whether currently seeking employment, reasons for not seeking employment); (e) demographic information (e.g., sex, ethnicity, age, citizenship, marital status) and perceptions of the job market. Both questionnaires were similar to those used in the 1979 and 1980 surveys with the following exceptions: For sources of support, separate options replaced the single option "Loans, family, employment"; questions were added for the type of position (e.g., faculty, research, direct human services) in the primary and secondary employment setting; and the question regarding work activities in the secondary employment setting was deleted.

The results reported below are based on the responses of individuals receiving their degrees from U.S. departments and professional schools (i.e., 2,189 doctorate recipients in 1981 and 2,059 in 1982). Excluded here are the responses of 232 individuals who received their degrees from Canadian departments; information on graduates of Canadian departments may be found in Wicherski et al. (1984).

Of the 4,248 respondents who received their degrees from U.S. departments during the 1981 and 1982 academic years, 45.6% were women, 7.8% were ethnic minorities, and 96.0% were U.S. citizens. With the exception of a higher percentage of U.S. citizens, these data are comparable to those reported by the National Research Council (Syverson, 1982a, 1983) for 1981 and 1982 psychology doctorate recipients. With regard to the type of doctoral degree earned, 91.7% of the respondents received a PhD degree, 2.4% an EdD degree, and 5.8% a PsyD.

The presentation of the results will parallel the presentation in our previous article (Stapp & Fulcher, 1982). Because many of the results are similar to those found in the 1979 and 1980 surveys, we will present less detail. Readers interested in additional detail are referred to Wicherski et al. (1984).

Overview of the Employment of 1981 and 1982 Doctorate Recipients

Employment Status

Although there have been variations from one year to the next, the 1975–1980 surveys have shown approximately 80% of the respondents to be employed full time, 7% employed part time, 10% postdoctoral fellows, 2% unemployed and seeking, and 1% unemployed and not seeking. The employment status of 1981 and 1982 doctorate recipients, reported in Tables 1 and 2, shows a consistent pattern of results. Compared with 1981 respondents, there were slightly higher percentages of 1982 respondents who were employed part time (9.7% vs. 8.4% in 1981) or unemployed and seeking employ-

[1] This report, *Detailed Statistical Tables: 1981 and 1982 Doctorate Employment Surveys*, is available from the Human Resources Research Office, American Psychological Association, 1200 Seventeenth Street, N.W., Washington, DC 20036.

[2] This designation of academic year (July 1 to June 30) corresponds to that used by the National Research Council in its annual surveys of doctorate recipients from U.S. universities (e.g., Syverson, 1982a).

DEPARTMENT OF Consumer Affairs

GEORGE DEUKMEJIAN
Governor
Marie Shibuya-Snell
Director

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

Laws, Rules and Regulations Relating to the Practice of Psychology

Issued by the

BOARD OF MEDICAL QUALITY ASSURANCE
PSYCHOLOGY EXAMINING COMMITTEE

1984

Includes Amendments Through January 1984

1430 Howe Avenue Sacramento, California 95825

(d) Such persons do not offer their services to the public for a fee, monetary or otherwise.

(e) Such persons do not provide direct health or mental health services.

(Amended by Stats. 1979, Ch. 996.)

Student Practice—Exemption

2911. Nothing in this chapter shall be construed as restricting the activities and services of a graduate student or psychological intern in psychology pursuing a course of study leading to a graduate degree in psychology at an accredited or approved college or university and working in a training program, provided that these activities and services constitute a part of his supervised course of study and that such persons are designated by such title as "psychological intern," "psychological trainee" or other such title clearly indicating the training status appropriate to his level of training. The term "psychological intern," however, shall be reserved for persons enrolled in the doctoral program in psychology or social psychology at an accredited or approved college or university.

Out-of-State Psychologist—Exemption

2912. Nothing in this chapter shall be construed to restrict or prevent a person who is licensed or certified as a psychologist in another state or territory of the United States or in a foreign country from offering psychological services in this state for a period not to exceed 30 days in any calendar year.

(Amended by Stats. 1978, Ch. 1161.)

Psychological Assistants

2913. A person other than a licensed psychologist may be employed by a licensed psychologist, by a licensed physician and surgeon who is board certified in psychiatry by the American Board of Psychiatry and Neurology, by a clinic which provides mental health services under contract pursuant to Section 5614 of the Welfare and Institutions Code, by a psychological corporation, by a licensed psychology clinic as defined in Section 1204.1 of the Health and Safety Code, or by a medical corporation to perform limited psychological functions provided that all of the following apply:

(a) The person is termed a "psychological assistant."

(b) The person (1) has completed a master's degree in psychology or education with the field of specialization in psychology or counseling psychology, or (2) has been admitted to candidacy for a doctoral degree in psychology or education with the field of specialization in psychology or counseling psychology, after having satisfactorily completed three or more years of postgraduate education in psychology and having passed preliminary doctoral examinations, or (3) has completed a doctoral degree which qualifies for licensure under Section 2914, in an accredited or approved university, college, or professional school located in the United States or Canada.

(c) The person is at all times under the immediate supervision, as defined in regulations adopted by the committee, of a licensed psychologist, or board certified psychiatrist, who shall be responsible for insuring that the extent, kind, and quality of the psychological services he or she performs are consistent with his or her training and experience and be responsible for his or her compliance with the provisions of this chapter and regulations duly adopted hereunder, including those provisions set forth in Section 2960.

(d) The licensed psychologist, board certified psychiatrist, contract clinic, psychological corporation, or medical corporation, has registered the psychological assistant with the committee. The registration shall be renewed annually in accordance with regulations adopted by the committee.

No licensed psychologist may register, employ, or supervise more than three psychological assistants at any given time unless specifically authorized to do so by the committee. No board certified psychiatrist may register, employ, or supervise more than one psychological assistant at any given time. No contract clinic, psychological corporation, or medical corporation may employ more than 10 such assistants at any one time. No contract clinic may register, employ, or provide supervision for more than one psychological assistant for each designated full-time staff psychiatrist who is qualified and supervises the psychological assistants. No psychological assistant may provide psychological services to the public for a fee monetary or otherwise, except as an employee of a licensed psychologist licensed physician, contract clinic, psychological corporation, or medical corporation.

(e) The psychological assistant shall comply with regulations that the committee may, from time to time, duly adopt relating to the fulfillment of requirements in continuing education.

(f) No person shall practice as a psychological assistant who is found by the committee to be in violation of the provisions of Section 2960 and the rules and regulations duly adopted thereunder.

(Amended by Stats. 1983, Ch. 207.)

Licensure Requirements

2914. Each applicant for licensure shall comply with all of the following requirements:

(a) Is not subject to denial of licensure under Division 1.5.

(b) Possess an earned doctorate degree (1) in psychology, (2) in education psychology, (3) in education with the field of specialization in counseling psychology or educational psychology, or (4) possess an earned doctorate degree deemed equivalent by the committee in regulation duly adopted under this chapter. Such degree or training shall be obtained from an accredited or approved university, college, professional school, or any other educational institution approved by the committee as offering a comparable program in regulations duly adopted under this chapter.

No educational institution shall be denied recognition as an accredited or approved academic institution solely because its program is not accredited by any professional organization of psychologists, and nothing in this act or in the administration of this act shall require the registration with the committee by educational institutions of their departments of psy-

chology or their doctoral programs in psychology.

(c) Have engaged for at least two years in supervised professional experience under the direction of a licensed psychologist, the specific requirements of which shall be defined by the committee in its regulations, or such suitable alternative supervision as determined by the committee in regulations duly adopted under this chapter, at least one year of which shall be after being awarded the doctorate in psychology.

(d) Take and pass the examination required by Section 2941 unless otherwise exempted by the committee under the provisions of this chapter.

(Amended by Stats. 1978, Ch. 1208.)

Severability Provision

2916. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any of the provisions or applications of this chapter which can be given effect without such invalid provisions or application, and to this end the provisions of this chapter are declared to be severable.

Confidentiality

2918. The confidential relations and communications between psychologist and client shall be privileged as provided by Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code.

Article 2. Administration

Section

2920 Psychology Examining Committee [*Amended*]
2921 Terms
2922 Appointment [*Amended*]
2923 Qualifications
2924 Removal
2925 Officers
2926 Meetings
2927.5 Notices
2928 Administration and Enforcement
2929 Seal
2930 Rules and Regulations
2931 Committee Functions
2932 Quorum
2933 Personnel
2934 Directory of Licensed Psychologists [*New*]
2935 Compensation
2936 Rules of Ethical Conduct; Posting of Notice

Psychology Examining Committee

2920. The Psychology Examining Committee of the Board of Medical Quality Assurance of the Department of Consumer Affairs shall administer the provisions of this chapter. The committee shall consist of eight members, three of whom shall be public members.

(Amended by Stats. 1982, Ch. 676.)

Terms

2921. Each member of the committee shall hold office for a ter four years, and shall serve until the appointment and qualification o successor or until one year shall have elapsed since the expiration of term for which he was appointed, whichever first occurs. No member serve for more than two consecutive terms.

Appointment

2922. In appointing the members of the committee, except the pu members, the Governor shall use his judgment to select psychologists represent, as widely as possible, the varied professional interests of chologists in California.

The Governor shall appoint one of the public members and the licensed members of the board qualified as provided in Section 2923. Senate Rules Committee and the Speaker of the Assembly shall e appoint a public member, and their initial appointment shall be mad fill, respectively, the first and second public member vacancies wh occur on or after January 1, 1983.

(Amended by Stats. 1982, Ch. 676.)

Qualifications

2923. Each member of the committee shall have all of the follow qualifications:

(a) He shall be a resident of this state.

(b) Each member appointed, except the public members shall b licensed psychologist.

The public members shall not be licentiates of the committee or of board under this division or of any board referred to in the Chiropra Act or the Osteopathic Act.

Removal

2924. The Governor has power to remove from office any membe the committee for neglect of any duty required by this chapter, for competency, or for unprofessional conduct.

Officers

2925. The committee shall elect annually a chairperson and vice ch person from among its members.

(Amended by Stats. 1978, Ch. 1208.)

Meetings

2926. The committee shall hold at least one regular meeting each ye Additional meetings may be held upon call of the chairman or at t written request of any two members of the committee.

Executive Sessions

2927. (Repealed by Stats. 1978, Ch. 1161.)

(Register 83, No. 25—6-15-83)

1394.6. Revised Criteria for Evaluation of Education.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

HISTORY:

1. Amendment of subsection (c) filed 9-28-78; effective thirtieth day thereafter (Register 78, No. 39). For prior history, see Registers 77, No. 8, 77, No. 31, 77, No. 43 and 77, No. 48.
2. Amendment filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).
3. Repealer and new subsection (c) filed 2-28-80; effective thirtieth day thereafter (Register 80, No. 9).
4. Renumbering of Section 1394.6 to Section 1386 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

1394.7. Original Research Dissertation Requirement Defined.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

HISTORY:

1. New section filed 2-15-78 as an emergency; effective upon filing (Register 78, No. 7).
2. Certificate of Compliance transmitted to OAH 6-9-78 and filed 6-15-78 (Register 78, No. 24).
3. Amendment filed 6-22-78; effective thirtieth day thereafter (Register 78, No. 24).
4. Repealer filed 9-28-78; effective thirtieth day thereafter (Register 78, No. 39).

1395. Foreign Graduates.

Applicants for licensure whose applications are based on graduation from foreign universities, colleges or professional schools shall provide the committee with such documents and evidence demonstrating that their formal education meets the requirements of Section 2914 of the code.

The applicant shall provide the committee with the following:

(a) An original diploma or other certificate of graduation, which will be returned, and a photostatic copy of such document, which will be retained.

(b) A transcript or comparable document of all coursework completed.

(c) A certified translation of all documents submitted in a language other than English.

(d) Satisfactory evidence of supervised professional experience comparable to that designated in Section 1387.

(e) Evidence that the doctoral dissertation was primarily psychological in nature. In its discretion, the committee may require an applicant to file a copy of the dissertation.

(f) A statement prepared by the applicant based on the above documents, indicating the chronological sequence of studies and research. The format of this statement shall be as comparable as possible to a transcript issued by American universities.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2914 and 2940, Business and Professions Code.

HISTORY:

1. Amendment filed 4-26-79; effective thirtieth day thereafter (Register 79, No. 17).
2. Amendment filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25).

(Register 83, No. 25—6-15-83)

1386. Revised Criteria for Evaluation of Education.

(a) Only those doctorate degrees which are designated as being earned in a department or school of psychology, educational psychology or education with the field of specialization in counseling psychology or educational psychology shall be accepted as an earned doctorate degree as specified in Section 2914, subsections (b) (1) through (3), of the code. Any other degree shall be subject to evaluation as an equivalent degree pursuant to the requirements of this section even though the designation "psychology" may be included in the title. If it is not evident on the official transcript, the committee may require that any doctorate degree earned in education with the field of specialization in counseling psychology or educational psychology be certified by the registrar as such a degree.

(b) Any doctorate degree earned in a program while approved by the American Psychological Association shall be deemed an equivalent degree pursuant to the provisions of this section.

(c) In order to be acceptable for psychology licensure as an equivalent degree, an applicant's doctorate degree shall meet the following requirements:

(1) The doctorate degree shall be equivalent or similar to a doctorate degree in psychology although not completed within a school or department of psychology, such as, a degree in child development, human development or behavioral medicine.

(2) Although the emphasis for evaluation of an equivalent degree is placed on the nature of the degree and the contents of the graduate program, the applicant's graduate program leading to the doctorate degree shall have contained at least 48 semester or 72 quarter units in those subject areas listed in subsection (c) (4) which have been successfully completed since receipt of a baccalaureate degree.

(3) The degree program shall be a recognizable and organizational unit within an educational institution which is under the authority of an official who has responsibility for the core and specialty areas of the program's curriculum.

(4) The degree program shall have an integrated, organized curriculum and sequence of study which includes instruction in the areas of biological bases of behavior, cognitive-affective bases of behavior, social bases of behavior and individual differences, instruction in psychometrics and research methodology, and professional ethics, and supervised practicum, internship and field or laboratory training, all of which is appropriate to the practice of psychology.

(5) All the coursework submitted as part of the equivalent degree program shall have been completed prior to receipt of the doctorate degree; however, the committee in its discretion may consider coursework which is directly relevant and appropriate to the course of study of the degree program which is completed after the doctorate degree is received.

(d) Applicants submitting evaluation for licensure shall submit official course descriptions of all post-baccalaureate courses completed and an abstract of the doctoral dissertation.

(e) Graduates of foreign universities, colleges or professional schools are exempt from the provisions of this section and shall be evaluated pursuant to Section 1395.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Section 2914, Business and Professions Code.

HISTORY:

1. Renumbering and amendment of former Section 1386 to Section 1387.5, and renumbering of former Section 1394.6 to Section 1386 filed 6-15-83; effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Registers 83, No. 9, 79, No. 17, and 78, No. 39.

Robert M. Arvidson, Ph.D.
Box 258
Cordova, Alaska 99574

February 23, 1985

Senator Jalmar Kerttula
Pouch V
Juneau, Alaska 99811

Re: Proposed Bill, " An Act relating to regulation of the practice of psychology and providing for an effective date."

Dear Senator Kerttula,

Thanks very much for your letter of Feb. 18, 1985. I am very pleased with the WORK DRAFT and the summary of the Bill, and I think that the addition of Sec. 5 concerning psychological associates improves the Bill. The following comments are of a minor or technical nature.

Section 1. It may be possible to delete Sec. 08.86.070(11) since it appears that broad authority to adopt regulations is already granted by AS 08.86.080. Sec. 08.86.070(10) may also be inappropriate since education and experience requirements are specified by statutein AS 08.86.162 & 164 (Article 3A). I am only calling this to your attention since they are included in the WORK DRAFT on page 2, lines 4-7, and it would be an opportune time to repeal the paragraphs if it is appropriate to do so. I have noted the deletions on the enclosed WORK DRAFT for your consideration.

Section 4. The words " Examiners in " can be deleted on page 3, line 17. I am enclosing page 616 from the May 1983 American Psychologist which reflects the current title of the board , which is the American Board of Professional Psychology. It is my lay opinion that the word "or" should be inserted between paragraphs (2) & (3) since the paragraphs identify two separate and appropriate categories for qualifying by credentials. The section might read better by combining paragraphs (1) & (2); then adding "or" after combined paragraph (1); changing (3) to (2); adding the proposed "and" and changing paragraph (4) to (3). An alternate way would to add subsections and rewrite paragraph (4) so that it would stand by itself. The main point that I am concerned with is that there are two avenues for obtaining reciprocity. The original 1967 section contained the conjunctions "or" & "and". Please disregard my corrections if I have interpreted this section incorrectly.

Section 5. The first part of Sec. 08.86.162(3) could be rewritten to read :

(3) has [AT LEAST THREE] two years' supervised experience after obtaining a master's degree [WITHIN THE PAST TEN YEARS] ;

The rest of paragraph (3) would remain unchanged. The amendment would change three years of experience to two years and would be a compromiseto the one year of post graduate supervised experience recommended by the Div. of Legislative Audit on page 16 in their Aug. 12, 1981 performance review of the psychology board (Audit Control Number 08-121-1054-R). The time stipulation for experience or degree should not be necessary since psychological associates must function under the supervision of a licensed psychologist (AS 08.86.164 (b) who is responsible for determining the

~~the~~ appropriateness of the psychological associate's education and experience for services performed (AS08.86.164 (c) . The time stipulation is somewhat ambiguous anyway since it suggests that the master's degree itself must have been obtained within the past 10 years (of application for licensure). Again, I am only calling this to your attention since Ms. Cramer included Sec. 5 on the WORK DRAFT and I think that my suggested changes might encourage some individuals to pursue licensure as psychological associates. It may be the case that one year of post graduate supervised experience would be an appropriate requirement for psychological associates since they must practice under supervision after licensure.

I have had some feedback concerning the objective examination proposed in Sec. 08.86. 130 (a) (3), and it is my opinion that the paragraph should stand as written. The paragraph does not specify whether the examination shall be written or oral, but it is assumed that the examination will be written. However, the paragraph gives the board the discretion to administer an oral examination if deemed necessary, and, if and only if the board can develop a valid and reliable objective oral examination. The problems the board has had with oral examinations are discussed on pages 13 & 37 of the Legislative Audit Report (No. 08-121-1054-R) and it appears that the oral examination has been eliminated.

I appreciate your interest in this proposed legislation. I am personally acquainted with an individual who has a BA, three MA degrees, a Ph. D. degree, several years of experience as a practicing psychologist, and is licensed as a psychologist in California, but was recently denied licensure as a psychologist in Alaska because he had not graduated from a school approved by the board (based on existing statutes). I believe that the proposed amendments to AS 08.86 will correct this problem and work to the benefit of the state.

Thank you for your consideration.

Sincerely yours,

Bob Arvidson

Robert M. Arvidson

Enc: As stated.

+ Reciprocity statutes
Oregon
California
Washington

Copy for your information.

Robert M. Arvidson, Ph.D.
Box 258
Cordova, Alaska 99574

MAR 4 1985

February 27, 1984

Board of Psychologist and Psychological
Associate Examiners
Division of Occupational Licensing
Pouch D
Juneau, Alaska 99811

RE: May 7 & 8, 1984 Board Minutes

Dear Board Members,

I have reviewed the above minutes and I have several comments. On page -3- the board discussed the problematic nature of AS 08.86.200 (Confidentiality of Communication), but did not take any action to change the section. I suggest some action should be taken since the section is in conflict with 12AAC 60.185 as the Code now reads (see Principle 5 of the "Ethical Principles of Psychologists"). More important, the section (AS 08.86.200) is in conflict with AS 47.17.010, ⊕ Persons required to report; and AS 47.24.010, Reports of harm.

An effort should be made to clarify Sec. 08.86.200 with respect to the above and reference to the California Supreme Court decision concerning " Duty to Warn" (see Tarasoff v. Regents of the University of California, 17 C. 3d 425, 131 Cal Rptr. 14, 551 P2d 334 (1976).

Another point concerns my paper, A Review and Critique of Alaska Psychologists And Psychological Associates Statutes AS 08.86 and the Alaska Administrative Code 12 AAC 60; With Recommendations and Suggestions for Change, (1984), which I forwarded to the board with a cover letter dated March 15, 1984. This submission is not noted under Correspondence Review on page three of the May 7 & 8, 1984 board minutes. This is puzzling since I received a letter concerning the paper from the board under the signature of Paul E. Turner, Ph.D. I request receipt of my paper be acknowledged in the March 25, & 26, 1985 board minutes for the public record. I am enclosing a copy of Dr. Turner's letter of May 10, 1984. I also request that * this letter be noted under Correspondence Review. Please send me a copy of the board minutes when they are approved.

I feel that it is important to have my 1984 paper noted in the minutes for the public record since I discussed the problems of confidentiality and the reporting of danger to others on page 14 of the paper.

Thank you for the copies of the March and May 1984 minutes. I am looking forward to receiving the September 1984 minutes as soon as they are approved.

Sincerely yours,

Robert M. Arvidson

Robert M. Arvidson, Ph.D.

* "this" refers to my present letter.

⊕ see also, State v. R.H. and Wotherhom. 182 P.2d ---

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

DIVISION OF OCCUPATIONAL LICENSING
BOARD OF PSYCHOLOGIST AND PSYCHOLOGICAL ASSOCIATE EXAMINERS

May 10, 1984

Mr. Robert M. Arvidson
Box 258
Cordova, Alaska 99574

Dear Mr. Arvidson:

The board reviewed your March 15, 1984 letter and enclosure of "A Review and Critique of the Alaska Psychologist and Psychological Associate Statutes AS 08.86, and the Alaska Administrative Code 12 AAC 60." The board wishes to extend its appreciation for your very thorough and erudite perspective regarding statutes applicable to psychology licensure. The board has many of the same concerns that you do relative to psychology licensure and has proposed changes both in regulation and statute relative to the practice act. Unfortunately, many of our efforts have not been productive for a number of reasons.

However, the board will endeavor to continue to review statute and make recommended changes in our practice act. It is our hope that these efforts as well as the perspectives of others, such as yours, can be incorporated into a clear description of the practice of psychology.

Thank you again for your comments.

Respectfully,

Paul Turner

Paul E. Turner, Ph.D.
Secretary

PET/valB-15/3

Department of Commerce & Economic Development / POSITION PAPER

SB 251: "An Act relating to regulation of the practice of psychology; and providing for an effective date."

The Department of Commerce and Economic Development remains neutral on this legislation.

The changes proposed were similar to those offered by this agency during the last sunset review hearings. There is one concern in that the bill prohibits the board from recognizing professional (which in most cases are national) accrediting institutions as an alternative to approving academic institutions.

The bill is also directed toward benefiting the psychological associate level of licensure.

Harry D. Treager, Director
Division of Occupational Licensing

April 8, 1985
Date

for Loren H. Lounsbury, Commissioner

4/10/85
Date

JS/kkk/E30
4885a

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 251

Title: Relating to regulation of the practice of psychology

Sponsor: Sen. Kertulla & Josephson

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.

Program Category Affected: Consumer Protection

BRU, Program or Subprogram(s) Affected: Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Jennifer Strickler / Mgnt Analyst Phone: 465-2144

Division: Occupational Licensing Date: 4-8-85

Approved by Commissioner: Loren H. Lounsbury Date: 4/10/85

Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

DELIVER TO: JPOM

APR 1[illegible] 1985

ORIGINAL
SENT: 04/09/85 TIME: 11:09
FROM: LANA TRUJILLO
SUBJECT: POM
PRINT DATE:. 04/09/85 TIME: 11:09

TO: ALL LEGISLATORS

FROM: JAMES T. PAYNE, PHD., 1941 BEAVER PL., ANCHORAGE, 99504, 333-6000(HM)

RE: SB 251, PRACTICE OF PSYCHOLOGY

I WOULD URGE ALL MEMBERS OF THE ALASKA STATE LEGISLATURE TO LOOK FAVORABLY UPON PASSAGE OF SB 251 SPONSORED BY SENATORS KERTTULA AND JOSEPHSON. THIS BILL WILL BETTER SERVE THE PSYCHOLOGICAL NEEDS OF ALASKANS THAN THE CURRENT LEGISLATION. IT IMPROVES LICENSING PROCEDURES WHILE MAINTAINING RIGOROUS STANDARDS.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

253

CHAIRMAN'S INFORMATION: SB 253

1) BILL TITLE: "An act relating to physical agents"

a) Introduced: Josephson, Fahrenkamp, V.Fischer, Rodey, and Sturgulewski;

b) Co-sponsors:

2) INTENT: This measure expands the "worker right to know law" by including "physical agents" among the list of those hazards which employers must inform employees of. The department of Labor will be required to provide posters and information fact sheets to employers for the education of their employees. Additionally, safety training will be required before new employees become exposed to physical agents in the work place.

Department of Labor would propose an amendment to Sen Joes version of this bill concerning the definition of "being exposed to" as contained within House version.

FISCAL NOTE: 0

N.B. NO EFFECTIVE DATE CLAUSE

3) ADDITIONAL REFERRALS: Finance, Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

SB 253/HB 319 Harmful Physical Agents

In 1983, the Alaska Legislature passed a Worker Right to Know Law, which required employers to train workers who are exposed to toxic substances and to post signs and provide upon request materials to inform workers of health hazards.

SB 253/HB 319, an act relating to physical agents, extends the original legislation to include posting and training requirements for harmful physical hazards in the workplace. Many workers in Alaska are exposed to harmful physical agents such as ionizing and non-ionizing radiation, extreme cold and heat, noise, lasers, and hand and arm vibration. These hazards have the capacity to cause acute as well as chronic, irreversible health effects.

* NOISE. Hearing loss due to noise is America's number one non-fatal health problem. Hearing loss can be prevented by training workers to wear protective gear and by keeping exposure to a minimum.

* HEAT. Exposure to excess heat in the work environment can cause heat exhaustion, dehydration, heat cramps and heat strokes. Employee education informs employees of proper clothing and work practices, and water and salt replacement.

* VIBRATION. Use of vibrating tools over extended periods of time can cause circulatory symptoms, numbness and blanching of fingertips. Engineering controls, medical surveillance, and personal protective equipment could help reduce hazards due to vibrating hand tools.

*NON IONIZING RADIATION. Exposure to non-ionizing radiation such as ultraviolet, microwave, radiofrequency, infrared, and laser radiation can cause adverse effects on skin, eyes, and in some cases the central nervous system.

- Infrared radiation can cause damage to the retina, iris and lens of the eye
- Lasers can also cause damage to the eye and excessive exposure can cause severe burns and damage to skin and underlying organs
- Radiofrequency and microwave radiation can cause tissue heating, immunilogic changes, cateract, and central nervous system effects

Workers should be made aware of potential non-ionizing radiation hazards through warning notices and protective gear should be worn at all times.

* COLD. Exposure to extremely cold weather can cause frost bite and hypothermia. Proper clothing and training can help prevent over-exposure to the cold.

* IONIZING RADIATION. Exposure to ionizing radiation such as x-rays and gamma rays can cause cancer and also may cause mutations in reproductive cells. Exposure can be prevented through shielding some types of radiation, wearing protective clothing, using properly filtered eye protection and utilizing detection devices.

As is true with toxic chemicals, proper training and protection for workers can prevent exposure and also illness due to harmful physical agents. The Alaska Environmental Lobby supports SB 253 and HB 319 as a necessary addition to Alaska's Worker Right to Know Law.

Issue Paper #4 prepared by Marilyn Heiman for the AEL 4/9/85

BACK UP INFORMATION

WORKER RIGHT TO KNOW AMENDMENTS (SB 253)

The attached bill, introduced Monday, March 25, amends the "worker right to know statutes to include physical agents with other toxic and hazardous substances about which employers must inform their employees.

The existing statute (AS 18.60) directs the Department of Labor to prepare for employers, information data sheets on hazardous and toxic materials to which employees may be exposed in the workplace. Information which is compiled by the Department is transmitted to the workers through the employers, includes: description of the substantiated effects of the substance, known threshold levels where effects occur, activities and situations where the substances are encountered and practices, technology and preventative measures which are available to the workers which will reduce or eliminate the negative impacts of the substance.

These notification and educational efforts, organized by the Department were instituted with the enactment of the right to know legislation (SB 79) in 1983 which was supported by industry, labor, environmental and health groups and interests.

Physical agents, which would be subject to these informational requirements with passage of these amendments, are those identified by the American Conference of Governmental Industrial Hygenists (ACGIH) and include:

Ionizing radiation (X-ray)
Heat and Cold Stress
Impulsive and Impact Noise
Radiofrequency, microwave, ultraviolet, and infrared radiation
Lasars
Hand-arm (segmented) vibration

Physical agents often are not recognized as dangerous substances. With enactment of this bill's amendments industrial accidents will be reduced in number and severity. For example, accidents such as the microwave exposure at Clear Air Force Station may be avoided if workers are better informed of the substances to which they may be exposed and are aware of preventative and safety precautions. Many occupations are not readily associated with exposure to dangerous levels of physical agents. Welders and pipefitters for example are often exposed to hazardous exposures of ionizing radiation (x-rays) when examining welds and joints.

It is anticipated there will be little or no fiscal impact as a function of these amendments to the right to know statute. The Department of Labor will essentially be editing information from national organizations relating to health and safety in the workplace, including the ACGIH, the Center for Disease Control, and Occupational Safety and Health Administration (OSHA).

THRESHOLD LIMIT VALUES

HEAT STRESS

These Threshold Limit Values refer to heat stress conditions under which it is believed that nearly all workers may be repeatedly exposed without adverse health effects. The TLVs shown in Table 1 are based on the assumption that nearly all acclimatized, fully clothed workers with adequate water and salt intake should be able to function effectively under the given working conditions without exceeding a deep body temperature of 38°C.[1, 2]

Since measurement of deep body temperature is impractical for monitoring the workers' heat load, the measurement of environmental factors is required which most nearly correlate with deep body temperature and other physiological responses to heat. At the present time Wet Bulb Globe Temperature Index (WBGT) is the simplest and most suitable technique to measure the environmental factors. WBGT values are calculated by the following equations:

1. Outdoors with solar load:
   WBGT = 0.7 NWB + 0.2 GT + 0.1 DB
2. Indoors or Outdoors with no solar load:
   WBGT = 0.7 NWB + 0.3 GT

where:

WBGT = Wet Bulb Globe Temperature Index
NWB = Natural Wet-Bulb Temperature
DB = Dry-Bulb Temperature
GT = Globe Temperature

The determination of WBGT requires the use of a black globe thermometer, a natural (static) wet-bulb thermometer, and a dry-bulb thermometer.

Higher heat exposures than shown in Table 1 are permissible if the workers have been undergoing medical surveillance and it has been established that they are more tolerant to work in heat than the average worker. Workers should not be permitted to continue their work when their deep body temperature exceeds 38.0°C.

EVALUATION AND CONTROL

1. *Measurement of the Environment*

The instruments required are a dry-bulb, a natural wet-bulb, a globe thermometer, and a stand. The

TABLE 1

Permissible Heat Exposure Threshold Limit Values
(Values are given in °C. WBGT)

	Work Load		
Work — Rest Regimen	Light	Moderate	Heavy
Continuous work	30.0	26.7	25.0
75% Work — 25% Rest, Each hour	30.6	28.0	25.9
50% Work — 50% Rest, Each hour	31.4	29.4	27.9
25% Work — 75% Rest, Each hour	32.2	31.1	30.0

measurement of the environmental factors shall be performed as follows:

A. The range of the dry and the natural wet bulb thermometer shall be −5°C to 50°C with an accuracy of ±0.5°C. The dry bulb thermometer must be shielded from the sun and the other radiant surfaces of the environment without restricting the airflow around the bulb. The wick of the natural wet-bulb thermometer shall be kept wet with distilled water for at least 1/2 hour before the temperature reading is made. It is not enough to immerse the other end of the wick into a reservoir of distilled water and wait until the whole wick becomes wet by capillarity. The wick shall be wetted by direct application of water from a syringe 1/2 hour before each reading. The wick shall extend over the bulb of the thermometer, covering the stem about one additional bulb length. The wick should always be clean and new wicks should be washed before using.

B. A globe thermometer, consisting of a 15 cm. (6-inch) diameter hollow copper sphere painted on the outside with a matte black finish or equivalent, shall be used. The bulb or sensor of a thermometer (range −5°C to 100 C with an accuracy of ±0.5°C) must be fixed in the center of the sphere. The globe thermometer shall be exposed at least 25 minutes before it is read.

2. *Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure.* National Bureau of Standards Handbook 69, (June 5, 1959), with *Addendum 1* (August 1963). Available as NCRP Report No. 22.

The above documents, as well as information on numerous other NCRP Reports addressing specific subjects in ionizing radiation protection are available from: NCRP Publications, PO Box 30175, Washington, DC 20014.

LASERS

The threshold limit values are for exposure to laser radiation under conditions to which nearly all workers may be exposed without adverse effects. The values should be used as guides in the control of exposures and should not be regarded as fine lines between safe and dangerous levels. They are based on the best available information from experimental studies.

Limiting Apertures

The TLVs expressed as radiant exposure or irradiance in this section may be averaged over an aperture of 1 mm except for TLVs for the eye in the spectral range of 400–1400 nm, which should be averaged over a 7 mm limiting aperture (pupil); and except for all TLVs for wavelengths between 0.1–1 mm where the limiting aperture is 10 mm. No modification of the TLVs is permitted for pupil sizes less than 7 mm.

The TLVs for "extended sources" apply to sources which subtend an angle greater than α (Table 7) which varies with exposure time. This angle is *not* the beam divergence of the source.

Correction Factors A and B (C_A and C_B)

The TLVs for ocular exposure in Tables 4 and 5 are to be used as given for all wavelength ranges. The TLVs for wavelengths between 700 nm and 1049 nm are to be increased by a uniformly extrapolated factor (C_1) as shown in Figure 2. Between 1049 nm and 1400 nm, the TLV has been increased by a factor (C_1) of five. For certain exposure times at wavelengths between 550 nm and 700 nm, correction factor (C_R) must be applied.

The TLVs for skin exposure are given in Table 6. The TLVs are to be increased by a factor (C_1) as shown in Figure 2 for wavelengths between 700 nm and 1400 nm. To aid in the determination of TLVs for exposure durations requiring calculations of fractional powers Figures 3, 4, 5 and 6 may be used.

Repetitively Pulsed Lasers

Since there are few experimental data for multiple pulses, caution must be used in the evaluation of such exposures. The protection standards for irradiance or radiant exposure in multiple pulse trains have the following limitations:

(1) The exposure from any single pulse in the train is limited to the protection standard for a single comparable pulse.

(2) The average irradiance for a group of pulses is limited to the protection standard as given in Tables 4, 5, or 7 of a single pulse of the same duration as the entire pulse group.

(3) When the Instantaneous Pulse Repetition Frequency (PRF) of any pulses within a train exceeds one, the protection standard applicable to each pulse is reduced as shown in Figure 6 for pulse durations less than 10^{-3} second. For pulses of greater duration, the following formula should be followed:

$$\text{Standard}\begin{pmatrix}\text{single pulse}\\ \text{in train}\end{pmatrix} = \frac{\text{Standard (pulse } n\tau)}{n}$$

where:

n = number of pulses in train

τ = duration of a single pulse in the train

Standard ($n\tau$) = protection standard of one pulse having a duration equal to $n\tau$ seconds.

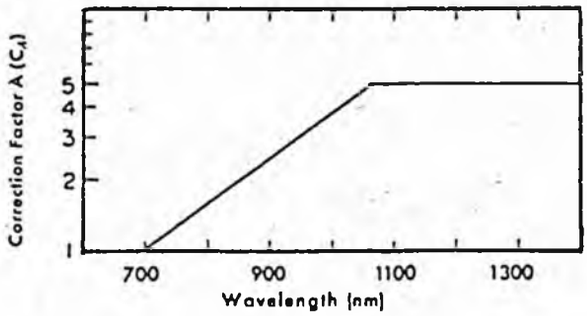

Figure 2 — TLV correction factor for λ = 700 – 1400 nm*

*For λ = 700 – 1049 nm, $C_1 = 10^{[0.002(\lambda - 700)]}$
For λ = 1050 – 1400 nm, $C_1 = 5$

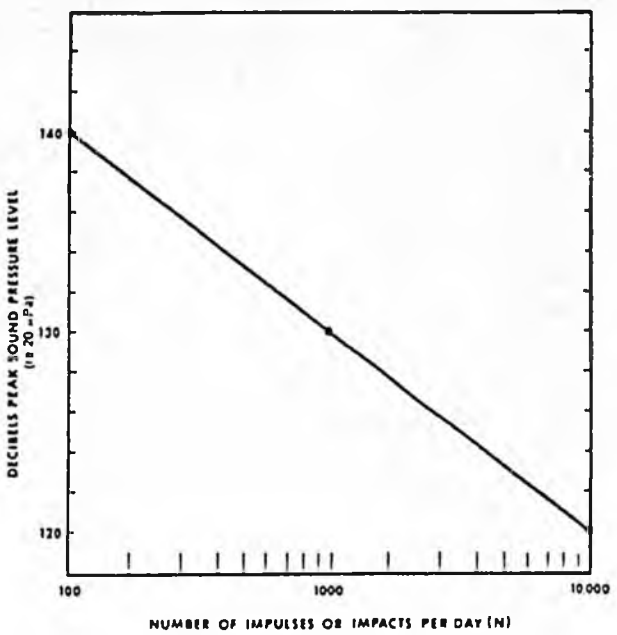

Figure 7 — Threshold Limit Values for Impulse/Impact Noise.

RADIOFREQUENCY/MICROWAVE RADIATION

These Threshold Limit Values (TLVs) refer to radiofrequency (RF) and microwave radiation in the frequency range from 10 kHz to 300 GHz, and represent conditions under which it is believed workers may be repeatedly exposed without adverse health effects. The TLVs shown in Table 10 are selected to limit the average whole body specific absorption rate (SAR) to 0.4 W/kg in any six minutes (0.1 hr) period for 3 MHz to 300 GHz, see Figure 8. Between 10 kHz and 3 MHz the average whole body SAR is still limited to 0.4 W/kg, but the plateau at 100 mW/cm² was set to protect against shock and burn hazards.

Since it is usually impractical to measure the SAR, the TLVs are expressed in units that are measurable, viz, squares of the electric and magnetic field strengths, averaged over any 0.1 hour period. This

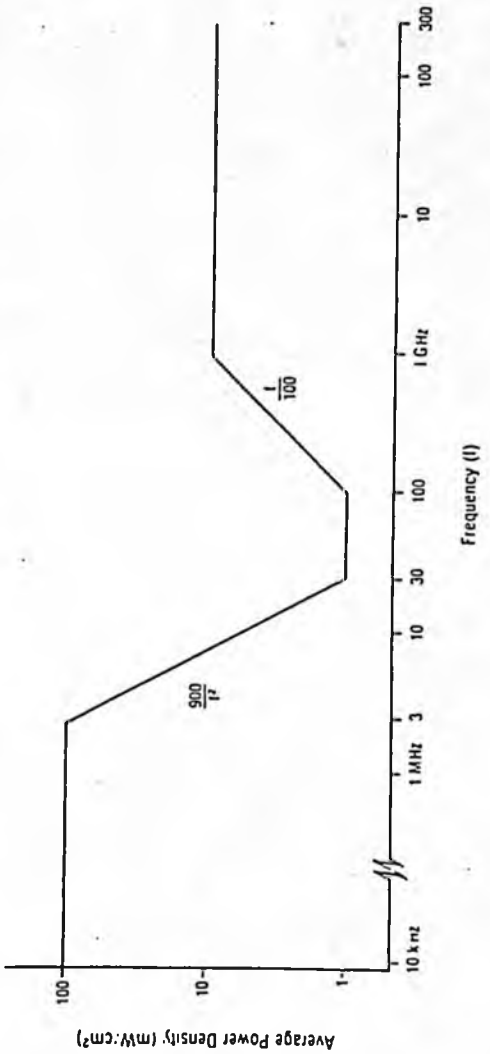

Figure 8 — Threshold Limit Values (TLV) for Radiofrequency/Microwave Radiation in Workplace (Whole Body SAR Less Than 0.4 W/kg).

TABLE 11

Relative Spectral Effectiveness by Wavelength*

Wavelength (nm)	TLV (mJ/cm^2)	Relative Spectral Effectiveness S_λ
200	100	0.03
210	40	0.075
220	25	0.12
230	16	0.19
240	10	0.30
250	7.0	0.43
254	6.0	0.5
260	4.6	0.65
270	3.0	1.0
280	3.4	0.88
290	4.7	0.64
300	10	0.30
305	50	0.06
310	200	0.015
315	1000	0.003

*See Laser TLVs.

TABLE 12

Permissible Ultraviolet Exposures

Duration of Exposure Per Day	Effective Irradiance, E_{eff} ($\mu W/cm^2$)
8 hrs.	0.1
4 hrs.	0.2
2 hrs.	0.4
1 hr.	0.8
30 min.	1.7
15 min.	3.3
10 min.	5
5 min.	10
1 min.	50
30 sec.	100
10 sec.	300
1 sec.	3,000
0.5 sec.	6,000
0.1 sec.	30,000

4. Permissible exposure time in seconds for exposure to actinic ultraviolet radiation incident upon the unprotected skin or eye may be computed by dividing 0.003 J/cm^2 by E_{eff} in W/cm^2. The exposure time may also be determined using Table 12 which provides exposure times corresponding to effective irradiances in $\mu W/cm^2$.
5. All the preceding TLVs for ultraviolet energy apply to sources which subtend an angle less than 80°. Sources which subtend a greater angle need to be measured only over an angle of 80°.

Conditioned (tanned) individuals can tolerate skin exposure in excess of the TLV without erythemal effects. However, such conditioning may not protect persons against skin cancer.

Reference:

1. *Sunlight and Man*. Fitzpatrick *et al*, Eds. Univ. of Tokyo Press, Tokyo, Japan (1974).

NOTICE OF INTENDED CHANGES (for 1984–85)

These physical agents, with their corresponding values, comprise those for which either a limit has been proposed for the first time, or for which a change in the "Adopted" listing has been proposed. In both cases, the proposed limits should be considered trial limits that will remain in the listing for a period of at least one year. If after one year no evidence comes to light that questions the appropriateness of the values herein the values will be reconsidered for the "Adopted" list.

NOTICE OF INTENT TO ESTABLISH THRESHOLD LIMIT VALUES

LASERS

It is proposed that the following footnote be added to Table 6 (Threshold Limit Value for Skin Exposure from a Laser Beam).

The IR-B and IR-C exposures to skin surface areas A(cm^2) exceeding 1000 cm^2, the TLV is

$$(100{,}000/A) \bullet (mW/cm^2);$$

for areas greater than 10,000 cm^2, the TLV is 10 mW/cm^2.

LIGHT AND NEAR-INFRARED RADIATION

These Threshold Limit Values refer to visible and near-infrared radiation in the wavelength range of 400

TABLE 18

Wind Chill Cooling Rate Effects*

Wind Chill Rates (Watts/m²/hr)	Comments/Effects
700	Conditions considered comfortable when dressed for skiing.
1200	Conditions no longer pleasant for outdoor activities on overcast days.
1400	Conditions no longer pleasant for outdoor activities on sunny days.
1600	Freezing of exposed skin begins for most people depending on the degree of activity and the amount of sunshine.
2300	Conditions for outdoor travel such as walking become dangerous. Exposed areas of the face freeze in less than 1 minute for the average person.
2700	Exposed flesh will freeze within half a minute for the average person.

*From Canadian Department of the Environment, Atmospheric Environment Service.

Work-Warming Regimen

If work is performed continuously in the cold at an equivalent chill temperature (ECT) or below −7°C (20°F) heated warming shelters (tents, cabins, rest rooms, etc.) shall be made available nearby and the workers should be encouraged to use these shelters at regular intervals, the frequency depending on the severity of the environmental exposure. The onset of heavy shivering, frostnip, the feeling of excessive fatigue, drowsiness, irritability, or euphoria, are indications for immediate return to the shelter. When entering the heated shelter the outerlayer of clothing shall be removed and the remainder of the clothing loosened to permit sweat evaporation or a change of dry work clothing provided. A change of dry work clothing shall be provided as necessary to prevent workers from returning to their work with wet clothing. Dehydration, or the loss of body fluids occurs insidiously in the cold environment and may increase the susceptibility of the worker to cold injury due to a significant change in blood flow to the extremities. Warm sweet drinks and soups should be provided at

the work site to provide caloric intake and fluid volume. The intake of coffee should be limited because of a diuretic and circulatory effect.

For work practices at or below −12°C (10°F) ECT the following shall apply:

1. The worker shall be under constant protective observation (buddy system or supervision).
2. The work rate should not be so high as to cause heavy sweating that will result in wet clothing; if heavy work must be done, rest periods must be taken in heated shelters and opportunity for changing into dry clothing shall be provided.
3. New employees shall not be required to work full-time in cold in the first days until they become accustomed to the working conditions and required protective clothing.
4. The weight and bulkiness of clothing shall be included in estimating the required work performance and weights to be lifted by the worker.
5. The work shall be arranged in such a way that sitting still or standing still for long periods is minimized. Unprotected metal chair seats shall not be used. The worker should be protected from drafts to the greatest extent possible.
6. The workers shall be instructed in safety and health procedures. The training program shall include as a minimum instruction in:
   a. Proper rewarming procedures and appropriate first aid treatment.
   b. Proper clothing practices.
   c. Proper eating and drinking habits.
   d. Recognition of impending frostbite.
   e. Recognition signs and symptoms of impending hypothermia or excessive cooling of the body even when shivering does not occur.
   f. Safe work practices.

Special Workplace Recommendations

Special design requirements for refrigerator rooms include the following:

1. In refrigerator rooms, the air velocity should be minimized as much as possible and should not exceed 1 meter/sec (200 fpm) at the job site. This can be achieved by properly designed air distribution systems.

8. International Organization for Standardization: *Guide for the Measurement and the Assessment of Human Exposure to Vibration Transmitted to the Hand*. Second DIS 5349. International Organization for Standardization, Geneva (in press, 1983).
9. International Organization for Standardization: *Human-Response Vibration Measuring Instrumentation*. Second Draft Proposal DP 8041. ISO/TC 108/SC 3 n 99. International Organization for Standardization, Geneva (unpublished, 1982).

PHYSICAL AGENTS UNDER STUDY

The Physical Agents Committee of ACGIH has examined the current literature and has not found sufficient information to propose a TLV. However, these agents will remain under study during the coming year to examine new evidence indicating the need and feasibility for establishing a proposed TLV. Comments and suggestions, accompanied by substantive documentation are solicited and should be forwarded to the Executive Secretary, ACGIH, Documentation summarizing the current status of the biological effects literature is available on those agents preceded by an asterisk (*).

1. **Extremely Low Frequency (ELF) Radiation*. Specifically, that portion of the spectrum from 0 to 300 Hz.
2. *Magnetic Fields*. Both pulsed and *continuous.
3. *Laser Radiation*. Specifically laser exposures of less than one (1) nanosecond.
4. *Vibration*. Whole-body.
5. *Pressure Variations.*

Bill No. Senate Bill No. 253

Date April 4, 1985

Title "An Act relating to physical agents."

Contact: Richard Arab
465-4856
Eileen Plate
465-2700

Under existing law, employers are required to provide information and training to employees on certain toxic and hazardous substances. Senate Bill No. 253 seeks to expand the "Right-to-Know" law to include physical agents.

Physical agents are defined as those listed in the "Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment" as published by the American Conference of Governmental Industrial Hygienists. The latest edition of this publication lists the following physical agents:

- Heat Stress
- Ionizing Radiation
- Lasers
- Noise
- Impulse or Impact Noise
- RF/Microwave Radiation
- Ultraviolet Radiation
- Airborne Upper Sonic and Ultrasonic Acoustic Radiation
- Cold Stress
- Hand-Arm (Segmental) Vibration

Exposure to physical agents can result in permanent disabilities, such as deafness. Often employers and employees are not aware of the harmful effects of a particular physical hazard present in the workplace, and the training and information requirements provided in this bill would assist in filling this void. This would, in turn, effect implementation of protective measures by the employer to safeguard employees, as well as provide employees with an understanding of the importance of following safe and healthful work practices.

As part of its Occupational Safety and Health program, the Department of Labor enforces regulations to protect employees from certain physical hazards (ionizing radiation, lasers, noise, RF/microwave radiation, and ultraviolet radiation). The information and training requirements of this bill would, therefore, enhance the Department's efforts to protect Alaska's workers.

The Department would offer one additional amendment to AS 18.60 to incorporate physical agents into the definition of "be exposed" currently set out in AS 18.60.105(a)(1), as follows:

AS 18.60.105(a)(1) is amended to read:

(1) "be exposed" means to ingest, inhale, or absorb through the skin or eyes a substance, or fumes or other potentially harmful aspect of a substance <u>or physical agent</u>;

POSITION PAPER/Department of Labor

The Department of Labor supports Senate Bill No. 253. It will not have a fiscal impact on the Department.

APPROVED:

Jim Robison
Commissioner

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 253: Sectional Analysis

Section 1) Expands the duties of the Department of Labor concerning occupational health and safety regulation and expands the "worker's right to know" law by including physical agents. The department would be required to publish an annual list of physical agents, maintain a current set of OSHA form 20's or equivalent information for each physical agent, and other information relevant to physical agents.

Department would also be required, upon request, to develope employee safety education programs, and obtain information on physical agents.

Section 2) Employer would be required to conduct a safety education program before an employee performs a new work task and is exposed to physical agents for which he has not already been trained. Also defines the employee safety instruction program.

Section 3) Employer is required to make available on the request of an employee, information on the physical agents to which the employee may be exposed. If the employer does not have a copy of the information requested, he shall request a copy within 3 state government working days after the request has been made.

Section 4) Concerns requirements for the posting of information on physical agents by employers.

Department shall print posters and provide information on each physical agent which the employee may be exposed to.

Section 5) Defines physical agents

Section 6) Despite the provisions in this bill, the department may continue to use existing posters until the next printing of posters.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 253
Title : "An Act relating to physical agents"

Sponsor : Josephson, et. al.
Requestor : Senate Labor & Commerce
Date of Request : 2/28/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Occupational Safety & Health

Components : Occupational Safety & Health

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Robert J. Bacolas, Sr. Phone : 465-4870
Division : Labor Standards & Safety Date : 3/3/86

Approved by Commissioner : Jim Robison Date : 3/3/86
Agency : Labor

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 253

Title: "An Act relating to physical agents"

Sponsor: Josephson, et. al.

Requestor: Senate Labor & Commerce

Date of Request: 3/27/85

FISCAL DETAIL

Agency Affected: Labor

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Occupational Safety & Health

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870

Division: Labor Standards & Safety Date: 3/28/85

Approved by Commissioner: Jim Robison Date: 3/28/85

Agency: Labor

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
4184 SLAB SB 254 - SB 265

1064

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

254

Alaska State Legislature

Senator Paul A. Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269 H

State Senate

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-3791

APR 22 1985

Memo

April 22, 1985

To: Senator Fred Zharoff, Chairman
Senate State Affairs Committee

From: Senator Paul Fischer

Subject: Senate Bill 254

I introduced this legislation to enable sole proprietors and partners to be covered under workmans' compensation laws. The statutes allow coverage for corporate owners, but do not permit coverage by sole proprietors and partners. This legislation is modeled after a similar Oregon law.

I have reviewed the amendments proposed by the Department of Labor and would support a committee substitute including Labor's proposed amendments.

I would appreciate your expeditious consideration of this bill.

attachments:

[redacted]

Backup from sponsor, Sen. Paul Fischer

Dick
Mueller
Realty

100 TRADING BAY RD., SUITE 1
KENAI, AK 99611
907-283-5888 REALTOR

February 20, 1985

State of Alaska
Director of Insurance
Dept. of Commerce &
Economic Development
Juneau, Alaska 99801

Sir:

I wish to call your attention to discrimination in Alaska Workman's Compensation laws and ask what can be done about it.

According to my insurance agent a sole proprietor of a business must furnish workmans's compensation insurance for all employees and all uninsured independent contractors. But, he can not be insured on this policy which he is forced to buy. Not even to the extent of injuries received on the job, doing the same work his insured employees and independent contractors are doing and this is discrimination against the small independent business man.

I can see some possible reason for excluding the employer from receving compensation for lost time, but even this is hard to justify.

In the case of real estate brokers, they must cover all independent contractors. Builders and other business owners are only required to cover independent contractors if they do not have insurance. Why can real estate agents who are independent contractors not insure themselves? This is an unfair burden on the broker owner.

Most real estate brokers in our area work on listing and sales the same as their agents and pay commissions to themself the same as the agents.

The operation of running the business is done in addition to sales. In my case most of my income is from sales based exactly the same as my agents.

Thank you for prompt answers to my questions.

Sincerely,

Richard R. Mueller

Richard R. Mueller, GRI,CRS,
Broker/Owner

RRM:rm

cc; Sen. Paul Fisher, Rep. Mike Navarre & Rep. Andre Marrou

Senate Bill 254

Date April 4, 1985

Title "An Act relating to Workers' Compensation."

Contact J. L. McClintock
465-2790

The Department of Labor supports the concept of legislation that would give sole proprietors and partners the opportunity to obtain coverage for workers' compensation. We would propose two amendments to the bill to correct potential problems, as follows:

1. Amend AS 23.30.239(c) which begins on line 19 to read:

> (c) Notwithstanding the provisions of AS 23.30.120(a), a person covered under (a) of this section bears the burden of proof of the validity of the claim.

Since there is no employee/employer relationship for persons who would be covered under this bill, there is no party to raise an affirmative defense in connection with a claim filed by a sole proprietor or partner. The proposed subsection (c) attempts to address this problem by the inclusion of a requirement of "corroborative evidence." That term could be defined quite broadly, however, leading to an interpretation which is not necessarily consistent with the intent of the Alaska Workers' Compensation Act. Our proposed amendment of subsection (c), which specifically provides that sole proprietors and partners do not get the benefit of the presumption contained in AS 23.30.120(a), would clarify the provision and avoid the potential for interpretations inconsistent with the intent of the Act.

2. Amend line 23 to read:

> may cancel the election by giving written notice to the insurer. Notwithstanding the provisions of AS 23.30.030(5), the

This would eliminate the conflict between the proposed subsection (d), which provides that "The cancellation becomes effective the day following the filing of notice with the insurer;" and AS 23.30.030(5), which provides that "A termination of the policy by cancellation is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the board."

APPROVED:

Jim Robison
Commissioner

POSITION PAPER/Department of Labor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 254

Title: "An Act relating to workers' compensation

Sponsor: P. Fischer

Requestor: Senate Labor & Commerce

Date of Request: 3/27/85

FISCAL DETAIL

Agency Affected: Labor

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: JM Jacque McClintock Phone: 465-2790

Division: Workers' Compensation Date: 3/28/85

Approved by Commissioner: JM Jim Robinson Date: 3/28/85

Agency: Labor

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Fiscal note (0)

Bill No. Senate Bill 254

Date April 4, 1985

Title "An Act relating to Workers' Compensation."

Contact J. L. McClintock
465-2790

The Department of Labor supports the concept of legislation that would give sole proprietors and partners the opportunity to obtain coverage for workers' compensation. We would propose two amendments to the bill to correct potential problems, as follows:

1. Amend AS 23.30.239(c) which begins on line 19 to read:

> (c) Notwithstanding the provisions of AS 23.30.120(a), a person covered under (a) of this section bears the burden of proof of the validity of the claim.

Since there is no employee/employer relationship for persons who would be covered under this bill, there is no party to raise an affirmative defense in connection with a claim filed by a sole proprietor or partner. The proposed subsection (c) attempts to address this problem by the inclusion of a requirement of "corroborative evidence." That term could be defined quite broadly, however, leading to an interpretation which is not necessarily consistent with the intent of the Alaska Workers' Compensation Act. Our proposed amendment of subsection (c), which specifically provides that sole proprietors and partners do not get the benefit of the presumption contained in AS 23.30.120(a), would clarify the provision and avoid the potential for interpretations inconsistent with the intent of the Act.

2. Amend line 23 to read:

> may cancel the election by giving written notice to the insurer. Notwithstanding the provisions of AS 23.30.030(5), the

This would eliminate the conflict between the proposed subsection (d), which provides that "The cancellation becomes effective the day following the filing of notice with the insurer;" and AS 23.30.030(5), which provides that "A termination of the policy by cancellation is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the board."

APPROVED:

Jim Robison
Commissioner

POSITION PAPER/Department of Labor

Introduced: 3/26/85
Referred: Labor & Commerce

IN THE SENATE BY P.FISCHER

SENATE BILL NO. 254

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.239. SOLE PROPRIETORS AND PARTNERS AS EMPLOYEES. (a) A person who is a sole proprietor, or a member of a partnership, may elect coverage as an employee under this chapter by making written application to an insurer. The insurer may accept the application and fix an assumed monthly wage at which the person shall be carried on the payroll for purposes of this chapter.

(b) When the application is accepted, the person is subject to the provisions and entitled to the benefits of this chapter. The person shall promptly notify the insurer whenever there is a change in the status of the person as a sole proprietor or partner.

(c) A claim may not be allowed or paid to a person covered under (a) of this section except upon corroborative evidence in addition to the evidence of the claimant.

(d) A person subject to this chapter as provided in this section may cancel the election by giving written notice to the insurer. The cancellation becomes effective the day following the filing of notice with the insurer.

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CS SB 254 (L&C): "AN ACT RELATING TO WORKERS" COMPENSATION"

NOTE: CHAIRMAN NEEDS TO MOVE FOR THE ADOPTION OF THE L&C CS;
Do you wish to "tighten up" the title?

THIS LEGISLATION EXTENDS THE OPPORTUNITY FOR SOLE PROPRIETORS AND "PARTNERS AS EMPLOYEES" TO OBTAIN WORKERS' COMPENSATION COVERAGE.

THE SENATE LABOR AND COMMERCE CS INCORPORATES CHANGES WHICH WERE PROPOSED BY THE DEPARTMENT OF LABOR AND BOTH THE DEPARTMENT OF LABOR AND THE DIVISION OF INSURANCE EXPRESSED SUPPORT FOR THIS BILL.

Chairman's Information:

1) SB 254: "An act relating to worker's compensation"

a) Introduced: P Fischer

b) Co-Sponsors:

2) INTENT: Extends the opportunity for sole proprietors and "partners as employees" to obtain workers' compensation coverage.

FISCAL NOTE: none

NOTE: It appears that the title is rather broad and I would suggest a title change to tighten it up. Also we have a L&C CS which contains changes requested by the Department of Labor.

3) ADDITIONAL REFERRALS:

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from Committee?
d) close public hearings?

6) COMMITTEE ACTION:
a) amendments?
b) CS adoption? Move for adoption of the L&C CS?

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

SB 254: Summary

This legislation would extend the opportunity to obtain workers' compensation coverage to sole proprietors or members of a partnership who wish such coverage. The bill provides that an insurer may accept the application and fix an assumed monthly wage at which the person will be carried on the payroll for purposes of this chapter.

After an application is accepted, the person is entitled to the benefits of this chapter, and the person must notify the insurer when there is a change in his status as a sole proprietor or partner.

A person covered under this section bears the burden of proof of the validity of the claim and may cancel his coverage by giving written notice to the insurer. The cancellation becomes effective the day following the filing of such notice with the insurer.

Ford -
4/10/85

Original sponsor: P.Fischer

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 254 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.239. SOLE PROPRIETORS AND PARTNERS AS EMPLOYEES. (a) A person who is a sole proprietor, or a member of a partnership, may elect coverage as an employee under this chapter by making written application to an insurer. The insurer may accept the application and fix an assumed monthly wage at which the person shall be carried on the payroll for purposes of this chapter.

(b) When the application is accepted, the person is subject to the provisions and entitled to the benefits of this chapter. The person shall promptly notify the insurer whenever there is a change in the status of the person as a sole proprietor or partner.

(c) Notwithstanding the provisions of AS 23.30.120(a), a person covered under (a) of this section bears the burden of proof of the validity of the claim.

(d) A person who has elected coverage under (a) of this section may cancel the election by giving written notice to the insurer. Notwithstanding AS 23.30.030(5), the cancellation becomes effective the day following the filing of notice with the insurer.

23.30.270 due to a loss which is excluded by the terms of the policy and for which the employer has paid no premiums. Munz v. Underwriters at Lloyds, 336 F.2d 798 (9th Cir. 1964).

Airplane trips not within coverage of policy. — Airplane trips to remote fishing lodges for free recreation were not necessary, incidental or appurtenant to, or connected with the business of the employer under an insurance policy covering all operations of every nature incidental to employer's hotel and bar. D.K. MacDonald & Co. v. Alaska Indus. Bd., 14 Alaska 483, 116 F. Supp. 555 (D. Alaska), 117 F. Supp. 401 (9th Cir. 1954). See also Underwriters at Lloyds v. Munz, 224 F. Supp. 954 (D. Alaska 1963), aff'd, 336 F.2d 798 (9th Cir. 1964).

Apportionment of liability between insurance carriers rejected. — See Underwriters at Lloyds v. Alaska Indus. Bd., 17 Alaska 527, 160 F. Supp. 248 (D. Alaska 1958).

Applied in Providence Washington Ins. Co. v. Alaska Pac. Assurance Co., Sup. Ct. Op. No. 2579 (File No. 6398), 654 P.2d 269 1982).

Sec. 23.30.030. Required policy provisions. A policy of a company insuring the payment of compensation under this chapter is considered to contain the provisions set out in this section.

(1) The insurer assumes in full all the obligations to pay physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, and compensation or death benefits imposed upon the insured under the provisions of this chapter.

(2) The policy is made subject to the provisions of this chapter and its provisions relative to the liability of the insured employer to pay physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices transportation charges to the nearest point where adequate medical facilities are available, burial expenses, compensation or death benefits to and for said employees or beneficiaries, the acceptance of the liability by the insured employer, the adjustment, trial and adjudication of claims for the physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, compensation or death benefits and the liability of the insurer to pay the same are considered a part of this policy contract.

(3) As between the insurer and the employee or the employee's beneficiaries, notice to or knowledge of the occurrence of the injury on the part of the insured employer is notice or knowledge on the part of the insurer; jurisdiction of the insured employer for the purpose of this chapter is jurisdiction of the insurer; and the insurer, in all things, is bound by and subject to the orders, awards, judgments and decrees made against the insured employer under this chapter.

(4) The insurer will promptly pay to the person entitled to them the benefits conferred by this chapter, including physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, and all installments of compensation or death benefits awarded or agreed upon under this

chapter. The obligation of the insurer is not affected by a default of the insured employer after the injury, or by default in giving a notice required by this policy. The policy is a direct promise by the insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, and hospital supplies, charges for burial, compensation or death benefits, and is enforceable in the name of that person. The insurer shall provide claims facilities through its own staffed adjusting facilities located within the state, or by independent, licensed, resident adjusters with power to effect settlement within the state.

(5) A termination of the policy by cancellation is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the board. If the employer has a contract with the state or a home rule or other political subdivision of the state, and the employer's policy is cancelled due to nonpayment of a premium, the termination of the policy is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the contracting agency, and the agency has the option of continuing the payments on behalf of the employer in order to keep the policy in force. If, however, the employer has secured insurance with another insurance carrier, cancellation is effective as of the date of the new coverage.

(6) All claims for compensation, death benefits, physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, and burial expenses, may be made directly against either the employer or the insurer, or both, and the order or award of the board may be made against either the employer or the insurer or both.

(7) If the insurer fails or refuses to pay a final award or judgment (except during the pendency of an appeal) made against it, or its insured, or if it fails or refuses to comply with a provision of this chapter, the insurance commissioner shall revoke the approval of the policy form, and may not accept further proofs of insurance from it until it has paid the award or judgment or has complied with the violated provision of this chapter, and has resubmitted its policy form and received the approval of the form by the insurance commissioner. (§ 40 ch 193 SLA 1959; am § 2 ch 1 SLA 1962; am § 2 ch 166 SLA 1972)

NOTES TO DECISIONS

Applied in Providence Washington Ins. Co. v. Alaska Pac. Assurance Co., Sup. Ct. Op. No. 2579 (File No. 6398), 654 P.2d 269 (1982).

Stated in Richard v. Fireman's Fund Ins. Co., Sup. Ct. Op. No. 155 (File No. 267), 384 P.2d 445 (1963).

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Sec. 23.30.115. Attendance and fees of witnesses. (a) A person is not required to attend as a witness in a proceeding before the board at a place more than 100 miles from the person's place of residence, unless the person's lawful mileage and fee for one day's attendance is first paid or tendered to the person; but the testimony of a witness may be taken by deposition or interrogatories according to the Rules of Civil Procedure.

(b) A witness summoned in a proceeding before the board or whose deposition is taken shall receive the same fees and mileage as a witness in the superior court. (§§ 23, 24 ch 193 SLA 1959)

Cross references. — For court rules on depositions and interrogatories, see Civ. R. 26-37.

NOTES TO DECISIONS

Applied in Commercial Union Cos. v. Smallwood, Sup. Ct. Op. No. 1246 (File No. 2443), 550 P.2d 1261 (1976).

Collateral references. — Competency of witness in proceeding for death under Workmen's Compensation Act as affected by Deadman's Statute, 77 ALR2d 680.

Sec. 23.30.120. Presumptions. (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that

(1) the claim comes within the provisions of this chapter;

(2) sufficient notice of the claim has been given;

(3) the injury was not proximately caused by the intoxication of the injured employee or proximately caused by the employee being under the influence of drugs unless the drugs were taken as prescribed by the employee's physician;

(4) the injury was not occasioned by the wilful intention of the injured employee to injure or kill self or another.

(b) If delay in giving notice is excused by the board under AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the employee notwithstanding the provisions of (a) of this section. (§ 9 ch 193 SLA 1959; am §§ 11, 13 ch 93 SLA 1982)

Revisor's notes. — Subsection (b) was enacted as a part of AS 23.30.100(d)(2). Renumbered in 1982.

Effect of amendments. — The 1982 amendment rewrote paragraph (3) of present subsection (a), which formerly read "the injury was not occasioned solely by the intoxication of the injured employee," and enacted the provisions of subsection (b).

NOTES TO DECISIONS

This section provides statutory guidance for the supreme court in evaluating the basis for a board decision. Cook v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 644 (File No. 1168), 476 P.2d 29 (1970).

A preexisting disease or infirmity does not disqualify a claim if the work aggravated, accelerated or combined with the disease or infirmity to produce the death. Cook v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 644 (File No. 1168), 476 P.2d 29 (1970); Burgess Constr. Co. v. Smallwood, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

There is a presumption in favor of compensability under the workmen's compensation laws. Marsh v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 1745 (File No. 3643), 584 P.2d 1134 (1978).

And that injury is work-connected. — Since the Workmen's Compensation Act creates a presumption that a claim for compensation comes within the provisions of the statute, it must be presumed that an injury is work-connected in the absence of substantial evidence to the contrary. Beauchamp v. Employers Liab. Assurance Corp., Sup. Ct. Op. No. 655 (File No. 1161), 477 P.2d 993 (1970). See also Miller v. ITT Arctic Servs., Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

The test of coverage should not be limited to specific or required duties of the employment, but should include duties reasonably incidental to the employment. Laborers & Hod Carriers Local 341 v. Groothuis, Sup. Ct. Op. No. 773 (File Nos. 1435, 1459), 494 P.2d 808 (1972).

Hence, where the duties of decedent's position were broadly defined and included "anything that would inure to the benefit of the country," it would be difficult to find a rational basis upon which it could be asserted that he was not acting within the scope of his employment at the time of the crash. Laborers & Hod Carriers Local 341 v. Groothuis, Sup. Ct. Op. No. 773 (File Nos. 1435, 1459), 494 P.2d 808 (1972).

Compensable activity. — While labeling an employee's activity as "personal" may not render the ensuing injury per se noncompensable, the activity must still be "reasonably foreseeable and incidental" to the employment, and not just "but for" the employment, to entitle the employee to claim compensation. Marsh v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 1745 (File No. 3643), 584 P.2d 1134 (1978).

A heart attack is within the statutory presumption of compensability of accidental injuries under the Alaska Workmen's Compensation Act. Employers Com. Union Ins. Cos. v. Schoen, Sup. Ct. Op. No. 1325 (File No. 2616), 554 P.2d 1146 (1976).

Application of presumption. — Presumption of compensability in subsection (1) of this section applies in determining whether an employee's current problems are related to an on-the-job injury or arise from an independent cause. Black v. Universal Servs., Inc., Sup. Ct. Op. No. 2348 (File No. 4786), 627 P.2d 1073 (1981).

The presumption in paragraph (1) of this section applies to claims of aggravation or acceleration of a preexisting condition. Burgess Constr. Co. v. Smallwood, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

The presumption of compensability is not so limited that it does not apply in cases where the injury is not shown to have occurred on the job and is not sudden or unexplained, but rather the result of a preexisting condition which may have been aggravated by the employment. Burgess Constr. Co. v. Smallwood, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Where claimant's theory was that his employment conditions, particularly his work on a haul road, aggravated his preexisting renal dysfunction by preventing him from getting proper medical attention and maintaining a low salt diet necessary to control hypertension, which accelerated his ultimate renal failure, such aggravation or acceleration must be presumed in the absence of substantial evidence to the contrary. Burgess Constr. Co. v. Smallwood, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Before the statutory presumption of compensability attaches, some preliminary link must be established between the disability and the employment, and in claims based on highly technical medical considerations medical evidence is often necessary in order to make that connection. Burgess Constr. Co. v. Smallwood, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

The presumption of compensability found in paragraph (1) of this section is expressly made applicable to any "proceeding for the enforcement of a claim for compensation under this chapter" of the Worker's Compensation Act, AS 23.30.005

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— 23.30.270. The broad inclusiveness of this language does not mean that the mere filing of a claim gives rise to the presumption of coverage, for there must be some evidence that the claim arose out of, or in the course of, employment before the presumption arises. Burgess Constr. Co. v. Smallwood, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Presumption may not be ignored. — The question in a particular case of whether the employment did so contribute to aggravate or accelerate the final result is one of fact which is usually determined from medical testimony, but once a prima facie case of work-relatedness is made, the board may not ignore the presumption and allocate the burden of proof to the claimant. Burgess Constr. Co. v. Smallwood, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

The board failed to apply the proper legal standard where nowhere in its findings and conclusions was there any mention of the statutory presumption of coverage, or of aggravation or acceleration of a preexisting condition, and the language employed by the board in its decision suggested that it improperly placed the burden of establishing work-relatedness on claimant. Burgess Constr. Co. v. Smallwood, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Overcoming presumption of compensability. — Two possible ways of overcoming the presumption of compensability are (1) by affirmative evidence showing that the death was not work-connected, or (2) by eliminating all reasonable possibilities that the death was work-connected. Miller v. ITT Arctic Servs., Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978); Burgess Constr. Co. v. Smallwood, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

The employer can overcome the presumption of compensability by introducing affirmative evidence that the assault was not work-related. Marsh v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 1745 (File No. 3643), 584 P.2d 1134 (1978).

Where the statutory presumption of workers' compensation coverage governs, it is necessary for the employer to show by substantial evidence that the employee's continuing back problems did not result from the work-related accident. Rogers Elec. Co. v. Kouba, Sup. Ct. Op. No. 1990 (File No. 4164), 603 P.2d 909 (1979).

Presumption of compensability not inconsistent with holding burden of proof on claimant. — There is no inconsistency between the presumption of compensability found in this section and a holding that the burden of proving that an injury arose out of and in the course of the employment rests upon the claimant for compensation, for the presumption of this section places a burden on the employer to go forward with evidence on the issue of whether the injury arises outside or within the scope of employment. Once competent evidence is introduced, the presumption drops out, and the final burden of proof as to all essential elements is on the claimant. Anchorage Roofing Co. v. Gonzales, Sup. Ct. Op. No. 867 (File No. 1533), 507 P.2d 501 (1973).

Burden of proof. — The presumption of this section applies until such time as there is evidence that the claimant was outside the scope of his employment. At such time the claimant then has the burden of going forward with evidence of the job-related nature of the injury. Anchorage Roofing Co. v. Gonzales, Sup. Ct. Op. No. 867 (File No. 1533), 507 P.2d 501 (1973).

The employer has the burden of going forward with the evidence on the issue of whether the injury arose outside the scope of employment, but once substantial evidence is introduced, the presumption drops out, and the burden of proving all elements of the claim falls on the plaintiff. Fireman's Fund Am. Ins. Cos. v. Gomes, Sup. Ct. Op. No. 1230 (File No. 2421), 544 P.2d 1013 (1976).

The Alaska Workmen's Compensation Act contains a presumption that an injury is work-connected in the absence of substantial evidence to the contrary. Once substantial evidence is introduced, the presumption drops out and the burden of proving all elements of the claim falls on the claimant. Miller v. ITT Arctic Servs., Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

If a company meets its burden of producing substantial evidence that the injury was not work-related, the presumption would then drop out, shifting the burden of proving all elements of the claim back to the claimant. Burgess Constr. Co. v. Smallwood, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Substantial evidence required to overcome presumption. — When a claimant shows that he has been injured at work, substantial evidence is needed to overcome the presumption of com-

pensability. Marsh v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 1745 (File No. 3643), 584 P.2d 1134 (1978). See also Laborers & Hod Carriers Local 341 v. Groothuis, Sup. Ct. Op. No. 773 (File Nos. 1435, 1459), 494 P.2d 808 (1972).

For a reviewing court to uphold a decision of the Alaska Workers' Compensation Board determining that an employer has rebutted the statutory presumption of coverage, it must find that the decision is supported by "substantial evidence." Black v. Universal Servs., Inc., Sup. Ct. Op. No. 2348 (File No. 4786), 627 P.2d 1073 (1981).

"Substantial evidence". — The supreme court has consistently defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Evidence which is competent or admissible may nevertheless be insufficient to overcome the presumption of compensability; the question whether the quantum of evidence is substantial is a legal question. Miller v. ITT Arctic Servs., Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

"Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Rogers Elec. Co. v. Kouba, Sup. Ct. Op. No. 1990 (File No. 4164), 603 P.2d 909 (1979); Burgess Constr. Co. v. Smallwood, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981); Black v. Universal Servs., Inc., Sup. Ct. Op. No. 2348 (File No. 4786), 627 P.2d 1073 (1981).

The mere inability to state that the disability was work-related does not constitute substantial evidence. Miller v. ITT Arctic Servs., Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

The mere possibility of another injury is not "substantial" evidence sufficient to overcome the presumption of compensability. Hoth v. Valley Constr., Sup. Ct. Op. No. 2736 (File No. 6750), 671 P.2d 871 (1983).

Affirmative evidence in the form of expert testimony that decedent's death was not work-related was sufficient to constitute substantial evidence for purposes of rebutting the statutory presumption of compensability. Miller v. ITT Arctic Servs., Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

Where, even though an employee's injury was sustained while he was at work, there was compelling evidence presented to indicate that the employee had taken himself outside the scope and duties of his employment in his encounter with a woman patron and that it was that conduct which motivated the assault on him by the woman's husband, there was substantial evidence to support the board's determination that the assault on the employee was not work-connected and did not entitle the employee to compensation. Marsh v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 1745 (File No. 3643), 584 P.2d 1134 (1978).

In order to produce substantial evidence necessary to overcome the statutory presumption of compensability, it is imperative that the carrier be given an opportunity to cross-examine the claimant's medical experts and produce its own medical evidence of lack of aggravation or causation. Burgess Constr. Co. v. Smallwood, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Uncontradicted lay testimony, coupled with inconclusive medical testimony, can be enough to support a finding by the board that a physical condition is causally connected to an accidental injury sustained in the course of the employment. Employers Com. Union Co. v. Libor, Sup. Ct. Op. No. 1162 (File No. 2119), 536 P.2d 129 (1975).

Resolution of doubt as to substance of medical testimony. — If there is any doubt as to the substance of medical testimony, it must be resolved in favor of the claimant. Beauchamp v. Employers Liab. Assurance Corp., Sup. Ct. Op. No. 655 (File No. 1161), 477 P.2d 993 (1970); Cook v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 644 (File No. 1168), 476 P.2d 29 (1970); Miller v. ITT Arctic Servs., Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978); Alaska Pac. Assurance Co. v. Turner, Sup. Ct. Op. No. 2067 (File No. 4304), 611 P.2d 12 (1980); Kessick v. Alyeska Pipeline Serv. Co., Sup. Ct. Op. No. 2171 (File No. 4614), 617 P.2d 755 (1980).

The rule on resolving doubt as to the substance of medical testimony is properly applicable only when the substance of a particular witness' testimony is in doubt. Miller v. ITT Arctic Servs., Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

Psychiatrist's report. — Where a psychiatrist concluded that an injured employee's problems were mental rather than physical, this report could be given more weight than other doctors' (who were not psychiatrists) conclusions to the contrary and where the psychiatrist's report was neither doubtful nor ambiguous, it

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No. 3643), 584 P.2d

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overcame the statutory presumption of compensability. Black v. Universal Servs., Inc., Sup. Ct. Op. No. 2348 (File No. 4786), 627 P.2d 1073 (1981).

Where a psychistrist who had no opportunity to examine the injured employee in any depth concluded contrary to numerous physicians who treated her that the employee's problems were mental rather than physical, this was insufficient evidence to sustain the Workers' Compensation Board's determination that the employee's injury was not compensable. Black v. Universal Servs., Inc., Sup. Ct. Op. No. 2348 (File No. 4786), 627 P.2d 1073 (1981).

Superior court's findings of an occupational disease were supported by substantial evidence in light of the whole record. Aleutian Homes v. Fischer, Sup. Ct. Op. No. 365 (File No. 668), 418 P.2d 769 (1966).

Paragraph (1) presumption held to operate. — Where deceased was shot and killed, after closing time while cleaning up, at the restaurant at which he was employed as a bartender, by an unknown assailant, and no words were spoken during the attack and no money was taken, the presumption of paragraph (1) operated, since no motive was found, no one knew why the assault was committed, and no plausible explanation showing the lack of employment connection was suggested. Fireman's Fund Am. Ins. Cos. v. Gomes, Sup. Ct. Op. No. 1230 (File No. 2421), 544 P.2d 1013 (1976).

Presumption of compensability not overcome. — See Land & Marine Rental Co. v. Rawls, Sup. Ct. Op. No. 2777 (File Nos. 6963-7090), P.2d (1984).

Applied in Thornton v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 327 (File No. 612), 411 P.2d 209 (1966); Ruble v. Arctic Gen., Inc., Sup. Ct. Op. No. 1887 (File No. 3710), 598 P.2d 95 (1979); Providence Washington Ins. Co. v. Bonner, Sup. Ct. Op. No. 2818 (File No. 7308), P.2d (1984).

Collateral references. — Matters concluded, in action at law to recover for the same injury, by decision or finding made in workmen's compensation proceeding. 84 ALR2d 1036.

Sec. 23.30.122. Credibility of witnesses. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action. (§ 14 ch 93 SLA 1982)

NOTES TO DECISIONS

Absent specific findings by the board that it chose to disbelieve a witness's testimony, a court will not assume that lack of credibility was a relevant factor in the board's decision. Hoth v. Valley Constr., Sup. Ct. Op. No. 2736 (File No. 6750), 671 P.2d 871 (1983).

Sec. 23.30.125. Review of compensation order. (a) A compensation order becomes effective when filed in the office of the board as provided in AS 23.30.110 and, unless proceedings to suspend it or set it aside are instituted as provided in (c) of this section, it becomes final on the 31st day after it is filed.

SB

256

Bill No. Senate Bill No. 256

Date April 5, 1985

Title "An Act relating to exposure to microwave radiation in the workplace."

Contact: Richard Arab
465-4856
Eileen Plate
465-2700

Senate Bill No. 256 provides special employer reporting requirements when an employee is over-exposed to microwave radiation; requires that employees who may be exposed to microwave radiation be informed of the potential exposure and trained to safely work around such radiation; and requires that microwave radiation information be included on the "Right to Know" poster printed and distributed by the department.

This bill was introduced as a result of an incident in which several workers were over-exposed to microwave radiation while repairing a radar dish. An estimated 700 workers in Alaska do this type of work. The bill would also cover other workers who may work around other sources of microwave radiation such as bar and restaurant employees who use microwave ovens.

The reporting of incidents involving over-exposure to microwave radiation will assist the department in identifying and correcting work conditions which cause such exposures; and the employee education and training, as prescribed in the bill, will effect implementation of protective measures by the employer to safeguard employees, as well as provide employees with an understanding of the importance of following safe and healthful work practices. This bill would, therefore, enhance the department's efforts to protect Alaska's workers.

The Department of Labor supports Senate Bill No. 256. It will not have a fiscal impact on the department.

APPROVED:

Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 256
Title: "An Act relating to exposure to microwave radiation..."
Sponsor: Coghill & Josephson
Requestor: Senate Labor & Commerce
Date of Request: 3/27/85

FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Occupational Safety & Health

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Assumes that inclusion of information on microwave radiation on the department's "Right-to-Know" poster, per Sec. 3 of SB 256, does not have to be incorporated until the department exhausts its present supply and reprints the poster.

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870
Division: Labor Standards & Safety Date: 3/28/85

Approved by Commissioner: Jim Robison Date: 3/28/85
Agency: Labor

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

259

Department of Commerce & Economic Development / POSITION PAPER

SB 259 "An act relating to the practice of public accountancy and providing for an effective date."

The Department of Commerce and Economic Development and the Division of Occupational Licensing would support this legislation with amendments.

The legislation, as drafted, expands the authority of the licensing board. The new legislation authorizes the boards to regulate items such as the use of names and titles, affiliations with other organizations, "reasonable requirements" for unimpaired capital, and professional liability insurance. This practice act allows for one not qualified to take an examination within 120 days if they expect to meet the qualifications. The legislation also restricts the board's ability to protect the consumer by limiting the period of revocation or suspension they can enforce for a violation. Alaska Statutes 08.04.485 (Section 23, beginning on page 12) gives the board the expanded authority to hold hearings which are not subject to the Administrative Procedures Act (AS 44.62).

A section by section analysis has been prepared by the staff of the Division of Occupational Licensing. The Division of Occupational Licensing is also committed to assisting in working with the bill sponsor for a clear and concise legislation that will protect the consumer, provide assistance to those qualified who are seeking licensing, and the licensing board in their administrative function without overregulating, overrestricting or expanding the licensure authority.

Harry D. Treager, Director
Division of Occupational Licensing

Date April 16, 1985

for Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date 4/19/85

2771t

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 259

Title: Practice of public accounting

Sponsor: Senator Zharoff

Requestor: _____

Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected: Consumer Protection

BRU, Program or Subprogram(s), Affected: Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
200 TRAVEL		-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL		.6	.7	.7	.7	.8
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		.6	.7	.7	.7	.8
CAPITAL						
REVENUE		***				

FUNDING: (Thousands of Dollars)

GENERAL FUND		.6	.7	.7	.7	.8
FEDERAL FUNDS						
OTHER						
TOTAL		.6	.7	.7	.7	.8

POSITIONS:

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This legislation expands the authority of the Board to regulate such items as, the use of names and titles, affiliations with other organizations, requirements for unimpared capital and professional liability insurance. The bill also establishes new requirements in processing regulation projects, and allow the board to hold hearings that are not subject to the Administrative Procedure Act (AS 44.62).

Prepared By: Jennifer Strickler, Mgnt Analyst Phone: 465-2144

Division: Occupational Licensing Date: April 18, 1985

Approved by Commissioner: Loren H. Lounsbury Date: 4/19/85

Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

SB 259 FISCAL IMPACT

300 Contractual Services:

Section 08.04.080 requires a copy of proposed regulations to be sent to each licensee. Regulation projects average about eight (8) pages, and based on 773 current licensees, the following costs would apply: 773 x .26¢ per set = $200.98

Postage at .22¢ per envelope x 773 = $170.06

Sections 16, 17, 18 of the bill requires the board to establish fees for registration of affiliations with organizations, registration of offices, and use of names and titles.

In compliance with the Administrative Procedure Act, notices must be published in a newspaper of general circulation. Therefore, advertising costs of $60 per ad in three (3) major papers of the State would apply. $60 x 3 newspapers = $180.00

TOTAL COSTS = $551.04

Revenues:

*** There are 18 public accountancy corporations currently licensed. Once the fee mentioned in sections 16,17 and 18 is established, an immediate fiscal impact would be generated from the 18 corporations already licensed.

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

260

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200 CHENEGA STREET
P.O. BOX 767
VALDEZ, ALASKA 99686
TELEPHONE (907) 835-2986

February 21, 1985

Senator Richard I. Eliason
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Alaska Statute 21.59. Automobile Service Corporations

Dear Senator Eliason:

I stopped by your office today to discuss with Sheila Chapter 59 of Title 21, dealing with Automobile Service Corporations, which was passed this last legislative session. As you know, I representative Allstate Insurance Company, and have been asked on behalf of an affiliate of Allstate Insurance Company, Allstate Motor Club, Inc., to look into this legislation. Allstate Motor Club, Inc. is an Automobile Service Corporation which provides its members with the benefits that are described in the club's "Official Service Contract", a copy of which I have enclosed for your information. Prospective members are enrolled by licensed Allstate Insurance Company agents, each of whom is an authorized representative of the Allstate Motor Club and in addition by direct mail efforts. Mail solicitations are included with various Sears, Roebuck and Company and Allstate Insurance Company bills and other promotional mailings and by other direct mail programs.

Members are entitled to reimbursement for covered expenses involving towing and road service expenses, trip interruption claims, legal defense claims, lost keys/lockout benefit, and theft/hit-and-run protection. Other benefits include lodging and rent a car discounts, Discovery magazine and trip planning.

Back up

Allstate Insurance Company indemnifies Allstate Motor Club through a $20 million protective policy. Allstate Life Insurance Company, also an affiliate, insures motor club members for accidental death or dismemberment.

As of December 31, 1984 Allstate Motor Club had 1,268,000 members nation-wide, and 4,741 members in Alaska.

During the past legislative session, chapter 59 of Title 21 was enacted. Alaska Statute 21.59.020(a) expressly provides that a person providing or intending to provide "Automobile Service Corporation services shall be incorporated as a nonprofit corporation . . ." (emphasis added). Allstate Motor Club is not a nonprofit corporation. I have looked through the legislative history of chapter 59, and have not discovered any discussion dealing with the "nonprofit" aspect of this bill. The "nonprofit" requirement of this bill will effectively put Allstate Motor Club out of business in Alaska, and we simply do not believe that was the intent of this legislation. If the "nonprofit" aspect of this legislation is not removed, Allstate Motor Club will not be able to continue to do business in Alaska and we would hope this legislation could be corrected to prevent this from occurring. This could be accomplished simply by removing the word "nonprofit" from AS 21.59.020(a). We would think this amendment would be simply a technical amendment and would hope that it would be noncontroversial. We stand ready to provide any further information you feel might be of assistance.

Sincerely,

HUGHES THORSNESS GANTZ
POWELL & BRUNDIN

By:
Michael L. Lessmeier

Enclosure
MLL/mh

cc: Rep. Fritz Pettyjohn

STATEMENT BEFORE

SENATE LABOR AND COMMERCE COMMITTEE

HEARING ON SB 260

PRESENTED ON BEHALF OF ALLSTATE MOTOR CLUB, INC.

April 3, 1985

Mr. Chairman, members of the Labor and Commerce Committee, my name is Michael Lessmeier. I am a lawyer from Juneau and am here on behalf of Allstate Motor Club, Inc. to support Senate Bill 260, which would allow a profit or non-profit corporation to obtain authorization as an automobile service corporation.

During the past legislative session, Chapter 59 of Title 21 was enacted. AS 21.59.020(a) states that a person providing or intending to provide "automobile service corporation services shall be incorporated as a non-profit corporation . . ." (emphasis added). The legislation before you would simply delete the "non-profit" aspect of Chapter 59 and thus allow a corporation authorized as an automobile service corporation under a certificate of authority issued by the Division of Insurance to provide automobile service corporation services. In researching the legislative history of Chapter 59, we have not discovered any discussion dealing with the "non-profit" aspect of this bill and we can conceive of no reason why a duly authorized corporation

should not be allowed to offer this service so long as it is issued an appropriate certificate of authority by the Director of the Division of Insurance, as required by the other provisions of this chapter.

Allstate Motor Club, Inc. is an automobile service corporation which provides its members certain benefits including reimbursement for covered expenses involving towing and road service expenses, trip interruption claims, legal defense claims, lost key/lockout benefits, and theft/hit-and-run protection. Other benefits include lodging and rent-a-car discounts, Discovery magazine and trip planning. Allstate Motor Club, Inc. is an affiliate of Allstate Insurance Company, and as of December 31, 1984, had approximately 1,268,000 members nationwide, and 4,741 members in Alaska.

Since Allstate Motor Club is a profit as opposed to a non-profit corporation, the "non-profit" requirement of this bill will effectively put Allstate Motor Club out of business in Alaska and we do not believe this was the intent of the legislation. As far as we know, there is no advantage to the consumer in requiring an automobile service corporation to be "non-profit", and in fact, this requirement may well effectively eliminate from the market any service corporation which does not qualify as "non-profit".

We do believe these corporations provide a benefit to the public which is in demand, and we ask your support of this legislation.

SB 260 File Contents

April 22, 1985 Monday

1) Bill Summary -- Legislative Reporting Service

2) Overview -- Provided by Senate L & C staff (nd)

3) Fiscal Note -- Dept. of Commerce & ED (4/2/85)

4) Statutes -- AS 21.59.020

5) Written testimony before Senate L & C Committee, (4/3/85)

6) Letter from Michael Lessmeier to Senator Eliason (2/21/85)

SB 260: "AN ACT RELATING TO AUTOMOBLIE SERVICE CORPORATIONS"

THIS LEGISLATION WAS INTRODUCED TO CORRECT AN OVERSIGHT WHICH OCCURRED IN LEGISLATION PASSED LAST YEAR. LAST YEARS BILL PROVIDED THAT AN AUTOMOBILE SERVICE CORPORATION BE INCORPORATED AS A NON PROFIT CORPORATION WHICH RESULTED IN PRECLUDING THE "FOR PROFITS" FROM DOING BUSINESS IN THIS STATE. ONE OF THE "FOR PROFIT" MOTOR CLUBS OPERATING IN THE STATE CURRENTLY HAS 4,741 ALASKAN MEMBERS, AND DURING TESTIMONY BEFORE THE COMMITTEE, THE DIVISION OF INSURANCE EXPRESSED ITS SUPPORT FOR CORRECTION OF THIS OVERSIGHT. THIS IS A NON CONTROVERSIAL BILL AND I URGE ITS PASSAGE BY THE BODY.

AUTOMOBILE SERVICE CORPORATIONS PROVIDE THEIR MEMBERS BENEFITS SUCH AS REIMBURSEMENT FOR TOWING AND ROAD SERVICE EXPENSES, LOST KEY AND LOCK_ OUT BENEFITS, AND THEFT AND HIT AND RUN PROTECTION.

Introduced: 3/28/85
Referred: Labor & Commerce

IN THE SENATE BY ZHAROFF

SENATE BILL NO. 260

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to automobile service corporations."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.59.020(a) is amended to read:

(a) A person providing or intending to provide automobile service corporation services shall be a corporation [INCORPORATED AS A NONPROFIT CORPORATION AND BE] currently authorized as an automobile service corporation under a certificate of authority issued by the director under this chapter.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 260

Title: "An Act to permit automobile service corporations

Sponsor: Zharoff

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected: Consumer Protection

BRU, Program or Subprogram(s) Affected: Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: John L. George, Director Phone: 465-2515

Division: Insurance Date: 4/2/85

Approved by Commissioner: Loren H. Lounsbury Date: 4/2/85

Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and [redacted]

Impacted Agency(ies)

/1/84

Statutes relating to SB 260

AS21.59.020

HEADINGS TITLE 21.
Insurance.
CHAPTER 59.
Automobile Service Corporations.
CITATION Sec. 21.59.020.
CATCH LINE
INCORPORATION AND CERTIFICATE OF AUTHORITY REQUIRED.
TEXT (a) A person providing or intending to provide automobile service corporation services shall be incorporated as a nonprofit corporation and be currently authorized as an automobile service corporation under a certificate of authority issued by the director under this chapter.

(b) If the corporation is to be formed under the laws of this state, the articles of incorporation of the proposed corporation or amendments to existing articles of incorporation shall be submitted to the director before they are filed with the commissioner of commerce and economic development. The commissioner of commerce and economic development may not file the articles or amendments unless the director's approval is endorsed. The director shall approve the articles or amendments unless the director finds that the articles or amendments do not comply with law. If not approved, the director shall return the proposed articles of incorporation to the incorporators or amendments to the corporation, together with a written, detailed statement of the reasons for nonapproval.

HISTORY (Sec. 1 ch 135 SLA 1984)

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

265

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 265: Sectional Analysis

Section 1) Repeals and re enacts section concerning the composition of the authority, and establishes a 7 member board. (incorporates a modified version of a recommendation by the Advisory Committee on Statewide Power Production Costs concerning APA Board structure)

Proposed APA Board structure:

1) Commissioner of DCED

2) one director from banking industry

3) one consumer representative

4) two directors from business and industry

5) two directors who are managers of the utility industry.

Directors are appointed by the Governor, serve for staggered 6 year terms, and are subject to Legislative confirmation.

Section 2) Requires that directors appointed by the Governor must be residents, qualified voters, and are subject to the conflict of interest statutes.

Section 3) Describes the mechanics of replacing current board members, i.e. public directors shall serve until their terms expire, and the Governor shall replace OMB member and 3 commissioners on the day before the effecive date of this act.

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

HISTORICAL REVIEW OF THE COMPOSITION OF THE APA BOARD:

1976: 4 public members, appointed by the Governor, and the Commissioner of DCED;

1978: 4 directors, appointed by the Governor, and the Commissioner of DCED. Commissioners of C&RA, DNR, DOT, and Revenue have the rights and privileges, but not voting.

1979: same

1980: same

1981: same

1982: 3 public members from different judicial districts; director of management and Budget, and 3 commissioners.

1983: same

1984: 7 directors, with 6 of those members appointed by the Governor. Of the 7, 3 must be public members, 3 must be commissioners, and the director of OMB.

1985: same

Adivisory Committee on Statewide Power Production Recommendation: Change the current composition of the APA Board to give it long term stability, free from political pressure.

9 member Board, with 6 year staggered terms, composed as follows:

1) One Commissioner (DCED)
2) four members from the utility industry
3) Two members from business and industry
4) one banker
5) one consumer representative

BOARD: POWER AUTHORITY, ALASKA

TITLE: Alaska Power Authority

DEPT: Department of Commerce and Economic Development

AUTHORITY: AS 44.83.010

STATUS: ACTIVE

REQUIREMENTS: FINANCIAL DISCLOSURE

PROHIBITIONS:

TERM: 4-year - overlapping

DESCRIPTION: 7 directors - 6 appointed by Governor: 3 public from different judicial districts (for terms), and 3 Commissioners, plus Director, Div. of Budget and Management; Board elects Chair.

SPECIAL FACTS: Quorum - 4 members; public corporation with independent legal existence; receives grants

FUNCTION: Promote general prosperity and economic welfare of Alaskans by providing a means of constructing, acquiring, financing, and operating power projects and facilities that recover and use waste energy.

COMPENSATION: Standard travel/per diem

MEETINGS: 12 times per year; 48 days maximum

*FOR FURTHER INFORMATION CONTACT: Executive Director, Alaska Power Authority, 334 West Fifth Avenue, Second Floor, Anchorage, AK 99501 - 276-0001

85

Pow' Authority

MEMBER	APPT	REAPPT	TERM
David L. Allison 217 Second Street Juneau 99801 Public/Restricted	83/07/06	84/07/02	88/07/01
Robert L. Hufman 1018 Galena Street Fairbanks 99701 Public/Restricted	83/02/28	83/06/30	87/07/01
Richard J. Knapp DOT/PF - Pouch Z Juneau 99811 Comm./State Dept.	84/06/30		
Loren Lounsbery DCED Juneau 99811 Comm./State Dept.	85/01/03		
Gordon Harrison OMB Juneau 99811 OMB-Dir/Mandate	84/11/13		
Lee R. Nunn, Jr. 6311 Habicht Court Anchorage 99504 Public/Restricted	83/06/07		85/07/01
Esther Wunnicke DNR Juneau 99811 Comm./State Dept.	83/01/18		

BOARD: POWER AUTHORITY, ALASKA

TITLE: Alaska Power Authority

DEPT: DCED

AUTHORITY: AS 44.83.010

STATUS: ACTIVE

REQUIREMENTS: FINANCIAL DISCLOSURE

PROHIBITIONS:

TERM: 4-year - overlapping

DESCRIPTION: 7 directors - 6 appointed by Governor: 3 public from different judicial districts (for terms), and 3 Commissioners, plus Director, Div. of Budget & Management; Board elects Chair.

SPECIAL RULES: Quorum - 4 members; public corporation with independent legal existence; receives grants

FUNCTION: Promote general prosperity and economic welfare of Alaskans by providing a means of constructing, acquiring, financing and operating power projects and facilities that recover and use waste energy.

COMPENSATION: Standard travel/per diem

MEETINGS: 12 times per year; 48 days maximum

CONTACT: Power Authority, Larry Crawford, E.D., 334 West Fifth Avenue, Second Floor Anchorage 99501 - 277-7641

84

Power Authority

MEMBER	APPT	REAPPT	TERM
David L. Allison 217 Second Street Juneau 99801 Pub/Restricted	83/07/06		84/07/01
Robert Heath Revenue Juneau 99811 Comm./ST Dept.	83/11/23		
Robert L. Hufman 1018 Galena Street Fairbanks 99701 Pub/Restricted	*83/02	83/06/30	87/07/01
Richard Lyon Commerce Juneau 99811 Comm./ST Dept. - Chair	83/01/18		
Pete McDowell OMB Juneau 99811 OMB-Dir/Mandate	83/01/18		
Lee R. Nunn, Jr. 6311 Habicht Court Anchorage 99504 Pub/Restricted	83/06/07		85/07/01
Esther Wunnicke DNR Juneau 99811 Comm./ST Dept.	83/01/18		

84

POWER AUTHORITY, ALASKA
(SLA 278; AS 44.83.010) 3 public members from different judicial districts; director of Budget & Management; 3 commissioners. Requires financial disclosure.

MEMBERS	REPLACING	APPT.	TERM
Mr. Charles Conway 821 N Street, Suite 201 Anchorage, Alaska 99501 (Chair)	Reappointed	81/08/17	84/07/01
Mr. Robert B. Weeden Box 80425 Fairbanks, Alaska 99701 479-6664	Reappointed	81/08/17	83/07/01
Mr. John Schaeffer Box 106 Kotzebue, Alaska 99752		81/09/01	85/07/01

Ron Lehr, Director
Division of Budget & Management
Pouch AM
Juneau, Alaska 99811

The Honorable Robert Ward
Commissioner
Dept. of Transportation
& Public Facilities
Pouch Z
Juneau, Alaska 99811

The Honorable Chuck Webber
Commissioner
Dept. of Commerce & Economic
Development
Pouch D
Juneau, Alaska 99811

The Honorable Ernst Mueller
Commissioner
Dept. of Environmental Conservation
Pouch O
Juneau, Alaska 99811

CONTACT AGENCY:
Eric Yould, Executive Director
333 W. Fourth Street
Anchorage, AK 99501
(277-7641)

ID #1 (G-11)

82/83

POWER AUTHORITY, ALASKA
(SLA 278; AS 44.83.010) 3 public members from different judicial districts; director of Budget & Management; 3 commissioners. Requires financial disclosure.

MEMBERS	REPLACING	APPT.	TERM
Mr. Charles Conway 821 N Street, Suite 201 Anchorage, Alaska 99501 (Chair)	Reappointed	81/08/17	84/07/01
Mr. Robert B. Weeden Box 80425 Fairbanks, Alaska 99701 479-6664	Reappointed	81/08/17	83/07/01
Mr. John Schaeffer Box 106 Kotzebue, Alaska 99752		81/09/01	85/07/01

Ron Lehr, Director
Division of Budget & Management
Pouch AM
Juneau, Alaska 99811

Commissioner Robert Ward
Dept. of Transportation
& Public Facilities
Pouch Z
Juneau, Alaska 99811

Commissioner Chuck Webber
Dept. of Commerce & Economic
Development
Pouch D
Juneau, Alaska 99811

Commissioner Ernst Mueller
Dept. of Environmental Conservation
Pouch O
Juneau, Alaska 99811

CONTACT AGENCY:
Eric Yould, Executive Director
333 W. Fourth Street
Anchorage, AK 99501
(277-7641)

82

POWER AUTHORITY, ALASKA
(SLA 278; AS 44.83.010) 4 public members; financial disclosure;
four-year terms.

MEMBERS	REPLACING	APPT.	TERM
Thomas E. Kelly 225 Cordova, Building B Suite 307 Anchorage, Alaska 99501	Charles Behlke	80/06/23	83/01/01
Mr. Chuck Conway Box 520 Sitka, Alaska 99835	Reappointed	80/12/15	85/01/01
Robert B. Weeden Box 80425 Fairbanks, Alaska 99701	Jacob Wick	80/06/23	84/01/01
Mr. Arnold G. Espe 2204 Arcadia Drive Anchorage, Alaska 99503	Bob Ward	79/02/14	82/01/01

CONTACT AGENCY:
Eric Yould, Executive Director
333 W. Fourth Street
Anchorage, AK 99501
(277-7641)

ID #1 (G-12)

1981

(SLA 278; AS 44.56.010-240) 4 public members; members are subject to *legislative confirmation and financial disclosure; four-year terms.

MEMBERS	REPLACING	APPT.	TERM
Mr. Charles Behlke P. O. Box 80257 Fairbanks, Alaska 99758	Frank Murkowski	79/02/14	83/01/01
Mr. Chuck Conway Box 520 Sitka, Alaska 99835		76/12/21	81/01/01
Mr. Jacob Wick Box 746 Kodiak, Alaska 99615		77/03/25	80/01/01
Mr. Arnold G. Espe 2204 Arcadia Drive Anchorage, Alaska 99503	Bob Ward	79/02/14	82/01/01

CONTACT AGENCY:
Commerce & Economic Development
(465-2500)
*Confirmation is required by statute but is not allowed under the constitution.
ID #80

1980

ALASKA POWER AUTHORITY
(SLA 278; AS 44.56.010-240) 4 public members; members are subject to *legislative confirmation and financial disclosure.

MEMBERS	REPLACING	APPT.	TERM
Mr. Charles Behlke P. O. Box 80257 Fairbanks, Alaska 99758	Frank Murkowski	79/02/14	83/01/01
Mr. Chuck Conway Box 520 Sitka, Alaska 99835		76/12/21	81/01/01
Mr. Jacob Wick Box 746 Kodiak, Alaska 99615		77/03/25	80/01/01
Mr. Arnold G. Espe 2204 Arcadia Drive Anchorage, Alaska 99503	Bob Ward	79/02/14	82/01/01

CONTACT AGENCY:
Commerce & Economic Development
(465-2500)
*Confirmation is required by statute but is not allowed under the constitution.
ID #80

(SLA 278; AS 44.56.010-240; 4 pubic members; members are subject t
*legislative confirmation andffinancial disclosure)

NAMES AND ADDRESSES	Replacing	New	Appt.	Acct.	Term Expires
Frank Murkowski 3 Mi. Chena Pump Road Fairbanks 99701			12/31/76		1/1/79
Chuck Conway Box 520 Sitka 99835			12/31/76		1/1/81
Jacob Wick Box 746 Kodiak 99615			3/25/77		1/1/80
Bob Ward 6711 Foothill Dr. Anchorage 99501			1/6/77 *		1/1/82

CONTACT AGENCY: Department of Commerce and Economic Development
Office of the Commissioner
(465-2500)

* Confirmation is required by statute but is not allowed under the constitution

degree of independence and perpetuity necessary for a consistent long term cost-beneficial program such as described. in this document. There should be full recognition of the management commitment that is necessary for the long term capital commitment and long term construction cycles of the electric generation facilities inherent under this concept.

The Committee assumes that the Alaska Power Authority (APA) will be the organization to administer this program. Since State funds will be involved, the legislature and administration will continue to be interested in the success of the program.

It is the recommendation of the Committee that a nine member board be created with the fiduciary responsibility of setting policy and directing the operation of the Power Authority. The Board would be constituted as follows:

- The Commissioner of Commerce and Economic Development--This would be the only Board member without a fixed term and would be the specific person charged with representing the interests of the Governor and his administration.

- Four Directors appointed by the Governor for staggered six year terms and approved by the legislature--These four members should include one member from the banking industry and one a consumer representative and two from business and industry.

- Four Directors from the Alaska Systems Coordinating Council (ASCC)--The Alaska Systems Coordinating Council is an existing group of electric utility

managers who on ad hoc basis are now coordinating the development of electric generation and transmission systems within the State. The Governor should appoint and the legislature approve these four Directors--two Railbelt, one Southeast Alaska, and one bush utility manager. The ASCC should make recommendations to the Governor. As with the other appointed members, the ASCC Directors should serve six year staggered terms.

An important function of the Board of Directors will be to set electric power development policy and to assure that cost-beneficial planning and operations are conducted by the APA that will benefit all Alaskan consumers. In order to insure that generating capacity additions are the ones which result in minimum cost, are compatible to long range plans and contribute to system optimization, any equalization payments for prospective units must be based solely on pre-construction approval by the Power Authority Board. In no event should the Authority be required to purchase power either directly or indirectly through a participating system which was not generated by said participating system.

Over the past few years, the State of Alaska has provided loans or grants for substantial sums of monies to develop generation capacity--most notable examples are the Four Dam Pool and the Fairbanks-Anchorage Intertie. It is the recommendation of this committee that these loans be converted to grants by the State and be considered as equity of the Alaska Power Authority. These projects obviously fit within the context of the concept presented by the Committee, in that they contribute to lowering the cost of generation for all

Kodiak Electric Association Inc.
(907) 486-3261 Box 787
KODIAK, ALASKA 99615

January 21, 1985

Representative Dave Thompson
Alaska State Legislature
Pouch V
(MS 3100)
Juneau, Alaska 99811

Dear Representative Thompson:

As you requested, enclosed is an explanation of the frequency problem we have with the Terror Lake Project in a "stand alone" mode, along with a strip chart showing a period of time under test conditions. The Coast Guard was disconnected from Terror Lake during these tests.

As you can see, when the project was governed by the diesel, the frequency is straight as a string. As soon as the diesel was taken off, the frequency started to fluctuate. This test was done at night after 8 p.m. and no damage to anyone's equipment resulted.

About a week earlier, a small mishap at the Terror Lake Project resulted in a few minutes of operation like this and considerable damage was done to computers throughout the area. That is why we conduct these tests after 8 p.m.

You will note the biggest swing was caused by a 500 KW load-change. During the day time, these are so common as to go unremarked as they happen as often as several times a minute. A larger load change will cause the project to relay off the system.

The APA and contractor technicians are presently on site making adjustments. I suspect they will be back several more times before we know if they are successful.

Sincerely,

David S. Nease, Jr.

Enclosures: 2

Kodiak Electric Association, Inc.

Attached is a strip-chart recording of frequency on the KEA System made during a "stand alone" test of Terror Lake generation on January 16 between 9 and 11:30 p.m. This would be typical steady-state operation with load changes of 500 KW or less. Also shown on the chart are the proposed APUC maximum frequency requirements and KEA's typical operation with diesel generation or diesel-assisted hydro operation.

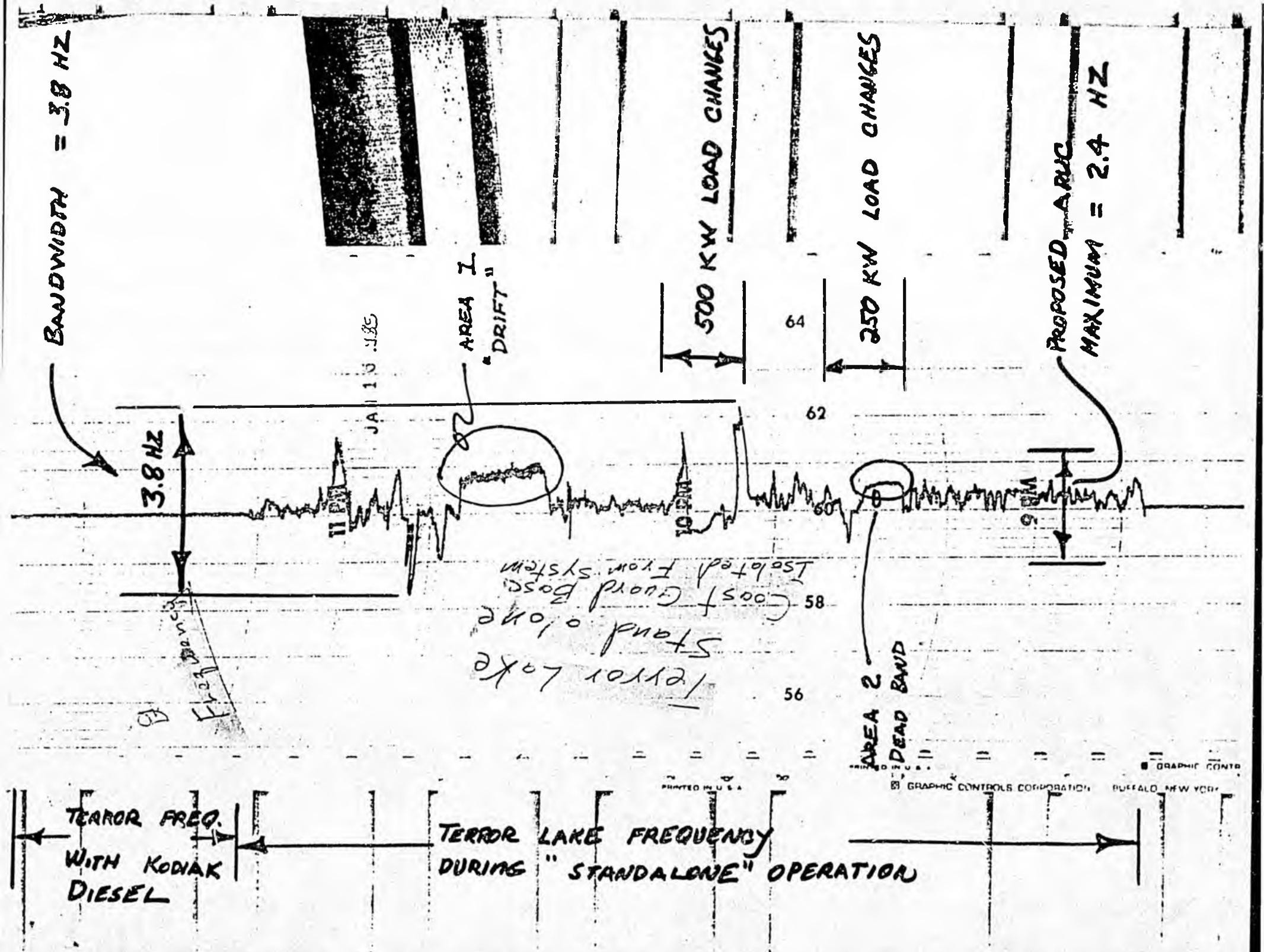
From the standpoint of our consumers, the 3.8 hz bandwidth is unacceptable. Damage to equipment has already resulted from smaller variations than these. The proposed APUC standard of (±)2% is a maximum value and should be approached only occasionally (once a day), not continually (once every 15 minutes).

Note two other things on the strip chart. The gradually sloping line (area 1) shows drift in the governor, and the failure to return to 60 hz (area 2) on some occasions indicates a "dead band" or a frequency variation that the governor does not see. These are also serious problems.

At this time, EBASCO Engineers, Woodward Governor Tech Reps and a Fugi Engineer are at the site trying to correct these problems. I speculate that they will correct the "drift" and "dead band" problems. It will be more difficult to correct the 3.8 hz bandwidth during "stand alone" operation. If any of these problems are not corrected, KEA will need continued diesel generation "on line" to support the system frequency.

Wiliam Eberhardt
Manager of Power Production
Kodiak Electric Association, Inc.
January 16, 1985

BANDWIDTH = 3.8 HZ
3.8 HZ
JAN 13 1985
11 PM
AREA 1
"DRIFT"
500 KW LOAD CHANGES
250 KW LOAD CHANGES
PROPOSED ARUC
MAXIMUM = 2.4 HZ
64
62
60
58
56
9 AM
AREA 2
DEAD BAND
Fred Branch
Terror Lake
Stand Alone
Coast Guard Base
Isolated Iron System
PRINTED IN U.S.A.
GRAPHIC CONTROLS CORPORATION BUFFALO, NEW YORK
TEAROR FREQ. WITH KODIAK DIESEL
TERROR LAKE FREQUENCY DURING "STANDALONE" OPERATION


BANDWIDTH = 3.8 HZ
3.8 Hz
AREA 1
"DRIFT"
500 KW LOAD CHANGES
250 KW LOAD CHANGES
PROPOSED ARUC
MAXIMUM = 2.4 HZ
AREA 2
DEAD BAND
64
62
60
58
56
11 PM
10 AM
9
Terror Lake
Stand Alone
Coast Guard Base
Isolated From System
TEARDR FREQ.
WITH KODIAK
DIESEL
TERROR LAKE FREQUENCY
DURING "STANDALONE" OPERATION
PRINTED IN U.S.A.
GRAPHIC CONTROLS CORPORATION BUFFALO, NEW YORK

BRIEFING PAPER ON THE HISTORY OF THE 4-DAM POOL NEGOTIATIONS AND THE GOVERNOR'S ADVISORY COMMITTEE ON STATEWIDE POWER COSTS

The history of the 4-dam pool starts with Senate Bill #25 wherein the Energy Bill of Alaska was enacted by funding various hydro projects throughout the State; Terror Lake being one of them.

At that point, the concept of financing was 100% grant money. Over a period of time, deteriorating oil revenues and subsequent legislation, particularly HB#9, changed the direction of ownership and financing to a statewide ownership of the projects and a common financing pool; hence the 4-dam pool.

It is important to note, at this time, all future additional projects are to go into the debt pool. This is referred to as system increment. Shortly after this legislation, the projects commenced to be finished and come "on line". Terror Lake is the last one and is not yet in commercial operation. Because of a shortfall in the original appropriation for grants to build the projects, additional financing was necessary. ($210,000,000) The APA determined to finance this via revenue bonds. At this point, towards the last quarter of 1983, considerable dissatisfaction was voiced by the members of the 4-dam pool concerning their negotiations with the APA regarding financing. Part of it was frustration in dealing with a State Agency but most of it was due to the restrictions put on the utilities by bond consultants involved in the Power Sales Contracts.

The administrative requirements were significant, but the bottom line was cost of power which the communities preceived as being higher than the current cost of diesel operation.

Two opposing forces were at work causing this particular conflict. One is in connection with diesel operation costs. The State and the 4-dam pool members were using projected costs of oil based on worldwide projections as well as the State of Alaska projections and had agreed on a 6.5% esculation per year.

Then, actual costs proceeded to decline instead of increase.

The other force is the projected kWh sales of the four combined communities. These sales had a direct affect on what the cost of power would be from the hydro projects. The more kWh sales, the lower the cost is per kWh. All sales combined were the guarantee of the payments to the bond buyers. However, toward the end of the 1985 legislative session an agreement was reached between the APA and the 4-dam pool communities (with the exception of Petersburg) with the communities ready to sign contracts. The communities accepted the fact that they were signing contracts higher than the cost of diesel production, figuring the cost of oil would esculate and the line would cross over in a few years and, in the long term, it would be stable, low-cost power. In this plan, there was the system increment for additional projects with a cap. A condition before signing was that a $49,000,000 appropriation must be approved by the legislature to put in place rate stabilization. Then, everything changed during the last week of the legislative session when the legislature decided that the State should finance these projects instead of writing bonds and passed legislation to do so. The essential criteria in the legislation was:

1) The rate of return to the State would be the same as the current market rates.
2) The alternative cost of power in the community must be considered (In most cases, diesel).
3) The loan terms could be as long as 50 years.
4) Loan payments could be deferred by the State if desired.

After a three-month wait, the APA called a meeting and presented the 4-dam pool members with a contract. The terms were 35 years with an 8% yield to the State. (Debt service rate from 5.50¢/kWh to 25.26¢/kWh in the 35th year)

The 4-dam pool communities asked to be given an opportunity to analyze their proposal and be allowed to make a counter proposal.

The 4-dam pool counter proposal is based on a 50-year loan term with a 5% rate of return, a deferred entry rate starting at 2¢ to 3.28¢ for five years and a flat rate of 3.53¢ for 30 years wherein the communities pay only for that capacity used. The

State would accept the responsibility for marketing unused capacity. After the 40th year, the communities would pick up the principal on unused capacity which is .0098¢ to the 50th year on the unused capacity but not the interest. There is no system increment in the 4-dam pool proposal.

Under the 4-dam pool's proposal to finance $210,000,000, the State gets a rate of return of $531,388,915. Under the State's proposal, the State would get a return of over $1,900,000 000 with a kWh rate that started at 5.5¢ and esculated in 30 years to 25.26¢ per kWh.

The 4-dam pool felt they were not given the opportunity to explain their position to any decision makers such as the APA Board Members or even adequately to the APA staff. The staff took it without any opportunity for explanation and stated that they would analyze it and explain it to the APA Board. The 4-dam pool representatives will now have an opportunity to explain to the APA Board on January 23.

On November 9, 1985, the Governor appointed a Blue Ribbon Panel to look into a statewide power rate. I was appointed as one of the members.

The APA set aside negotiations while the Governor's Committee undertook its study and also to see what the outcome of resulting legislation, if any, would be. Therefore, an interim contract resulted with a cost of power at 2.64¢/kWh until June. The Governor's Committee presented their report on December 15 to the Governor and to the APA. Representatives of that Committee will meet with the APA on the 23rd of January to make a presentation. Basically, the Committee recommends a three-point program.

1) Rates throughout the State will be averaged by a State Agency purchasing all kWh produced at the bussbar and selling it back at an average rate. (Estimated at 5¢ at the bussbar)

2) Averaged rates would be higher in the railbelt and lower throughout the rest of the State. Therefore, a $100,000,000 appropriation would be made for eight years to provide rate stabilization to ratepayers in the railbelt so that they pay the same rate as they would normally pay.

Secondly, $200,000,000 would be appropriated for eight years and be put into an interest bearing account with the interest accruing to that account to be used to finance large power projects. When the large projects are "on line", it will no longer be necessary to provide appropriations for rate stabalization as the large projects will provide this financing. The above would probably require a constitutional amendment.

3) Reorganize the APA Board. The APA will become essentially a State generation and transmission utility. No utility can successfully operate under the unstable conditions that exist at present on the APA Board. It is necessary that it have long-term stability and that political pressures be removed from the Board. Recommendations for the reorganization are described in the Committee's report to the Governor. Briefly, it would be a nine-man board with six-year staggered terms. One Commissioner would serve on the board; four members would be from the utility industry, recommended by the Alaska Coordinating Council; two members would be from business and industry; one would be a banker and one would be a consumer representative. The Coordinating Council would act as an advisory group to the Board and the Staff of the APA.

January 22, 1985

14-0997
Cramer
3/28/85

IN THE SENATE BY ZHAROFF

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to composition of the Alaska Power Authority Board."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 44.83.030 is repealed and reenacted to read:

Sec. 44.83.030. MEMBERSHIP OF THE AUTHORITY. The board of directors of the authority consists of seven members. The commissioner of commerce and economic development serves as a director and the governor shall appoint one director from the banking industry, one consumer representative, two directors from business and industry, and two directors who are managers in the utility industry. Directors appointed by the governor serve for staggered terms of six years and are subject to confirmation by a majority of the members of the legislature in joint session.

* Sec. 2. AS 44.83.045(a) is amended to read:

(a) The [PUBLIC] directors <u>appointed by the governor must</u> [SHALL] be residents and qualified voters of Alaska and shall comply with the requirements of AS 39.50 (conflict of interests). [THE PUBLIC DIRECTORS SHALL SERVE OVERLAPPING FOUR-YEAR TERMS.]

* Sec. 3. Notwithstanding the amendments to AS 44.83.030 made by sec. 1 of this Act, the public directors of the authority on the day before the effective date of this Act shall continue to serve until their terms expire. The governor shall replace the director of the office of management and budget and the three commissioners who are directors on the day before the effective date of this Act in accordance with AS 44.83.030 as amended

by this Act.

Kodiak Electric Association Inc.

(907) 486-3261

Box 787
KODIAK, ALASKA 99615

December 21, 1984

Enclosed you will find a copy of the report completed by the Governor's Blue Ribbon Committee for statewide power rates.

The scenarios looked at here indicate a cost of 5¢ at the bussbar for the communities. (Bussbar meaning low bushing side of the substation transformers)

Ed Ward

STATUTES RELATING TO SB 265

AS44.83.03044.83

CHAPTER = 83
SECTION = 44.83.030
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 83.
Alaska Power Authority.
ARTICLE 1.
Creation and Organization.
CITATION Sec. 44.83.030.
CATCH LINE
MEMBERSHIP OF THE AUTHORITY.
TEXT The authority shall consist of the following directors:

(1) three public directors to be appointed by the governor and confirmed by the legislature; only one director may be appointed from each judicial district described in AS 22.10.010;

(2) the director of the office of management and budget, or the director's designee within that office, and three commissioners of principal executive departments appointed by the governor.

HISTORY (Sec. 1 ch 278 SLA 1976; am sec. 2 ch 156 SLA 1978; am sec. 2 ch 118 SLA 1981; am sec. 25 ch 63 SLA 1983)

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8072

4185 SLAB SB 271 - SB 286

1565

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB
271

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

FOR IMMEDIATE RELEASE
April 8, 1985

EXPANSION OF LOCAL HIRE PROPOSAL

JUNEAU, AK -- Senator Joe Josephson today introduced Senate Bill 271, which would reapply local hire requirements to oil company activities on state leases.

This issue first arose in 1973 when the Legislature enacted a local hire program covering nearly all oil company, subcontractor, and supplier employees. "Since this law was struck down by the Supreme Court in 1978, oil companies and other private employers have been hiring a higher percentage of non-Alaskans for Alaskan jobs," according to Josephson.

The current local hire law, introduced by Senator Josephson in 1983, only applies to public works contracts using state funds. SB 271, if enacted, would extend Alaskan hire to private sector employees working on state-leased property. "No longer will oil companies and their contractors be able to recruit large numbers of non-residents while leaving qualified Alaskans unemployed," said Senator Josephson.

(more)

Press release, clippings

In preparing this bill, Senator Josephson reviewed the 1978 decision of the United States Supreme Court (Hicklin v. Orbeck) which invalidated the former Alaska local hire law.

According to Josephson, "That decision conceded that a state, in setting forth the conditions under which the people's property is developed, may favor residents fo employment purposes, if the state program is not overbroad and is properly tailored to meet the cause of unemployment in the state."

"But the Court found that the old Alaska statute was too broad. It affected distribution systems, including pipelines, refineries, and suppliers. Senate Bill 271 cures that concern, and affects only employers working on state-leased property and their employees.

"When the Court decided Hicklin v. Orbeck, it thought that Alaska's unemployment problem was the result of an absence of trained, skilled workers able to meet the requirements of the new petroleum industry in the state.

"Whatever merit there may have been when the decision was made in 1978, based on reports dating back to 1971 -- and I believe that the Court was not adequately informed about the Alaska workers then available -- it can no longer be argued that Alaska lacks a skilled, available, trained work force of residents.

(more)

"In my judgment, the work force is now indisputably qualified. And the State, for its part, has much more sophisticated data available as evidence to show the impact of nonresident workers entering Alaska and recruited from Outside.

"These changing conditions mean to me that the factual premises are now significantly different.

"When the Hicklin v. Orbeck case was before the Court, the legislation had included a one-year residency requirement as a test for qualifying as a resident worker.

"It is clear that the one-year requirement will not pass constitutional muster; accordingly, Senate Bill 271 substitutes a lawful 30-day physical presence plus intent-to-remain standard which we are assured is constitutional.

"Recently available data show a trend towards recruitment and hire of non-residents, while qualified and experienced Alaska workers are not employed. This trend violates the expectations of Alaska workers and leaders dating back to the time when the Legislature made concessions to industry, and even back to the very beginning of North Slope development. Senate Bill 271 is not free of constitutional question, but it is an earnest and careful

(more)

effort to remove offending provisions of the old law, and to use every available and appropriate state power to encourage the employment of qualified Alaskans."

For further information contact:
Senator Joe Josephson
465-4525

Editorial

Josephson's Local Hire Bill Is Right on Target

State Senator Joe Josephson has come up with a local hire bill that gets to the heart of the problem of oil companies on the Slope encouraging the hiring of non-resident Alaskans while qualified Alaskans sit on the bench waiting for work. That bill would require companies doing business on state leases to hire Alaskans first.

"No longer will oil companies and their contractors be able to recruit large numbers of non-residents while leaving qualified Alaskans unemployed," Sen. Josephson said in introducing the measure.

Josephson said he had found a way around Constitutional problems that led the U.S. Supreme Court to strike down a 1973 local hire law. Josephson, a lawyer and member of the Senate Minority, said the 1973 law was "overboard" and affected distribution systems, including pipelines, refineries, and suppliers. By narrowly tailoring a bill excluding these Josephson said the act would meet a constitutional test. In addition, he said the Supreme Court found that Alaska did not have a trained work force at the time of its ruling but that such was no longer the case.

"In my judgment, the work force is now indisputably qualified. And the state, for its part, has much more sophisticated data available as evidence to show the impact of non-resident workers entering Alaska and recruited from Outside," Josephson said.

Although a minority bill, he said he thought it would get a fair hearing. Majority members Jay Kertula (D-Palmer) and Fred Zharoff (D-Kodiak) have co-sponsored the bill. Zharoff has slated hearings on the bill next week in his Labor and Commerce Committee.

We commend Senator Josephson for his measure.

When we originally suggested editorially that it was time to consider another local hire law in light of the Wyoming Supreme Court's decision on the Wyoming Hiring Preference Law, we envisioned companies working on state leases would be included. And we must admit we were a little chagrined that local hire as passed the House 39-0 included only projects which receive some state funding. Such would leave practically the entire North Slope uncovered by the local hire law and that precisely is where the problem is.

Lt. Governor Stephen McAlpine a strong supporter of local hire and Josephson's bill points out that $1.2 billion per year is being earned by workers who don't apply for the Permanent Fund dividend, in other words, who don't consider themselves residents. Previously, Governor Sheffield released figures that more than 600 workers on the Slope had indicated they were not residents. No doubt many others have nothing more than post office box addresses to evidence their claims residency.

Alaska gets revenue chiefly in two ways: throu taxation and through salaries and wages which generat a multiple effect through the economy. If the seconda means of obtaining revenue dries up, the Alaska peop are going to clamor for more taxes on the oil industr Incidentally, another bill to increase corporate incon tax on the oil companies has been introduced in tl legislature.

Big Oil appears to take the attitude it is so big it ca do almost anything it wishes. By now it should be cryst clear that they cannot continue to escalate the hiring o non-resident Alaskans while qualified Alaska residents a ready, willing and able to work. Alaskans simply won stand for it.

Letters

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

April 16, 1985

The Honorable Fred Zharoff
Chairman, Senate Labor and
Commerce Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: SB 271: Resident Hire
Under Oil and Gas Leases

Dear Senator Zharoff:

I am responding to a request from a member of your staff for our comments regarding SB 271, which deals with resident hire under certain oil and gas leases. Unfortunately, I will be in Anchorage at the time of your committee's scheduled hearing on this bill. However, if any questions arise during the course of that hearing, I would certainly be happy to respond to them upon my return early next week.

As you probably know, the Alaska Legislature first enacted a resident hire law with respect to state oil and gas leases in 1972. That law, AS 38.40, was enforced by the Department of Labor throughout the period of construction of the Trans-Alaska Pipeline, but was ultimately held unconstitutional by the United States Supreme Court in the case of Hicklin v. Orbeck, 437 U.S. 518 (1978). SB 271 appears to be an attempt to craft a resident hire requirement for employment activity on state oil and gas leases, etc., which would satisfy the concerns of the U.S. Supreme Court in Hicklin. However, the new preference established by the bill may still be found by the courts to exceed the permissible scope of a state's ability to establish employment preferences for residents, consistent with the Hicklin case.

In Hicklin, the U.S. Supreme Court found essentially three separate problems with "Alaska Hire":

1) The court did not believe that the justifications advanced by the State in favor of the resident preference were adequate. At the time the legislature adopted AS 38.40, it did not have before it an adequate factual basis to validate its determination that state

intervention in the job market in the form of an employment preference for residents was necessary.

2) Even if the State could have adequately justified imposing a resident hire requirement on certain employers, the broad sweep of AS 38.40 in applying to any employer who benefited in some manner from the "economic ripple effect of Alaska's decision to develop its oil and gas resources" simply went too far, in the Court's view. As the Court pointed out, "Alaska hire extends to employers who have no connection whatsoever with the State's oil and gas, perform no work on state land, have no contractual relationship with the State, and receive no payment from the State." Hicklin, at 530.

3) Even if the State could have justified imposing a resident hire requirement, and even if it only applied to an employer who had a direct relationship with the State (i.e. by contract or by working on State-owned land) the scope of the preference as it applied to individual residents was still too broad. In this regard, the court noted that "Alaska Hire simply grants all Alaskans, regardless of their employment status, education, or training, a flat employment preference for all jobs covered by the Act. . . . If Alaska is to attempt to ease its unemployment problem by forcing employers within the State to discriminate against non-residents -- again, a policy which may present serious constitutional questions -- the means by which it does so must be closely tailored to aid the unemployed the Act is intended to benefit." Hicklin, at 527-528.

While SB 271 does address some of the concerns raised in Hicklin, it appears to leave some of them unresolved:

1) Although the bill sets out a broader and more comprehensive set of legislative findings (AS 38.45.020), I am not aware that any factual studies or other kinds of inquiries have been conducted which would provide a firm basis for these findings. If they do exist, they should be presented during the course of the legislature's consideration of the bill and made a part of the legislative record. In that regard, I understand there is a proposal under active consideration in the House (HB 295) which would appropriate $100,000 to the Department of Labor for just such a study.

2) The bill does seem to address the problem in Hicklin of applying the resident hire requirement to too broad a range of employers. Under the bill, only employers engaged in activity on state lands would be subject to the law.

3) The bill does not address the problem in Hicklin of giving all state residents an employment preference, whether or not they are unemployed or underemployed. In this regard, creating "employment target groups" comprised of unemployed residents, chronically underemployed residents, and training-qualified residents should respond to those concerns in Hicklin.

If I can provide any further background or assistance, please do not hesitate to contact me.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Ronald W. Lorensen
Deputy Attorney General

RWL:vrb

cc: Honorable Joe Josephson
Senator

Honorable Red Boucher
Representative

Honorable Marco Pignalberi
Representative

International Brotherhood of Electrical Workers

TELEPHONE
(907) 272-6571
TELEX 25-250

J. J. "JACK" HULL
BUSINESS MANAGER • FINANCIAL SECRETARY

2702 DENALI STREET
ANCHORAGE, ALASKA 99503

ERIC WORTHINGTON
PRESIDENT

Local 1547
GOU (C) 490

April 23, 1985

The Honorable Senator Zharoff
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Zharoff:

Thank you very much for the opportunity to speak before the Senate Labor and Commerce Committee regarding SB 271 on April 17, 1985.

In order to help facilitate the hearing process, I shortened my presentation before you. However, I have enclosed my complete written testimony and a copy for each member of the Senate Labor and Commerce Committee.

If you need any further statistics or other information from our organization, please contact me or Jack Hull, the Business Manager, and we will be sure to assist you in any way we can.

Sincerely,

Dixie Lee Hudish
Industrial Relations Officer

Enclosure

cc:
Senator Sackett
Senator Ray ✓
Senator Eliason
Senator Bennett
Senator Josephson
Senator Kertulla
Senator V. Fischer
Representative Pignalberi
Representative Cotten
Representative Davis
Representative Phillips
Representative Hurley
Representative Navarre
Representative Goll
Representative Sund

DLH/eb

PUBLIC TESTIMONY

ON

SB 271

April 17, 1985

Mr. Chairman, members of the Senate Labor and Commerce Committee:

My name is Dixie Hudish, Industrial Relations Officer for the International Brotherhood of Electrical Workers (IBEW), Local No. 1547, 2702 Denali Street, Anchorage, Alaska 99503. I am speaking on behalf of Jack Hull, Business Manager, of the IBEW.

First of all I would like to thank those legislators who have worked so diligently on this proposed Bill that the IBEW whole-heartedly supports SB 271.

The IBEW is most concerned with out of state firms who are awarded bids for construction and bringing their own workers from out of state.

Presently, in our Fairbanks office, where jobs are dispatched out for slope work, we have approximately 200 residents in all four classifications (Communication, Wireman, Lineman and Apprentice)

out of work. We have only 100 members (local residents) working on the slope at this time. Compared to 600 residents last year who are on Book I. Local re' dent members who have lived in Alaska one year and have wo' a certain number of hours (2,080 hours within the past four years) in the trade are dispatched first from Book I.

We have better than 32% Alaska natives in the Apprenticeship program at Fairbanks. These apprentices are from Barrow, Nome, Kotzebue, Galena, Tanana and Fort Yukon. Yet there are 40 apprentice wireman and 120 wireman out of work from the Fairbanks dispatch area.

We have 12% Alaska Natives in the Apprenticeship program in Anchorage and there are presently 70 apprentices out of work (34 wireman, 24 lineman, and 12 communication). Most of these Alaska Native apprentices are from the Bethel area.

We know that a majority of our local people are losing their jobs, primarily from out of state firms who are hiring their own people and bringing them up here to work on the slope.

I would like to mention several oil field firms who are doing just that:

1. GSL Oil Field Service - A firm out of Corpus Christi, Texas, who is working out of the Prudhoe Bay Hotel. They have up to 50-60 workers, mostly out of state, presently hired as maintenance road crews.

2. Pingo Oil Field Service - They hire maintenance people and are of state.

3. North Oilfield Service - Out of state people.

4. Udelhoven Oil Field Service - A good portion of their workers are out of state and work at Kapuruk.

These oil field services are mostly subcontracted by either ARCO or SOHIO.

VECO is another large firm who hires a lot of out of state workers.

The IBEW has not dispatched any non-resident since September 1984.

Out of approximately 300 total electricians working on the slope -- we can fairly say 200 are not local people. The situation

appears not to be getting any better for our local workers, but worse.

We have approximately 300 local people out of work from the Anchorage Dispatch office. This is a very large amount of our members unemployed. Many of these members, I am sure are drawing unemployment.

We have seen many situations where outside firms are awarded contracts only to hire people from outside. Case in point is the Irby Construction Company from Jackson, Mississippi, who received the contract to build the Inter-tie line between Fairbanks and Anchorage. You might say one-half of the line was built by out of state people.

I could continue on with more examples, but I feel I have painted a big enough picture for all of you to realize the situation our local resident members are up against. One only needs to come up on a flight out of Los Angeles, etc. to verify the number of out of state workers heading for the North Slope. The IBEW feels this bill would favorably help the economic picture of Alaska. The oil and gas industry needs to be more responsive to the needs of resident hire and this bill would provide just that.

LABORERS INTERNATIONAL UNION OF NORTH AMERICA

LOCAL NUMBER 942

OFFICES: 315 BARNETTE ST., FAIRBANKS, ALASKA 99701 PHONE (907) 456-4584
369 S. FRANKLIN STREET, JUNEAU, ALASKA 99801 PHONE (907) 586-2860

WILLIE LEWIS
President

JOE J. THOMAS
Business Manager and
Secretary-Treas.

JUNEAU OFFICE
JAMES R. WAKEFIELD
Assistant
Business Manager

The following is a breakdown of people dispatched to work through Laborers Local #942 between January 1984 and April 10, 1985.

Total Dispatched - 4278
Residents - 3923
Nonresidents - 355
92% Resident Hire

Total dispatched from Fairbanks hall for work at Prudhoe Bay.

Total - 1833
Residents - 1620
Nonresidents - 213*
88% Resident Hire

*Better than 90% of this figure was name requests by Employer.

Total dispatched from Fairbanks hall for all work other than Prudhoe Bay.

Total - 2030
Residents - 1896
Nonresidents - 134
93% Resident Hire

Total dispatched from Juneau and Ketchikan halls (includes all of Southeastern Alaska.)

Total - 415
Residents - 407
Nonresidents - 8*
98% Resident Hire

*All eight were name requests by Employers as foremen or individuals with special skills.

Total dispatched by all three Local #942 Hiring Halls (Fairbanks, Juneau, Ketchikan) for work other than Prudhoe Bay.

Total - 2445
Residents - 2303
Nonresidents - 142
94% Resident Hire

[redacted]

Backup

MR. CHAIRMAN AND MEMBERS OF THE SENATE LABOR AND COMMERCE. MY NAME IS CHARLIE ELDER AND I AM AN EMPLOYEE OF SOHIO AS AN EXECUTIVE CONSULTANT FOR OUR INTEREST IN ALASKA.

MY PURPOSE TODAY IS TO LAY ON THE TABLE SOHIO'S OBJECTIONS AND COMMENTS ON SENATE BILL 271, AND I WILL ATTEMPT TO BE BRIEF. I WILL BE GLAD TO HAVE QUESTIONS AT ANY TIME DURING MY COMMENTS. AND, OF COURSE, IT WILL BE OPEN SEASON AT THE CONCLUSION OF MY REMARKS. I WILL COMMENT TODAY ON A NUMBER OF PROVISIONS OF SB271, BUT OVERRIDING ALL OF THE LATER STATEMENTS IS THE FACT THAT THIS BILL GREATLY ERODES OUR RIGHT TO MANAGE. THIS IS AN INHERENT RIGHT AND ABSOLUTELY NECESSARY IF WE ARE TO DO THE BEST JOB IN THE INTEREST OF OUR COMPANY, EMPLOYEES, AND STOCKHOLDERS. IN VIEW OF THE STAKE THE STATE OF ALASKA HAS IN OUR PERFORMANCE, SUCCESSES AND FAILURES, THE LACK OF MANAGEMENT CONTROL, I BELIEVE, WILL FAR OUTWEIGH THE PROVISIONS OF THIS BILL AND SHOULD BE A FACTOR IN YOUR DELIBERATIONS. THE "RIGHT TO MANAGE" IS UNIVERSALLY RECOGNIZED AND IN MY NEARLY 40 YEARS WITH SOHIO I HAVE NEVER SIGNED A CONTRACT (AND THERE HAVE BEEN MANY) WITH A UNION OR A NONUNION CONTRACTOR WHICH DID NOT CONTAIN REFERENCE TO MANAGEMENT RIGHTS AS FOLLOWS:

MANAGEMENT RIGHTS

SOHIO RETAINS FULL AND EXCLUSIVE AUTHORITY FOR THE MANAGEMENT OF ITS OPERATION. SOHIO RETAINS THE RIGHT TO DIRECT THE WORKING FORCE, INCLUDING THE HIRING, PROMOTIONS,

TRANSFERS, DICIPLINE OR DISCHARGE OF EMPLOYEES: THE SELECTION OF FOREMAN; THE ASSIGNMENT OF OVERTIME WORK AND THE DETERMINATION OF WHEN IT SHALL BE WORKED. NO RULES, CUSTOMS, OR PRACTICES WHICH LIMITS OUR PRODUCTIVITY, EFFICIENCY OR THE INDIVIDUAL AND/OR JOINT WORKING EFFORTS OF EMPLOYEES SHALL BE PERMITTED.

SB271 REMOVES FROM SOHIO A LARGE PORTION OF THESE MANAGEMENT RIGHTS AND WE BELIEVE IN THE OVERALL IT WILL WORK TO THE DETRIMENT OF THE STATE. NONE OF THE FOREGOING SHOULD BE INTERPRETED THAT SOHIO WILL NOT CONTINUE ITS GOOD FAITH EFFORT TO HAVE ALASKANS IN THE JOBS WITHOUT A LEGISLATIVE REQUIREMENT TO DO SO.

THE FOREGOING IS OUR BASIC OBJECTION, BUT WE HAVE THE FOLLOWING ADDITIONAL QUESTIONS AND COMMENTS:

I. IF THE BILL IS UNCONSTITUTIONAL WE WILL ALL FIND OUT LATER, BUT PASSING THIS QUESTION FOR THE MOMENT, IT APPEARS THE BILL IS PUNITIVE IN NATURE OR PERHAPS THE KINDEST THING THAT COULD BE SAID IS THAT IT'S GROSSLY UNFAIR IN THAT ITS APPLICATION IS LIMITED TO THE OIL INDUSTRY AND ITS SUPPORT CONTRACTORS - NOT MENTIONING OUR OTHER INDUSTRIES UTILIZING MUCH HIGHER PERCENTAGES OF NONRESIDENTS.

AN ALASKAN DOL ANALYSIS UPDATED TO MARCH 31, 1985 CONTINUES AS FOLLOWS NONRESIDENT EMPLOYMENT IN BUSINESSES AND INDUSTRIES IN THE STATE.

A. FOOD PROCESSING (75% NONRESIDENTS).

B. EATING AND DRINKING PLACES (51%).

C. MINING OTHER THAN OIL AND GAS (48%).

D. LOGGING AND LUMBER (48%)

E. CONSTRUCTION (45%).

F. HOTELS (44%).

G. BUSINESS SERVICES (44%).

H. FISHERIES ?

I. TOURISM ?

THE OIL INDUSTRY DOES NOT EVEN MAKE THE SCOREBOARD. BY WHAT LOGIC ARE THESE BUSINESSES EXCLUDED FROM SB 271? THIS INFORMATION FLIES IN THE FACE OF LEGISLATIVE FINDINGS (2).

2. LEGISLATIVE FINDINGS (4) (5) REFERS TO THE INVESTMENT BY THE STATE IN TRAINING PROGRAMS. WHILE I AM NOT FAMILIAR WITH ANY SPECIFIC TRAINING PROGRAMS CONDUCTED FOR THE PRIVATE SECTOR, WE APPRECIATE AND COMMEND THE STATE FOR THEIR SUPPORT OF VOCATIONAL EDUCATION. SOHIO HAS MADE SUBSTANTIAL USE OF THESE FACILITIES TO TRAIN ALASKAN WORKERS. WE HAVE PAID TUITION OF $125,000 OVER THE LAST FIVE YEARS TO THE VOC-ED FACILITIES AND HAVE ALSO AWARDED SCHOLARSHIPS AMOUNTING TO $38,000 TO GRADUATES THROUGHOUT THE STATE FOR ATTENDANCE AT OTHER INSTITUTIONS. WE DO NOT BELIEVE THE STATE'S INVESTMENTS HAVE BEEN OF LITTLE AVAIL.

3. SECTION 38.45.030 RESIDENT HIRE PASSES THE RESPONSIBILITY OF PREPARING REGULATIONS AND ADMINISTERING PROVISIONS OF THE BILL TO THE COMMISSIONER OF LABOR AND THE COMMISSIONER OF THE DEPARTMENT OF NATURAL RESOURCES.

THE COMMISSIONER OF LABOR IS CHARGED WITH 17 DISTRICT RESPONSIBILITIES, INCLUDING THE ASSESSMENT PENALTIES, WHICH I WILL NOT REPEAT.

THE COMMISSIONER OF DNR HAS THE RESPONSIBLITY TO STUDY AND EVALUATE DOL CERTIFICATION, INVESTIGATION AND HOLD HERINGS, AND, IF WILLFULL NONCOMPLIANCE IS DETERMINED THE COMMISSIONER CAN IMPOSE SEVERE PENALTIES.

IN ADDITION, DOL OR DNR MAY SEEK INJUNCTIVE RELIEF AGAINST A PERSON WHO IS NOT IN COMPLIANCE.

4. INSOFAR AS THE EMPLOYER IS CONCERNED HE MUST, IN THE INTEREST OF GOOD BUSINESS, CONSIDER AND MAKE A JUDGMENT ON AT LEAST ELEVEN ISSUES, MOST OF WHICH ENCROACH ON HIS RIGHT TO MANAGE.

5. INSOFAR AS THE STATE IS CONCERNED SB271 CERTAINLY DOES NOT ENCOURAGE INVESTMENT IN OIL DEVELOPMENT, AND IT COULD PREVENT THE LOWEST COST DEVELOPMENT WHICH MAY BE NECESSARY FOR FOR THE MARGINAL FIELDS WE EXPECT TO BE WORKING WITH.

IF PASSED, SB271 WILL CERTAINLY RESULT IN HIGHER ADMINISTRATIVE COSTS IF ALL OF THE PROVISIONS ARE CARRIED OUT. I AM CURIOUS AS TO WHETHER OR NOT THIS POINT HAS BEEN CONSIDERED.

THE STATE WILL ACQUIRE A BILL THAT IS BASICALLY UNINFORCEABLE, AND ASSURES THE CERTAINTY OF MANY LAWSUITS FILED BY INDIVIDUALS, THE INDUSTRY AND ITS ASSOCIATED CONTRACTORS.

6. FINALLY, IT'S COUNTERPRODUCTIVE TO THE STATE POLICY CONTAINED N SECTION 38.45.010.

THIS CONCLUDES MY PREPARED REMARKS.

STATE OF ALASKA 1985 LEGISLATIVE SESSION **DRAFT**

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CS SB 271

Title: "An Act requiring resident hire under certain gas & oil leases"

Sponsor: Josephson, et. al.

Requestor: Seante Labor & Commerce

Date of Request: 4/15/85

FISCAL DETAIL

Agency Affected: Labor

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Labor Standards & Safety
Wage & Hour Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		69.3	71.7	193.4	200.1	207.2
200 TRAVEL		8.5	9.0	40.7	43.1	45.7
300 CONTRACTUAL		22.4	18.4	49.2	52.1	55.3
400 SUPPLIES		1.5	1.6	3.4	3.6	3.8
500 EQUIPMENT		13.2	0	5.4	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		114.9	100.7	292.1	298.9	312.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		114.9	100.7	292.1	298.9	312.0
FEDERAL FUNDS						
OTHER						
TOTAL		114.9	100.7	292.1	298.9	312.0

POSITIONS:

FULL-TIME		2	2	5	5	5
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: RB Robert J. Bacolas, Sr. Phone: 465-4870

Division: Labor Standards & Safety Date: 4/17/85

Approved by Commissioner: RB Jim Robison Date: 4/17/85

Agency: Labor

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Fiscal note

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
THE FOURTEENTH LEGISLATURE
BILL/RESOLUTION NO.: CS SB 271
TITLE: "An Act requiring resident hire under certain oil & gas leases"
AGENCY AFFECTED: Department of Labor

In order to carry out the duties of this bill the Department of Labor would require the following resources:

FYs 86 and 87

One Wage and Hour Investigator I and one Clerk Typist III would be required to carry out the monitoring activities. Costs associated with these positions are detailed on the attached new position request forms.

In addition to these costs, there would be a one time expense of $15,000 for computer equipment and software to capture residency information.

FYs 88 and beyond

The Prudhoe and Kuparuk unit agreements will possibly be renegotiated this year at which time these leases would be covered by the provisions of this bill. An additional Wage and Hour Investigator and two Wage and Hour Technicians will be required. The costs associated with these positions is summarized below:

	W&H Tech. Anchorage	W&H Tech. Anchorage	W&H Invest. I Fairbanks
Personal Service	34.4	34.4	50.3
Travel	0	0	15.6
Contractual	9.4	9.4	10.9
Commodities	.6	.6	.6
Equipment	1.8	1.8	1.8
	46.2	46.2	79.2

Also, an additional $15,600 in travel expense would be incurred by existing positions for travel to the North Slope.

Assumptions

1) The major unitization agreements (Prudhoe Bay and Kuparuk) will not be covered by this bill until FY 88 when the agreements are renegotiated.

2) Inflation will be 3.5% for personal service and 6% for non personal service items.

	POSITION TITLE				RANGE/STEP	BARG. UNIT	PAGE/LINE	COV.	APPROV.	DISAPP.
1.	Wage & Hour Investigator I				16A	GGU				
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PFT	12				Anchorage				
3.	CONTINUATION LEVEL		ADDITION							

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	32,424	
6.	Benefits	5,401	
7.	Supplemental Benefits	1,987	
8.	Fixed Benefits	2,735	
9.	TOTAL PERSONAL SERVICES 01		42,547
10.	Travel 02		8,500
11.	Contractual 03		9,490
12.	Commodities 04		500
13.	Equipment 05		1,600
14.	Other		
15.	TOTAL COST		62,637

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	62,637
19.		I-A Receipts 1005	
20.		Program Receipts 1020	
21.		Other	

FOR O&M USE ONLY
KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position would monitor new or re-negotiated oil and gas leases to ensure compliance with resident hire laws.

The position would interact with the Department of Natural Resources and industry contacts to establish an effective monitoring procedure.

Travel costs are to establish monitoring procedures and for monitoring compliance with resident hire law. Contractual costs include rent, $3,600; indirect $3,890; and other average expenses of $2,000. Commodities of $500 and one-time equipment costs of $1,600 are also included.

REQUEST FOR NEW POSITION

AGENCY Department of Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage & Hour Administration

Revised Date

FY 86

LEG:F:

1.	POSITION TITLE Clerk Typist III			RANGE/STEP 8A	BARG. UNIT GGU	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	19,572	
6.	Benefits	3,261	
7.	Supplemental Benefits	1,200	
8.	Fixed Benefits	2,735	
9.	TOTAL PERSONAL SERVICES	01	26,768
10.	Travel	02	0
11.	Contractual	03	7,948
12.	Commodities	04	1,000
13.	Equipment	05	1,600
14.	Other		
15.	TOTAL COST		37,316

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	37,316
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This clerical position would provide typing, filing, and data entry under the provisions of this bill.

Contractual costs include rent, $3,600; indirect $2,348, and other average expenses of $2,000. Commodities of $1,000 and one-time equipment costs of $1,600 are also included.

REQUEST FOR NEW POSITION

AGENCY Department of Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage & Hour Administration

Page 2 of 2

Revised Date

FY 86

LEG:F:

01-111612/821-15

Bill No. Senate Bill No. 271

Date April 16, 1985

Title "An Act requiring resident hire under certain oil and gas leases and unitization agreements on state land; and providing for an effective date."

Contact: Robert W. Landau
465-2700
Eileen Plate
465-2700

Senate Bill 271 would establish a resident hire preference for all employment on oil and gas projects on state land.

Under the bill, the Department of Labor would be primarily responsible for: (1) establishing resident hire requirements for each oil and gas project on state land; (2) maintaining and making available a list of qualified residents seeking employment on oil and gas projects; (3) establishing and monitoring employer reporting requirements; (4) conducting investigations and holding hearings to determine compliance with resident hire requirements: (5) seeking monetary penalties and/or injunctive relief for noncompliance; and (6) promulgating requirements for oil and gas projects on state land.

Because of the beneficial impact of resident hiring on the workforce and the economy in general, the Department strongly endorses the principle that qualified Alaska residents should be given employment preference on oil and gas projects on state land. This is consistent with the view that a state is entitled to give preference to its own citizens in the development of the state's natural resources.

Although the Department supports SB 271, the bill as presently drafted would have a significant fiscal impact. We believe this impact could be reduced through the following refinements to the language of the bill:

1) Because of the substantial cost involved in establishing and maintaining a comprehensive list of all qualified residents for oil and gas employment, AS 38.45.030(d) should be amended to require that, upon the receipt of an employer job order for oil and gas employment, the Department will then screen its applicant pool for qualified residents and make the appropriate referrals. It would be very costly to maintain an updated list of all qualified residents interested in oil and gas employment.

   In addition, making such a list available to employment agencies, unions, and other entities would run afoul of both state and federal confidentiality laws. Once such an "official" list of qualified applicants is circulated, the potential for abuse of that list is enormous. In its place, the Department recommends a job order/referral system similar to what is currently done on public construction projects.

2) Rather than require the Commissioner of Labor to evaluate each oil and gas project on state land and establish resident hire requirements for that project, AS 38.45.030 should simply require that Alaska residents be employed on all oil and gas projects on state

POSITION PAPER/Department of Labor

land where they are available and qualified. Where employers are unable to find available and qualified residents, the Department could then issue a "waiver" for the employment of a nonresident (as it currently does with public construction employment). This approach would shift the burden of a project labor evaluation onto the employer (who is normally in a better position to make the evaluation) and would preserve the Department's resources for supplying qualified resident applicants and, if none are available, for issuing the necessary waivers.

3) Under AS 38.45.050, certain cost savings could be achieved by statutorily establishing a minimum monetary value threshold for covered oil and gas projects rather than requiring the Department to engage in a complex cost-benefit analysis through the administrative regulations process.

Approved:

Jim Robison
Commissioner

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

CSSB 271: Sectional Analysis

Section 1) Adds a new chapter:

38.45.010: Declares that the state policy for development of natural resources includes providing employment opportunities in natural resource development projects.

38.45.020: Legislative Findings: references findings about unemployment in the state, investments the state has made in training programs to develope a qualified work force, the social burdens which result from resident workers being displaced by non residents, and the need for a resident employment preference.

38.45.030: a) employers of natural resource development projects on state lands shall meet the resident hiring requirements established by the commissioner of labor, and may not discriminate against qualified residents for employment.

b) the commissioner of labor shall determine the amount of work that must be performed by residents on a natural resource development project on state land. Commissioner shall consider employment factors, and require an employer to make a"maximum feasible effort" to hire qualified residents for jobs on state lands.

c) Commissioner of DNR shall incorporate into each lease, unitization agreement, or renegotiation lease, provisions requiring compliance with this chapter and authorizing penalties for non compliance.

d) Employers subject to resident hiring requirements may request the Dept of Labor to assist in locating qualified residents. If the department is unable to refer a sufficient number of qualified residents, it may approve the hiring of nonresidents for the balance of the request.

38.45.040: employers obligated to meet hiring requirements under this chapter shall comply with reporting requirements deemed necessary by the commissioner of Labor.

38.45.050: This chapter applies to all natural resource projects on state land, and the Dept of Labor will determine the extent of the resident hire preference for each project. Resident preference applies only to work performed directly for an employer.

38.45.060: a) Both DOL and DNR shall adopt regs for this chapter. DOL shall adopt regs prohibiting discrimination against qualified residents for resource development projects on state land. These regs are subject to the Administrative Procedures Act except as provided in (b).

(b) An employer shall judge the work qualifications of an applicant, however an applicant who has been rejected or terminated may, within 30 days, request a hearing before DOL to determine whether the employer violated the provisions of this chapter. DOL shall hold a hearing within 20 days of receipt of the request unless the employee requests a longer period of time. The administrative procedures act does not apply to this section.

(c) DOL may conduct investigations and hearings to determine compliance with this chapter. If they determine an employer has "wilfully" failed to comply, the commissioner may certify that finding to DNR.

38.45.070: PENALTIES: If DOL finds that an employer has rejected or terminated a qualified employee in violation of this chapter, the department may require the employer to pay 3 times the lost wages to the employee and may require additional amounts if the employee's actual expenses incurred exceed the triple wages assessed. Either party may appeal the decision to the superior court.

Upon certification of noncompliance by DOL, DNR may investigate and conduct hearings. If DNR determines "wilful" noncompliance, they may impose the following penalties:

1) increase the compensation received by the state thru a lease or agreement by a factor of no more than 10; not to exceed $100,000

2) require all or a portion of the project to cease;

3) remove the eligibility for contracting with the state or it's political subdivisions for a period not to exceed three years; or

4) require a noncompliance payment in liquidated damages to the State. Damages may be in an amount equal to 7.5 times the amount of required hours not worked times the "going wage" for the job.

38.45.080: In addition to the penalties imposed, DOL and DNR may seek an injunction for noncompliance with this chapter. DNR may seek an injunction to enforce penalties imposed.

38.45.090: Definitions:

1) "employer" is a person, other than the state, who is a party to a lease agreement for a resource development project on state land. This definition includes an affiliate, principal, subsidiary, contractor, or subcontractor if the activity is performed on state land.

2) "natural resource project on state land" is a contract, lease, unitization agreement, or renegotiation of such leases for the development of oil and gas, timber, and mineral resources on state land.

3) "qualified resident" is defined as a resident who has the necessary training or skills to perform the work.

4) "resident" is defined as a person who has been in the state for 30 days prior to entering into a contract for employment on a natural resource development project on state land, and who shows the intention to permanently reside in the state.

Section 2) Chapter applies to a lease, a unitization agreement, or a renegotiated lease or agreement for the development of O&G, timber, or minerals, after the effective date of this act. This chapter also applies to the renegotiation of an agreement entered into before the effective date of this act, if the renegotiation results in a major change to the duties of the parties.

Section 3) Immediate effective date.

Introduced: 4/8/85
Referred: Labor and Commerce
Resources

IN THE SENATE

BY JOSEPHSON, KERTTULA
V. FISCHER AND ZHAROFF

SENATE BILL NO. 271

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act requiring resident hire under certain oil and gas leases and unitization agreements on state land; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 38 is amended by adding a new chapter to read:

CHAPTER 45. RESIDENT EMPLOYMENT PREFERENCE UNDER STATE LEASES.

Sec. 38.45.010. STATE POLICY. It is the policy of the state to develop its natural resources to provide the maximum benefit to the people of the state as required by the Constitution of the State of Alaska. These benefits include employment opportunities in natural resource development projects for residents qualified for the employment, as well as receipt of state revenue from the development.

Sec. 38.45.020. LEGISLATIVE FINDINGS. The legislature finds:

(1) the rate of unemployment among residents of the state is one of the highest in the nation;

(2) a major factor of increasing importance in the unemployment problem is the failure of employers engaged in the exploration, development, and production of natural resources on state land, and under leases or other agreements granted or permitted by the state, to employ state residents;

(3) whereas at an earlier stage of the state's history it was asserted that high unemployment in the state was due to cultural and geographical migration barriers, the state now has many residents who are qualified, trained, and available for employment in the

exploration, development, and production of oil and gas on state land, but who are not presently employed because an increasing amount of the work they are qualified to perform is being performed on state land by nonresidents;

(4) the state has made significant investments in training programs and vocational education to help furnish industry with qualified residents able to work in the development, exploration, and production of oil and gas products on state land;

(5) unless the trend towards hiring nonresidents is reversed, the state's investment in these training and education programs will be of little avail, the state policy of maximizing benefits from natural resource development will be thwarted, and the state will suffer the burdens wrought by increasing demands for public assistance and other state services from unemployed residents and their families;

(6) employment of nonresidents displaces qualified residents from work in the development, exploration and production of oil and gas products on state land and from work in service occupations on state land that directly support the development, exploration, and production activities; therefore, the growing number of nonresidents hired for work on state land, in the development, exploration, and production of state resources, is a peculiar source of the unemployment evil now besetting the state;

(7) state policies favoring stable levels of taxation have been predicated upon assurances from the oil and gas industry that state residents would receive employment opportunities in the exploration, development, and production of oil and gas from state-owned land, but data show that these assurances, and the expectations they created, are not being fulfilled.

Sec. 38.45.030. RESIDENT HIRE. (a) An employer shall meet the

resident hiring requirements established by the commissioner of labor under this section on an oil and gas project on state lands that is subject to a hiring preference under AS 38.45.050. An employer may not discriminate against qualified residents in employment on an oil and gas project on state land.

(b) The commissioner of labor shall determine the amount of work that must be performed under this chapter by qualified residents on an oil and gas project on state land. In making this determination, the commissioner shall consider the nature of the work, the classification of workers, availability of residents, and the willingness of residents to perform the work. The commissioner shall require an employer to make the maximum feasible effort to hire qualified residents for jobs on state land.

(c) In order to create, protect, and preserve the right of qualified residents to employment in oil and gas projects on state land the commissioner of natural resources shall incorporate into each lease, unitization agreement, or renegotiation of a lease or agreement, provisions requiring compliance with this chapter and authorizing penalties under AS 38.45.070 for failure to comply.

(d) The Department of Labor shall maintain a file of the names of qualified residents seeking employment on an oil and gas project on state land. The department shall make the file available to an employer and to an employment or dispatching agency, union, or other similar entity.

Sec. 38.45.040. REPORTING PROVISIONS. An employer obligated to meet resident hiring requirements under this chapter shall comply with the reporting provisions that the commissioner of labor determines are reasonably necessary to carry out this chapter.

Sec. 38.45.050. APPLICABILITY OF CHAPTER. (a) The Department

- DNR??

of Labor shall determine by regulation the minimum monetary value for projects subject to the resident hiring preference under this chapter. In determining the minimum value, the department shall compare the benefit that enures to state residents with administrative and enforcement costs.

(b) An employer shall submit to the department evidence of the monetary value of an oil and gas project on state land. The department shall determine whether the project is subject to a hiring preference. If the project is subject to a hiring preference, the department shall determine the extent of the preference under AS 38.45.030. The preference applies only to employment that is performed directly for an employer. The department shall ensure that projects or activities within projects are not artificially divided to prevent coverage under this chapter. If the department finds evidence of artificial division, the burden is on the employer to show that the division is not artificial.

Sec. 38.45.060. REGULATIONS AND HEARINGS. (a) The Department of Labor and the Department of Natural Resources shall adopt regulations to implement this chapter. The Department of Labor shall adopt regulations prohibiting discrimination against qualified residents in employment on an oil and gas project on state land. Regulations and proceedings under this chapter are subject to the Administrative Procedure Act (AS 44.62) except as provided in (b) of this section.

(b) An employer shall determine and judge the work qualifications of applicants for employment. An applicant who has been rejected or an employee who has been terminated from employment may request a hearing before the Department of Labor to determine whether the employer violated this chapter in denying the application or terminating the employment. The Department of Labor shall hold a hearing on

the question within 10 days of receipt of the request unless the applicant or employee requests a longer period of time.

(c) The Department of Labor may conduct investigations and hearings to determine compliance with this chapter. If the commissioner of labor finds that an employer has wilfully failed to comply with this chapter, the commissioner may certify the finding to the Department of Natural Resources.

Sec. 38.45.070. PENALTIES. (a) If the Department of Labor finds that an employer has rejected a qualified applicant or terminated a qualified employee from employment in violation of this chapter, the department may require the employer to pay the person three times the amount of wages the person lost and may require additional amounts if the person's actual expenses incurred as a result of the wrongful action exceeded the triple wages assessed. Either party may appeal the department's decision under this section to the superior court. The court shall hear the appeal de novo.

(b) The Department of Natural Resources, upon certification of noncompliance by the Department of Labor, under AS 38.45.060, may investigate and conduct hearings. If it finds wilful noncompliance, the department may impose on the employer any of the following penalties, as appropriate:

(1) increase the rent or other forms of compensation received by the state under the project lease or agreement by a factor of no more than 10; the increase may not exceed $100,000;

(2) require that all or a portion of project operations cease;

(3) remove, for an appropriate period of time not to exceed ___ years, the ability of the employer to contract with the state or any of its political subdivisions; or

(4) require a noncompliance payment in liquidated damages to the state in an amount equal to seven and one-half times the number of hours required but not worked by qualified residents, times the going wage or salary rate for the particular job or activity involved.

Sec. 38.45.080. INJUNCTIVE RELIEF. The Department of Labor or the Department of Natural Resources, in addition to the imposition of penalties under AS 38.45.070, may seek injunctive relief against a person who is not in compliance with this chapter; the Department of Natural Resources may seek injunctive relief to enforce penalties imposed under AS 38.45.070.

Sec. 38.45.090. DEFINITIONS. In this chapter

(1) "employer" means a person other than the state who is a party to a lease or agreement for an oil and gas project on state land and includes the person's affiliate, principal, subsidiary, contractor, or subcontractor if the activity of the affiliate, principal, subsidiary, contractor, or subcontractor is performed on state land;

(2) "oil and gas project on state land" means an oil and gas lease, a unitization agreement, or any renegotiation of a lease or agreement if the state is a party to the lease or agreement and the project is performed in whole or in part on state land;

(3) "resident" means a person who

(A) except for military service, has been physically present in the state for a period of 30 days immediately before the time the person enters into a contract of employment on an oil and gas project on state land; and

(B) shows by all attending circumstances the intention to permanently reside in this state.

* Sec. 2. This chapter applies to an oil and gas lease, a unitization agreement, or a renegotiation of a lease or agreement entered into on or

after the effective date of this Act.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Chairman's Information:

1) CSSB 271(L&C) "An act requiring resident hire on certain natural resource projects on state land; and providing for an effective date."

   a) Introduced: Sen Josephson, Kerttula, V Fischer, Zharoff

   b) Co-Sponsors:

2) INTENT: This legislation establishes a resident hire preference for natural resource development projects on state land. The bill outlines the responsibilities of the Dept of Labor and DNR regarding resident hire, and establishes penalties to be imposed upon employers who are in noncompliance with this Chapter.

   FISCAL NOTE: Fiscal Note being prepared by the Dept of Labor;

   NOTE: Need to move for the adoption of L&C CS and title change

3) ADDITIONAL REFERRALS: Resources and Finance

4) PUBLIC HEARINGS:

   a) Sponsor:

   b) Public witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from Committee?
   d) close public hearings?

6) COMMITTEE ACTION:
   a) amendments?
   b) CS adoption?

Cramer
4/27/85 ✓

Original sponsors: Josephson, Kerttula,
V.Fischer and Zharoff

IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTE

CS FOR SENATE BILL NO. 271 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act requiring resident hire on certain natura
resource projects on state land; and providing for a
effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 38 is amended by adding a new chapter to read:

CHAPTER 45. RESIDENT EMPLOYMENT PREFERENCE UNDER STATE LEASES.

Sec. 38.45.010. STATE POLICY. It is the policy of the state t
develop its natural resources to provide the maximum benefit to th
people of the state as required by the Constitution of the State o
Alaska. These benefits include employment opportunities in natura
resource development projects for residents qualified for the employ
ment, as well as receipt of state revenue from the development.

Sec. 38.45.020. LEGISLATIVE FINDINGS. The legislature finds:

(1) because of its unique climate and its distance from th
contiguous states, the state has historically suffered from uniqu
social, seasonal, geographic, and economic conditions that result i
an unstable economy;

(2) the unstable economy is a hardship on the residents o
the state and is aggravated by the large numbers of seasonal an
transient nonresident workers;

(3) the rate of unemployment among residents of the stat
is one of the highest in the nation;

(4) the state has one of the highest ratios of nonresiden
to resident workers in the nation;

(5) the state has a compelling interest in reducing t level of unemployment among its residents;

(6) a major factor of increasing importance in the une ployment problem is the failure of employers engaged in the explor tion, development, and production of natural resources on state lan and under leases or other agreements granted or permitted by t state, to employ state residents;

(7) whereas at an earlier stage of the state's history was asserted that high unemployment in the state was due to cultur and geographical migration barriers, the state now has many residen who are qualified, trained, and available for employment in the expl ration, development, production, and extraction of natural resourc on state land, but who are not presently employed because an increa ing amount of the work they are qualified to perform is being pe formed on state land by nonresidents;

(8) the state has made significant investments in traini programs and vocational education to help furnish industry with qua ified residents able to work in the development, exploration, produ tion, and extraction of natural resource products on state land;

(9) unless the trend towards hiring nonresidents is r versed, the state's investment in these training and education pr grams will be of little avail, the state policy of maximizing benefi from natural resource development will be thwarted, and the state wi suffer the burdens wrought by increasing demands for public assistan and other state services from unemployed residents and their familie

(10) employment of nonresidents displaces qualified res dents from work in the development, exploration, production, a extraction of natural resource products on state land and from work service occupations on state land that directly support the develo

ment, exploration, and production activities; therefore, the growi number of nonresidents hired for work on state land, in the develo ment, exploration, production, and extraction of state resources, is peculiar source of the unemployment evil now besetting the state;

(11) state policies favoring stable levels of taxation ha been predicated upon assurances from the natural resource industri that state residents would receive employment opportunities in t exploration, development, and production of natural resources fr state-owned land, but data show that these assurances, and the expe tations they created, are not being fulfilled.

Sec. 38.45.030. RESIDENT HIRE REQUIREMENTS. (a) An employ shall meet the resident hiring requirements established by the commi sioner of labor under this section on a natural resource project state land that is subject to a hiring preference under AS 38.45.05(An employer may not discriminate against qualified residents in e ployment on a natural resource project on state land.

(b) The commissioner of labor shall determine the amount of wo that must be performed under this chapter by qualified residents on natural resource project on state land. In making this determinatio the commissioner shall consider the nature of the work, the classi fication of workers, availability of residents, and the willingness residents to perform the work. The commissioner shall require employer to make the maximum feasible effort to hire qualified resi dents for jobs on state land.

(c) In order to create, protect, and preserve the right of qual ified residents to employment in natural resource projects on stat land, the commissioner of natural resources shall incorporate int each lease, unitization agreement, or renegotiation of a lease o agreement, provisions requiring compliance with this chapter, regula

tions adopted under this chapter, and all later amendments to th chapter or the regulations, and authorizing penalties under AS 38.45 070 for failure to comply. The commissioner shall incorporate in each lease, agreement, or renegotiation a requirement that the less include a provision requiring compliance with this chapter, lat amendments of this chapter, regulations adopted under this chapter a authorizing penalties under AS 38.45.070 in a contract under the lea or agreement with contractors or subcontractors who will be operati on state land.

(d) An employer subject to resident hiring requirements und this chapter may request the Department of Labor to assist in loca ing qualified available resident employees. After receiving a reque for assistance, the department shall refer qualified availab residents to the employer to fill the employer's hiring needs. If th department is unable to refer a sufficient number of residents, it ma approve the hiring of nonresidents for the balance of the request.

Sec. 38.45.040. REPORTING PROVISIONS. An employer obligated t meet resident hiring requirements under this chapter shall comply wit the reporting provisions that the commissioner of labor determines ar reasonably necessary to carry out this chapter.

Sec. 38.45.050. APPLICABILITY OF CHAPTER. This chapter applie to all natural resource projects on state land. The Department o Labor shall determine the extent of the resident hiring preference fo each project under AS 38.45.030. The preference applies only t employment that is performed directly for an employer.

Sec. 38.45.060. REGULATIONS AND HEARINGS. (a) The Departmen of Labor and the Department of Natural Resources shall adopt regula tions to implement this chapter. The Department of Labor shall adop regulations prohibiting discrimination against qualified residents i

employment on a natural resource project on state land. Regulatio and proceedings under this chapter are subject to the Administrati Procedure Act (AS 44.62) except as provided in (b) of this section.

(b) An employer shall determine and judge the work qualific tions of applicants for employment. An applicant who has been rejec ed or an employee who has been terminated from employment may, with 30 days after the rejection or termination, request a hearing befo the Department of Labor to determine whether the employer violate this chapter in denying the application or terminating the employment The Department of Labor shall hold a hearing on the question within 2 days of receipt of the request unless the applicant or employee re quests a longer period of time.

(c) The Department of Labor may conduct investigations an hearings to determine compliance with this chapter. If the commis sioner of labor finds that an employer has wilfully failed to compl with this chapter, the commissioner may certify the finding to th Department of Natural Resources.

Sec. 38.45.070. PENALTIES. (a) If the Department of Labo finds that an employer has rejected a qualified applicant or term inated a qualified employee from employment in violation of thi chapter, the department may require the employer to pay the perso three times the amount of wages the person lost and may require addi tional amounts if the person's actual expenses incurred as a result o the wrongful action exceeded the triple wages assessed. Either part may appeal the department's decision under this section to the su perior court. The court may hear the appeal de novo.

(b) The Department of Natural Resources, upon certification o noncompliance by the Department of Labor under AS 38.45.060, ma investigate and conduct hearings. If it finds wilful noncompliance

the department may impose on the emp. oyer any of the following pe
alties:

(1) increase the rent or other forms of compensation r
ceived by the state under the project lease or agreement by a fact
of no more than 10; the increase may not exceed $100,000;

(2) require that all or a portion of project operatio
cease;

(3) remove, for an appropriate period of time not to exce
three years, the eligibility of the employer to contract with t
state or any of its political subdivisions; or

(4) require a noncompliance payment in liquidated damag
to the state in an amount equal to seven and one-half times the numb
of hours required but not worked by qualified residents multiplied
the going wage or salary rate for the particular job or activi
involved.

(c) The commissioner may impose the penalties under (b)(1) a
(2) of this section on a lessee only if the lessee itself has fail
to comply with this chapter or incorporate into the contract with t
violator a provision requiring compliance with this chapter.

Sec. 38.45.080. INJUNCTIVE RELIEF. The Department of Labor
the Department of Natural Resources, in addition to the imposition
penalties under AS 38.45.070, may seek injunctive relief against
person who is not in compliance with this chapter; the Department
Natural Resources may seek injunctive relief to enforce penalti
imposed under AS 38.45.070.

Sec. 38.45.090. DEFINITIONS. In this chapter

(1) "employer" means a person other than the state who is
party to a lease or agreement for a natural resource project on sta
land and includes the person's affiliate, principal, subsidiary

contractor, or subcontractor if the activity of the affiliate, princ
pal, subsidiary, contractor, or subcontractor is performed on sta
land;

(2) "natural resource project on state land" means a co
tract, lease, unitization agreement, or a renegotiation of a contrac
lease, or agreement for exploration, development, extraction or pr
duction of oil and gas, mineral, or timber resources if the state is
party to the contract, lease or agreement and the project is performe
in whole or in part on state land;

(3) "qualified resident" means a resident who possesses th
requisite education, training, skills, or experience to perform t
work;

(4) "resident" means a person who

(A) except for military service, has been physicall
present in the state for a period of 30 days immediately befor
the time the person enters into a contract of employment on
natural resource project on state land; and

(B) shows by all attending circumstances the intentic
to permanently reside in this state.

* Sec. 2. This chapter applies to a lease, unitization agreement, c
contract for the development of oil and gas, or mineral or timber resource
entered into after the effective date of this Act and to a renegotiation c
the lease, agreement or contract. This chapter applies to the renegotia
tion after the effective date of this Act of a lease, agreement, or con
tract entered into before the effective date of this Act if the renegotia
tion results in a major change to the duties of a party.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.
10.070(c).

RECORDS
CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB
286

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FORMERLY
alaska
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hospital
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April 8, 1986

The Honorable Fred Zharoff, Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
Juneau, Alaska 99811

Dear Senator ~~Zharoff~~ Fred,

re: SSSB 286

The Health Association of Alaska wishes to take this opportunity to suggest that Sponsor Substitute for Senate Bill 286 by Zharoff by request be amended to permit hospitals to use the fourteen day work week as is provided in the federal Fair Labor Standards Act. I have attached a copy of Section 7(j) of that Act which sets out the federal language.

Thank you for your assistance in this matter.

Sincerely,

Dennis L. DeWitt
Executive Director

FEDERAL LAW

Fair Labor Standards Act As Amended

Act of June 25, 1938 (P.L. 75-718) effective October 24, 1938, as amended by P.L. 81-393, effective January 25, 1950, by P.L. 84-381, by P.L. 85-231, effective November 28, 1957; by P.L. 85-750, approved August 25, 1958; by P.L. 85-791, approved August 28, 1958; by P.L. 87-30, effective September 3, 1961; by the Equal Pay Act of 1963 (P.L. 88-38), effective June 11, 1964; by P.L. 89-601, effective February 1, 1967; by P.L. 89-670, effective October 15, 1966; by P.L. 92-318, effective June 23, 1972; by P.L. 93-259, effective May 1, 1974; by P.L. 95-151, effective November 1, 1977. Annotations in brackets show changes made by amendments.

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19. Separability of provisions.

TITLE

SEC. 1. That this Act may be cited as the "Fair Labor Standards Act of 1938."

FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes, commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce. That Congress further finds that the employment of persons in domestic service in households affects commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency,

tract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by the Service Contract Act of 1965 (41 U.S.C. 351-357) or to whom subsection (a)(1) of this section is not applicable, wages at rates not less than the rates provided for in subsection (b) of this section.

(2) Notwithstanding the provisions of section 13 of this Act (except subsections (a)(1) and (f) thereof) and the provisions of the Service Contract Act of 1965, every employer in an establishment providing linen supply services to the United States under a contract with the United States or any subcontract thereunder shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (b), except that if more than 50 per centum of the gross annual dollar volume of sales made or business done by such establishment is derived from providing such linen supply services under any such contracts or subcontracts, such employer shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (a)(1) of this section.

(f) Any employee— (1) who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under section 6(b) unless such employee's compensation for such service would not because of section 209(g) of the Social Security Act constitute wages for the purposes of title II of such Act, or

(2) who in any workweek—

(A) is employed in domestic service in one or more households, and

(B) is so employed for more than 8 hours in the aggregate, shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under section 6(b).

[1974 Amendments: Sec. 6 was amended to add subsection (f).]

MAXIMUM HOURS

SEC. 7. (a)(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this Act by the Fair Labor Standards Amendments of 1966—

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks; or

applicable to the same work when performed during nonovertime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: Provided, That the rate so established shall be authorized by regulation by the Secretary of Labor as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (1) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(h) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) shall be creditable toward overtime compensation payable pursuant to this section.

(i) No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 6, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(j) No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated subsection (a) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

[1974 Amendments: Sec. 7(j) was amended to add in the second line the phrase beginning "or an establishment" and ending "on the premises."]

(k) No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed 240 hours; [Effective January 1, 1976, 232 hours; effective January 1, 1977, 216 hours; effective January 1, 1978, "exceed 216 hours" is changed to "exceed the lesser of (A) 216 hours or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974 *[Ed. note: Section 6(c)(3) which authorized the Secretary of Labor to conduct a study of hours of work of certain law enforcement personnel of public agencies was deleted as a result of the 1977 amendments.]* in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975"] or

14 DAY WORKWEEK

MEMORANDUM State of Alaska

TO: Jim Robison, Commissioner
Department of Labor

Bob Bacolas, Director
Labor Standards and Safety

FROM: James Sanwick
Wage and Hour Investigator

DATE: March 15, 1985

FILE NO:

TELEPHONE NO: 465-4842

SUBJECT: Fluctuating Work Week

For the month's work listed on page two under each section would resutl in the employee earning $2,000.00 total under Section (2), $2,400.00 under Section (1) and $2,450.00 under normal pay calculations.

Normal Pay

140 hours straight time at $10.00 per hour	= $1,400.00
70 hours overtime rate at $15.00 per hour	= $1,050.00
Total	$2,450.00

Section (1) Pay Plan

150 hours striaght time ant $10.00 per hour	= $1,500.00
20 hours overtime at $15.00 per hour	= $ 900.00
Total	$2,400.00

Section (2) Pay Plan

4 weeks fixed rate at %500.00 per week	= $2,000.00
Total	$2,000.00

D R A F T

BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the payment of overtime and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*Section 1. AS 23.10.060(17) is repealed.

*Section 2. AS 23.10.060(18) is repealed.

*Section 3. AS 23.10.060 is amended by adding two new subsections to read:

Sec. 23.10.060(b). IRREGULAR AND FLEXIBLE WORK HOUR PLANS. The following pay plans which provide fixed pay rates for irregular or flexible work hours up to a predetermined maximum are permissible under this chapter, provided the department has reviewed the pay plan and, in writing, has approved the plan as being in compliance with the appropriate subsection herein with any subsequent changes in the pay plan, as requested by the employer also being subject to approval by the department. In addition, the department shall periodically review all plans to ensure their continued compliance with the appropriate subsection herein. Such approval by the department shall be considered an irrebuttable presumption that the plan meets the requirements of this statute.

December 7, 1984

It is further provided that for plans under subsections 2 ~~and 3~~ herein, the nature of the employer's business and the duties of the employee necessitate irregular hours of work with, for plans under subsection 2 herein, neither the employer nor the employee being able to control or anticipate with absolute certainty the number of hours to be worked.

(1) Work performed by an employee under a flexible work hour plan, either through agreement as part of a collective bargaining contract, or through signed written agreement pursuant to AS 23.05.160, which provides for a 40 hour workweek and not more than a 10 hour work day; for work over 40 hours per week or 10 hours a day under a flexible work hour plan compensation at the rate of one and one-half times the regular rate of pay shall be paid for overtime;

(2) Work performed by an employee under an irregular work hour plan, either through agreement as part of a collective bargaining contract or through signed written agreement pursuant to AS 23.05.160, which provides a fixed weekly wage for irregular weekly hours not to exceed 60 hours in a workweek; for work over 60 hours per week under a irregular work hour plan compensation at the rate of one and one-half times the regular rate of pay shall be paid for overtime;

(3) Work performed by an employee under a flexible workweek plan authorized under 29 CFR 778.114, either through agreement as part of a collective bargaining contract or through signed written agreement pursuant to AS 23.05.160; hours allowed under this plan shall not exceed 60 hours in a workweek; for work over 60 hours per week under a flexible workweek plan

compensation at the rate of one and one-half times the effective hourly rate of pay shall be paid for overtime. The effective hourly rate of pay shall be determined based on the actual hours worked in a workweek up to 60 hours.

(4) The commissioner shall promulgate rules and regulations which are necessary for the administration of this subsection.

Sec. 23.10.060(c) GOOD FAITH EXCEPTION. In any action commenced prior to or on or after the date of the enactment of this act to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Alaska Wage & Hour Act, if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for such act or omission, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in as AS 23.10.110 provided, however, that this Section shall not apply to cases where litigation has commenced on or before January 1, 1985.

*Section 4. This act takes effect immediately in accordance with AS 01.10.070(c).

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	
WORK AS IT WOULD APPEAR UNDER NORMAL RULES						1 152/213	
2 153/212 ST	3 154/211 8	4 155/210 8	5 156/209	6 157/208 6	7 158/207	8 159/206 4	Total 26
OT	2	2					4
9 160/205 ST	10 161/204 8	11 162/203 8	12 163/202 8	13 164/201 8	14 165/200 Flag Day	15 166/199 6	38
OT	8	2	4	8			20
16 167/198 Father's Day ST	17 168/197 8	18 169/196 8	19 170/195 8	20 171/194 8	21 172/193	22 173/192 6	38
OT	8	2	4	8			20
23 174/191 ST	24 175/190 8	25 176/189 8	26 177/188 8	27 178/187 8	28 179/186	29 180/185 6	38
30 181/184 OT	8	2	4	8			20

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	
WORK AS IT WOULD APPEAR UNDER SECTION ONE						1 152/213	
2 153/212 ST	3 154/211 10	4 155/210 10	5 156/209	6 157/208 6	7 158/207	8 159/206 4	Total 30
OT							
9 160/205 ST	10 161/204 10	11 162/203 10	12 163/202 10	13 164/201 10	14 165/200 Flag Day	15 166/199	40
OT	6		2	6		6	20
16 167/198 Father's Day ST	17 168/197 10	18 169/196 10	19 170/195 10	20 171/194 10	21 172/193	22 173/192 4	40
OT	6		2	6		6	20
23 174/191 ST	24 175/190 10	25 176/189 10	26 177/188 10	27 178/187 10	28 179/188	29 180/185	40
30 181/184 OT	6		2	6		6	20

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2700

March 19, 1985

MAR 19 1985

The Honorable Fred Zharoff
Alaska State Senate
Pouch V
State Capitol
Juneau, AK 99811

Dear Senator Zharoff:

The following individuals are the members of the Ad hoc committee on the fluctuating work week legislation:

Mano Frey,President, AFL,CIO
Dixie Hudish, IBEW Local 1547
Richard Peluso, President, Western Alaska Bldg. Trades
Jim Pentlarge, Attorney
Mike Klein, COMINCO
Jack Thompson, Air Van Lines
Pete Nelson, Alaska Miners Association
Joe Crane, Anaconda
Ken Calhoon, Anchorage Chamber of Commerce
Chuck Becker, Brown & Root
Charles Johnson, Dresser Atlas
Milton Bird, Frontier Co.
Jerry Sheehan, Gearhart Co.
Paul Preston, Haliburton
John Hallahan, U.S. Borax
George Easley, Easley Co.

Sincerely,

Jim Robison
Commissioner

07-39LH

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2700

FEB 25 1985

February 22, 1985

The Honorable Fred Zharoff
Alaska State Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Zharoff:

Enclosed is a copy of the fluxuating work week legislation that I spoke about at the Department of Labor overview. I have been asked by Jack Thompson to provide you with a copy.

I have spoken to both Mano Frey, President of AFL-CIO, and Mike Klein, Chairman for the employers; and this is acceptable to both parties.

If you have questions, please feel free to call.

Sincerely,

Jim Robison
Commission

Enclosure

07-G9LH

RECEIVED
FEB 12 1985
OFFICE OF THE COMMISSIONER

Cominco American

M J Klein
Vice President
Human Resources & Administration

Comm.	✓
Deputy	✓
Sp. Asst.	
Info. Off.	
Adm. Asst.	
Int. Aud.	
Med. Dir.	
To:	
cc:	
cc:	
cc:	

Mr. Nano Frey
Business Manager
Laborers' Union
2501 Commercial Drive
Anchorage, Alaska 99501

February 8, 1985

Dear Nano:

Enclosed is a final copy of the "Payment of Overtime" bill. I have included the changes discussed at our February 7 meeting as well as deleting the reference to 29 CFR in Subsection 3 at the bottom of page 2. This latter deletion was at the request of Commissioner Robison.

In my discussion with the Commissioner, he suggested that the bill be introduced simultaneously by the Labor and Commerce Committees. Apparently he has discussed this approach with both Committee Chairmen (Mike Navarre in the House, and Fred Zharoff in the Senate). With regard to introduction of the bill, I have asked Jack Thompson to get in touch with you to coordinate its introduction as soon as possible.

If you have any questions, don't hesitate to give me a call.

Yours truly,

MJK:pc

Enclosure

cc: Commissioner Jim Robison w/Atch
Mr. Jack Thompson w/Atch
Mr. Jack Sheehan w/Atch
Mr. Paul Preston w/Atch

BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the payment of overtime and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*Section 1. AS 23.10.060(17) is repealed.

*Section 2. AS 23.10.060(18) is repealed.

*Section 3. AS 23.10.060 is amended by adding two new subsections to read:

Sec. 23.10.060(b). IRREGULAR AND FLEXIBLE WORK HOUR PLANS. The following pay plans which provide fixed pay rates for irregular or flexible work hours up to a predetermined maximum are permissible under this chapter, if the department has reviewed the pay plan and, in writing, has approved the plan as being in compliance with the appropriate subsection herein. Any subsequent changes in the pay plan must be approved by the department. Failure to obtain prior approval of the plan or subsequent changes renders the plan unlawful until written approval is obtained from the department.

February 8, 1985

It is further provided that for plans under subsections 2 and 3 herein, the nature of the employer's business and the duties of the employee necessitate irregular hours of work with, for plans under subsection 2 herein, neither the employer nor the employee being able to control or anticipate with absolute certainty the number of hours to be worked.

(1) Work performed by an employee under a flexible work hour plan, either through agreement as part of a collective bargaining contract, or through signed written agreement pursuant to AS 23.05.160, which provides for a 40 hour workweek and not more than a 10 hour work day; for work over 40 hours per week or 10 hours a day under a flexible work hour plan compensation at the rate of one and one-half times the regular rate of pay shall be paid for overtime;

(2) Work performed by an employee under an irregular work hour plan, either through agreement as part of a collective bargaining contract or through signed written agreement pursuant to AS 23.05.160, which provides a fixed weekly wage for irregular weekly hours not to exceed 60 hours in a workweek; for work over 60 hours per week under a irregular work hour plan compensation at the rate of one and one-half times the regular rate of pay shall be paid for overtime;

(3) Work performed by an employee under a flexible workweek plan, either through agreement as part of a collective bargaining contract or through signed written agreement pursuant to AS 23.05.160; hours allowed under this plan shall not exceed 60 hours in a workweek; for work over 60 hours per week under a flexible workweek plan compensation at the rate of

one and one-half times the effective hourly rate of pay shall be paid for overtime. The effective hourly rate of pay shall be determined based on the actual hours worked in a workweek up to 60 hours. ?

(4) The commissioner shall promulgate rules and regulations which are necessary for the administration of this subsection.

Sec. 23.10.060(c) GOOD FAITH EXCEPTION. In any action commenced after the date of the enactment of this act to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Alaska Wage & Hour Act, if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for such act or omission, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in AS 23.10.110.

*Section 4. This act takes effect immediately in accordance with AS 01.10.070(c).

Mike Kloe
Manyo Frye

Dear Senator Zharoff:

Dear Representative Navarre:

For the past several months, a team of representatives of the support industry in Alaska and a team of representatives of labor in the state have been meeting to develop acceptable language of an amendment to Alaska labor law. The genesis of these teams stems from a keen interest in the issue by Governor Bill Sheffield.

The mutually agreed to language of the proposed amendment is enclosed with this letter.

We are convinced that the benefits accruing to industry as a result of enactment of this amendment are reasonable and substantial and that the interests of the Alaskan worker are well protected.

We the undersigned, therefore, respectfully request your sponsorship of the amendment, in your capacity as Chairman of the Labor and Commerce Committee, and your active intervention in pursuing enactment of the bill. Should you have any questions on the issues, please feel free to call on any one of us.

Sincerely,

Mike Klein
Chairman of
the Industry
Team and Vice
President of
Cominco America

Jack Thompson
Vice President
Air Van Lines

Paul Preston
Alaska Manager
Halliburton Svcs.

Jerry Sheehan
Alaska Manager
Gearhart Industries

Jim Robison
Commissioner
Alaska State
Department of
Labor

Mano Frey
Chairman of
the Labor Team
and President of
the Alaska State
AFL/CIO

Rich Peluso
President of the
Southcentral Alaska
Central Labor Council

Dixie Lee Hudish
Representative
International Brotherhood
of Electrical Workers

J Klein
President
Resources & Administration

Cominco American

Commissioner Jim Robison
Alaska Department of Labor
Box 1149
Juneau, Alaska 99802

June 6, 1985

Dear Jim:

Thank you for forwarding the copy of Senate Bill 286 pertaining to the payment of overtime and good faith exception.

In reviewing the proposed bill, I note that the phrase "That will average 40 hours per week over an extended length of employment" was added in two places in the bill (the first being on page 2, subsection (a), lines 7 and 8; and the second addition being in subsection (3), lines 23 and 24). Inasmuch as this stipulation was not included in the draft bill agreed to by Labor and Management, and is not required by Federal Wage & Hour regulations, I am somewhat curious as to why it was included in the final version.

Any information you can provide regarding the additional language will be greatly appreciated.

Yours truly,

Mike

MJK:pc

cc: Nano Frey
Jack Thompson

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

M E M O R A N D U M March 22, 1985

SUBJECT: Proposed legislation relating to payment of overtime (Work Order No. 14-0940)

TO: Senator Fred Zharoff

FROM: Teresa B. Cramer
Legislative Counsel

You have asked for an analysis of the language proposed as AS 23.10.060(c) establishing a good faith exception to imposition of penalties for an employer's failure to pay minimum wages, overtime compensation or liquidated damages.

The language proposed in the draft is taken from 29 U.S.C. 260 with little change. It permits the court to refuse to impose liquidated damages or to impose a reduced amount of damages on an employer who failed to pay the full amount of wages, overtime or liquidated damages required by the Alaska Wage and Hour Act if the employer satisfies the court that the failure was in good faith and that the employer had reasonable grounds for paying the amount paid. There is a substantial body of federal case law interpreting the language of this section.

If you wish to ensure that amending current law by addition this section does not affect cases already pending or claims that arise from employment already performed, then you may wish to include in the bill a section that clearly limits the application of the bill to services performed after the effective date of the Act.

If I may be of further assistance, please advise.

TBC:csh
c3/061

Archive

Section (3). A flexible work week plan that provides a fixed weekly wage for no more than 60 hours per workweek and that requires the employer to pay compensation at a rate of one and one half times the effective hourly rate of pay for hours in excess of 40 hours per week. The effective hourly rate of pay is determined by dividing the fixed weekly wage by the actual hours worked in a workweek, not to exceed 60 hours. Hours in excess of 60 hours per workweek are paid at one and one half times the effective rate of pay for a 60 hours workweek at the fixed weekly wage. The Department may not approve a plan under this section unless it finds the nature of the employers business and the duties of the employer require irregular hours of work. An example, follows your effective hourly rate will be $15. However, you will be paid a guaranteed weekly salary of $600 regardless of the number of hours worked in a week (up to 60 hours per week). For any hours worked in excess of 40 but less than 60, you will receive:

1/2 Rate	Regular Rate	Hours Worked	Salary Guarntee	Overtime Pay	Total Weekly Earnings
0	15.00	1-40	600	0	600
7.32	14.63	41	600	7.32	607.32
7.14	14.28	42	600	14.28	614.28
6.00	12.00	50	600	60.00	660.00
5.45	10.91	55	600	82.00	682.75
5.00	10.00	60	600	100.00	700.00

For any overtime in excess of 60 in a workweek, you will receive $15 per hour (your effective hourly rate of $10 times 1.5 for overtime) with this amount added to the $700 paid for the first 60 hours.

600 ÷ 42 = 14.28 ST

14.28 ÷ ½ = 7.14 OT

40 hrs × 14.28 = 571.20

2 hrs × $14.28 + 7.14 = 42.84

TOTAL 614.04

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

M E M O R A N D U M April 17, 1985

SUBJECT: Payment of overtime
(Work Order No. 14-0993)

TO: Senator Fred Zharoff

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have asked for a sectional analysis of Work Order 14-0993.

Section 1 exempts pay plans approved under AS 23.10.062, enacted by section 2 of the bill, from the requirement for payment of overtime based on an eight hour workday and 40 hour work week.

Section 2, subsection (a), permits the Department of Labor to approve flexible work hour, irregular work hour, and flexible work week plans and invalidates a plan or amendment to a plan until the department approves it in writing.

Subsection (b) permits the department to approve plans if they are entered into either under a collective bargaining agreement or when the employee is hired and lists the requirements for the payment of overtime under each type of plan.

Subsection (c) requires an employer and employee to sign a written agreement at the time of hiring concerning payment under the work plans available in the section and requires advance agreement to changes in the plan.

Section 3 permits an employer to defend against a claim for unpaid minimum wages, overtime compensation, or liquidated damages under the Alaska Wage and Hour Act by showing that the employer acted in good faith and upon reasonable grounds. The court may either reduce an award or refuse to award liquidated damages.

Section 4 limits application of the bill to work performed after the effective date.

Section 5 repeals the existing exemption for flexible work hour plans made under a collective bargaining and by agreement between the employer and the employee.

Section 6 is an immediate effective date clause.

If I may be of further assistance, please advise.

TBC:ojb
J14/006

THE ALLIANCE

P.O. Box 100100 / Anchorage, Alaska 99510 / (907) 562-0100

William Webb — President
Arctic Hosts, Inc.

Ann Curtis — Vice President
Crowley Maritime Corporation

Chuck Becker — Vice President
Brown & Root, U.S.A., Inc.

W.D. Bennett — Secretary
Perkins Coie

Val Molyneux — Treasurer
Veco, Inc.

Milton Byrd — Director
Charter College

Jack Thompson — Director
Air Van northAmerican

Tom Dow — Director
NANA Development

Craig Duncan — Director
Price Waterhouse

Randy Goodrich — Director
Executive Travel Service

Scott Hawkins — Director
Alaska Pacific Bancorporation

Roger Haxby — Director
Waukesha Alaska Corporation

Larry Holmstrom — Director
Holden, Hackney & Holmstrom

Joe Mathis — Director
Universal Services, Int'l, Inc.

Chuck McClain — Director
Calista Construction

Patrick Rumley — Director
Smith, Robinson & Gruening

Lowell Shinn — Director
Rainier Bank of Alaska

C. Larry Walker — Director
Frontier Companies of Alaska

Dan Black — Director
Price/CIRI Construction

Michelle Fleming
Executive Director

Kathie Tuttle
Administrative Assistant

January 31, 1986

FEB 4 1986

Senator Fred F. Zharoff
Alaska State Legislature
Box V
Juneau, Alaska 99811

Dear Senator Zharoff:

On behalf of all the members of the Alaska Support Industry Alliance, I want to commend you and your colleagues for a quick and professional start to this second session of the fourteenth Alaska legislature and to express our appreciation for your dedication to the public interest.

The Alliance brings together officers and employees of over two hundred companies in Alaska to focus on public policy issues which they feel will affect their general well being. These organizations, directly or indirectly, serve the needs of the state's petroleum and mining industries; consequently, the Alliance concentrates on a limited number of the many issues which come before you as a legislator.

From a survey of Alliance members, the following issues are found to be of particular concern and, as such, represent our priorities for 1986.

* Maintain a stable tax policy and tax structure.
* Assure predictable state and federal leasing programs.
* Support promotional strategies for local hire without statutory mandate.
* Enact amendment to Alaska labor law providing for overtime payment alternatives and a "good-faith" defense.
* Reform the permitting process.

As you can see, Alliance members have kept this year's focus quite concentrated. Enclosed with this letter are position papers which expand on the issues. There are, nevertheless, other issues of critical concern currently under study, on which The Alliance is not yet prepared to define its position or on which we will lend support to those who have accepted leadership roles in pursuing such objectives. The crisis in liability insurance and the need to establish a trend in operating budget expenditures commensurate with declining revenues are two notable examples.

The thousands of employees and officers of firms that are members of The Alliance recognize clearly that you and your colleagues in the legislature are key to achieving our objectives. Without your help and support, these aspirations of our members cannot be realized.

The Alliance, in turn, is prepared to help you. Once again, Brown & Root has made available to us the services of Chuck Becker to serve as our lobbyist of record and whose experience with legislative bodies at all three levels of government, you are free to call on. Additionally, many other representatives of Alliance members are prepared to lend their considerable resources to your efforts, just let us know.

Again, on behalf of the members of The Alliance, I want to extend to you our best wishes for a successful session.

Sincerely,

ALASKA SUPPORT INDUSTRY ALLIANCE

William F. Webb

William F. Webb
President

WFW:ph

Enclosures

Reauthorization of Alternative Methods of Overtime Compensation and Authorization of a "Good-Faith" Defense in Alaska Labor Law

In 1979, the previous State Administration with virtually no public input enacted regulations to prohibit the use of alternative wage an hour pay plans known as Fluctuating Work Week and BELO. Both of these plans are uniformly recognized and approved by other states and by the federal government. While each require strict adherence to necessary prerequisites before they can be used by an employer, both plans have proven highly beneficial to employers and employees in several industries of vital importance to the State of Alaska, such as mining, timber and oil and gas. For the employee, such plans permit greater stability of income; for the employer, such plans allow greater predictability of labor cost.

Since prohibition of these plans, both labor and management in Alaska have recognized that such action was excessively restrictive, and unnecessarily impedes economic development and job creation. Accordingly, the State Department of Labor, in cooperation with representatives of industry and organized labor, has worked to develop language acceptable to all parties concerned.

This legislation will re-establish alternative pay plans, while further protecting employees from any abuse of such plans.

The thrust, therefore, of the bill is to re-authorize alternative methods for payment of wages and, in addition, to establish a "good faith" defense to the imposition of liquidated damages against an employer in the event of an unknowing or otherwise justifiable failure to pay overtime wage rates.

This amendment, will be offered to the appropriate committees of the Legislature for consideration We trust it will earn your support and will be enacted.

THE ALLIANCE

MEMBER

ASSURE PREDICTABLE STATE AND FEDERAL LEASING PLANS

The U.S Department of the Interior is revising its five-year schedule for oil and gas lease sales in the outer continental shelf. Concurrently, the State Department of Natural Resources has established a five-year plan for oil and gas lease sales within the state's purview.

The stablility of the state's leasing plan is in marked contrast to the relative lack of predictability of the federal plan which has been repeatedly set back by Congressional moratoria and court action. Indeed, the State of Alaska has been a principal litigant in the effort to frustrate federal plans. These actions have already had detrimental impacts on our economy and portend even greater harm to both the economy and our national security.

The Alliance calls on all parties concerned to work cooperatively and to base all decisions on a studied review of available data.

The federal government must recognize that a fraction of the revenues derived from commercial production in the outer continental shelf should be targeted to the states to offset costs associated with development on shore. Likewise, the state government must assume an active role in eliminating impediments to promising economic development scenarios and cease posturing as one of those impediments.

The Alliance has taken, and will continue to take a prominent role in informing Alaskans about the issues in this important matter and of the facts attendant to those issues. The jobs of too many Alaskans are placed in jeopardy when political expediency triumphs over empirical evidence in the decision-making process.

Reform the Permitting System

The Alliance advocates a reform of the permitting process. The Governor's changes that have resulted in many permitting decisions being made in the Office of the Governor have expedited several important oil and gas permits, which The Alliance commends.

However, The Alliance is concerned that a more comprehensive analysis and reform of the State's permitting system must be done to resolve fundamental flaws which remain.

As a first step to remedy the problem, The Alliance supports legislation which would accomplish the following:

* Establish the Department of Natural Resources as the state's lead agency for coordination, review and processing of permits related to natural resource development;

* Establish the Department of Natural Resources as the state's lead agency for coastal consistency review of natural resource development projects; and

* Require that all state permit agencies include a cost/benefit analysis in their review of project proposals.

SUPPORT STRATEGIES FOR LOCAL HIRE WITHOUT STATUTORY MANDATE

The unemployed Alaskan represents a serious social and economic problem to the state which must be solved. Employment strategies targeted at the jobless must be devised and implemented cooperatively by government and industry working toward this common goal. Alaskans who are ready, willing and able to work must be given that opportunity.

Legislation which would employ mandates and sanctions designed to force Alaska businesses to hire Alaskans as a method to solve the problem of unemployment is counterproductive. Typically such an approach has been found to be an assault on the fundamental laws of our nation. Alaskans demand a more thoughtful approach towards resolution of the unemployment problem from its leaders of government; an approach which seeks resolution by creating an environment designed to generate new and expanded business opportunities.

A vibrant Alaska economy is the best local hire policy.

The entire Alaska business community must learn of the already existing incentives to hire an Alaskan worker. The spirit of independence, of self-sufficiency and of self-motivation pervades the Alaskan workforce unlike any other. An employer cannot put a better worker to work than an Alaskan.

The Alliance recommends an effort be launched by government and business, in a spirit of cooperation, to solve the problem of unemployment in Alaska and to promote the realities associated with the assertion . . .

"Hire Alaskans; its good business!"

MAINTAIN A STABLE TAX POLICY AND TAX STRUCTURE

Increasing taxes on Alaska's petroleum industry through one or more of several creative techniques, is not only counterproductive, such action could prove fiscally detrimental to the Alaska economy.

There are those who have suggested that a return to separate accounting for purposes of calculating corporate income taxes of oil and gas companies is more fair and accurate than the current modified apportionment method. It is not. Nor would it spur marginal oilfield development. On the contrary, the proposal is a de facto tax increase of enormous proportions which would certainly chill both exploration and development.

Likewise, tampering with the tax code by modifying the economic limit factor (ELF) is an equally imprudent proposal. The ELF allows severance taxes to be reduced as individual wells become less productive and margins narrow. In place, the ELF contributes to decisions destined to develop the "high tech" requirements of advanced recovery plans which will continue the revenue flow to the state from Alaska's oilfields. If eliminated, the impact could be significant enough to cause the early shutdown of these fields.

A robust oil and gas industry is a fundamental prerequisite for economic dynamism in other sections in the Alaska business community. A tax increase imposed during a period of declining revenues caused by instabilities in the world market place, will further aggravate an already tenuous market condition and could quickly curtail industry investments in Alaska.

As state revenues decline, state spending must decline.

It is in the best interest of the people of Alaska for their government leaders to foster conditions designed to attract investment and to create jobs.

The Alliance recommends the State of Alaska maintain a stable tax policy and tax structure and to act decisively on measures to reduce the state operating budget.

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 0072

4186 SLAB SB 288

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James A. DeSmith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

288

STATUTES REFERENCED BY CSSB 288

AS04.11.320
HEADINGS TITLE 4.
Alcoholic Beverages.
CHAPTER 11.
Licensing.
ARTICLE 4.
Denial, Suspension, or Revocation of Licenses and Permits.
CITATION Sec. 04.11.320.
CATCH LINE
DENIAL OF NEW LICENSES AND PERMITS.
TEXT (a) An application requesting issuance of a new license shall be denied if

(1) the board finds, after review of all relevant information, that issuance of the license would not be in the best interest of the public;

(2) issuance of the license is prohibited by AS 04.11.390, relating to residency, or AS 04.11.410, relating to location of premises near churches and schools;

(3) the application has not been completed in accordance with AS 04.11.260;

(4) issuance of the license would violate the restrictions pertaining to the particular license imposed under this title;

(5) issuance of the license is prohibited under this title as a result of an election conducted in accordance with AS 04.11.502;

(6) the requirements of AS 04.11.420 - 04.11.450 relating to zoning, ownership and location of the license, and the identity and financing of a licensee have not been met;

(7) the licensed premises are to be located in a municipality, the type of license sought is a beverage dispensary or package store license, and that type of license is already in effect in the municipality under a community liquor license, unless the new license is to become effective after the community liquor license is no longer effective, whether as the result of a local option election or otherwise;

(8) the authority sought is authority to operate a beverage dispensary or package store under a community liquor license for premises to be located in a municipality where the authority sought is already held by a private licensee under a beverage dispensary or package store license, unless the community liquor license is to become effective after the privately held license is no longer effective, whether as the result of a local option election or otherwise;

(9) issuance of the license is prohibited under AS 04.11.400(a) or prohibition of issuance of the license is found necessary under AS 04.11.400(b);

(10) the application contains false statements of material fact;

AS04.11.320 cont.

(11) the license is sought for the sale of alcoholic beverages in a first or second class city or which there are no licensed premises at the time of application unless a majority of the voters in a local option election conducted in accordance with AS 04.11.502 have voted "no" on the question set out in AS 04.11.490, or have voted "yes" on a question set out in AS 04.11.492 or 04.11.500;

(12) the license is sought for the sale of alcoholic beverages in an established village in which there are no licensed premises at the time of application unless a majority of the voters in a local option election conducted in accordance with AS 04.11.502 have voted "no" on the question set out in AS 04.11.490 or have voted "yes" on the question set out in AS 04.11.500.

(b) An application for the issuance of a new permit shall be denied if

(1) the board finds, after review of all relevant information, that issuance of the permit would not be in the best interests of the public;

(2) the board finds that any of the statements made in the application are untrue;

(3) the application has not been completed in accordance with AS 04.11.260;

(4) the permit is sought for the sale of alcoholic beverages in a first or second class city or established village in which there are no licensed premises at the time of application unless a majority of the voters in a local option election conducted in accordance with AS 04.11.502 have voted "no" on the question set out in AS 04.11.490.

HISTORY (Sec. 2 ch 131 SLA 1980)

AS04.11.370

HEADINGS TITLE 4.
Alcoholic Beverages.
CHAPTER 11.
Licensing.
ARTICLE 4.
Denial, Suspension, or Revocation of Licenses and Permits.

CITATION Sec. 04.11.370.

CATCH LINE
SUSPENSION AND REVOCATION OF LICENSES AND PERMITS.

TEXT A license or permit shall be suspended or revoked if the board finds that one or more of the following grounds exists:

(1) misrepresentation of a material fact on an application for a license or permit;

(2) continuation of activities authorized under a license or permit would be contrary to the best interest of the public;

(3) failure on the part of the licensee to correct defects which constitute violations of this title, regulations adopted under this title, or other laws within a prescribed time after receipt of notice issued by the board or its agent;

AS04.11.370 cont.

(4) conviction of a licensee of a violation of a provision of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010;

(5) conviction of the agent or employee of a licensee of a violation of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010, if the licensee is found by the board to have either knowingly allowed the violation or to have recklessly or with criminal negligence failed to act in accordance with the duty prescribed under AS 04.21.030 with the result that an agent or employee violates a law, regulation, or ordinance;

(6) failure of the licensee to comply with the laws and regulations pertaining to public health in the state;

(7) use of the licensed premises as a resort for illegal possessors or users of narcotics, prostitutes, or pimps; in addition to any other legally competent evidence, the character of the premises may be proved by the general reputation of the premises in the community as a resort for illegal possessors or users of narcotics, prostitutes, or pimps;

(8) occurrence of illegal gambling within the limits of the licensed premises;

(9) permitting any public offense involving moral turpitude to occur on the licensed premises;

(10) violation by a licensee of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010;

(11) violation by an agent or employee of a licensee of a provision of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010, if the licensee is found by the board to have either knowingly allowed the violation or to have recklessly or with criminal negligence failed to act in accordance with the duty prescribed under AS 04.21.030 with the result that the agent or employee violates the law, regulation, or ordinance.

HISTORY (Sec. 2 ch 131 SLA 1980)

AS04.21.080

HEADINGS TITLE 4.
Alcoholic Beverages.
CHAPTER 21.
General Provisions.

CITATION Sec. 04.21.080.

CATCH LINE
DEFINITIONS.

TEXT (a) In this title

(1) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when he fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation;

(2) a person acts "knowingly" with respect to conduct

AS04.21.080 cont.

or to a circumstance described by a provision of law defining an offense when he is aware that his conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless he actually believes it does not exist; a person who is unaware of conduct or a circumstance of which he would have been aware had he not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which he would have been aware had he not been intoxicated acts recklessly with respect to that risk.

(b) In this title

(1) "alcoholic beverage" includes, but is not limited to, whiskey, brandy, rum, gin, wine, ale, porter, beer, and all other spirituous, vinous, malt and other fermented or distilled liquors intended for human consumption and containing more than one percent alcohol by volume;

(2) "board" means the Alcoholic Beverage Control Board;

(3) "bottling" means to put into a bottle, can, or other container;

(4) "designated premises" means any or all designated portions of a building or structure, rooms or enclosures in the building or structure, or real estate leased, used, controlled, or operated by a licensee for the purpose for which the permit is issued by the board at the location of the site for which the permit is issued;

(5) "director" means the director of the Alcoholic Beverage Control Board;

(6) "distributing point" means a location where alcoholic beverages are distributed from a warehouse;

(7) "drunken person" means a person whose physical or mental conduct is substantially impaired as a result of the introduction of an alcoholic beverage into his body and who exhibits those plain and easily observed or discovered outward manifestations of behavior commonly known to be produced by the overconsumption of alcoholic beverages;

(8) "established village" means

(A) an unincorporated community that is in the unorganized borough and that has 25 or more permanent residents; or

(B) an unincorporated community that is in an organized borough, has 25 or more permanent residents, and

AS04.21.080 cont.

(i) is on a road system and is located more than 50 miles outside the boundary limits of a unified municipality, or

(ii) is not on a road system and is located more than 15 miles outside the boundary limits of a unified municipality;

(9) "licensed premises" means any or all designated portions of a building or structure, rooms or enclosures in the building or structure, or real estate leased, used, controlled, or operated by a licensee in the conduct of business for which he is licensed by the board at the specific address for which the license is issued;

(10) "local governing body" means, as appropriate, a city council, a borough assembly, or a traditional village council, but does not include a corporation established under the Alaska Native Claims Settlement Act;

(11) "municipality" means an incorporated city, an organized borough, or a unified municipality established under AS 29.68.

HISTORY (Sec. 4 ch 131 SLA 1980; am sec. 1 ch 75 SLA 1983)

* AS11.81.900 (out of sequence - see following page)

AS21.06.090

HEADINGS TITLE 21.
Insurance.
CHAPTER 06.
The Director of Insurance.

CITATION Sec. 21.06.090.

CATCH LINE
REGULATIONS.

TEXT (a) The director may adopt reasonable regulations to effectuate this title. A regulation may not extend, modify, or conflict with any law of this state or the reasonable implications thereof. A regulation affecting a person or matter other than the personnel or the internal affairs of the director's office shall be adopted or amended only after a hearing thereon of which notice was given as required by AS 21.06.200. If reasonably possible the director shall set out the proposed regulation or amendment in or with the notice of hearing. A regulation or amendment as to which a hearing is required is not effective until it has been on file as a public record in the director's office for at least 10 days.

(b) In addition to any other penalty provided, wilful violation of a regulation subjects the violator to the administrative penalty prescribed for that violation.

HISTORY (Sec. 1 ch 120 SLA 1966)

AS11.81.900

HEADINGS TITLE 11.
Criminal Law.
CHAPTER 81.
General Provisions.
ARTICLE 6.
Definitions.

CITATION Sec. 11.81.900.

CATCH LINE
DEFINITIONS.

TEXT (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;*

*Further text excluded to save space.

AS21.06.120

HEADINGS TITLE 21.
Insurance.
CHAPTER 06.
The Director of Insurance.

CITATION Sec. 21.06.120.

CATCH LINE
EXAMINATION OF INSURERS.

TEXT (a) The director may examine the affairs, transactions, accounts, records, and assets of each authorized insurer and each licensed surplus lines broker as often as the director considers advisable. The director shall so examine each domestic insurer at least once every three years. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States. Examination of a reciprocal insurer may also include examination of its attorney-in-fact to the extent that the transactions of the attorney-in-fact relate to the insurer.

(b) The director shall in like manner examine each insurer applying for an initial certificate of authority to do business in this state.

(c) In place of an examination by the director, the director may accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of another state, territory, commonwealth, or district of the United States.

HISTORY (Sec. 1 ch 120 SLA 1966; am sec. 1 ch 117 SLA 1984)

AS21.06.140

HEADINGS TITLE 21.
Insurance.
CHAPTER 06.
The Director of Insurance.

CITATION Sec. 21.06.140.

CATCH LINE
CONDUCT OF EXAMINATION.

TEXT (a) The director shall conduct the examination at the home office of a domestic, foreign, or Canadian insurer, or the United States branch office of an alien insurer, or in any of its branch or agency offices; or with respect to persons other than insurers, at the office or other place or places where the records are kept.

(b) Every person being examined and its officers, employees, agents, and representatives shall produce and make freely available to the director the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination, and shall facilitate and aid the examination as far as reasonably possible.

(c) If the director finds accounts to be inadequate or inadequately kept or posted after the director has given the person notice of the inadequacy of the accounts and a reasonable opportunity to complete or correct the accounting, the director may employ experts to rewrite, post, or balance them at the expense of the person being examined.

AS21.06.140 cont.

(d) If the director considers it necessary to value real estate involved in the examination, the director may make written request of the person being examined to appoint one or more competent appraisers approved by the director, for the purpose of appraising the property. If no appointment is made within 10 days after the request is delivered to the person the director may appoint the appraiser or appraisers. The appraisal shall be made promptly, and a copy of the appraisal report shall be furnished to the director. The reasonable expense of the appraisal shall be borne by the person being examined.

(e) As far as practical the director shall conduct the examination of a foreign or alien insurer in cooperation with the insurance supervisory officials of other states in which the insurer transacts business, and for this purpose the director may participate in joint examinations of insurers or be represented at an examination by an examiner of another state.

HISTORY (Sec. 1 ch 120 SLA 1966)

AS21.06.160

HEADINGS TITLE 21.
Insurance.
CHAPTER 06.
The Director of Insurance.

CITATION Sec. 21.06.160.

CATCH LINE

EXAMINATION EXPENSE.

TEXT (a) Each person examined, other than as to examinations under AS 21.06.130, shall pay the actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, all at reasonable rates customary therefor and as established or adopted by the director, upon presentation of a detailed account of the charges and expenses by the director or pursuant to the written authorization of the director. The accounting may either be presented periodically during the course of the examination or at the termination of the examination. A person may not pay and an examiner may not accept additional emolument for an examination.

(b) The director shall pay into the general fund of the state all money received under (a) of this section. In lieu of making a deposit into the general fund, the director may give written authorization for the person examined to make direct payment to the examiner for travel expenses and living allowance.

(c) If the person fails to pay the charges and expenses prescribed in (a) of this section, the amount may be recovered by suit by the attorney general on behalf of the state and restored to the general fund. The amount due shall be a first lien upon all of the assets and property of the person in this state.

HISTORY (Sec. 1 ch 120 SLA 1966)

AS21.06.180

HEADINGS TITLE 21.
Insurance.
CHAPTER 06.
The Director of Insurance.

CITATION Sec. 21.06.180.

CATCH LINE
HEARINGS.

TEXT (a) The director may hold hearings for any purpose within the scope of this title considered to be necessary.

(b) The director shall hold a hearing if required by a provision of this title, or upon written demand by a person aggrieved by an act, threatened act or failure of the director to act, or by a report, regulation or order of the director (other than an order for the holding of a hearing, or an order on hearing or under it). A demand shall specify the grounds to be relied upon at the hearing as a basis for the relief. Unless postponed by mutual consent or for good cause shown, the hearing shall be held within 30 days after receipt by the director of the written demand.

(c) If within the 30-day period the director does not either (1) grant the hearing, or (2) issue an order refusing the hearing, as to the previous report, regulation, or order as to which the person so claims to be aggrieved, the hearing shall be considered to have been refused.

HISTORY (Sec. 1 ch 120 SLA 1966)

AS21.06.190

HEADINGS TITLE 21.
Insurance.
CHAPTER 06.
The Director of Insurance.

CITATION Sec. 21.06.190.

CATCH LINE
STAY OF ACTION.

TEXT (a) A demand for a hearing received by the director before the effective date of an order issued or within 10 days after an order is delivered stays the effectiveness of the order pending the hearing and an order made thereon, except as to action taken or proposed under an order

(1) on hearing;
(2) under and supplemental to an order on hearing; or
(3) based upon impairment of assets or unsound financial condition of an insurer.

(b) If an automatic stay is not provided for and the director after receipt of a written request for a stay fails to grant it, the person aggrieved may apply to the superior court for a stay of the director's proposed action.

HISTORY (Sec. 1 ch 120 SLA 1966)

AS21.06.200

HEADINGS TITLE 21.
Insurance.
CHAPTER 06.
The Director of Insurance.

CITATION Sec. 21.06.200.

CATCH LINE
NOTICE OF HEARING.

TEXT Not less than 20 days in advance the director shall give notice of the time and place of the hearing, stating the matters to be considered at the hearing. If the persons to be given notice are not specified in the provision under which the hearing is held, the director shall give notice to all persons whose pecuniary interests are to be directly and immediately affected by the hearing.

HISTORY (Sec. 1 ch 120 SLA 1966)

AS21.06.210

HEADINGS TITLE 21.
Insurance.
CHAPTER 06.
The Director of Insurance.

CITATION Sec. 21.06.210.

CATCH LINE
HEARING PROCEDURE.

TEXT (a) The director shall allow a party to the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence and to examine witnesses, to present evidence in support of the party's interest, and to have subpoenas issued by the director to compel attendance of witnesses and production of evidence in the party's behalf.

(b) The director shall permit to become a party to the hearing by intervention, if timely, any person who was not an original party to the proceeding and whose pecuniary interests are to be directly and immediately affected by the director's order made upon the hearing.

(c) Formal rules of pleading or evidence need not be observed at a hearing.

(d) Upon written request seasonably made by a party to the hearing and at that person's expense, the director shall cause a full stenographic record of the proceedings to be made by a competent reporter. If transcribed, a copy of the stenographic record shall be furnished to the director, without cost to the director or the state, and shall be a part of the director's record of the hearing. If transcribed a copy of the stenographic record shall be furnished to any other party to the hearing at the request and expense of the other party. If no stenographic record is made or transcribed, the director shall prepare an adequate record of the evidence and of the proceedings.

AS21.06.210 cont.

(e) Upon written request of a party to a hearing filed with the director within 30 days after an order made pursuant to a hearing has been mailed or delivered to the persons entitled to receive it, the director may grant a rehearing or reargument of the matters involved in the hearing. Notice of the rehearing or reargument shall conform to the requirements of AS 21.06.200.

HISTORY (Sec. 1 ch 120 SLA 1966)

AS21.06.220

HEADINGS TITLE 21.
Insurance.
CHAPTER 06.
The Director of Insurance.

CITATION Sec. 21.06.220.

CATCH LINE

ORDER ON HEARING.

TEXT (a) In conducting the hearing the director shall sit in a quasi-judicial capacity. Within 30 days after termination of the hearing, rehearing, or reargument, the director shall make an order on hearing, covering matters involved in the hearing, rehearing or reargument, and shall give a copy of the order to the same persons given notice of the hearing.

(b) The order shall contain a concise statement of the facts found by the director, the conclusions of the director, and the matters required by AS 21.06.100.

(c) The order may affirm, modify, or nullify a previous action or may constitute the taking of new action within the scope of the notice of hearing.

HISTORY (Sec. 1 ch 120 SLA 1966)

AS21.06.230

HEADINGS TITLE 21.
Insurance.
CHAPTER 06.
The Director of Insurance.

CITATION Sec. 21.06.230.

CATCH LINE

APPEALS FROM THE DIRECTOR.

TEXT A person aggrieved by an order of the director may appeal the order to the superior court, using procedures provided by court rule.

HISTORY (Sec. 1 ch 120 SLA 1966)

AS21.06.250

HEADINGS TITLE 21.
Insurance.
CHAPTER 06.
The Director of Insurance.

CITATION Sec. 21.06.250.

CATCH LINE
FEES AND LICENSES.

TEXT (a) The director shall collect required fees in advance. The fees are as follows:

(1) certificate of authority

(A) for filing an application for certificate of authority, articles of incorporation and other charter documents, bylaws, financial statement, examination report, power of attorney to the director, and all other documents and filings required in connection with such application, and for issuance of an original certificate of authority, if issued

domestic insurers $100
foreign insurers $100

(B) annual continuation of certificate of authority ..... $ 65

(C) reinstatement of certificates of authority ..... $ 65

(D) amending certificate of authority .... $ 10

(2) filing amendment of articles of incorporation, domestic and foreign insurers ..... $ 10

(3) filing bylaws or amendments thereto, where required ..... $ 10

(4) filing annual statement of insurer, other than as part of application for original certificate of authority ..... $ 10

(5) general agent or agent license, property, casualty, surety, title insurance agents, and including disability insurance without additional license or fee when written by property, casualty, or surety insurer otherwise represented by the general agent or agent

(A) application for original license, and including issuance of license, if issued,

(i) individual ..... $ 35

(ii) firm or corporation 75

(B) annual renewal or continuation of license

(i) individual ..... $ 35

(ii) firm or corporation 75

(C) appointment of agent or general agent, each insurer ..... $ 5

(D) annual renewal of appointment of general agent or agent, each insurer ..... $ 5

(E) temporary license ..... $ 35

AS21.06.250 cont.

(6) nonresident general agent or agent's license
(A) individual ..... $ 7!
(B) firm or corporation ..... $15(
(C) annual renewal or continuation of license
..... $ 75
(7) broker license
(A) application for original license and including issuance of license if issued - resident
(i) all line broker .....
$100
(ii) property-casualty broker .....
75
(iii) life-disability broker .....
75
(B) annual renewal or continuation of license - resident
(i) all line broker .....
$100
(ii) property-casualty broker .....
75
(iii) life-disability broker .....
75
(C) application for original license and including issuance of license, if issued - nonresident
(i) all line broker .....
$250
(ii) property-casualty broker .....
150
(iii) life-disability broker .....
150
(D) annual renewal or continuation of license - nonresident
(i) all line broker .....
$250
(ii) property-casualty broker .....
150
(iii) life-disability broker .....
150
(8) solicitor license
(A) application for original license, including issuance of license if issued ..... $ 15
(B) annual continuation of license ..... $ 15
(9) general agent or agent license, life, disability insurance and annuities
(A) application for original license, including issuance of license, if issued,
(i) individual ..... $
35
(ii) firm or corporation .....
75
(B) annual renewal or continuation of license,
(i) individual ..... $
35
(ii) firm or corporation .....
75

AS21.06.250 cont.

(C) appointment of general agent or agent, each insurer ..... $ 5

(D) annual renewal of appointment of general agent or agent, each insurer ..... $ 5

(10) examination for license as general agent, agent, broker, solicitor or adjuster, each examination ..... $ 10

(11) surplus line broker license

(A) application for original license and for issuance of license, if issued - resident $100

(B) application for original license and for issuance of license if issued - nonresident $300

(C) annual renewal or continuation of license - resident $100

(D) annual renewal or continuation of license - nonresident $300

(12) adjuster license

(A) application for original license and for issuance of license if issued - resident ..... $ 35

(B) annual renewal or continuation of license - resident ..... $ 35

(C) application for original license and for issuance of license, if issued - nonresident ..... $ 75

(D) annual renewal or continuation of license - nonresi- dent ..... $ 75

(13) insurance vending machine license, each machine, each year ..... $ 35

(14) for issuing any other certificate required or permissible under law ..... $ 5

(15) for accepting service of process .... $ 5

(16) for copy of insurance code, actual printing cost plus postage;

(17) for copy of insurance report, actual printing cost plus postage;

(18) for any printed material furnished by the director not mentioned above, the director may charge the actual cost of printing plus handling and postage;

(19) for limited license (travel insurance agent) ..... $ 25

(20) -Repealed, sec. 6 ch 113 SLA 1974.-

(21) rating bureaus (for a three-year license) $100

(b) The director shall promptly deposit with the commissioner of revenue to the credit of the general fund of this state all fees received under this section.

HISTORY (Sec. 1 ch 120 SLA 1966; am secs. 1 - 6 ch 113 SLA 1974; am sec. 1 ch 206 SLA 1976)

AS21.09.180

HEADINGS TITLE 21.
Insurance.
CHAPTER 09.
Authorization of Insurers and General Requirements.

CITATION Sec. 21.09.180.

CATCH LINE
DIRECTOR ATTORNEY FOR SERVICE OF PROCESS.

TEXT (a) Each insurer applying for authority to transact insurance in this state shall appoint the director as its attorney to receive service of legal process issued against it in Alaska. The appointment shall be made on a form designated and furnished by the director. The appointment shall be irrevocable, shall bind the insurer and any successor in interest to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force in Alaska a contract made by the insurer or obligations arising from it.

(b) Service of process against a foreign or alien insurer shall be made only by service of process upon the director, or upon a deputy or other person in charge of the office during the absence of the director. Service of process against a domestic insurer may be made either upon the director or upon the insurer corporation in the manner provided by laws applying to corporations generally, or upon the insurer's attorney-in-fact if a domestic reciprocal insurer.

(c) Each insurer at the time of application for a certificate of authority shall file with the director the name and address of the person to whom process against it served upon the director is to be forwarded. The insurer may change the designation by a new filing.

HISTORY (Sec. 1 ch 120 SLA 1966)

AS21.09.190

HEADINGS TITLE 21.
Insurance.
CHAPTER 09.
Authorization of Insurers and General Requirements.

CITATION Sec. 21.09.190.

CATCH LINE
SERVICE OF PROCESS.

TEXT (a) Duplicate copies of legal process against an insurer for whom the director is attorney under AS 21.09.180 shall be served upon the director, or upon a deputy or other person in charge of the office during the absence of the director. At the time of service the plaintiff shall pay $5 to the director taxable as costs in the action. Upon receiving service the director shall promptly forward a copy by certified mail with return receipt requested to the person last designated by the insurer to receive it.

(b) Process served upon the director and the copy forwarded as provided in this section constitutes service upon the insurer.

HISTORY (Sec. 1 ch 120 SLA 1966)

AS21.09.200

HEADINGS TITLE 21.
Insurance.
CHAPTER 09.
Authorization of Insurers and General Requirements.

CITATION Sec. 21.09.200.

CATCH LINE
ANNUAL STATEMENT.

TEXT (a) Each authorized insurer shall annually, before March 2, file with the director a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31. The statement shall be in the general form and context acceptable to the director, and in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon, and supplemented for additional information as required by the director. The statement shall be verified by the oath of the insurer's president or vice-president, and secretary, or, if a reciprocal insurer, by oath of the attorney-in-fact or its like officers if a corporation unless verification is waived by the director of insurance.

(b) The statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the director requires otherwise. If the director requires a statement concerning an alien insurer's affairs throughout the world, the insurer shall file the statement with the director as soon as is reasonably possible. The statement shall be verified by the insurer's United States manager or other authorized officer.

(c) The director may refuse to accept a fee for continuance of the insurer's certificate of authority, as provided in AS 21.09.130, or may suspend or revoke the certificate of authority of an insurer failing to file its annual statement when due.

(d) At the time of filing, the insurer shall pay to the director the fee for filing its statement as prescribed in AS 21.06.250.

(e) An insurer shall pay to the division $100 for each day the insurer fails to file the annual statement in the form required and within the time established in (a) of this section. The authority of the insurer to enter into new obligations or issue new or renewal policies of insurance in this state may be suspended by the director if the annual statement has not been filed by March 1.

HISTORY (Sec. 1 ch 120 SLA 1966; am sec. 1 ch 149 SLA 1984)

AS21.09.250

HEADINGS TITLE 21.
Insurance.
CHAPTER 09.
Authorization of Insurers and General Requirements.

CITATION Sec. 21.09.250.

CATCH LINE
PROHIBITED ACTS.

TEXT An insurer doing business in this state may not make, write, place or cause to be made, written or placed in this state a policy, duplicate policy or contract of insurance of any kind or character, or general or floating policy upon persons or property resident, situated or located in this state, from or through a broker, agent, surplus line broker or person who has not secured a license in this state. An insurer may not pay a commission or any form of remuneration to a person, firm or organization for the writing or placing of insurance coverage in this state unless that person, firm or organization holds a license issued by the director.

HISTORY (Sec. 1 ch 120 SLA 1966)

AS21.09.280

HEADINGS TITLE 21.
Insurance.
CHAPTER 09.
Authorization of Insurers and General Requirements.

CITATION Sec. 21.09.280.

CATCH LINE
GENERAL AGENTS AND MANAGERS.

TEXT (a) An insurer appointing a person as its general agent or manager to represent it in this state shall file notice of the appointment with the director on forms prescribed and furnished by the director.

(b) A general agent or manager has the authority, consistent with this title, that may be conferred by the insurer. A general agent, resident or nonresident, qualified in AS 21.27.090, licensed as provided in this section, may exercise the powers conferred by this title upon agents licensed for the kinds of insurance that the general agent is authorized to transact for the insurer appointing the agent.

(c) Except as provided under AS 21.27.500, the appointment of a resident or nonresident general agent is not effective unless the person appointed is licensed as the general agent of the insurer by the director upon application and payment of the fee as provided in AS 21.06.250.

(d) Every license expires at the close of business on the 30th day of June following the date of issue, and may be renewed for an additional year upon application and payment of the fee.

(e) The director may deny, suspend, or revoke a license for any cause specified in AS 21.27.410 in the manner provided in AS 21.27.420.

HISTORY (Sec. 1 ch 120 SLA 1966; am sec. 7 ch 113 SLA 1974)

AS21.12.020

HEADINGS TITLE 21.
Insurance.
CHAPTER 12.
Kinds of Insurance, Limits of Risk, and Reinsurance.

CITATION Sec. 21.12.020.

CATCH LINE
REINSURANCE.

TEXT (a) An insurer may accept reinsurance only of the kinds of risks and retain risk within the limits it is otherwise authorized to insure.

(b) An insurer may reinsure all or part of a particular risk with a solvent insurer authorized to transact insurance in one or more states and having surplus to policyholders in an amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance.

(c) No credit shall be allowed to an insurer, as an asset or as a deduction from liability, for reinsurance ceded to an alien insurer unless the alien insurer has surplus to policyholders, or assets held in trust for the benefit of its American policyholders, in an amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, or in the case of a group of individual unincorporated insurers, assets held in trust for the benefit of its American policyholders in a sum not less than $50,000,000, and is either (1) authorized to transact insurance in at least one state of the United States, or (2) has an attorney-in-fact resident in the United States upon whom service of legal process may be made.

(d) Credit shall be allowed as an asset or as a deduction from liability, to a ceding insurer for reinsurance ceded to an assuming insurer qualified under (a) - (c) of this section; except that no credit shall be allowed unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

(e) Upon request of the director, an insurer shall promptly inform the director in writing of the cancellation or other material change in any of its reinsurance treaties or arrangements.

(f) This section does not apply to wet marine and transportation insurance.

HISTORY (Sec. 1 ch 120 SLA 1966)

TITLES AND CHAPTERS REFERENCED BY CSSB 288

AS21.12 TITLE 21.
Insurance.
CHAPTER 12.
Kinds of Insurance, Limits of Risk, and Reinsurance.

AS21.18 TITLE 21.
Insurance.
CHAPTER 18.
Assets and Liabilities.

AS21.21 TITLE 21.
Insurance.
CHAPTER 21.
Investments.

AS21.24 TITLE 21.
Insurance.
CHAPTER 24.
Administration of Deposits.

AS21.36 TITLE 21.
Insurance.
CHAPTER 36.
Trade Practices and Frauds.

AS21.78.040

HEADINGS TITLE 21.
Insurance.
CHAPTER 78.
Rehabilitation and Liquidation.

CITATION Sec. 21.78.040.

CATCH LINE
GROUNDS FOR REHABILITATION.

TEXT The director may apply to the court for an order appointing the director as receiver of and directing the director to rehabilitate a domestic insurer when the insurer

(1) is impaired or insolvent;

(2) has refused to submit any of its books, records, accounts or affairs to reasonable examination by the director;

(3) has concealed or wrongfully removed records or assets or otherwise violated AS 21.69.390;

(4) has failed to comply with an order of the director to make good an impairment of capital or surplus or both;

(5) has transferred or attempted to transfer substantially its entire property or business, or has entered into a transaction the effect of which is to merge substantially its entire property or business in that of any other insurer without having first obtained the written approval of the director;

(6) is found, after examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to its members, subscribers, or stockholders, or to the public;

(7) has an officer, director, or manager who has refused to be examined under oath, concerning its affairs, for which purpose the director is authorized to conduct and to enforce by all appropriate and available means an examination under oath in another state or territory of the United States, in which the officer, director or manager may then presently be, to the full extent permitted by the laws of the other state or territory, this special authorization considered;

(8) has been or is the subject of an application for the appointment of a receiver, trustee, custodian or sequestrator of the insurer or its property otherwise than under the provisions of this title, but only if the appointment has been made or is imminent and its effect is or would be to oust the courts of this state of jurisdiction;

(9) has consented to such an order through a majority of its directors, stockholders, members or subscribers; or

(10) has failed to pay a final judgment rendered against it in this state upon any insurance contract issued or assumed by it, within 30 days after the judgment became final or within 30 days after the time for taking an appeal has expired, or within 30 days after dismissal of an appeal before final termination, whichever date is the later.

HISTORY (Sec. 1 ch 120 SLA 1966)

AS21.78.050

HEADINGS TITLE 21.
Insurance.
CHAPTER 78.
Rehabilitation and Liquidation.

CITATION Sec. 21.78.050.

CATCH LINE
GROUNDS FOR LIQUIDATION.

TEXT The director may apply to the court for an order appointing the director as receiver, if an appointment of the director as receiver is not then in effect, and directing the director to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trusteed assets in this state, regardless of whether or not there has been a prior order directing the director to rehabilitate the insurer, upon any of the grounds specified in AS 21.78.040, or if the insurer

(1) has ceased transacting business for a period of one year;

(2) is an insolvent insurer and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute an action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian or sequestrator under any law except this title; or

(3) is the Medical Indemnity Corporation of Alaska, and the director has ordered termination of the business of the corporation in accordance with AS 21.88.055.

HISTORY (Sec. 1 ch 120 SLA 1966; am sec. 2 ch 177 SLA 1978)

AS21.78.100

CHAPTER = 21.78
SECTION = 21.78.100
TITLE = 21

HEADINGS TITLE 21.
Insurance.
CHAPTER 78.
Rehabilitation and Liquidation.

CITATION Sec. 21.78.100.

CATCH LINE
ORDER OF LIQUIDATION, DOMESTIC INSURERS.

TEXT (a) An order to liquidate the business of a domestic insurer shall require the director to take immediate possession of the property of the insurer, to liquidate its business, to deal with the insurer's property and business in the director's name as director of insurance or in the name of the insurer, as the court may direct, and to give notice to all creditors who may have claims against the insurer to present the claims.

(b) The director may apply for and secure an order dissolving the corporate existence of a domestic insurer, except the Medical Indemnity Corporation of Alaska, upon the director's application for an order of liquidation of the insurer or at any time after the order has been granted.

HISTORY (Sec. 1 ch 120 SLA 1966; am sec. 3 ch 177 SLA 1978)

AS21.80.020

HEADINGS TITLE 21.
Insurance.
CHAPTER 80.
Alaska Insurance Guaranty Association Act.

CITATION Sec. 21.80.020.

CATCH LINE
APPLICABILITY.

TEXT This chapter applies to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty, and ocean marine insurance.

HISTORY (Sec. 1 ch 121 SLA 1970)

AS21.80.180

HEADINGS TITLE 21.
Insurance.
CHAPTER 80.
Alaska Insurance Guaranty Association Act.

CITATION Sec. 21.80.180.

CATCH LINE
DEFINITIONS.

TEXT In this chapter, unless the context requires otherwise,

(1) "account" means any one of the three accounts created by AS 21.80.040;

(2) "association" means the Alaska Insurance Guaranty Association;

(3) "commissioner" means the commissioner of the Department of Commerce and Economic Development or a representative of the commissioner;

(4) "covered claim" means an unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer becomes an insolvent insurer after August 6, 1970, and (A) the claimant or insured is a resident of this state at the time of the insured event; or (B) the property from which the claim arises is permanently located in this state; "covered claim" does not include any amount due a reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise;

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, either at the time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of competent jurisdiction;

AS21.80.180 cont.

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, who

(A) writes any kind of insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or interinsurance contracts, and

(B) is licensed to transact insurance in this state;

(7) "net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on direct business; "net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

HISTORY (Sec. 1 ch 121 SLA 1970; am secs. 43, 44 ch 102 SLA 1976; am secs. 5, 6 ch 104 SLA 1983)

AS21.88.055

HEADINGS TITLE 21.
Insurance.
CHAPTER 88.
Health Care Providers Insurance.
ARTICLE 2.
Medical Indemnity Corporation of Alaska.

CITATION Sec. 21.88.055.

CATCH LINE
TERMINATION.

TEXT (a) If at any time the corporation posts written premiums for two consecutive years of less than 35 per cent of all premiums written in Alaska for physicians' medical malpractice insurance or posts written premiums for one calendar year of less than 20 per cent of all premiums written in Alaska for physicians' medical malpractice, the director may hold a public hearing in accordance with AS 21.06.180 - 21.06.230 to determine whether the business of the corporation should be terminated.

(b) Upon the effective date of an order of termination issued by the director under (a) and (d) of this section, the terms of the governors appointed under AS 21.88.030 expire, and the corporation, its governors, officers and employees are relieved of all further liabilities for all their obligations to the creditors and policyholders of the corporation, and the business of the corporation shall be liquidated according to AS 21.78.

(c) At any time after termination of the corporation by the director, the director may, after public hearing held in accordance with AS 21.06.180 21.06.230 and (d) of this section, order reactivation of the corporation if the director finds that malpractice insurance is unavailable for physicians and hospitals

AS21.88.055 cont.

on the voluntary market. The business of the corporation shall commence operation upon appointment by the governor of new governors to the board.

(d) In determining whether to terminate or reactivate the business of the corporation the director shall consider the following:

(1) the level of expected premiums and losses for continued operation;

(2) the requirement for state funds to support continued operation;

(3) the availability of alternative markets for coverage to a substantial majority of physicians and hospitals in the state;

(4) the costs of continued operation of the corporation;

(5) the impact that the continued operation of the corporation will have on rates charged for coverage by the corporation or by alternative markets; or

(6) the expected number of physicians or hospitals who would participate if the operations were continued.

(e) If after public hearing held in accordance with (a) and (c) of this section the director determines that continuing the business of the corporation would result in substantial underwriting loss unless excessive premiums are charged to participating physicians and hospitals, the director may order termination of the corporation.

HISTORY (Sec. 11 ch 177 SLA 1978)

AS43.60.010

HEADINGS TITLE 43.
Revenue and Taxation.
CHAPTER 60.
Excise Tax on Alcoholic Beverages.

CITATION Sec. 43.60.010.

CATCH LINE

ALCOHOLIC BEVERAGE TAX.

TEXT (a) Every brewer, distiller, bottler, jobber, retailer, wholesaler, or manufacturer who sells alcoholic beverages in the state or who consigns shipments of alcoholic beverages into the state, whether or not the alcoholic beverages are brewed, distilled, bottled, or manufactured in the state, shall pay on all malt beverages (alcoholic content of one percent or more by volume), wines, and hard or distilled alcoholic beverages, the following taxes: (1) malt beverages at the rate of 35 cents a gallon or fraction of a gallon; (2) wine or other beverages of 21 percent alcohol by volume or less, at the rate of 85 cents a gallon or fraction of a gallon; and (3) other beverages having a content of more than 21 percent alcohol by volume at the rate of $5.60 a gallon.

(b) -Repealed, sec. 3 ch 235 SLA 1976.-

HISTORY (Sec. 35-4-31 ACLA 1949; am sec. 1 ch 73 SLA 1957; am sec. 1 ch 61 SLA 1961; am sec. 28 ch 70 SLA 1964; am sec. 1 ch 61 SLA 1971; am sec. 3 ch 235 SLA 1976; am sec. 1 ch 46 SLA 1983)

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

CSSB 288(L&C): Sectional Analysis

Section 1) Requires the denial of an application for a new liquor license if the applicant has less than $500,000 in liability insurance coverage.

Section 2) Requires the revocation of a liquor license if the licensee fails to maintain at least $500,000 in liability coverage.

Section 3) Permits the director of the Division of Insurance to become a court ordered receiver for the Liquor License Holders' Indemnification Corporation if the director has ordered termination of the business under 21.85.055.

Section 4) Excludes the Corporation from the domestic insurance corporations that may be disolved by the director following liquidation.

Section 5) Excludes the Corporation from insurers that may be defined as "insolvent insurers" under this chapter.

Section 6) Excludes the corporation from insurers included within the definition of "member insurers".

Section 7) Adds a new chapter to AS 21 titled "Liquor License Holders' Insurance Corporation.

21.85.010: States that the purpose of the chapter is to provide a means of furnishing liquor license holders with adequate liability insurance for acts or ommissions that concern customers on licensed premises.

21.85.020: Provides for the creation of the Corporation as a public corporation. Its existence is independent of the state and it cannot encumber the state with any debt, liability, or obligation.

21.85.030: (a) provides for the exercise of corporation powers thru a board of governors. The board shall be made up of Alaskan residents appointed by the Governor and confirmed by the Legislature. Four board members must be liquor license holders, and of these, 2 must have

obtained their insurance coverage from the corporation. No more than 2 may reside in municipalities with populations in excess of 100,000 and 2 members must be professionals from the insurance industry and be licensed to do business in the state. The remaining 2 board members must be persons who have no financial interest in a liquor license and are not members of the insurance industry.

(b) establishes a 3 year term of office for Board members and provides for appointments of staggered terms. Also requires that an outgoing board member be replaced by a new member from the same class as described in subsection (a).

(c) provides that upon early termination by a board member, the governor shall appoint a replacement from the same class as described in subsection (a).

(d) provides that the director or a designee may participate in all board meetings but does not have voting privileges.

(e) provides for compensation and reimbursement of expenses for members of the board under a policy approved by the director.

(f) holds harmless past and present board members and employees of the corporation for business related conduct unless the conduct was knowingly outside the scope of authority, knowingly against the interests of the corporation, or in a criminal action, the person acted knowingly or recklessly.

(g) provides that a board member, or employee under this section is entitled to defense by the state in a court action. The board member or employee shall be required to reimburse the state for the defense if it is established that the person's conduct was knowingly outside the scope of authority, knowingly against the interests of the corporation, or in a criminal action, acted knowingly and recklessly.

(h) defines "knowingly" and "recklessly" as having the meaning given in AS 11.81.900 (see statutes in members packet)

21.85.040: (a) provides that the board shall prepare an operating plan for the corporation, which will become effective upon approval of the director. In the event the board fails to submit a plan or necessary amendments, the director shall, after notice and hearing, adopt such a plan as is necessary to carry out the provisions of this chapter. Adoption of the plan is not subject to

the administrative procedures act.

(b) provides that the plan of operation shall establish procedures for the performance of corporation duties, procedures for handling assets and liabilities, meeting schedules for the board of governors, record keeping, awarding of contracts, issuing contracts of insurance, and determining rates.

21.85.050 (a) provides that the corporation shall issue to all liquor license holders who are acceptable risks and who pay premiums, insurance contracts of indemnification for themselves and their employees against losses in excess of $50,000 for covered claims. The corporation shall defend its insureds in actions for damages. Coverage is limited to $500,000 and the corporation need not indemnify for punitive damages on a covered claim. Coverage may be provided for an earlier period if approved by the director. Coverage may not be provided for a claim already made, or for a claim which the license holder had or reasonably should have had notice. Insurance premiums shall be determined by the board of governors and approved by the director. The corporation must comply with all applicable general insurance regulations, but is exempt from the Alaska Insurance Guarantee Association. It must honor its contracts to its insureds, establish standards for the acceptability of risks, and may exclude applicants on risk selection factors.

(b) provides that the corporation may employ and compensate persons and that these persons are not state employees. The corporation may get reinsurance from private insurers, borrow or advance funds, enter into contracts for corporation purposes, litigate in the name of the corporation, provide risk management advice, contract for management services, and perform other necessary acts.

21.85.055 (a) provides that the director may hold a public hearing to determine whether the corporation should be terminated if the corporation posts less than 35% of the premiums written for two consecutive years or less than 20% for one year.

(b) provides that upon an order of termination by the director the terms of the members of the board expire, the members obligations end, and the corporation shall be liquidated.

(c) provides that after termination of the corporation it may be reactivated by the director if it is determined that liability insurance is unavailable for liquor license holders on the voluntary market. The

reactivated corporation shall commence business on the appointment of a new board of governors by the governor of the state.

(d) provides that in determining whether to terminate or reactivate the corporation, the director shall consider the level of expected premiums and losses, the requirement for state funds needed to operate, the availability of alternative insurance markets, the costs of continued operation, the impact of continued operation on rates, and the expected number of insureds in the event of continued operation.

(e) the director may order termination of the corporation if, after public hearing, it is determined that continued business would result in substantial underwriting losses unless excessive premiums are charged to participants.

21.85.060 The corporation shall be taxed in the same manner as a domestic insurer.

21.85.070 requires that the corporation maintain records sufficient to determine losses for rate making and to maintain loss control. Information regarding reserves, premiums, expenses, and claims shall be annually reported and made available to the public. The director may require supplemental reports that include names of insured persons and claimants.

21.85.080 provides that policy rates shall be determined by license categories. A minimum rate may be set for each category of liquor license holder. Rates may not be excessive in terms of premiums unjustifiably exceeding losses. Rates may not be inadequate in terms of losses exceeding premiums. Rates may not be discriminatory. Rates shall be adjusted annually based on actual experience of the corporation over the previous 4 years. Rate considerations shall include national trends in damages, income from the investments of reserves, individual risk underwriting factors, classifications within license categories, and amounts necessary for loan repayments. If the corporation suffers excessive claim losses for a given year, the corporation may levy a special assessment, subject to approval by the director, against policy holder for that year. This special assessment may be made in installments within 3 years, and may not exceed 150% of the insured's premium for the given year. The obligation is not cut off by policy termination. If earned premiums for a given year prove excessive, the corporation may, subject to approval of the director, pay or credit the excess to persons insured during the given year. The director may extinguish special assessments under this section upon the finding of a sound actuarial basis.

21.85.090 provides for installment payments of premiums. Permits the cancellation of policies for nonpayment of premiums by delivery of notice to the insured and to the ABC Board. Cancellation is not effective until 30 days after the notice.

21.85.095 (a) permits the corporation, subject to approval by the director, to transfer its assets and liabilities to a company that is certified to transact casualty insurance in this state. The company must pay full value to the state for any surplus in the corporation, reinsure all policy obligations, and meet other reasonable requirements of the director. A written statement of compliance with these requirements must be submitted to the board of governors by the company.

(b) provides that while the company continues to write premiums at levels required under 21.85.055, it may carry forward and offset against its premium tax obligation to the state, the amount by which the aggregate claims paid on reinsurance assumed exceeds aggregate reserves on business established at the date of the reinsurance agreement.

21.85.210: Provides that the corporation shall establish a reserve fund as required by DCED.

21.85.900 Definitions section

Section 8) The tax imposed during the period January 1, 1986 thru December 31, 1986:

Malt beverages: $.70 a gallon or fraction of a gallon

Wine (21% beverages): $1.70 a gallon or fraction of a gallon

Beverages above 21% alcohol: $11.20 a gallon

Section 9) The purpose of the tax rate increase in section 8 is to compensate the state for appropriations made to the reserve fund enacted in section 7 of this act. If the Department of Revenue collects more than $5,000,000 resulting from the increased tax rate during 1986, the excess shall be refunded by the department to taxpayers in proportion to the taxes paid by each taxpayer under 43.60.010 during the months subject to the increased tax rates.

Section 10) This act takes effect on the effective date of an Act making a special appropriation to the reserve fund established in section 7 of this act.

Chairman's Information:

1) CSSB 288(L&C): "An act relating to liquor license holder's insurance; and providing for increased alcoholic beverage taxes and providing for an effective date"

a) Introduced: Sen Josephson, Ziegler, and Ferguson

b) Co-Sponsors:

2) INTENT: This legislation creates the liquor license holders' indemnification corporation of Alaska to address a statewide problem of prohibitively expensive or unavailable insurance for liquor dispensing businesses in the state. The legislation proposes to create an insurance corporation similar to the MICA concept for the medical profession, and will require a fiscal note to capitalize the reserve fund. Further, the bill proposes to double the liquor taxes for a period of one year (July 1st 1985 thru June 30, 1986) to off set the cost of the $5.1 million dollar fiscal note needed to capitalize the reserve fund.

FISCAL NOTE: One fiscal note from the Dept of Revenue is 0; another fiscal note from Revenue indicates they would generate $7 250,000 thru the increased liquor taxes; There is a $5,100,000 fiscal note being prepared by DCED for the capitalization of the reserve fund.

3) ADDITIONAL REFERRALS: Finance

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from Committee?
d) close public hearings?

6) COMMITTEE ACTION:
a) amendments?
b) CS adoption?

SENATE LABOR AND COMMERCE
STANDING COMMITTEE
May 3, 1985
3:30 p.m.

Members Present: Sen. Fred Zharoff, Chair

COMMITTEE CALENDAR

CSSB 288(L&C) "An Act relating to liquor license holders' insurane; providing for increased alcoholic beverage taxes; and providing for an effective date."

CSHB 102(Fin) "An Act relating to the Alaska Resources Corporation; and providing for an effective date."

WITNESS REGISTER

Dave Gray
Representing City of Kodiak
836 Calhoun
Juneau, Alaska 99801
Position statement: Present to testify on CSHB 102(Fin), did not testify.

Charles Bytebiere
Alaska General Agencies[?]
Alliance Insurance
405 E. Fireweed
Anchorage, Alaska 99801
Position statement: Present to testify on CSSB 288(L&C)

Paul Trueh
Dept. of Commerce and Economic Development
Division of Insurance
Pouch D
Juneau, Alaska 99811
465-2515
Position statement: Present for CSSB 288(L&C), did not testify.

Don Koch
Dept. of Commerce and Economic Development
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Juneau, Alaska 99811
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Position statement: Present for CSSB 288(L&C), did not testify.

Chris Ulmann
Dept. of Commerce and Economic Development
Division of Insurance
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465-2515
Position statement: Present for CSSB 288(L&C), did not testify.

Bruce Botelho
Dept. of Revenue
Pouch S
Juneau, Alaska 99811
465-2300
Position statement: Present for CSHB 102(Fin), did not testify.

Marty Lentz
Dept. of Revenue
Pouch S
Juneau, Alaska 99811
465-2300
Position statement: Present for CSHB 102(Fin), did not testify.

Jeff Bush
Dept. of Law
Pouch K
Juneau, Alaska 99811
465-3600
Position statement: Present for CSHB 102(Fin), did not testify.

Greg Baker
Dept. of Commerce and Economic Development
Office of Commercial Fisheries Development
Pouch D
Juneau, Alaska 99811
465-2162
Position statement: Present for CSHB 102(Fin), did not testify.

ACTION NARRATIVE

COMPLETE TRANSCRIPT

Tape #28
Side A
003
3:40 p.m.

Sen. Zharoff: We don't have enough committee members here to open the meeting but since we do have visitors from out of town -- and if we do receive a quorum we'll open the meeting officially -- we'll go ahead with the questioning and see what information has been supplied us this time, and we'll also transcribe this for the other members of the committee. And if we do have a quorum, toward the end of the meeting, we'll open it and either take action or no act on on this bill.

Senate Bill 288, the one that we had previous testimony on, on Wednesday, we'll go ahead and continue the testimony at that time. There's a suggestion here by Mr. McLean to hold the bill until Monday but the version you see there superceded that, but probably his wisdom was greater than ours -- he realized we probably wouldn't have a quorum today -- maybe we shouldn't listen to him, but since we do have a visitor from out of town and Senator Josephson is the prime sponsor of the bill, there were some questions that came up; maybe we could just informally address those now, and if you wanted to speak up loudly we could probably pick it up with the mike there. Let us know if we're not getting the reading on there. For our information, would you give us your name.

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Charles Bytebiere: My name is Charles Bytebiere.

Sen.Zharoff: I realize you haven't had an opportunity to see the committee substitute [for CSHB 102(Fin)] that we've been working on, but in regards to the original bill, if you have any specific comments... We were concerned about what the insurance industry was doing as far as providing insurance for various businesses in the state; in this case, here, the liquor industry at this time appears to be without insurance, more than anything, unless that's a misunderstanding on my part. Maybe you might correct us there, and then also, between Sen. Josephson and I, I guess we'll go through questiona, and run through this rather informally.

Charles Bytebiere: I do blelieve there is a misunerstanding here. We have a company writing liquor liability currently in the State of Alaska, the Alliance Insurance Company. In the last 60 days we have probably had in excess of 300 applications submitted. It was not until this last week that we finally refused to quote one, but one out of in excess of 300 applications submitted. It was not until this last week that we finally refused to quote one. But one out of in excess of three hundred and that was what we felt was for good cause. There is a liquor market available, albeit it is more expensive than last year, and I think probably this is what has caused most of the consternation. The coverage is available, excess coverage is available over the company that we have writing it, and umbrella coverages are available.

Sen. Josephson: Are these 300 applicants retail stores or bars?

Charles Bytebiere: A combination. We've had everything from package stores, that's been the minority, we've had combination restaurant and bars, we've had the pure bar.

Sen. Josephson: I talked, before introducing the bill, to Marsh & McLennan, both I think in Fairbanks and in Anchorage, and one other underwriter. I also talked to people across the country involved in insurance. What I was told, and what I saw in documents, was that the bar owner who a year ago was paying premiums of $4,000 per year, was being quoted premiums of $26,000 per year.

Charles Bytebiere: Entirely possible. Now, can I go into that for a moment?

Sen. Josephson: Sure.

Charles Bytebiere: I'm sure with the work you've done with insurance, you're aware of the ISO rating bureau.

Sen. Josephson: No, I'm not.

Charles Bytebiere: This is an independent bureau, having nothing to do with any particular insurance company, that sets both rates that must be charged, and then sets a suggested guide "A" rate. Companies are not obligated to follow the "A" rates. The rate for a half-million [dollars] suggested by the ISO, is, I believe, or let's go to 300,000[dollars], is about a 3¼ rate per $100 of gross receipts. The current rates that we are charging, at the most expensive when you're into your pure bar, is about $2.00. The problem comes as the past year was being written at about a 30¢ rate. It's obvious that the 30c rate was not going to be sufficient to pay the losses, and while the rates are extremely higher than last year they are still not up to the recommended rate level of the insurance rating organization.

Sen. Josephson: But the point is, that from the standpoint of the bar owner, who's only concerned with his bottom line, these rates may not be affordable. I'm sort of surprised that your testimony is that 299 people have found they were affordable. Is that what you're saying? They've signed up for this insurance?

Charles Bytebiere: I would say not the whole 300, no. I would say probably closer to 50%. But on the affordable, let's turn that for a moment. It doesn't matter whether it's private industry, whether it's the state running an insurance company, or what, you have to collect enough premiums to pay your losses.

Sen. Josephson: Well, there isn't any criticism involved here. If I directed an insurance company, I'm sure I would do the same thing. You're not in business to lose money. The question, though, is whether the insurance industry, in the light of the modern-day litigation climate, has simply broken down in its ability to handle, at affordable rates, the problems of the [liquor] industry. That's the question, it's not a question of fault or blame. And that's the perception that I have and some of my colleagues have: that a bar owner who could make it at $4000, has the Hobson's choice of either being uninsured at $26,000 or going broke, in some instances, or if not going broke, deciding that the game is worth the candle, and getting out of the game, and letting somebody else we may not want in the business operate instead.

Charles Bytebiere: Well, first I'd like to give you a copy of an article that appeared in the Anchorage paper yesterday [Anchorage Daily News, 5-2-85, "Insurance Rates..."]. I think it explains the current situation very well.

Sen Josephson and Sen. Zharoff: We have it.

Charles Bytebiere: Applying the line of reasoning that you are applying Senator [Josephson], we might as well expand the company to take in at least a dozen different areas.

Sen. Josephson: Yes, I know...

Charles Bytebiere: There are other areas that are far worse off than the bar and restaurant situation. As you know there are certain areas that have virtually become uninsurable. The restaurant owner has a rather unique -- or bar owner, whichever the case may be -- has a rather unique situation. He is looking at a pure overhead cost. Now let's break down the cost of liquor liability from his $4000 last year to $20,000, which sounds spectacular, and let's take a look and say, "Alright, what is this man paying on a per drink basis." If we're talking about 2% of his gross receipts, we're talking about 6c on a $3 drink. I don't think that's an unreasonable overhead item, and I think that can be passed on to the customer. I don't see how the passage of this bill is going to reduce the amount of the judgements. I don't see where it's going to reduce the amount of dollars needed to pay the claims. I think all we're going to do is form another insurance company who is ultimately going to come to the same rate schedule.

Sen. Josephson: We thought we were going to do that because we eliminate coverage for claims under $50,000.

Charles Bytebiere: I was curious about that, because, again, if we're into a standpoint of picking $24,000, which incidentally is the high end of the scale, if the $24,000 is not affordable, I can't understand the thinking of a $50,000 deductible.

Sen. Josephson: The thinking -- I can explain that if you'd like -- but I'm not sure the Chair wants me to do that...but through the Chair I'll simply say that that was suggested to me, very frankly, by the Insurance Commissioner of Minnesota, who said that one of the problems in this field is that very often the money is consumed, and the negotiation and arbitration between the carrier for a driver and the carrier for a bar handling claims under $50,000. In our state we are moving to the mandatory insurance program for drivers with $50,000 required limits, and we are trying to encourage victims to look to that source as the primary source, discourage claims against the bars in the first place. That isn't going to work in a lot of instances, I recognize. But that is the theory of the $50,000 deductible. It doesn't prevent somebody from getting other insurance if he wants to. That's the theory.

Charles Bytebiere: I understand the theory. It is a frightening one to me simply because in all of the claims I've had presented to me I've never had a joint claim presented against a driver and a bar. They might both well be sued, but the driver's insurance is going to be wiped protecting the driver, and then the bar is going to, I feel in most cases, be facing that $50,000 deductible, and at that point you may have well put them out of business.

Sen. Josephson: I don't understand what you're saying...

Charles Bytebiere: If, for instance, I go into a bar and I have too much to drink, and am involved in an accident which results in a liquor liability suit, it's not going a joint suit against the bar and myself, there's going to be a suit against me, there's going to be a suit against the bar. I am not going to tender my limits to the bar to satisfy their deductible. If you could get into a negotiation between carriers it might work. But I think the chances are greater that the bar will pay the $50,000 deductible and will not have the benefit of the individual driver's limits. The other problem is that not all liquor liability claims arise out of automobiles. And in this particular area you would have a real problem.

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Sen. Josephson: How many carriers are there, in your opinion, who now, besides Alliance, who now write this kind of insurance?

Charles Bytebiere: On a primary basis, none. On a primary basis they are the only carrier who is currently interested. There is another carrier who will do the excess coverage -- take it up to a half-million [dollars], then there are several umbrella carriers; obviously once you have the half-million primary in place, we'll write an umbrella.

Sen. Josephson: Well, insofar as you make the point that other businesses are facing the same problem, we're aware of that. In fact, this is not the first time the Legislature has tried to address this issue, as you know; we did it with the doctors, the medical profession. What the Legislature has to determine is whether you in the private sector are going to be able to handle the problem or whether you won't. I suppose Alliance could elect not to be here at all, and then we'd have nobody.

Charles Bytebiere: That's true. But I think we face that with every line of insurance we have. There are others who are even a little bit worse off right now.

Sen. Josephson: There is a social problem connected with this, apart from the [Division of] Insurance Director's testimony that about 90% of the bars don't have coverage. This was the testimony we got at the last meeting. I guess you disagree with that, by the way.

Charles Bytebiere: I can't speak, I don't know what the total membership is doing. I know the figures of the ones that have been submitted to me, and we write far in excess of 10%.

Sen. Josephson: The social problem is that if reliable or responsible operators decide that this is pushing them over the brink, and I'm not omitting what you say about how it's affordable, but if that's their decision, the licenses they hold are very valuable, whether they are low-volume, neighborhood bars or high-volume discos. And they may simply decide that it isn't worth their time anymore to pour drinks for Joe and Mary...at the bowling alley, and just sell those licenses to people that are even undesirable in Alaska. We can't control that...

Charles Bytebiere: Well, I think that's more into the domain of the Liquor Control Board. We recently had a bar in Anchorage closed for that very reason. There was a out-of-state Mafia-suspected figure involved in the ownership, and while it was never in paper, the liquor license was taken. And I think that that is something that is under the control and domain of the Liquor Control Board.

Sen. Josephson: Thank you, Mr. Chairman.

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Sen. Zharoff: I guess our concern was at least affording or providing some means of insurance to those people in the liquor industry that would like to have it, but right now don't have the accessibility to it, whether its prohibitive by cost or whether the insurer will just not serve a certain area.

Charles Bytebiere: If there is a prohibition, it is purely from cost, because we have seen bars from Nome and Barrow, Anchorage, Fairbanks, Kenai, and, as I say, only one have we declined to provide a quote to. So it is not a prohibition on anything other than cost. We have covered all classifications, the rates will vary. If you have a restaurant and bar where the bulk of the receipts are food, it's not going to be nearly as expensive as the pure bar, the bar with the dance floor, the live entertainment, the disco. But coverage has been available to anyone up to this point who has asked. As to the question of Marsh-Mack [Marshall & McLennan], we have written several accounts for them. We have not written everything we quoted.

Sen Josephson: Are the rates comparable with the same classification in Cordova as they are in Anchorage, or Seward as they are in Anchorage?

Charles Bytebiere: Um-hmm. I should have brought one of the applications that the company designed along and you could get a feeling from reading the application what influences the rate. Starting at the low end of the scale, if you have that small pizza place that's selling beer and wine and doesn't even have a separate bar, the rate is extremely low. You go from there into the restaurant that does have a bar, but the liquor is mainly an accomodation of the food. You go from there to the restaurant and bar that's doing more liquor than they are food, into the pure bar, the disco, and you will see a rate change at each level. Geographical location does not affect the rate.

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Sen. Zharoff: I don't know, I might be mistaken, but I thought we were kind of led to believe last time, there towards the end of our meeting, that there was more optimism in terms of additional providers. Maybe you could touch on that.

Charles Bytebiere: There may be. I am not aware of one, but there are people working probably on a daily basis looking for providers.

Sen. Zharoff: Well I think you were to have been the bearer of good news, but maybe not.

Charles Bytebiere: Well, I think what you're going to see happen is that once the ink turns black on the results of liquor liability, then you will see other markets come in. There's very little desire for an insurance company to go in and be at risk where the ink is always red. If we get the loss ratios turned around this year, then I think by the end of the year there is hope that you will see other companies, if they feel they write it profitably.

Sen. Josephson: What is your impression...is the tendency in this Legislature of a new dram shop law affecting this industry or is it instead the scarcity of coverage or the cost of coverage attributable to hard dollar results and litigation, and national trends?

Charles Bytebiere: This is one man's opinion: I think we do have a very, very tough climate in this state for...we have a tough legal climate. Our juries many times have given some awards that you have to sit back and wonder about. There may be concerns in the minds of insurance companies as to a new dram shop act. From a realistic standpoint, you might as well pass a new dram shop act, because that's the way the juries are interpreting it anyway.

Sen. Josephson: I made that statement last time, that I thought it was "much ado over nothing."

Charles Bytebiere: I would rather see the juries interpret the law the way it is currently written. But I think they have taken the avenue of: they are settling on ordinary negligence. They are not demanding criminal negligence. This probably more than anything else is one of the difficulties, but again it comes down to the matter of if you can make the business profitable, then you will have additional capacity. If we can't make it profitable, then it doesn't matter whether its a state company, a private carrier, it's going to become unavailable. In reading the bill, quite frankly, if I were in the liquor industry, I would be afraid to let the state company write my insurance. Because it's an accessible company, You may tell me I have a premium of $6,000 and at the end of the year send me an additional $9,000. You cannot operate at an inadequte rate, by the law, the wording of the law, if you show a 300% loss ratio your first year because you were unfortunate and got hit with a couple of lawsuits, what's this going to do to your rate for the coming year? I think the danger that your'e going to get into is if there is private insurance available as well as state insurance, then the State's company should be unfortunate enough to suffer a sever loss ratio, which can happen to any company. You're going to drive the

better class of business out of your company because your rate level is going to go up. As I read the bill, you have no choice. Not only will the rates go up, but you'll be penalized retroactively, with an assessable policy. So what the insured is really doing under this, is he's giving you a blank check.

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Sen. Josephson: One of the results we think would happen, of course, is that, for the very reasons you mentioned, the industry would begin to police itself much better than it does. Every bar owner would have a stake in how every other bar does business. And I think there's positive benefits from that.

Charles Bytebiere: I think it's a good theory. I question it. I look at the problems the bar owners have right now, and I can't understand why the inducement isn't already there. I look at there rising premiums, I look at the dollars they're paying, and yet, you can walk into a bar and it is obvious that the person standing behind that bar, if they're an employee, has never been given any instructions as to how much liquor they can pour for a customer. The idea, the other thing that is frightening is the motive is the hammer motive, in that we're going to hit you with a $50,000 deductible, we're going to slap you with an assessable policy, and we're gonna bring your rates up to whatever the rate level is. I think what you will find is the better class of business drifting out. And you will wind up with problem areas.

Sen. Josephson: If you permit that choice.

Charles Bytebiere: Well, your bill does not say that it would be mandatory that all bars would have to be written through this company. So I would imagine that the choice would be there.

Sen. Josephson: I think we do require that there be insurance.

Charles Bytebiere: Yes.

Sen. Josephson: We would not provide -- I say "we", the corporation -- would have the right not to write to the problem area.

Charles Bytebiere: Alright, now, what is the corporation accomplishing, if you now have twenty bar owners that walk in and says, "The corporation has denied us insurance." This is a judgement call. Any underwriting decision is a judgement call, and now you've got the same problem we've gone to all the trouble of forming a company, but it's not an assigned risk plan. It's not something where the man can apply and be guaranteed coverage. And if I am underwriting for that company and trying to turn a profit, what you really have done is just created another insurance company.

Sen. Josephson: We do accomplish, perhaps, is getting that license out of Alaska, or out of business, unless the licensee can get insurance somewhere else.

Charles Bytebiere: The next question, and I would really be concerned here, is your requirement for insurance on the bar, and don't get me wrong, I'm no championing drunk drivers, but why are you discriminating? Are you gonna tell the corner retaurant that they've must carry a quarter of a million dollars worth of insurance? Are you going to take the retail store downtown and say, "You can't open your doors or get a business license until you have a quarter of a million dollars?"

Sen. Josephson: That's not...Mr. Chairman, we do require certain key industries to provide insurance against certain kinds of contract bonds and kinds of public works and so forth, so that's nothing really new. And there's a tradition or history in America, which the courts have recognized, of particular regulation affecting the sale of alcohol. I don't really think that's an anomaly that we...

Charles Bytebiere: As I say, it's only a question. If I were a bar owner I might be upset; it doesn't bother me one way or the other. But as a bar owner I might wonder, "Why am I being singled out, as opposed to other Main. St. businesses that are not being forced into this area."

Sen. Josephson: If the Chairman will permit me again, let me get your advice in another direction. If you were sitting where Senator Zharoff and I sit, and you wanted to make sure that you had a viable local industry, responsible industry, that did have insurance coverage, what would you do?

Charles Bytebiere: I think I would look first to the private sector, see if it's available there. And if it's available there, then I would have to let the private sector take care of it.

Sen. Josephson: And would you be concerned about the cost, or would you just say, "Well..."

Charles Bytebiere: Well, my feeling is that as long as you are dedicated in your bill, to at least operating at a break even point, the claim will not be any less, regardless which company is paying the claim. You're still going to require...if the claim is a half million dollars, it matters not whether it's the corporation that's paying the claim or the XYZ Insurance Company, you still need the half million dollars. I don't think you can operate the corporation any cheaper from an expense standpoint than an insurance company is going to operate. And I don't think you would be willing to settle for any less profit. I don't think that the cost is going to vary, and it makes not a bit of difference who is running the insurance organization.

Sen. Josephson: Do you have any reason why Alliance still finds this an attractive market, and somebody else doesn't?

Charles Bytebiere: They have provided liquor liability on an almost nationwide basis for the last several years. The other thing that I would question here, and I would put out for your thoughts...I don't know how many liquor licenses we have in the State of Alaska...

Sen. Josephson: Four- or five-hundred in the bar business.

Charles Bytebiere: Insurance is basically nothing more than a game with the law of large numbers. I do not believe that if you take an insurance company and you say to them, "You have available only a thousand clients, and that's providing that you can write every client that there is in the state," that you have a sufficient base to make anything credible. I think that your experience would become distorted very quickly because you have a maximum; if you have 500 bars then you throw in the restaurants and the package stores and maybe you have 1500. But you have a maximum of 1500 clients. If price is the consideration, and we manage to lower the price to an average of $4000 a bar the premium spread is not big enough. As I say, it's almost too specialized with too small a client base.

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Sen. Zharoff: I guess that one of the concerns that we've had here is that -- you might correct it if I'm wrong -- I was under the impression that a number of the people in the liquor industry have looked for some sort of private insurance of some kind, and the difficulty in obtaining it, either the difficulty or the cost...

Charles Bytebiere: The cost is high. That, as I say, I can't deny. The only real difficulty that came in obtaining it is that there were two markets that simultaneously elected to cancel all of their existing business. We came up to cancel all of their existing business. We came up with a common cancellation date on some 250-300 accounts. Now, to try to get that processed and get quotations for people in a week's time, there was too much paper. Some people had to go [indist.] for a week, ten days, two weeks before they could get a quote, simply because of the crush of business that was liquidated, so to speak.

Sen. Zharoff: Was this a result, here, of trends nationwide, or is it just Alaska being singled out, or what?

Charles Bytebiere: I think liquor liability is difficult nationwide. It is more difficult in probably half a dozen states because of the past track record. There are some states that liquor liability is extremely inexpensive in. California changed their law a couple of years ago and said the bar is not responsible for the actions of its customers. Obviously, liquor liability is not that much of a problem in California now. By court award, by jury award, we are a difficult state, but we have at least a half a dozen states that are in the same position. We are what's referred to in the industry as a "class A" state.

Sen. Zharoff: A "class A" state?

Charles Bytebiere: For liquor liability. You don't get any worse.

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Sen. Zharoff: I know you had copies of the article that appeared in the Anchorage Daily News yesterday. Did you have any comments on that one that you wanted to share with us?

Charles Bytebiere: I think that this has probably given us a good feeling of what has created the problem. Up until we've had a problem and too many people not involved in the insurance industry have not been aware as to why, and I think it does give us a good explanation of what is causing the problem.

Sen. Josephson: I think we'll look into what your testimony is with our own Director of Insurance, who helped draft the bill, and who has the job of making sure that every insurance entity is viable, on whom we rely for information. I have said to Mr. McLean and others that if someone can show me that there is a viable private market and it's affordable, which is a judgement, I would prefer, too, to see the private sector do that, but on the other hand, not to be redundant about it, I will, as an individual legislator, as long as I am down here, and when an Alaska business group comes to me and says we can't get coverage in the Alaska market and I can see a way that the state can help without a subsidy, I mean either through license fees or some other way explore that, I'm going to keep doing that as I did with doctors, in fact, I was a lobbyist for the doctors before I got here. I think there should be insurance mechanisms; I just feel that way. I will say that we're also looking at the other side of the coin which is the liability regime, and we have some proposals, not the Governor's proposal but other proposals, for amending the dram shop law, which might be helpful too. So, with that Mr. Chairman, I thank you, and Mr. McLean for having this witness before us. My suggestion would be that we get back to the people in the industry who have complained about this, and see if they agree that coverage is available at all. Because I will say that just, I believe, two Saturdays ago I met with twelve business people from CHAR in Anchorage, and the impression I was getting then was that the insurance is not available. And they may not know of you and your office...

Charles Bytebiere: Possible...

Sen. Josephson: I'm going to send you some business, because I'm going to send them your name and address, so that...

Charles Bytebiere: One of the CHAR representatives asked me in the hall to meet with him in Anchorage next week.

Sen. Josephson: O. K. Thank you very much Mr. Chairman.

Sen. Zharoff: Was there anybody else that wanted to comment on Senate Bill 288? Well, thank you Mr. Bytebiere.

Sen. Josephson: I'll excuse myself, and I want to thank the Chair for having this brought out in this way.

Sen. Zharoff: Are you gonna leave me alone, just like the rest of the committee, or...

Sen. Josephson: I'm being summoned by some municipal people from Anchorage...

Sen. Zharoff: I see...

Sen. Josephson: I'll come back.

Sen. Zharoff: I see. Whichever way the wind blows, there! Not having sole dictatorial powers I can't pass this out on my own. And we apologize to everybody that did show for this bill, in great anticipation that it would move today. Another period of disappointment. I think we've got some questions, we've been working on a draft that has gone through several reviews, and there are still some technicalities in there. There's a good possibility we may see it again. I don't see any real action this year. We might look at it during the interim, as suggested, and possibly we may want to call on Mr. McLean, there, for some assistance. House Bill 102, for those who are waiting in great anticipation, we'll have to hold that one for Monday. With that we'll adjourn.

Who's back?
Lifestyles, Page J-1

prize: $187,00
Page C-1

Anchorage Dail

VOL.XL, NO. 119, 170 PAGES

ANCHORAGE, ALASKA, THURSDAY, MAY 2, 1985

Insurance rates balloon as much as 600 percent

By RONNIE CHAPPELL
Daily News reporter

Huge losses have forced insurance companies doing business in Alaska to raise some commercial premiums 600 percent while new businesses are having an extremely difficult time buying coverage at any price, state officials say.

Concern is also growing that some insurance companies will not be able to meet their financial obligations in the event of large claims, said Don Koch, chief of the market surveillance section of the Alaska Division of Insurance.

Two insurance companies doing business in Alaska went bankrupt last year, Koch said, "and I'm particularly concerned about six or seven others."

Several may be asked to cease operation in Alaska or to "stop writing certain kinds of insurance because they are unduly exposing themselves and the public," Koch said.

Others have voluntarily stopped writing new policies and are canceling old ones in order to bring potential liability into line with company assets.

According to Koch, the problems are generally limited to companies that specialize in business property, workman's compensation and liability coverage.

Alaskans can expect to pay more to insure their homes and personal automobiles, he said, but the increases will be minuscule compared to the increases seen by some Alaska businesses.

Doctors are paying two to three times as much for malpractice insurance while architects and consulting engineers have seen premiums increase 400 to 500 percent.

Bars and restaurants that can

See Back Page, INSURANCE

Policies are steep and scarce

By RONNIE CHAPPELL
Daily News reporter

KENAI — Last year Kenai River fishing guide Harry Gaines was able to purchase business liability insurance for $125. This summer, he may have to pay six times as much.

"The insurance companies are asking as much as $1,000 and I've checked with just about everyone of them that writes this kind of insurance," Gaines said.

Gaines, a well established guide, will be able to absorb the higher premiums. But the new rates will work a signifi-

See Back Page, POLICIES

Policies

Continued from Page A-1

cant hardship on smaller operators, he said.

The premiums are increasing, Gaines said, even though there has never been a significant claim filed against a Kenai River fishing guide. Gaines blames a change in state regulations requiring guides to purchase liability coverage.

"Now that it's mandatory, they're really putting it to us," Gaines said.

Not so, said broker Steve Shumacher of the Leo Oberts Insurance Agency in Kenai. "All rates, across the board, have gone up" as insurance companies struggle to stem a rising tide of red ink caused by declining interest rates, low premiums and losses that exceed income.

"The companies are losing money so fast they don't have time to look at individual segments of the business," Schumacher said. "They're taking a broad brush approach.

"My own insurance is going to triple this year. It's nothing I like either."

According to Schumacher, his company will pay more than $60,000 for an "errors and omissions" policy that cost him less than $20,000 last year.

"My rates have more than doubled in the last two years," said Dr. George Garnett, who maintains a large family practice in Soldotna. Last year, Garnett paid $5,000 for malpractice insurance. This year he's paying $11,000.

The situation is much the same at Central Peninsula General Hospital, where the Lutheran Homes and Hospital Society is paying $54,000 a year for liability insurance, an increase of 172 percent over 1984.

Commercial fishermen can expect to pay 25 to 30 percent more for hull insurance this year, said broker Mike Miller of Northern Marine Insurance in Juneau.

William Nelson, who operates a small but successful consulting engineering firm in Kenai, saw the cost of his "errors and omissions" policy jump from $3,800 to $16,000 in one year, an increase of 450 percent.

"I didn't have any claims and I've never had any problems. It just went up that much," Nelson said.

To date, Nelson has been unable to pass the additional cost on to his customers because he's now completing contracts that were bid before his insurance premiums began to skyrocket.

"I had no choice," he said. I couldn't drop the insurance and I couldn't charge the difference. It's a tough situation."

Kenai architect Carmen Gintoli has avoided "premium shock" so far, but his luck appears destined to run out on July 1 when his current liability policy expires.

"All indications are that my $6,000 annual premium will increase three to five times," he said.

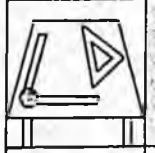
Premium Shock

Rates for business are up all over

FISHING VESSELS
Obtaining insurance for a Bering Sea crab boat is next to impossible.

EARTHQUAKE INSURANCE
Next to impossible to buy.

DOCTORS
Malpractice insurance is up 200 to 300 percent.



ARCHITECTS & ENGINEERS
Premiums are up 400 to 500 percent. Coverage for "errors and ommisions" can cost $30,000 per year.

BARS & RESTAURANTS
Liquor liability is hard to obtain. Those who can get it are paying 700 to 800 percent more than last year.

FISHING GUIDES
Coverage is now mandatory for Kenai River fishing guides and premiums can cost 600 percent more than last year.

Anchorage Daily News/Ron Engstrom

Insurance rates up; some firms in trouble

Continued from Page A-1

New businesses are finding it almost impossible to buy property or business liability insurance and many are being forced to turn to the state's assigned risk pool — where premiums are 10 percent higher than on the open market — for automobile liability and workman's compensation policies that are required by state law.

Getting hull insurance for a Bering Sea crab boat is now almost impossible, Koch said, and earthquake insurance is also difficult to find.

"We've heard of people who tried to purchase it and only got part of what they needed at a price that was close to exhorbitant."

Businesses in Alaska are not the only ones caught in the bind.

Rates are increasing dramatically across the nation as the insurance industry attempts to stem a $50 billion tide of red ink. Last year, Koch said, losses exceeded premiums by more than $21 billion.

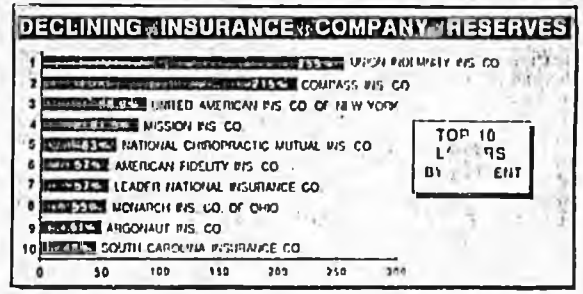
In past years, companies were able to recoup their losses, subsidize premiums and earn reasonable profits with income earned on the investment of the premiums they collected. That began to change, Koch said, when interest rates began to decline in the early '80s.

Losses have now started to chew into the capital reserves that companies are required to maintain in order to write insurance coverage.

The Division of Insurance surveyed more than 300 insurance companies earlier this year. Many saw their cash reserves decline by more than 10 percent in 1984. Nineteen recorded losses of 40 percent or more.

Ten companies have premium-to-capital reserve ratios that are alarming, Koch said, "and two are insolvent."

State regulators say healthy insurance companies generally have a premium-to-cash reserve ratio of 3 or less, to 1. Six firms surveyed by the state had ratios of more than 6 to 1. One, the Great Global Insurance Company, had a ratio of 14.8 to 1.



Source: State Division of Insurance

The big losses sustained by some insurance companies has Koch and others wondering whether the firms will be able to pay off their Alaska claims. Two firms went bankrupt last year.

One of the companies had losses of $500,000 in Alaska last year, Koch said. Settlement of those claims is still being worked out.

The other firm wrote completion or performance bonds for construction contractors. Most of the bonded projects have been completed, but "there are still some out there that are still underway."

"We don't know the potential liability," Koch said, adding that his "gut feeling" is that it's less than $10 million.

Koch is especially concerned about the health of companies that provide excess workman's compensation coverage to businesses that are "self-insured."

These businesses agree to be responsible for their own workman's compensation claims up to a threshold amount and purchase excess insurance to cover claims above that specified level.

"If the excess-insurer fails and a self-insured business has a big claim, you could end up with injured workers with no recourse to any kind of benefit," Koch said. "That's spooky.

"It could also drive the company out of business, and that's also spooky."

In coming months, Koch said, the Division of Insurance will be asking some "shaky" companies to suspend operation in Alaska. He declined to name the firms.

Big losses are also having a substantial impact on the ability of insurance companies to maintain existing policies and write new ones. Under state law, the potential liability on a single policy cannot exceed 10 percent of the firm's cash reserve.

With cash reserves dwindling, many companies are now at the limit of their underwriting capacity. Some are canceling existing policies while others, such as Providence Washington — a major writer of workman's compensation coverage in Alaska — have stopped writing new ones.

"It doesn't take too many of those to have a profound effect on availability" of insurance coverage, Koch said.

A national survey indicates that demand for coverage will outstrip industry capacity by $5 billion in 1985 and by more than $50 billion in 1986, he said.

Koch predicts hard times for insurance companies and policy holders over the next 2.5 to 3 years. People should expect "higher rates, higher deductibles and lower coverage."

House, Senate lawmakers agree on $62 million for Anchorage projects

Continued from Page A-1

million in federal highway money that is earmarked for Anchorage projects, Falks said.

tors today to continue his push for a special election this year to request voter approval of a $350 million package of general obligation bonds. The package would in-

his share of the total state construction budget. Wanting to avoid vetoes by the governor, legislators have traditionally tried to appropriate

- $5 million for an extension of C Street from Minnesota Boulevard to Klatt Road.
- $4.5 million for widening and bridge construction on Lake Otis Parkway.
- $1.5 million for [illegible]

[illegible] coverage limited road service areas.
- $900,000 to acquire sites for new schools in Anchorage.
- $700,000 to match federal money for improvements to Bonifacio Parkway between Tudor Road and Debar Road.

Heart

Continued from Page A-1

University School of Medicine, concludes that perhaps 36 percent of the heart patients don't

MICA
LICA

What happens this year w/o any legislation?

Liquor licensees holders.

How many will have insurance now?

300,000 Limited liability

Another market available — who knows market liability

Questions regarding the LLHICA Bill:

1) Who will actually be paying the increased liquor taxes to support this legislation? (wholesaler, retailer, bar owner, consumer?)

2) In the event that the taxes collected exceed the revenue requirements for the insurance program, which taxpayers will actually receive the refund? Consumers, wholesalers, retailers ? Would this refund proposal require additional personnel to impliment? Accounting nightmare?

3) How much money will the state be required to appropriate to the reserve fund to make the proposal viable? I have heard figures from $5,000,000 to $10,000,000;

4) There are various classes of liquor licenses in the state. What categories of liquor dispensors are we talking about? Liquor stores? bars? vendors at social or athletic events?

5) If the board of governors is to consist of 8 members and includes a corporation director who does not have voting privileges, how does the board of governors intend to break a tie vote? Should the number of appointees be an odd number?

6) 21.85.030 (e) provides that the corporation shall compensate members of the board and reimburse them for travel expenses under a policy approved by the director. Where will the money come from to compensate members? INVESTMENTS ON THE RESERVES

7) Technical point: page 7 line 24 references the Alaska Insurance Guarantee Corporation. Should that not be Alaska Insurance Guarantee Association?

8) The bill also provides that the corporation may retain and employ people to discharge the duties of the corporation. Will the funds come from the proposed tax increases?

How do we know when the $ is reached.

Edwards
5/3/85 ✓

Original sponsors: Josephson, Ziegler and Ferguson

indicates changes in CS

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 288 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to liquor license holders' insurance; providing for increased alcoholic beverage taxes; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 04.11.320(a) is amended by adding a new paragraph to read:

(13) the applicant has less than ~~$500,000~~ #250,000 in liability insurance coverage.

* Sec. 2. AS 04.11.370 is amended by adding a new paragraph to read:

(12) failure of the licensee to maintain at least ~~$500,000~~ #250,000 in liability insurance coverage.

* Sec. 3. AS 21.78.050 is amended to read:

Sec. 21.78.050. GROUNDS FOR LIQUIDATION. The director may apply to the court for an order appointing the director as receiver, if an appointment of the director as receiver is not then in effect, and directing the director to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trusteed assets in this state, regardless of whether or not there has been a prior order directing the director to rehabilitate the insurer, upon any of the grounds specified in AS 21.78.040, or if the insurer

(1) has ceased transacting business for a period of one year;

(2) is an insolvent insurer and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute an

action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian or sequestrator under any law except this title; [OR]

(3) is the Medical Indemnity Corporation of Alaska, and the director has ordered termination of the business of the corporation in accordance with AS 21.88.055; or

(4) is the Liquor License Holders' Indemnity Corporation of Alaska, and the director has ordered termination of the business of the corporation in accordance with AS 21.85.055.

* Sec. 4. AS 21.78.100(b) is amended to read:

(b) The director may apply for and secure an order dissolving the corporate existence of a domestic insurer, except the Medical Indemnity Corporation of Alaska or the Liquor License Holders' Indemnity Corporation of Alaska, upon the director's application for an order of liquidation of the insurer or at any time after the order has been granted.

* Sec. 5. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, the Liquor License Holders' Indemnity Corporation of Alaska, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, either at the time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of competent jurisdiction;

* Sec. 6. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, the Liquor License Holders' Indemnity Corporation of Alaska, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, who

(A) writes any kind of insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or interinsurance contracts, and

(B) is licensed to transact insurance in this state;

* Sec. 7. AS 21 is amended by adding a new chapter to read:

CHAPTER 85. LIQUOR LICENSE HOLDERS' INSURANCE CORPORATION.

Sec. 21.85.010. PURPOSE OF THIS CHAPTER. It is the purpose of this chapter to provide a means of furnishing liquor license holders under AS 04 with adequate insurance against liability for negligent acts or omissions that concern customers on licensed premises.

Sec. 21.85.020. CORPORATION CREATED. There is created the Liquor License Holders' Indemnity Corporation of Alaska that is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt, liability or obligation of the state or a pledge of full faith and credit of the state.

Sec. 21.85.030. CORPORATION BOARD OF GOVERNORS. (a) The corporation shall exercise its powers through a board of governors that is appointed by the governor of the state and confirmed by the legislature. Members of the board of governors shall be Alaska residents as follows:

(1) four liquor license holders; no more than two of the

liquor license holders shall reside in a municipality having a population of more than 100,000, and at least two of the liquor license holders must be indemnified against loss by reason of liability by the Liquor License Holders' Indemnity Corporation of Alaska;

(2) two persons who hold insurance licenses issued under this title; RE-PHRASED

(3) two persons who are not liquor license holders or financially interested in a license issued under AS 04 and do not hold insurance licenses issued under this title. Re-phrased

(b) The term of office of each governor is three years, except that the governor of the state shall designate two initially appointed governors to serve for one year and two initially appointed governors to serve for two years. Upon the expiration of the term of a governor, the governor of the state shall appoint a successor who shall be from the same class described in (a) of this section as the governor whose term has expired.

(c) Upon a governor's early resignation, death or inability to serve, the governor of the state shall appoint a successor from the same class defined in (a) of this section as the terminating governor, who shall serve for the unexpired term.

(d) The director or a designee of the director is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(e) The corporation shall compensate members of the board of governors and reimburse them for necessary travel expenses according to a policy approved by the director.

(f) A governor, officer, or employee or former governor, officer, or employee of the corporation is not liable for damages or

other relief in any action by reason of the person's actions or inactions as a governor, officer, or employee of the corporation, or by reason of the actions or inactions of the corporation, its board of governors, officers or employees unless

(1) the person acted with actual knowledge that the person was acting outside the scope of the person's authority;

(2) at the time the person acted for a purpose that the person knew was not in the best interests of the corporation; or

(3) with respect to any criminal action, the person acted knowingly or recklessly.

(g) If a claim or action is brought against a person entitled to the protection of (f) of this section, the claim or action shall be defended by the state. The person shall reimburse the state for the cost to the state of the person's defense if it is established that the person

(1) acted with actual knowledge that the person was acting outside the scope of the person's authority;

(2) at the time was acting for a purpose that the person knew was not in the best interests of the corporation; or

(3) with respect to any criminal action, acted knowingly or recklessly.

(h) In this section,

(1) "knowingly" has the meaning given in AS 11.81.900;

(2) "recklessly" has the meaning given in AS 11.81.900.

Sec. 21.85.040. CORPORATION PLAN OF OPERATION. (a) The board of governors shall prepare and submit to the director for approval a plan of operation that provides for the fair and reasonable administration of the affairs of the corporation and the discharge of the purposes for which it is created. The plan and any amendments to it

Re-Phrased

become effective upon the director's approval. If the board of governors fails to submit a plan of operation acceptable to the director, or if at a subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments that are necessary or advisable to carry out the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which the powers and duties of the corporation specified in AS 21.85.050 shall be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

(3) establish regular times and places for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

(5) establish the procedures for awarding contracts to carry out the provisions of this chapter;

(6) establish the procedures for issuing contracts of insurance as provided in AS 21.85.050 and for the determination of rates;

(7) contain additional provisions necessary for the execution of the powers and duties of the corporation.

Sec. 21.85.050. POWERS AND DUTIES OF THE CORPORATION. (a) The corporation shall

(1) in the form approved by the director, issue to all liquor license holders who are found to be acceptable risks under

90 days "start-up" time

standards developed under (5) of this subsection, and who pay the premiums for it, an insurance contract effective no earlier than 90 days following enactment of this chapter; the contract shall indemnify liquor license holders and their employees on licensed premises against loss in excess of $50,000 by reason of liability for covered claims, and agree to tender on behalf of the liquor license holders and their employees on licensed premises a defense to a covered claim; except as provided in (b) of this section, the limit of liability covered by policies issued by the corporation shall be $250,000; the contract shall cover the defense against but need not indemnify liability for punitive damages arising from a covered claim; at the option of the corporation, if approved by the director, and for an additional premium the contract may cover claims for any period before the contract is issued, except that coverage will not be provided for a claim already filed or of which the liquor license holder had or reasonably should have had notice at the time the retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued by the corporation that shall be determined by the board of governors in accordance with AS 21.85.080 and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090, 21.06.120, 21.06.140, 21.06.160, 21.06.250; AS 21.09.180 - 21.09.200, 21.09.250, 21.09.280; AS 21.12.020(b) - (e); AS 21.18; AS 21.21; AS 21.24 and AS 21.36; and shall be exempt from participation as a member insurer in the Alaska Insurance Guaranty Corporation;

(4) carry out the obligations of the contracts issued by the corporation by defending all covered claims made against insured liquor license holders and by paying all liabilities that are finally

adjudicated against the liquor license holders or that may in the opinion of the corporation reasonably be expected to be finally adjudicated against the liquor license holders to the extent of the contract obligation;

(5) establish standards for the acceptability of risks; in establishing these standards the corporation may exclude an applicant for insurance based on individual risk selection factors, but may not exclude an applicant based only on the type of license held by the applicant.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for these services; employees of the corporation are not considered state employees;

(2) negotiate for and procure reinsurance from private casualty insurers or reinsurers for any and all liability incurred by contracts issued by it;

(3) provide for a limit of liability under (a) of this section that exceeds $250,000 if the director determines that sufficient reserves or adequate reinsurance exists to support the increase;

(4) borrow or advance funds necessary to carry out the purposes of the corporation;

(5) negotiate and become a party to contracts that are necessary to carry out the purposes of the corporation;

(6) sue or be sued in the name of the corporation;

(7) provide risk management advice and services to liquor license holders;

(8) negotiate and become a party to contracts for

management services for the corporation;

(9) perform other acts necessary and proper to carry out the duties of the corporation.

Sec. 21.85.055. TERMINATION. (a) If at any time the corporation posts written premiums for two consecutive years of less than 35 percent of all premiums written in the state for liquor license holders' liability insurance or posts written premiums for one calendar year of less than 20 percent of all premiums written in the state for liquor license holders' liability insurance, the director may hold a public hearing in accordance with AS 21.06.180 - 21.06.230 to determine whether the business of the corporation should be terminated.

(b) Upon the effective date of an order of termination issued by the director under (a) and (c) of this section, the terms of the governors appointed under AS 21.85.030 expire, and the corporation, its governors, officers and employees are relieved of all further liabilities for all their obligations to the creditors and policyholders of the corporation, and the business of the corporation shall be liquidated according to AS 21.78.

(c) In determining whether to terminate or reactivate the business of the corporation the director shall consider the following:

(1) the level of expected premiums and losses for continued operation;

(2) the requirement for state funds to support continued operation;

(3) the availability of alternative markets for coverage to a substantial majority of liquor license holders in the state;

(4) the costs of continued operation of the corporation;

(5) the impact that the continued operation of the corporation will have on rates charged for coverage by the corporation or

by alternative markets; or

(6) the expected number of liquor license holders who would participate if the operations were continued.

(d) If after public hearing held in accordance with (a) of this section the director determines that continuing the business of the corporation would result in substantial underwriting loss unless excessive premiums are charged to participating liquor license holders, the director may order termination of the corporation.

Sec. 21.85.060. PREMIUM TAX. The corporation shall be taxed in the same manner as a domestic insurer.

Sec. 21.85.070. STATISTICS. The corporation shall collect, maintain and report information concerning claims against liquor license holders that it insures. The information must be on forms prescribed by the director, and must be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. At least annually the corporation shall report to the director the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to and the expenses incurred by the corporation during the year. This report shall be available to the public. The director may require that supplemental reports include the names of insured liquor license holders and the claimants.

Sec. 21.85.080. RATES. The rates and rating plans used by the corporation for the policies issued shall be determined by license category of liquor license holders in accordance with all of the following:

(1) a minimum rate may be set for each category of liquor license holders within a license classification;

(2) rates may not be excessive; rates are excessive if,

after a period of time and with respect to an amount of gross premium that is actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for covered claims reported and unpaid, reserves for covered claims incurred during the policy period and not reported, and reasonable expenses for the operation of the corporation;

(3) rates may not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the liquor license holders are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including covered claims paid, reserves for covered claims reported and unpaid, reserves for covered claims incurred during the policy period and not reported, and reasonable expenses for the operation of the corporation;

(4) rates may not be unfairly discriminatory;

(5) rates shall be adjusted annually;

(6) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation as developed for the preceding four policy years;

(7) in considering losses to be incurred, changes in the law, national, regional, or local trends in damage awards, and other relevant factors may be considered;

(8) income from the investment of reserves shall be considered;

(9) individual risk underwriting factors shall be considered;

(10) disciplines and classifications within the license categories of liquor license holders shall be considered;

(11) amounts sufficient for repayment of loan obligations

shall be considered;

(12) if the earned premiums of the corporation for any given year are less than the incurred claims, claim expense, underwriting expense, reserves for that year and provision for repayment of any loans, the corporation may, subject to the prior approval of the director, levy an assessment upon the insureds who held policies during that year; the assessment, which may be made in periodic installments, shall be made within three years and may not exceed 150 percent of the insured's premium for that year; the termination of any policy does not relieve the insured of contingent liability for the insured's proportionate share of the obligations to the corporation that accrued while the policy was in force;

(13) if the earned premiums of the corporation for any given year exceed its incurred claim expense, underwriting expense, reserves for that year, and provision for repayment of any loan, the corporation may, subject to the prior approval of the director, apportion and pay or credit its insureds who held policies during that year; a payment or credit shall be proportionate to the insured's earned premium for that year;

(14) upon application by any person, the director may issue a certificate authorizing the corporation to extinguish all or a portion of an assessment levied, or that could be levied, under (12) of this section for all insureds with policies in force when the certificate is issued, and to omit provisions levying an assessment under (12) of this section in all policies delivered or issued for delivery after the certificate is issued, if the director determines that there is a sound actuarial basis for the extinguishment; the director may at any time revoke the certificate; a policy in force at the time of revocation is not subject to the revocation of the

certificate for the remainder of the period for which the premium has been paid, but after revocation a policy may not be issued or renewed without providing for an assessment of the insured.

Sec. 21.85.090. PAYMENT OF PREMIUMS; CANCELLATION OF INSURANCE. The corporation may provide for installment payment of premiums in which case each installment is due by the date specified. The corporation may cancel any of its policies for nonpayment of any premium or installment on a premium, or other charge, by mailing or delivering notice of cancellation to the insured at the address shown on the policy and to the Alcoholic Beverage Control Board. Cancellation is not effective until 30 days after the date notice is mailed or delivered by the corporation.

Sec. 21.85.095. TRANSFER OF CORPORATE ASSETS AND LIABILITIES. (a) The corporation may, subject to the prior approval of the director, transfer its assets and liabilities to a company that meets all of the following conditions:

(1) the company possesses a valid certificate of authority to transact casualty insurance business in the state; in evaluating the capital and surplus of the company for qualification for a certificate of authority, the value of the assets and liabilities transferred by the corporation may not be considered;

(2) the company pays to the corporation for return to the state treasury the full value of any surplus in the corporation;

(3) the company executes a complete reinsurance and hold harmless agreement in a form approved by the director covering all of the obligations of the corporation to its creditors and policyholders;

(4) the company meets other requirements the director may reasonably require to protect the interests of the state, the liquor license holders insured, the involved company, and the public;

(5) the company provides the board of governors with a written statement from the director that the company qualifies under (1) - (5) of this subsection.

(b) If and while the company to which the assets and liabilities of the corporation are transferred in the manner provided in (a) of this section continues to write premiums in excess of the levels provided in AS 21.85.055, it shall be entitled to carry forward and offset against its premium tax obligation to the state the amount by which the aggregate claims paid on reinsurance assumed under (a)(3) of this section exceeds aggregate reserves on the same business established at the date of the reinsurance agreement.

Sec. 21.85.210. RESERVE FUND ESTABLISHED. The corporation shall establish a reserve fund, in an amount required by the Department of Commerce and Economic Development to provide surplus in respect to policyholders.

Sec. 21.85.900. DEFINITIONS. In this chapter, unless the context requires otherwise,

(1) "continuous coverage" means one or more successive policy period that is uninterrupted by cancellation or failure to renew for any reason;

(2) "corporation" means the Liquor License Holders' Indemnity Corporation of Alaska;

(3) "covered claim" means a claim by an injured person reported to the corporation during the period of continuous coverage by the corporation of the insured liquor license holder for a negligent act or omission that concerns customers on licensed premises;

(4) "governor" means a member of the board of governors of the Liquor License Holders' Indemnity Corporation of Alaska;

(5) "licensed premises" has the meaning given in

AS 04.21.080;

(6) "liquor license holder" means a person, association of persons, or a corporation that holds a current liquor license issued under AS 04.

* Sec. 8. Notwithstanding the provisions of AS 43.60.010(a)(1) - (3), the tax imposed by AS 43.60.010 during the period July 1, 1985 through June 30, 1986 shall be paid at the following rates:

(1) malt beverages at the rate of $.70 a gallon or fraction of a gallon;

(2) wine or other beverages of 21 percent alcohol by volume or less at the rate of $1.70 a gallon or fraction of a gallon; and

(3) other beverages having a content of more than 21 percent alcohol by volume at the rate of $11.20 a gallon.

* Sec. 9. The primary purpose of the rate increase under sec. 8 of this Act is to compensate the state for appropriations made to the reserve fund established under AS 21.85.210 enacted in sec. 7 of this Act.

* Sec. 10. This Act takes effect on the effective date of an Act making a special appropriation to the reserve fund established under AS 21.85.210, enacted in sec. 7 of this Act.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date 4/19/85

REQUEST
Bill/Resolution No: SB 288
Title: Alcohol Tax Increase

Sponsor: Josephson
Requestor: Labor and Commerce
Date of Request: 4/19/85

FISCAL DETAIL
Agency Affected: Department of Revenue
Program Category Affected: Collection and Management
BRU, Program of Subprogram(s) Affected:
Audit Division
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: This bill will not require an additional appropriation.

Prepared By: Martin J. Richard Phone: 465-2320
Division: Audit Division Date: 4/19/85

Approved by Commissioner: Date: 4/22/85
Agency: Revenue

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Fiscal note

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: SB 288
Title: Liquor License Holder's Insurance... Providing for Increased Alcoholic Beverage Taxes
Sponsor: Josephson, Ziegler, Ferguson
Requestor: Labor & Commerce; Finance
Date of Request: April 19, 1985

FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected:

BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
	OPERATING						
100	PERSONAL SERVICES	-	-	-	-	-	-
200	TRAVEL	-	-	-	-	-	-
300	CONTRACTUAL	-	-	-	-	-	-
400	SUPPLIES	-	-	-	-	-	-
500	EQUIPMENT	-	-	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS	-	-	-	-	-	-
800	MISCELLANEOUS	-	-	-	-	-	-
	TOTAL OPERATING	-	-	-	-	-	-
	CAPITAL	-	-	-	-	-	-
	REVENUE	-	7,250	7,250	-	-	-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-	-	-	-	-	-
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER	-	-	-	-	-	-
	TOTAL	-	-	-	-	-	-

POSITIONS:

	FULL-TIME	-	-	-	-	-	-
	PART-TIME	-	-	-	-	-	-
	TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page for analysis.

Prepared By: David Tonkovich DT
Division: Revenue Research
Phone: 465-2173
Date: 4/22/85

Approved by Commissioner: [signature]
Agency:
Date: 4/24/85

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE SB 288
Attachment

Analysis:

1. The legislation doubles the tax rates on alcoholic beverages for tax year 1986. Analysis assumes that one half of increased revenues falls into each of fiscal years 1986 and 1987.

2. There will be some downward pressure on consumption because of price increases due to higher taxes. While no estimates of price elasticity are available for Alaska figures from national studies suggest that this decreased consumption will be relatively insignificant in terms of its revenue impact.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSSB 288
Title: Liquor License Holder's Insurance
Sponsor: Josephson
Requestor: Senate Labor & Comm.
Date of Request: 5/1/85

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
Program Category Affected: Consumer Protection
BRU, Program or Subprogram(s) Affected: Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		5,100.0				
800 MISCELLANEOUS						
TOTAL OPERATING		5,100.0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		5,100.0				
FEDERAL FUNDS						
OTHER						
TOTAL		5,100.0				

POSITIONS:

FULL-TIME		0				
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: John George, Director
Division: Insurance
Phone: 465-2515
Date: 5/1/85

Approved by Commissioner: Loren H. Lounsbury
Agency: Commerce and Economic Development
Date: 5/1/85

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL Notes (3) 7/1/84

2265W5185a

Edwards
4/30/85.

Original sponsors: Josephson, Ziegler
and Ferguson

IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 288 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to liquor license holders' insurance; providing for increased alcoholic beverage taxes; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 04.11.320(a) is amended by adding a new paragraph to read:

(13) the applicant has less than $500,000 in liability insurance coverage.

* Sec. 2. AS 04.11.370 is amended by adding a new paragraph to read:

(12) failure of the licensee to maintain at least $500,000 in liability insurance coverage.

* Sec. 3. AS 21.78.050 is amended to read:

Sec. 21.78.050. GROUNDS FOR LIQUIDATION. The director may apply to the court for an order appointing the director as receiver, if an appointment of the director as receiver is not then in effect, and directing the director to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trusteed assets in this state, regardless of whether or not there has been a prior order directing the director to rehabilitate the insurer, upon any of the grounds specified in AS 21.78.040, or if the insurer

(1) has ceased transacting business for a period of one year;

(2) is an insolvent insurer and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute an

action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian or sequestrator under any law except this title; [OR]

(3) is the Medical Indemnity Corporation of Alaska, and the director has ordered termination of the business of the corporation in accordance with AS 21.88.055; or

(4) is the Liquor License Holders' Indemnity Corporation of Alaska, and the director has ordered termination of the business of the corporation in accordance with AS 21.85.055.

* Sec. 4. AS 21.78.100(b) is amended to read:

(b) The director may apply for and secure an order dissolving the corporate existence of a domestic insurer, except the Medical Indemnity Corporation of Alaska or the Liquor License Holders' Indemnity Corporation of Alaska, upon the director's application for an order of liquidation of the insurer or at any time after the order has been granted.

* Sec. 5. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, the Liquor License Holders' Indemnity Corporation of Alaska, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, either at the time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of competent jurisdiction;

* Sec. 6. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, the Liquor License Holders' Indemnity Corporation of Alaska, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, who

(A) writes any kind of insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or interinsurance contracts, and

(B) is licensed to transact insurance in this state;

* Sec. 7. AS 21 is amended by adding a new chapter to read:

CHAPTER 85. LIQUOR LICENSE HOLDERS' INSURANCE CORPORATION.

Sec. 21.85.010. PURPOSE OF THIS CHAPTER. It is the purpose of this chapter to provide a means of furnishing liquor license holders under AS 04 with adequate insurance against liability for negligent acts or omissions that concern customers on licensed premises.

Sec. 21.85.020. CORPORATION CREATED. There is created the Liquor License Holders' Indemnity Corporation of Alaska that is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt, liability or obligation of the state or a pledge of full faith and credit of the state.

Sec. 21.85.030. CORPORATION BOARD OF GOVERNORS. (a) The corporation shall exercise its powers through a board of governors that is appointed by the governor of the state and confirmed by the legislature. Members of the board of governors shall be Alaska residents as follows:

(1) four liquor license holders; no more than two of the

liquor license holders shall reside in a municipality having a population of more than 100,000, and two of the liquor license holders must be indemnified against loss by reason of liability by the Liquor License Holders' Indemnity Corporation of Alaska;

(2) two professionals from the insurance industry who are authorized or licensed to do business in the state;

(3) two persons who are not liquor license holders or financially interested in a license issued under AS 04 or representatives of the insurance industry.

(b) The term of office of each governor is three years, except that the governor of the state shall designate two initially appointed governors to serve for one year and two initially appointed governors to serve for two years. Upon the expiration of the term of a governor, the governor of the state shall appoint a successor who shall be from the same class described in (a) of this section as the governor whose term has expired.

(c) Upon a governor's early resignation, death or inability to serve, the governor of the state shall appoint a successor from the same class defined in (a) of this section as the terminating governor, who shall serve for the unexpired term.

(d) The director or a designee of the director is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(e) The corporation shall compensate members of the board of governors and reimburse them for necessary travel expenses according to a policy approved by the director.

(f) A governor, officer, or employee or former governor, officer, or employee of the corporation is not liable for damages or

other relief in any action by reason of the person's actions or inactions as a governor, officer, or employee of the corporation, or by reason of the actions or inactions of the corporation, its board of governors, officers or employees unless

(1) the person acted with actual knowledge that the person was acting outside the scope of the person's authority;

(2) at the time the person acted for a purpose that the person knew was not in the best interests of the corporation; or

(3) with respect to any criminal action, the person acted knowingly or recklessly.

(g) If a claim or action is brought against a person entitled to the protection of this subsection, the claim or action shall be defended by the state. The person shall reimburse the state for the cost to the state of the person's defense if it is established that the person

(1) acted with actual knowledge that the person was acting outside the scope of the person's authority;

(2) at the time was acting for a purpose that the person knew was not in the best interests of the corporation; or

(3) with respect to any criminal action, acted knowingly or recklessly.

(h) In this section,

(1) "knowingly" has the meaning given in AS 11.81.900;

(2) "recklessly" has the meaning given in AS 11.81.900.

Sec. 21.85.040. CORPORATION PLAN OF OPERATION. (a) The board of governors shall prepare and submit to the director for approval a plan of operation that provides for the fair and reasonable administration of the affairs of the corporation and the discharge of the purposes for which it is created. The plan and any amendments to it

become effective upon the director's approval. If the board of governors fails to submit a plan of operation, or if at a subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments that are necessary or advisable to carry out the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which the powers and duties of the corporation specified in AS 21.85.050 shall be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

(3) establish regular times and places for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

(5) establish the procedures for awarding contracts to carry out the provisions of this chapter;

(6) establish the procedures for issuing contracts of insurance as provided in AS 21.85.050 and for the determination of rates;

(7) contain additional provisions necessary for the execution of the powers and duties of the corporation.

Sec. 21.85.050. POWERS AND DUTIES OF THE CORPORATION. (a) The corporation shall

(1) in the form approved by the director, issue to all liquor license holders who are found to be acceptable risks under standards developed under (5) of this subsection, and who pay the

premiums for it, a contract or contracts indemnifying liquor license holders and their employees on licensed premises against loss in excess of $50,000 by reason of liability for covered claims, and agreeing to tender on behalf of the liquor license holders and their employees on licensed premises a defense to a covered claim; the liability covered by policies issued by the corporation shall be $500,000; the contract shall cover the defense against but need not indemnify liability for punitive damages arising from a covered claim; at the option of the corporation, if approved by the director, and for an additional premium the contract may cover claims for any period before the contract is issued, except that coverage will not be provided for a claim already filed or of which the liquor license holder had or reasonably should have had notice at the time the retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued by the corporation that shall be determined by the board of governors in accordance with AS 21.85.080 and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090, 21.06.120, 21.06.140, 21.06.160, 21.06.250; AS 21.09.180 - 21.09.200, 21.09.250, 21.09.280; AS 21.12.020(b) - (e); AS 21.18; AS 21.21; AS 21.24 and AS 21.36; and shall be exempt from participation as a member insurer in the Alaska Insurance Guaranty Corporation;

(4) carry out the obligations of the contracts issued by the corporation by defending all covered claims made against insured liquor license holders and by paying all liabilities that are finally adjudicated against the liquor license holders or that may in the opinion of the corporation reasonably be expected to be finally adjudicated against the liquor license holders to the extent of the

contract obligation;

(5) establish standards for the acceptability of risks; in establishing these standards the corporation may exclude an applicant for insurance based on individual risk selection factors, but may not exclude an applicant based only on the classification of the applicant.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for these services; employees of the corporation are not considered state employees;

(2) negotiate for and procure reinsurance from private casualty insurers or reinsurers for any and all liability incurred by contracts issued by it;

(3) borrow or advance funds necessary to carry out the purposes of the corporation;

(4) negotiate and become a party to contracts that are necessary to carry out the purposes of the corporation;

(5) sue or be sued in the name of the corporation;

(6) provide risk management advice and services to liquor license holders;

(7) negotiate and become a party to contracts for management services for the corporation;

(8) perform other acts necessary and proper to carry out the duties of the corporation.

Sec. 21.85.055. TERMINATION. (a) If at any time the corporation posts written premiums for two consecutive years of less than 35 percent of all premiums written in the state for liquor license holders' liability insurance or posts written premiums for one

calendar year of less than 20 percent of all premiums written in the state for liquor license holders' liability insurance, the director may hold a public hearing in accordance with AS 21.06.180 - 21.06.230 to determine whether the business of the corporation should be terminated.

(b) Upon the effective date of an order of termination issued by the director under (a) and (c) of this section, the terms of the governors appointed under AS 21.85.030 expire, and the corporation, its governors, officers and employees are relieved of all further liabilities for all their obligations to the creditors and policyholders of the corporation, and the business of the corporation shall be liquidated according to AS 21.78.

(c) In determining whether to terminate or reactivate the business of the corporation the director shall consider the following:

(1) the level of expected premiums and ses for continued operation;

(2) the requirement for state funds to support continued operation;

(3) the availability of alternative markets for coverage to a substantial majority of liquor license holders in the state;

(4) the costs of continued operation of the corporation;

(5) the impact that the continued operation of the corporation will have on rates charged for coverage by the corporation or by alternative markets; or

(6) the expected number of liquor license holders who would participate if the operations were continued.

(d) If after public hearing held in accordance with (a) of this section the director determines that continuing the business of the corporation would result in substantial underwriting loss unless

excessive premiums are charged to participating liquor license holders, the director may order termination of the corporation.

Sec. 21.85.060. PREMIUM TAX. The corporation shall be taxed in the same manner as a domestic insurer.

Sec. 21.85.070. STATISTICS. The corporation shall collect, maintain and report information concerning claims against liquor license holders that it insures. The information must be on forms prescribed by the director, and must be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. At least annually the corporation shall report to the director the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to and the expenses incurred by the corporation during the year. This report shall be available to the public. The director may require that supplemental reports include the names of insured liquor license holders and the claimants.

Sec. 21.85.080. RATES. The rates and rating plans used by the corporation for the policies issued shall be determined by license category of liquor license holders in accordance with all of the following:

(1) a minimum rate may be set for each category of liquor license holders within a license classification;

(2) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium that is actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for covered claims reported and unpaid, reserves for covered claims incurred during the policy period and not reported, and reasonable expenses for the operation of the corporation;

(3) rates may not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the liquor license holders are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including covered claims paid, reserves for covered claims reported and unpaid, reserves for covered claims incurred during the policy period and not reported, and reasonable expenses for the operation of the corporation;

(4) rates may not be unfairly discriminatory;

(5) rates shall be adjusted annually;

(6) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation as developed for the preceding four policy years;

(7) in considering losses to be incurred, changes in the law, national, regional, or local trends in damage awards, and other relevant factors may be considered;

(8) income from the investment of reserves shall be considered;

(9) individual risk underwriting factors shall be considered;

(10) disciplines and classifications within the license categories of liquor license holders shall be considered;

(11) amounts sufficient for repayment of loan obligations shall be considered;

(12) if the earned premiums of the corporation for any given year are less than the incurred claims, claim expense, underwriting expense, reserves for that year and provision for repayment of any loans, the corporation may, subject to the prior approval of the director, levy an assessment upon the insureds who held policies

during that year; the assessment, which may be made in periodic installments, shall be made within three years and may not exceed 150 percent of the insured's premium for that year; the termination of any policy does not relieve the insured of contingent liability for the insured's proportionate share of the obligations to the corporation that accrued while the policy was in force;

(13) if the earned premiums of the corporation for any given year exceed its incurred claim expense, underwriting expense, reserves for that year, and provision for repayment of any loan, the corporation may, subject to the prior approval of the director, apportion and pay or credit its insureds who held policies during that year; a payment or credit shall be proportionate to the insured's earned premium for that year;

(14) upon application by any person, the director may issue a certificate authorizing the corporation to extinguish all or a portion of an assessment levied, or that could be levied, under (12) of this section for all insureds with policies in force when the certificate is issued, and to omit provisions levying an assessment under (12) of this section in all policies delivered or issued for delivery after the certificate is issued, if the director determines that there is a sound actuarial basis for the extinguishment; the director may at any time revoke the certificate; a policy in force at the time of revocation is not subject to the revocation of the certificate for the remainder of the period for which the premium has been paid, but after revocation a policy may not be issued or renewed without providing for an assessment of the insured.

Sec. 21.85.090. PAYMENT OF PREMIUMS; CANCELLATION OF INSURANCE. The corporation may provide for installment payment of premiums in which case each installment is due by the date specified. The

corporation may cancel any of its policies for nonpayment of any premium or installment on a premium, or other charge, by mailing or delivering notice of cancellation to the insured at the address shown on the policy and to the Alcoholic Beverage Control Board. Cancellation is not effective until 30 days after the date notice is mailed or delivered by the corporation.

Sec. 21.85.095. TRANSFER OF CORPORATE ASSETS AND LIABILITIES. (a) The corporation may, subject to the prior approval of the director, transfer its assets and liabilities to a company that meets all of the following conditions:

(1) the company possesses a valid certificate of authority to transact casualty insurance business in the state; in evaluating the capital and surplus of the company for qualification for a certificate of authority, the value of the assets and liabilities transferred by the corporation may not be considered;

(2) the company pays to the corporation for return to the state treasury the full value of any surplus in the corporation;

(3) the company executes a complete reinsurance and hold harmless agreement in a form approved by the director covering all of the obligations of the corporation to its creditors and policyholders;

(4) the company meets other requirements the director may reasonably require to protect the interests of the state, the liquor license holders insured, the involved company, and the public;

(5) the company provides the board of governors with a written statement from the director that the company qualifies under (1) - (5) of this subsection.

(b) If and while the company to which the assets and liabilities of the corporation are transferred in the manner provided in (a) of this section continues to write premiums in excess of the levels

provided in AS 21.85.055, it shall be entitled to carry forward and offset against its premium tax obligation to the state the amount by which the aggregate claims paid on reinsurance assumed under (a)(3) of this section exceeds aggregate reserves on the same business established at the date of the reinsurance agreement.

Sec. 21.85.210. RESERVE FUND ESTABLISHED. The corporation shall establish a reserve fund, in an amount required by the Department of Commerce and Economic Development to provide surplus in respect to policyholders.

Sec. 21.85.900. DEFINITIONS. In this chapter

(1) "continuous coverage" means one or more successive policy period that is uninterrupted by cancellation or failure to renew for any reason;

(2) "corporation" means the Liquor License Holders' Indemnity Corporation of Alaska;

(3) "covered claim" means a claim by an injured person reported to the corporation during the period of continuous coverage by the corporation of the insured liquor license holder for a negligent act or omission that concerns customers on licensed premises;

(4) "governor" means a member of the board of governors of the Liquor License Holders' Indemnity Corporation of Alaska;

(5) "licensed premises" has the meaning given in AS 04.21.-080;

(6) "liquor license holder" means a person, association of persons, or corporation that holds a current liquor license issued under AS 04.

* Sec. 8. Notwithstanding the provisions of AS 43.60.010(a)(1) - (3), the tax imposed by AS 43.60.010 during the period January 1, 1986 through December 31, 1986 shall be paid at the following rates:

(1) malt beverages at the rate of $.70 a gallon or fraction of a gallon;

(2) wine or other beverages of 21 percent alcohol by volume or less at the rate of $1.70 a gallon or fraction of a gallon; and

(3) other beverages having a content of more than 21 percent alcohol by volume at the rate of $11.20 a gallon.

* Sec. 9. The purpose of the rate increase under sec. 8 of this Act is to compensate the state for appropriations made to the reserve fund established under AS 21.85.210 enacted in sec. 7 of this Act. If the Department of Revenue collects more than $5,000,000 as a result of increased alcoholic beverage tax rates imposed during 1986, the excess shall be refunded by the department to taxpayers in proportion to the taxes paid by each taxpayer under AS 43.60.010 during the months subject to the increased rates.

* Sec. 10. This Act takes effect on the effective date of an Act making a special appropriation to the reserve fund established under AS 21.85.210, enacted in sec. 7 of this Act.

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4187 SLAB SB 290 - SB 295

1067

SB

290

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 19, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to direct service charges for the sale of power by the Alaska Power Authority to retail consumers.

This bill addresses financing concerns with regard to future energy projects acquired or constructed by the Alaska Power Authority where the principal user of the power generated or transmitted by the authority is a non-governmental utility. Section 103(b) of the Internal Revenue Code restricts the use of tax-exempt bonds for financing power projects and transmission interties which are secured by payments to be made under power sales agreements with non-governmental utilities such as private investor-owned utilities, rural electric associations, and electric cooperatives.

This bill would facilitate the use of tax-exempt financing by authorizing the authority to impose and collect direct service charges from consumers, as an alternative to power sales agreements, as a method for securing and providing for the payment of bonds issued by the authority. Money collected by the authority from the imposition of direct service charges will constitute revenues to meet the costs of acquiring, financing, and guaranteeing power projects. The tax-exempt financing permitted by the use of direct service charges should help to reduce the capital costs of power projects.

ch 29°

After this bill is passed, the authority will seek a revenue ruling from the IRS to confirm that the use of direct service charges as security for revenue bonds will permit tax-exempt financing of power projects.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No: SB290

Title: An act relating to the direct service charges for the sale of power by the Alaska Power Authority

Sponsor: Senate Rules Committee

Requestor: Governor

Date of Request:

FISCAL DETAIL

Agency Affected: ALASKA POWER AUTHORITY

Program Category Affected:

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES			- 0 -			
200 TRAVEL			NOT APPLICABLE			
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			- 0 -			
FEDERAL FUNDS			NOT APPLICABLE			
OTHER						
TOTAL						

POSITIONS:

FULL-TIME			- 0 -			
PART-TIME			NOT APPLICABLE			
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert D. Heath

Division: Alaska Power Authority

Phone: 276-0001

Date: 4/12/85

Approved by Commissioner:

Date:

Agency:

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

291

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/~~Resolution~~ No.: SB291

Title: An act authorizing the APA to transfer certain projects to public utilities

Sponsor: Senate Rules Committee

Requestor: Governor

Date of Request:

FISCAL DETAIL

Agency Affected: Alaska Power Authority

Program Category Affected:

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES			- 0 -			
200 TRAVEL						
300 CONTRACTUAL		NOT APPLICABLE				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS			- 0 -			
OTHER		NOT APPLICABLE				
TOTAL						

POSITIONS:

FULL-TIME			- 0 -			
PART-TIME		NOT APPLICABLE				
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert D. Heath Phone: 276-0001

Division: Alaska Power Authority Date: 4/12/85

Approved by Commissioner: Date:

Agency:

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

BILL SHEFFIELD
GOVERNOR

SB 291

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 19, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill authorizing the Alaska Power Authority to transfer two completed transmission line projects that were originally financed through the power development fund. Rather than attempt to deal retroactively with the 1981 appropriations for the Port Lions transmission line and the Kobuk - Shungnak transmission line, the bill simply permits the power authority to transfer the projects.

AS 44.83.380 -- 44.83.425 require that the Alaska Power Authority own and operate projects constructed with money from the power development fund. That fund was originally intended to finance major retail generation, transmission, and distribution projects under the "energy program for Alaska." The power authority board and staff have determined that they have neither the financial nor staff resources to operate and maintain small projects that are often located in remote areas of the state. This bill will permit the authority to transfer ownership, management, and operation of these two projects to the local utilities.

Sincerely,

Bill Sheffield
Governor

APR 30 1985
BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

April 8, 1985

M E M O R A N D U M

TO: Honorable Bill Sheffield
Governor

FROM: Norman C. Gorsuch
Attorney General

RE: Attached bill on transfer of transmission line projects from the power development fund
Our file: 377-182-85

Attached is a bill to authorize transfer of two completed transmission line projects (Port Lions and Kobuk - Shungnak) that were originally financed through the power development fund, a fund administered by the Alaska Power Authority. The bill was requested by the board of directors of the authority. We do not know the extent of review or approval it has received in your office.

Although the board originally asked for legislation permitting the transfer of three projects out of the "energy program for Alaska," our research indicates that the appropriation for the Delta agricultural project was never made to the power development fund. Consequently, that project is not within the energy program for Alaska and no legislation is necessary for transferring that project.

We understand that the transfer of these projects is intended to be a gift, not a sale, to the respective utilities. This grant of public property raises the question of whether a public purpose is being served, as required by art. IX, sec. 6, of the Alaska Constitution, which provides in part:

> No tax shall be levied, or appropriation of public money made, or public property transferred, ... except for a public purpose. [Emphasis added.]

We do not know many of the facts surrounding these proposed transfers, but, considering a number of Alaska Supreme Court decisions that have applied art. IX, sec. 6, it would appear that a grant of power transmission lines to communities such as these would indeed serve a public purpose. We have been told

that the local utilities to which these projects are intended to be transferred are owned by nonprofit corporations, but we do not know the basis for their selection, their demonstration of ability to operate and maintain the transmission lines, the nature or extent of the service they plan to provide, or the way in which these free transmission lines will affect the utilities' rate structures. The power authority will no doubt provide this sort of information as the bill works its way through your office and the legislature.

A draft transmittal letter to the legislature is also attached.

NCG:AHP:CEJ:cmh

cc w/enc.: Hon. Loren H. Lounsbury, Commissioner
Dept. of Commerce & Economic Development

Lee Munn, Chairman
Alaska Power Authority
Anchorage

Robert Heath, Executive Director
Alaska Power Authority
Anchorage

XC: Susan White

MEMORANDUM State of Alaska

TO: Larry Crawford
Executive Director
Alaska Power Authority

DATE: July 18, 1984

FILE NO:

TELEPHONE NO:

FROM: Norman C. Gorsuch
Attorney General

BY: RAK
Ross A. Kopperud
Assistant Attorney General
Transportation Section, Anchorage

SUBJECT: Transfer of APA facilities - July 9, 1984.

RECEIVED
JUL 18 1984
ALASKA POWER AUTHORITY

The issue was raised in Eric Yould's memorandum to me of August 4, 1983, whether the APA had the authority to transfer the Cantwell Distribution System to Golden Valley Electric Association (GVEA) upon completion. Eric Yould's memo is attached for your convenience. By subsequent telephone calls and from APA staff, the question has been expanded to include whether the APA can dispose of other projects once they are completed.

I responded to this inquiry in the fall of 1983, although there is no memorandum confirming the advice given at that time. The advice given was that the APA could transfer these facilities away to other entities in keeping with the APA's purpose.

On July 6, 1984, I discussed the above advice which I had previously given to the APA with Carolyn Jones, assistant attorney general for the APA. Ms. Jones confirmed that this advice was consistent with her understanding of the APA's authority and further stated she had also given similar advice to the APA in her memorandum to you of May 30, 1984, referenced "Use and disbursement of appropriations". Ms. Jones's memorandum is also attached for your convenience.

The underlying rationale for my advice to the APA is as follows:

> A.S. 44.83.070. Purpose of the Authority.
>
> The purpose of the authority is to promote, develop and advance the general prosperity and economic welfare of the people of Alaska by providing a means of constructing, acquiring, financing and operating power production facilities limited to fossil fuel, wind power, tidal, geothermal, hydroelectric, and solar energy and energy conservation facilities.

Under A.S. 44.83.080 entitled "Powers of the Authority", it states:

> In furtherance of its corporate purpose, the authority has the following powers in addition to its other powers;
>
> (7) to sell, lease as lessee or lessor, exchange, donate, convey ... real or personal property owned by it, or in which it has an interest, when in the judgment of the authority, the action is in furtherance of its corporate purpose.
>
> . . . .
>
> (14) to enter into contracts or agreements with respect to the exercise of any of its powers, and do all things necessary or convenient to carry out is corporate purpose and exercise the powers granted in this chapter.

(Emphasis added).

The above statutory references make it clear that the APA may donate or convey real or personal property in furtherance of its corporate purpose. The other statutory references make it clear that the purpose and authority of the APA is quite broad. It is my understanding that the APA has no staff or facilities to maintain and operate those facilities which it wants to transfer to public utilities. It would, I believe, be consistent with the APA's corporate purpose to transfer the facilities in issue to various utilities who can maintain and operate those facilities for the benefit of the people of Alaska.

In conclusion, absent legislation which would specifically restrict the APA's power to transfer its facilities to some other entity, it is my opinion that the APA may transfer its facilities to other entities so long as it is in keeping with the APA's corporate purpose.

If you should have any further questions on this issue, please call me at your convenience.

RK/dw

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Commerce & Econ. Dev.	Alaska Power Authority	HB 391	House Rules/by Governor

DEPARTMENT POSITION

Support passage of HB 391.

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Susan White, Special Assistant to the Executive Director			5/1/85

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Department of Commerce and Economic Development Office of Energy	Kodiak Electric Association City of Kobuk
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
	None

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

See attached.

ANALYSIS OF BILL/PROGRAM EFFECTS

Proposed projects transfer as specified in HB 391 would grant the Kobuk-Shungnak and Port Lions transmission lines to the City of Kobuk and Kodiak Electric Association. Transfer of these projects would remove them out of the Energy Program for Alaska and relinquish the State's responsibility to own, operate and maintain them.

If statutory authority is not provided for transfer of the Kobuk-Shungnak line, APA will work to develop an O&M agreement with AVEC (which operates the power plant at Shungnak) and the City of Kobuk and develop a set of fees to provide for O&M revenues to be returned to the State. Currently, APA is providing minimal maintenance twice a year to assure basic operational status of the line. Maintenance costs over the past two years have been approximately $5,000 per year.

Although O&M funding for the Port Lions line is not budgeted in the APA's FY '86 operating budget, the FY '86 costs, if the project is retained by the APA, could potentially be absorbed within the existing budget (Terror Lake O&M agreement). If additional funding (program receipts) is, in fact, required, an RPL will be submitted to the LB&A Committee.

AMENDMENTS PROPOSED

No amendments.

2267W5185a

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

HB 391

BACKGROUND/LEGISLATIVE INTENT

The two transmission line projects recommended for transfer from the Power Authority to the appropriate utilities are the Kobuk-Shungnak and Port Lion's transmission lines. Appropriations to the Power Authority's Power Development Fund provided for the construction of these projects and include them in the Energy Program for Alaska. Power projects acquired or constructed as part of the Energy Program for Alaska may only be transferred through legislation.

The Kobuk-Shungnak transmission line was funded through two separate appropriations of $345,000 (SLA 79, Ch. 80) and $200,000 (SLA 81, Ch. 90). These appropriations were funded respectively to the Department of Commerce and Economic Development, Office of Energy and the Alaska Power Authority. The line is complete and has been operational since February 1982.

The Port Lion's transmission line was funded through three appropriation sources. (Please see attached Port Lion's funding summary). The Port Lion's line is complete and is ready to begin operation.

The Power Authority Board of Directors passed Resolution #1985-01 recommending transfer of the two projects, and requested legislation be introduced to effect the transfer. The Attorney General's Office has found the proposed transfer to be appropriate as the lines to be granted and transferred to the local utilities would serve the required public purpose.

2267Wb185a

PORT LION'S FUNDING SUMMARY

Total Construction Cost:	$1,639,481

Funding Sources:

Ch. 54, SLA 1980, page 3, line 9	$ 93,812	(a)
Ch. 92, SLA 1981, page 12, line 6	1,400,000	
Ch. 92, SLA 1981, page 12, line 9	145,669	(b)
	$1,639,481	

(a) Balance of $200,000 appropriation, remainder ($106,188) was used by KEA to conduct feasibility study for a Port Lion's power project.

(b) Revised program from Terror Lake allocation to Port Lion's allocation within the same appropriation.

2267W5185a

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

292

BILL SHEFFIELD
GOVERNOR

Ch 292

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 19, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the exemption of the Alaska Power Authority's officers and employees from the State Personnel Act (AS 39.25).

The amendment in sec. 1 of the bill clarifies the status of the authority's executive director and staff by codifying a longstanding practice, i.e., treatment of the executive director and his or her staff as being in the exempt service. The members of the authority are already in the exempt service by virtue of AS 39.25.110(10), which places "members of boards, commissions, or authorities" in that category. Adding the Alaska Power Authority to the list in AS 39.25.110(11), as sec. 1 of the bill does, may create an element of redundancy regarding "members" and "officers," but that list already contains precedent for doing so, and it leaves no doubt as to this authority -- both members and staff -- being in the exempt service.

The amendment in sec. 2 of the bill corrects what appears to be an error made when AS 44.83.045 became law in 1978 (ch. 156, SLA 1978). AS 44.83.045(c) contains language making the executive director of the authority "subject to the provisions of AS 39.25" (which citation the revisor of statutes, evidently, changed to refer specifically to the sections of AS 39.25). The State Personnel Act covers all state employees, placing them in one of three categories of service: exempt, partially exempt, or classified. Making the executive director "subject to" the State Personnel Act merely means that he or she is either exempt, partially exempt, or in the classified service. In effect, the language in question has no meaning.

Governor's Letter of Transmittal

Section 2 of the bill, therefore, deletes that language from AS 44.83.045(c), and makes clear what category of service the executive director and the rest of the staff are in -- consistent with the amendment in sec. 1.

Sincerely,

Bill Sheffield
Governor

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

April 5, 1985

RECEIVED

APR 11 1985

M E M O R A N D U M

TO: Honorable Bill Sheffield
Governor

FROM: Norman C. Gorsuch
Attorney General

RE: Attached bill placing employees of the Alaska Power Authority in the exempt service
Our file: 377-181-85

Attached is a bill exempting the employees of the Alaska Power Authority from the State Personnel Act (AS 39.25). The bill was recommended by the board of directors of the Alaska Power Authority to clarify the status of the authority's executive director and staff.

It has long been our view that the Alaska Power Authority is exempt from the State Personnel Act, but a last-minute error in SCS CSHB 442, when it was passed by the legislature in 1978 (sec. 4, ch. 156, SLA 1978), confused the issue. 1978 Inf. Opp. Att'y Gen. (July 11; J-66-808-78). The attached amendment will finally correct that error. As mentioned in that July 11, 1978 opinion, it is likely that the original intent was to cite AS 39.50, the conflict-of-interests chapter, rather than AS 39.25. However we understand that the authority does not want to amend AS 44.83.045(c) in a way that would subject the executive director to AS 39.50.

A draft transmittal letter to the legislature is also attached.

NCG:CEJ:mem

cc w/enc.: Hon. Loren Lounsbury, Commissioner
Dept. of Commerce & Economic Development

Lee Munn, Chairman
Alaska Power Authority
Anchorage

Robert Heath, Executive Director
Alaska Power Authority

Dept of Law Memo

STATE OF ALASKA

MEMORANDUM

TO: Hon. Phillip Hubbard, Commissioner
Department of Commerce & Economic Development
ATTN: Lois Cook

DATE: July 11, 1978

FILE NO: J-66-808-78

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

By:
Rodger W. Pegues
Assistant Attorney General

SUBJECT: Status of personnel of the Alaska Power Authority

This responds to your request for our opinion as to the effect of the recent amendment to the APA's organic act which provides, "The executive director of the authority is subject to the provisions of AS 39.25."

We are advised on good authority that the amendment was proposed to make the executive director subject to the Conflict of Interest Act and that, by error, the reference was made to AS 39.25 rather than to AS 39.50. The bill was rushed through at the last minute, and passed without correction to the reference. The Statute Reviser will be asked to make a corrective amendment in his omnibus bill next year.

In our view, the plain error rule controls. The amendment makes sense only if it is read to be 39.50 rather than 39.25. Making a person "subject to" the State Personnel Act -- without anything more -- accomplishes nothing. Under that Act, one may be exempt, partially exempt, or classified. If the amendment is read to mean AS 39.25, i.e., the Personnel Act, then all it says is that the executive director is exempt, partially exempt, or classified. He is that now, i.e., he is exempt. Moreover, there is neither rhyme nor reason to place the executive director under the Personnel Act and not include his staff. That will be the result, however, if the amendment's plain language is followed. On the other hand, if the reference were to AS 39.50, i.e., to the Conflict of Interest Act, it would subject the executive director to that Act's requirements and thereby accomplish the amendment's purpose. Moreover, it would make sense to subject the executive director to that Act but not to include his staff. Accordingly, the reference to AS 39.25 must be considered plain error, and the status quo ante obtains.

That the amendment was intended to subject the executive director to the Conflict of Interest Act does not, however, mean that he is now subject to that Act. Until a

AG's Opinion

law has been passed subjecting him to that Act, he is not subject to it; it takes more than intent to make a law. Train v. City of New York, 420 U.S. 35, 45 (1975). Nothing prevents his filing a Conflict of Interest Statement voluntarily, however, or the authority's requiring him to file one as a condition of employment.

The answers to your questions then are as follows:

(1) The executive director of the APA is in the exempt service.

(2) The other employees of the APA are in the exempt service.

RWP/pjg

Alaska Power Authority
State of Alaska

March 4, 1986

Senator Fred Zharoff, Chairman
Senate Labor and Commerce Committee
P.O. Box V
Capital Building
Juneau, Alaska 99811

Dear Senator Zharoff:

As requested, the attached position paper relating to CSSB 292 is provided. If I may be of further assistance please do not hesitate to contact me.

Sincerely,

Robert D. Heath
Executive Director

PO Box 190869 701 East Tudor Road Ancho[redacted]

POSITION PAPER CSSB 292 (SENATE LABOR AND COMMERCE)

SECTION 1:

CSSB 292 (SENATE LABOR AND COMMERCE) amends AS 39.25.110 (11) by establishing the Alaska Power Authority as a state agency in exempt service. Currently the legal status of the Executive Director and staff of the Alaska Power Authority is not expressly stated through statute. The Alaska Power Authority has been advised by the Attorney General's office to seek legislation clarifying the status of staff employed by the Alaska Power Authority. The Alaska Power Authority supports this amendment as shown by the resolution adopted by the Board of Directors at the 2/26/85 board meeting.

SECTION 2:

CSSB 292 (SENATE LABOR AND COMMERCE) addresses the membership of the Alaska Power Authority Board of Directors and proposes to repeal and reenact AS 44.83.030. Currently, the Executive Director and staff of the Alaska Power Authority reports directly to the Board of Directors. Because of this organizational structure, it is not appropriate for staff to render an opinion or state a position on the proposed language to restructure the make-up of the Alaska Power Authority Board. However, staff will present and solicit the Board's formal opinion on the bill at the next board meeting, tentatively scheduled for 3/24/86 or 3/25/86. The board's position on this matter will be expeditiously communicated in writing to the appropriate legislative committees.

SECTION 3,4,5,6 AND 7:

CSSB 292 (SENATE LABOR AND COMMERCE) propose amendments also requiring consideration by the Alaska Power Authority Board of Directors.

ALASKA POWER AUTHORITY
Resolution 1985-03

RESOLUTION BY THE ALASKA POWER AUTHORITY BOARD OF DIRECTORS RECOMMENDING THAT AS 39.25.110 BE AMENDED TO SPECIFICALLY NAME THE ALASKA POWER AUTHORITY AS A STATE AGENCY IN EXEMPT SERVICE.

WHEREAS, the Alaska Power Authority was created as a public corporation of the State of Alaska with a separate and independent legal existence in the Department of Commerce and Economic Development; and

WHEREAS, the Alaska Power Authority consists of a seven member board of directors required to employ an Executive Director, who employs additional staff as necessary, and is granted powers under AS 44.83.080 to carry on and further its corporate purposes; and

WHEREAS, the Alaska Power Authority, although considered to be a State agency in exempt service not covered by the provisions of AS 39.25 (the State Personnel Act), is not specifically named as such in this chapter; and

WHEREAS, the Authority has been advised by the Office of the Attorney General to seek legislation to provide clarification on the status of the Executive Director and staff;

NOW THEREFORE, BE IT RESOLVED, by the Board of Directors of the Alaska Power Authority:

That AS 39.25.110 is recommended for statutory amendment to specifically name the Alaska Power Authority as being a State agency in exempt service, thereby exempting the Authority from the provisions of the State Personnel Act;

BE IT FURTHER RESOLVED, that the Alaska Power Authority Board of Directors respectfully requests the Governor to introduce legislation providing for amendment to AS 39.25.110 as recommended herein.

This resolution having been submitted to a vote, the vote thereon was as follows:

YEAS: _____

NAYS: _____

ABSENT: _____

And the resolution was declared adopted on this the _____ day of _____, 1985.

ALASKA POWER AUTHORITY

BY: _____
Chairman

BY: _____
Secretary

8597/347

RECEIVED
FEB 19 1985
ALASKA POWER AUTHORITY

LAW OFFICES
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A PROFESSIONAL CORPORATION
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KATHRYN A. BLACK
RODNEY B. CARMAN
JOSEPH M. CHOMSKI **
PAUL L. DILLON
CYNTHIA L. DUCEY
ERIC A. EISEN **
JOSEPH W. EVANS
CARL E. FORSBERG
WILLIAM W. GARNER *
KENNETH J. GOLDMAN
RICHARD G. HAGGART
BRUCE E. HORTON
HAL R. HORTON
CAROL JOHNSON
MARC W. JUNE
STANLEY T. LEWIS
JEFFREY B. LOWENFELS
LAWRENCE Z. OSTROVSKY
MICHAEL J. PARISE
SUZANNE C. PESTINGER
TIMOTHY PETUMENOS
MICHAEL V. REUSING
ELISABETH H. ROSS
E. BUDD SIMPSON
STEPHEN F. SORENSEN
SHERIDAN STRICKLAND
BARRY N. SUMMER *
JON K. TILLINGHAST
DANIEL WESTERBURG

*D. C. BAR ONLY
**D. C. AND ALASKA BAR
ALL OTHERS ALASKA BAR ON

February 13, 1985

William Mellow
Assistant Attorney General
Attorney General's Office
Pouch "K"
Juneau, Alaska 99811

Jonathan B. Rubini
Assist. Attorney General
Attorney General's Office
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Frank Raye, Director
Division of Personnel
Department of Administration
Pouch "C"
Juneau, Alaska 99811

Mr. Brad Thompson
Division of Risk Mgmt.
State of Alaska
Pouch "C"
Juneau, Alaska 99811

Mr. Dick Stone
Northern Adjusters
2609 Arctic Blvd.
Anchorage, Alaska 99503

Re: Sidney R. Kidwell v. State of Alaska
James E. Benka v. State of Alaska

Gentlemen:

I have already discussed with most of you my thoughts on these cases. As you are aware, two employees of the Alaska Power Authority, Kidwell and Benka, have sued the State of Alaska for wrongful termination. This letter and the attached Research Memorandum focuses on the claim made by these employees that they were fired contrary to the provisions of the Alaska Personnel Act.

Our investigation reveals that the Alaska Power Authority did not follow the Alaska Personnel Act because they were under the impression that the personnel act did not apply to the Alaska Power Authority.

As you can see from the attached Research Memorandum, we have a substantial concern that the personnel act will be held to apply to the Alaska Power Authority. I have routed results of this research to a broader group of people than I normally would in view of the fact that it

appears important that the State consider remedial legislation specifically exempting the Alaska Power Authority from the provisions of the personnel act.

We have much more detailed memoranda in the file on the factual circumstances surrounding the termination of Kidwell and Benka which we can make available for your review. The issue addressed in the attached memorandum however is a purely legal issue regarding the procedures that must be followed under the Alaska Personnel Act. It did not appear necessary to detail the facts of the Kidwell and Benka cases in order to keep you advised.

Very truly yours,

BIRCH, HORTON, BITTNER,
PESTINGER & ANDERSON

Timothy Petumenos

TP/jm
Encl.
cc: Ray Benish
David Ritze

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/~~Resolution~~ No.: SB 252

Title: An act placing the employees of APA in the exempt service under the State Personnel Act

Sponsor: Senate Rules Committee

Requestor: Governor

Date of Request:

FISCAL DETAIL

Agency Affected: Alaska Power Authority

Program Category Affected:

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL			- 0 -			
300 CONTRACTUAL						
400 SUPPLIES			NOT APPLICABLE			
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS			- 0 -			
OTHER						
TOTAL			NOT APPLICABLE			

POSITIONS:

FULL-TIME			- 0 -			
PART-TIME			NOT APPLICABLE			
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert D. Heath Phone: 276-0001

Division: Alaska Power Authority Date: 4/12/85

Approved by Commissioner: Date:

Agency:

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Fiscal Note

degree of independence and perpetuity necessary for a consistent long term cost-beneficial program such as described. in this document. There should be full recognition of the management commitment that is necessary for the long term capital commitment and long term construction cycles of the electric generation facilities inherent under this concept.

The Committee assumes that the Alaska Power Authority (APA) will be the organization to administer this program. Since State funds will be involved, the legislature and administration will continue to be interested in the success of the program.

It is the recommendation of the Committee that a nine member board be created with the fiduciary responsibility of setting policy and directing the operation of the Power Authority. The Board would be constituted as follows:

- The Commissioner of Commerce and Economic Development--This would be the only Board member without a fixed term and would be the specific person charged with representing the interests of the Governor and his administration.

- Four Directors appointed by the Governor for staggered six year terms and approved by the legislature--These four members should include one member from the banking industry and one a consumer representative and two from business and industry.

- Four Directors from the Alaska Systems Coordinating Council (ASCC)--The Alaska Systems Coordinating Council is an existing group of electric utility

managers who on ad hoc basis are now coordinating the development of electric generation and transmission systems within the State. The Governor should appoint and the legislature approve these four Directors--two Railbelt, one Southeast Alaska, and one bush utility manager. The ASCC should make recommendations to the Governor. As with the other appointed members, the ASCC Directors should serve six year staggered terms.

An important function of the Board of Directors will be to set electric power development policy and to assure that cost-beneficial planning and operations are conducted by the APA that will benefit all Alaskan consumers. In order to insure that generating capacity additions are the ones which result in minimum cost, are compatible to long range plans and contribute to system optimization, any equalization payments for prospective units must be based solely on pre-construction approval by the Power Authority Board. In no event should the Authority be required to purchase power either directly or indirectly through a participating system which was not generated by said participating system.

Over the past few years, the State of Alaska has provided loans or grants for substantial sums of monies to develop generation capacity--most notable examples are the Four Dam Pool and the Fairbanks-Anchorage Intertie. It is the recommendation of this committee that these loans be converted to grants by the State and be considered as equity of the Alaska Power Authority. These projects obviously fit within the context of the concept presented by the Committee, in that they contribute to lowering the cost of generation for all

(3) prior positions held by a state employee;

(4) whether a state employee is in the classified, partially exempt, or exempt service;

(5) the dates of appointment and separation of a state employee; and

(6) the compensation authorized for a state employee.

(c) A state employee has the right to examine the employee's own personnel files and may authorize others to examine those files.

(d) An applicant for state employment who appeals an examination score may review written examination questions relating to the examination unless the questions are to be used in future examinations. (§ 18 ch 144 SLA 1960; am § 5 ch 112 SLA 1982)

Effect of amendments. — The 1982 amendment rewrote this section.

Article 2. Coverage of Personnel.

Section	Section
90. Coverage of chapter	120. Partially exempt service
100. Classified service	130. Extension of partially exempt and classified services
110. Exempt service	

Sec. 39.25.090. Coverage of chapter. This chapter and the rules adopted under it apply to all positions in (1) the classified service, and (2) the exempt and partially exempt service as specifically provided. (§ 3 ch 144 SLA 1960; am § 6 ch 112 SLA 1982)

Effect of amendments. — The 1982 amendment inserted "exempt and" in item (2).

Sec. 39.25.100. Classified service. The classified service consists of all positions in the state service not included in the exempt service or in the partially exempt service. (§ 4 ch 144 SLA 1960)

NOTES TO DECISIONS

Quoted in Mueller v. Alaska State Bd. of Personnel, Sup. Ct. Op. No. 396 (File No. 738), 425 P.2d 145 (1967); State v. Bogenrife, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

Sec. 39.25.110. Exempt service. Unless otherwise provided by law, the following positions in the state service constitute the exempt service and are exempt from the provisions of this chapter and the rules adopted under it:

(1) persons elected to public office by popular vote or appointed to fill vacancies in elected offices;

(2) justices, judges, magistrates, and employees of the judicial branch including employees of the Judicial Council;

(3) employees of the state legislature and its agencies;

(4) the head of each principal department in the executive branch;

(5) officers and employees of the University of Alaska;

(6) certificated teachers and noncertificated employees employed by a regional educational attendance area established and organized under AS 14.08.031 — 14.08.041 to teach in, administer, or operate schools under the control of a regional educational attendance area school board;

(7) certificated teachers employed by the Department of Education as correspondence teachers or teachers in skill centers operated by the Department of Education;

(8) patients and inmates employed in state institutions;

(9) persons employed in a professional capacity to make a temporary or special inquiry, study or examination as authorized by the governor;

(10) members of boards, commissions, or authorities;

(11) the officers and employees of the following boards, commissions, and authorities:

(A) Alaska Gas Pipeline Financing Authority;

(B) Alaska Permanent Fund Corporation;

(C) Alaska Energy Center;

(D) Alaska Industrial Development Authority;

(E) Alaska Commercial Fisheries Entry Commission;

(F) Alaska Commission on Postsecondary Education;

(12) the executive secretary and legal counsel of the Alaska Municipal Bond Bank Authority;

(13) physicians licensed to practice in this state and employed by the division of mental health and developmental disabilities, Department of Health and Social Services;

(14) petroleum engineers and petroleum geologists employed in a professional capacity by the Department of Natural Resources and by the Oil and Gas Conservation Commission, except for those employed in the division of geological and geophysical surveys in the Department of Natural Resources;

(15) officers, agents, and employees of the Alcoholic Beverage Control Board granted limited peace officer powers by the Alcoholic Beverage Control Board under AS 04.06.110;

(16) persons employed by the division of marine transportation as masters and members of the crews of vessels who operate the state ferry system and who are covered by a collective bargaining agreement provided in AS 23.40.040;

(17) officers and employees of the state who reside in foreign countries;

(18) employees of the Alaska Seafood Marketing Institute;

(19) firefighters employed by the Department of Natural Resources for a fire emergency;

(20) employees of the Office of the Governor and the office of the lieutenant governor, including the staff of the governor's mansion;

(21) [**Repealed June 30, 1988**] Employees of the Citizens' Advisory Commission on Federal Areas in Alaska (AS 41.37.010);

(22) youth employed by the Department of Natural Resources under the Youth Employment and Student Intern programs. (§ 5 ch 144 SLA 1960; am § 1 ch 48 SLA 1961; am § 1 ch 133 SLA 1961; am § 3 ch 93 SLA 1962; am § 3 ch 24 SLA 1966; am § 31 ch 46 SLA 1970; am § 65 ch 69 SLA 1970; am § 13 ch 113 SLA 1970; am § 3 ch 78 SLA 1971; am § 18 ch 78 SLA 1974; am § 42 ch 127 SLA 1974; am § 2 ch 32 SLA 1975; am § 2 ch 79 SLA 1975; am § 37 ch 124 SLA 1975; am § 1 ch 157 SLA 1976; am § 3 ch 90 SLA 1978; am § 7 ch 18 SLA 1980; am § 43 ch 106 SLA 1980; am § 10 ch 131 SLA 1980; am § 4 ch 148 SLA 1980; am § 4 ch 106 SLA 1981; am §§ 2, 3 ch 37 SLA 1982; am § 7 ch 112 SLA 1982; am § 1 ch 11 SLA 1983; am § 1 ch 103 SLA 1984)

Effect of amendments. — The first 1980 amendment added paragraph (22). (See now paragraph (11)(B).)

The second 1980 amendment added paragraph (23). (See now paragraph (11)(D).)

The third 1980 amendment added paragraph (24). (See now paragraph (15).)

The fourth 1980 amendment added paragraph (25). (See now paragraph (11)(C).)

The 1981 amendment added a paragraph (26) (see now paragraph (18)), relating to employees of the Alaska Seafood Marketing Institute.

The first 1982 amendment added a paragraph (27) (see now paragraph (21)), relating to employees of the Citizens' Advisory Commission on Federal Areas in Alaska. Section 3, ch. 37, SLA 1982, effective June 30, 1988, repeals this paragraph.

The second 1982 amendment rewrote this section.

The 1983 amendment rewrote paragraph (13).

The 1984 amendment added paragraph (22).

NOTES TO DECISIONS

The thrust of the exemptions in this chapter, the Public Employees Retirement System, former AS 39.35.680(5)(c), and the statutory leave provisions for state employees, AS 39.20.310, is to provide for those public employees who are not susceptible to ordinary recruiting and examining procedures. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

No inconsistency between ferry crew exemption of this section and inclusion of such personnel with Public Employment Relations Act, AS 23.40.070 et seq. — See Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Sec. 39.25.120. Partially exempt service. (a) Positions in the partially exempt service are included in the position classification plan established under this chapter and are compensated according to the pay plan (AS 39.27.011).

(b) A person holding a position in the partially exempt service is not required to take an examination or qualify or earn a place on a register,

CHAPTER = 44.83
SECTION = 44.83.030
TITLE = 44

HEADINGS TITLE 44.
State Government.
CHAPTER 83.
Alaska Power Authority.
ARTICLE 1.
Creation and Organization.

CITATION Sec. 44.83.030.

CATCH LINE
MEMBERSHIP OF THE AUTHORITY.

TEXT The authority shall consist of the following directors:

(1) three public directors to be appointed by the governor and confirmed by the legislature; only one director may be appointed from each judicial district described in AS 22.10.010;

(2) the director of the office of management and budget, or the director's designee within that office, and three commissioners of principal executive departments appointed by the governor.

HISTORY (Sec. 1 ch 278 SLA 1976; am sec. 2 ch 156 SLA 1978; am sec. 2 ch 118 SLA 1981; am sec. 25 ch 63 SLA 1983)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

HISTORICAL REVIEW OF THE COMPOSITION OF THE APA BOARD:

1976: 4 public members, appointed by the Governor, and the Commissioner of DCED;

1978: 4 directors, appointed by the Governor, and the Commissioner of DCED. Commissioners of C&RA, DNR, DOT, and Revenue have the rights and privileges, but not voting.

1979: same

1980: same

1981: same

1982: 3 public members from different judicial districts; director of management and Budget, and 3 commissioners.

1983: same

1984: 7 directors, with 6 of those members appointed by the Governor. Of the 7, 3 must be public members, 3 must be commissioners, and the director of OMB.

1985: same

Adivisory Committee on Statewide Power Production Recommendation: Change the current composition of the APA Board to give it long term stability, free from political pressure.

9 member Board, with 6 year staggered terms, composed as follows:

1) One Commissioner (DCED)
2) four members from the utility industry
3) Two members from business and industry
4) one banker
5) one consumer representative

Review of APA Board Composition

BOARD: POWER AUTHORITY, ALASKA

TITLE: Alaska Power Authority

DEPT: Department of Commerce and Economic Development

AUTHORITY: AS 44.83.010

STATUS: ACTIVE

REQUIREMENTS: FINANCIAL DISCLOSURE

PROHIBITIONS:

TERM: 4-year - overlapping

DESCRIPTION: 7 directors - 6 appointed by Governor: 3 public from different judicial districts (for terms), and 3 Commissioners, plus Director, Div. of Budget and Management; Board elects Chair.

SPECIAL FACTS: Quorum - 4 members; public corporation with independent legal existence; receives grants

FUNCTION: Promote general prosperity and economic welfare of Alaskans by providing a means of constructing, acquiring, financing, and operating power projects and facilities that recover and use waste energy.

COMPENSATION: Standard travel/per diem

MEETINGS: 12 times per year; 48 days maximum

*FOR FURTHER INFORMATION CONTACT: Executive Director, Alaska Power Authority, 334 West Fifth Avenue, Second Floor, Anchorage, AK 99501 - 276-0001

85

Power Authority

MEMBER	APPT	REAPPT	TERM
David L. Allison 217 Second Street Juneau 99801 Public/Restricted	83/07/06	84/07/02	88/07/01
Robert L. Hufman 1018 Galena Street Fairbanks 99701 Public/Restricted	83/02/28	83/06/30	87/07/01
Richard J. Knapp DOT/PF - Pouch Z Juneau 99811 Comm./State Dept.	84/06/30		
Loren Lounsbery DCED Juneau 99811 Comm./State Dept.	85/01/03		
Gordon Harrison OME Juneau 99811 OMB-Dir/Mandate	84/11/13		
Lee R. Nunn, Jr. 6311 Habicht Court Anchorage 99504 Public/Restricted	83/06/07		85/07/01
Esther Wunnicke DNR Juneau 99811 Comm./State Dept.	83/01/18		

BOARD: POWER AUTHORITY, ALASKA

TITLE: Alaska Power Authority

DEPT: DCED

AUTHORITY: AS 44.83.010

STATUS: ACTIVE

REQUIREMENTS: FINANCIAL DISCLOSURE

PROHIBITIONS:

TERM: 4-year - overlapping

DESCRIPTION: 7 directors - 6 appointed by Governor: 3 public from different judicial districts (for terms), and 3 Commissioners, plus Director, Div. of Budget & Management; Board elects Chair.

SPECIAL FACTS: Quorum - 4 members; public corporation with independent legal existence; receives grants

PURPOSE: Promote general prosperity and economic welfare of Alaskans by providing a means of constructing, acquiring, financing and operating power projects and facilities that recover and use waste energy.

COMPENSATION: Standard travel/per diem

MEETINGS: 12 times per year; 48 days maximum

Staff: Power Authority, Larry Crawford, E.D., 334 West Fifth Avenue, Suite 300 Anchorage 99501 - 277-7641

84

Power Authority

MEMBER	APPT	REAPPT	TERM
David L. Allison 217 Second Street Juneau 99801 Pub/Restricted	83/07/06		84/07/01
Robert Heath Revenue Juneau 99811 Comm./ST Dept.	83/11/23		
Robert L. Hufman 1018 Galena Street Fairbanks 99701 Pub/Restricted	*83/02	83/06/30	87/07/01
Richard Lyon Commerce Juneau 99811 Comm./ST Dept. - Chair	83/01/18		
Pete McDowell OMB Juneau 99811 OMB-Dir/Mandate	83/01/18		
Lee R. Nunn, Jr. 6311 Habicht Court Anchorage 99504 Pub/Restricted	83/06/07		85/07/01
Esther Wunnicke DNR Juneau 99811 Comm./ST Dept.	83/01/18		

84

POWER AUTHORITY, ALASKA
(SLA 278; AS 44.83.010) 3 public members from different judicial districts; director of Budget & Management; 3 commissioners. Requires financial disclosure.

MEMBERS	REPLACING	APPT.	TERM
Mr. Charles Conway 821 N Street, Suite 201 Anchorage, Alaska 99501 (Chair)	Reappointed	81/08/17	84/07/01
Mr. Robert B. Weeden Box 80425 Fairbanks, Alaska 99701 479-6664	Reappointed	81/08/17	83/07/01
Mr. John Schaeffer Box 106 Kotzebue, Alaska 99752		81/09/01	85/07/01

Ron Lehr, Director
Division of Budget & Management
Pouch AM
Juneau, Alaska 99811

The Honorable Robert Ward
Commissioner
Dept. of Transportation
& Public Facilities
Pouch Z
Juneau, Alaska 99811

The Honorable Chuck Webber
Commissioner
Dept. of Commerce & Economic
Development
Pouch D
Juneau, Alaska 99811

The Honorable Ernst Mueller
Commissioner
Dept. of Environmental Conservation
Pouch O
Juneau, Alaska 99811

CONTACT AGENCY:
Eric Yould, Executive Director
333 W. Fourth Street
Anchorage, AK 99501
(277-7641)

ID #1 (G-11)

82/83

POWER AUTHORITY, ALASKA
(SLA 278; AS 44.83.010) 3 public members from different judicial districts; director of Budget & Management; 3 commissioners. Requires financial disclosure.

MEMBERS	REPLACING	APPT.	TERM
Mr. Charles Conway 821 N Street, Suite 201 Anchorage, Alaska 99501 (Chair)	Reappointed	81/08/17	84/07/01
Mr. Robert B. Weeden Box 80425 Fairbanks, Alaska 99701 479-6664	Reappointed	81/08/17	83/07/01
Mr. John Schaeffer Box 106 Kotzebue, Alaska 99752		81/09/01	85/07/01

Ron Lehr, Director
Division of Budget & Management
Pouch AM
Juneau, Alaska 99811

Commissioner Robert Ward
Dept. of Transportation
& Public Facilities
Pouch Z
Juneau, Alaska 99811

Commissioner Chuck Webber
Dept. of Commerce & Economic
Development
Pouch D
Juneau, Alaska 99811

Commissioner Ernst Mueller
Dept. of Environmental Conservation
Pouch O
Juneau, Alaska 99811

CONTACT AGENCY:
Eric Yould, Executive Director
333 W. Fourth Street
Anchorage, AK 99501
(277-7641)

82

POWER AUTHORITY, ALASKA
(SLA 278; AS 44.83.010) 4 public members; financial disclosure;
four-year terms.

MEMBERS	REPLACING	APPT.	TERM
Thomas E. Kelly 225 Cordova, Building B Suite 307 Anchorage, Alaska 99501	Charles Behlke	80/06/23	83/01/01
Mr. Chuck Conway Box 520 Sitka, Alaska 99835	Reappointed	80/12/15	85/01/01
Robert B. Weeden Box 80425 Fairbanks, Alaska 99701	Jacob Wick	80/06/23	84/01/01
Mr. Arnold G. Espe 2204 Arcadia Drive Anchorage, Alaska 99503	Bob Ward	79/02/14	82/01/01

CONTACT AGENCY:
Eric Yould, Executive Director
333 W. Fourth Street
Anchorage, AK 99501
(277-7641)

ID #1 (G-12)

1981

(SLA 278; AS 44.56.010-240) 4 public members; members are subject to *legislative confirmation and financial disclosure; four-year terms.

MEMBERS	REPLACING	APPT.	TERM
Mr. Charles Behlke P. O. Box 80257 Fairbanks, Alaska 99758	Frank Murkowski	79/02/14	83/01/01
Mr. Chuck Conway Box 520 Sitka, Alaska 99835		76/12/21	81/01/01
Mr. Jacob Wick Box 746 Kodiak, Alaska 99615		77/03/25	80/01/01
Mr. Arnold G. Espe 2204 Arcadia Drive Anchorage, Alaska 99503	Bob Ward	79/02/14	82/01/01

CONTACT AGENCY:
Commerce & Economic Development
(465-2500)
*Confirmation is required by statute but is not allowed under the constitution.
ID #80

1980

ALASKA POWER AUTHORITY
(SLA 278; AS 44.56.010-240) 4 public members; members are subject to *legislative confirmation and financial disclosure.

MEMBERS	REPLACING	APPT.	TERM
Mr. Charles Behlke P. O. Box 80257 Fairbanks, Alaska 99758	Frank Murkowski	79/02/14	83/01/01
Mr. Chuck Conway Box 520 Sitka, Alaska 99835		76/12/21	81/01/01
Mr. Jacob Wick Box 746 Kodiak, Alaska 99615		77/03/25	80/01/01
Mr. Arnold G. Espe 2204 Arcadia Drive Anchorage, Alaska 99503	Bob Ward	79/02/14	82/01/01

CONTACT AGENCY:
Commerce & Economic Development
(465-2500)
*Confirmation is required by statute but is not allowed under the constitution.
ID #80

(SLA 278; AS 44.56.010-240; 4 pubic members; members are subject *legislative confirmation andffinancial disclosure)

NAMES AND ADDRESSES	Replacing	New	Appt.	Acct.	Term Expir
Frank Murkowski 3 Mi. Chena Pump Road Fairbanks 99701			2/21/76		1/1/79
Chuck Conway Box 520 Sitka 99835			2/21/76		1/1/81
Jacob Wick Box 746 Kodiak 99615			2/25/77		1/1/80
Bob Ward 6711 Foothill Dr. Anchorage 99501			1/6/77 *		1/1/82

CONTACT AGENCY: Department of Commerce and Economic Development
Office of the Commissioner
(465-2500)

* Confirmation is required by statute but is not allowed under the constitution

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 292 Sectional Analysis

Section 1) Adds the APA to the list of Boards, Commissions, and authorities whose officers and employees are in the exempt service.

Section 2) Changes the composition of the APA Board to seven members as follows:

Commissioner of DCED

one director from the banking industry

one consumer representative

two directors from business and industry

two directors who are managers in the utility industry;

Directors appointed by the Governor shall serve staggered 6 year terms, and are subject to confirmation by the Legislature.

Section 3) Adds new language so that the board advises the executive director, rather than the powers of authority being held directly by the board.

Section 4) Directors appointed by the Governor must be state residents and comply with conflict of interest provisions.

Section 5) Adds language so that the powers of the authority are vested in the executive director. Adds staff of the APA to the exempt service category.

Section 6) Amends language to be consistent with sections 3 and 5.

Section 7) Current Public members will serve out their terms.

Section 8) Immediate effective date.

Cramer
2/13/86
#2

Original sponsor: Rules/Governor

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 292 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Alaska Power Authority; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 39.25.110(11) is amended to read:

(11) the officers and employees of the following boards, commissions, and authorities:

(A) Alaska Gas Pipeline Financing Authority;

(B) Alaska Permanent Fund Corporation;

(C) Alaska Energy Center;

(D) Alaska Industrial Development Authority;

(E) Alaska Commercial Fisheries Entry Commission;

(F) Alaska Commission on Postsecondary Education;

(G) Alaska Power Authority;

* Sec. 2. AS 44.83.030 is repealed and reenacted to read:

Sec. 44.83.030. MEMBERSHIP OF THE AUTHORITY. The board of directors of the authority consists of seven members. The commissioner of commerce and economic development serves as a director and the governor shall appoint one director from the banking industry, one consumer representative, two directors from business and industry, and two directors who are managers in the utility industry. Directors appointed by the governor serve for staggered terms of six years and are subject to confirmation by a majority of the members of the legislature in joint session.

* Sec. 3. AS 44.83.040(a) is amended to read:

(a) The directors shall elect one of their number as chairman and may elect other officers they determine desirable. The board shall advise the executive director on the management of the authority. Four [THE POWERS OF THE AUTHORITY ARE VESTED IN THE DIRECTORS, AND FOUR] directors of the authority constitute a quorum. Action may be taken and motions and resolutions adopted by the authority at a meeting by the affirmative vote of a majority of the directors. The directors of the authority serve without compensation, but they shall receive the same travel pay and per diem as provided by law for board members.

* Sec. 4. AS 44.83.045(a) is amended to read:

(a) The [PUBLIC] directors appointed by the governor must [SHALL] be residents and qualified voters of Alaska and shall comply with the requirements of AS 39.50 (conflict of interests). [THE PUBLIC DIRECTORS SHALL SERVE OVERLAPPING FOUR-YEAR TERMS.]

* Sec. 5. AS 44.83.045(c) is amended to read:

(c) The authority shall employ an executive director who may [, WITH THE APPROVAL OF THE AUTHORITY,] employ additional staff as necessary. The powers of the authority are vested in the executive director. In addition to its staff of regular employees, the authority may contract for and engage the services of legal and bond counsel, consultants, experts, and financial and technical advisors the authority considers necessary for the purpose of conducting studies, investigations, hearings, or other proceedings. The board of directors shall establish the compensation of the executive director. The executive director and staff of the authority are in the exempt service under AS 39.25.110 [IS SUBJECT TO THE PROVISIONS OF AS 39.25.010 - 39.25.-220].

* Sec. 6. AS 44.83.110(f) is amended to read:

(f) The executive director [CHAIRMAN] of the authority shall annually, no later than January 2, make and deliver to the governor and the legislature a certificate stating the sum, if any, required to restore any capital reserve fund to the capital reserve fund requirement. The legislature may appropriate the [SUCH A] sum, and the authority shall deposit the [ALL] sums appropriated during the then current fiscal year by the legislature for the [SUCH] restoration [SHALL BE DEPOSITED BY THE AUTHORITY] in the proper capital reserve fund. Nothing in this section creates a debt or liability of the state.

* Sec. 7. Notwithstanding the amendments to AS 44.83.030 made by sec. 2 of this Act, the public directors of the authority on the day before the effective date of this Act shall continue to serve until their terms expire. On the effective date of this Act, the governor shall replace the director of the office of management and budget and the three commissioners in accordance with AS 44.83.030 as amended by this Act.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 4/19/85
Referred: Labor and Commerce
and State Affairs

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 292

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act placing the employees of the Alaska Power Authority in the exempt service under the State Personnel Act; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 39.25.110(11) is amended to read:

(11) the officers and employees of the following boards, commissions, and authorities:

(A) Alaska Gas Pipeline Financing Authority;

(B) Alaska Permanent Fund Corporation;

(C) Alaska Energy Center;

(D) Alaska Industrial Development Authority;

(E) Alaska Commercial Fisheries Entry Commission;

(F) Alaska Commission on Postsecondary Education;

(G) Alaska Power Authority;

* Sec. 2. AS 44.83.045(c) is amended to read:

(c) The authority shall employ an executive director who may, with the approval of the authority, employ additional staff as necessary. In addition to its staff of regular employees, the authority may contract for and engage the services of legal and bond counsel, consultants, experts, and financial and technical advisors the authority considers necessary for the purpose of conducting studies, investigations, hearings, or other proceedings. The board of directors shall establish the compensation of the executive director. The executive director and staff of the authority are in the exempt

SB 292

service under AS 39.25.110 [IS SUBJECT TO THE PROVISIONS OF AS 39.25.-010 -- 39.25.220].

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

CHAIRMAN'S INFORMATION: CSSB 292 (L&C)

1) BILL TITLE: "An act relating to the Alaska Power Authority; and providing for an effective date."

a) Introduced: Governor (subcommittee rolled in contents of SB 265 changing the composition of the APA Board)

b) Co-sponsors:

2) INTENT: This measure clarifies that employees of APA are in the exempt service, and restructures the composition of the Power Authority Board. Powers of the authority would be vested in the executive director, and the board shall advise the executive director on the management of the authority.

FISCAL NOTE: 0

N.B. NO EFFECTIVE DATE CLAUSE

3) ADDITIONAL REFERRALS: State Affairs, Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt the L&C CS

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

295

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 295
Title : Treatment of a mental or nervous condition in certain policies
Sponsor : Faiks
Requestor :
Date of Request :

FISCAL DETAIL

Agency Affected : Commerce & Econ. Dev.
BRU : Consumer Protection
Components : Insurance

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : John George, Director Phone : 465-2515
Division : Insurance Date : _____

Approved by Commissioner : Loren H. Lounsbury Date : 1/15/86
Agency : Commerce and Economic Development

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

2227WA11586b,

FISCAL NOTE

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 295

Title: Treatment of a mental or nervous condition in certain policies

Sponsor: Faiks

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected: Consumer Protection

BRU, Program or Subprogram(s) Affected: Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: John George, Director Phone: 465-2515

Division: Insurance Date: 4/25/85

Approved by Commissioner: Loren H. Lounsbury Date: 4/26/85

Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

2227WA42585a

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No.: SB 295
Title: An Act Requiring Insurers to offer coverage for the treatment of ...
Sponsor: Faiks
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: All State Agencies
BRU: Retirement and Benefits

Components: Retirement and Benefits (GHLB)

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES						
RTMNT & BNFTS						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
TRS MATCH						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
POSITIONS:	-0-	-0-	-0-	-0-	-0-	-0-
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

J.K. Humphreys

Prepared By: J.K. Humphreys, Director
Phone: 465-4470
Division: Retirement & Benefits
Date: 2/21/86

Approved by Commissioner: Eleanor Andrews
Date: 3/4/86
Agency: Department of Administration

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Rev. 11/15/85

Senate Bill 295
Fiscal Note Analysis
Prepared by Division of Retirement & Benefits
Department of Administration
February 21, 1986

Analysis: Passage of this bill would require insurers to offer an option to receive certain minimum coverage for treatment of a mental or nervous condition.

It is our understanding that an employer, as policy holder of a group plan, could elect this option for covered employees. Employees in a group plan could not make this election on an individual basis.

The State of Alaska now provides mental health coverage for all eligible employees. The level of this coverage is somewhat less than that provided for in the bill in an effort of cost containment in the Plan. Health insurance benefits are determined at the bargaining table. This bill would not affect our present level of coverage or cost.

Should the higher level of coverage described in the bill be incorporated into the state's health plans, FY 87 costs to the state are estimated to increase by $1,522,024.

This cost is calculated as follows:

The increase of $2.65 per month health cost times the number of state employees (13,200) times 12 months equals	$419,760
The change in the PERS employer contribution rate (.12%) times the estimated FY 87 state PERS salaries ($590,176,728) equals	$708,212
The change in the TRS employer contribution rate (.075%) times the estimated FY 87 state TRS salaries ($68,569,578) equals	$ 51,427
The changes in the TRS state match contribution rate (.075%) times the estimated FY 87 TRS system salaries ($456,833,417) equals	$342,625
Total	$1,522,024

Introduced: 4/22/85
Referred: Labor & Commerce and
Health, Education & Social Services

IN THE SENATE BY FAIKS

SENATE BILL NO. 295

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act requiring insurers to offer coverage for the treatment of a mental or nervous condition in certain health insurance policies."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.42 is amended by adding a new section to read:

Sec. 21.42.365. COVERAGE FOR TREATMENT OF A MENTAL OR NERVOUS CONDITION. (a) An insurer that issues for delivery, delivers, or renews a health insurance policy in the state after the effective date of this section shall offer the insured an option to receive the following minimum coverage for treatment of a mental or nervous condition of the insured or other person who would otherwise be covered by the insured's health insurance policy:

(1) 45 days a year of inpatient treatment for each covered individual;

(2) 30 visits a year of outpatient treatment for each covered individual.

(b) The health insurance policy may impose reasonable contract limitations, but may not require that the insured pay a higher deductible or co-payment for a cost for treatment of a mental or nervous condition than for a cost for treatment of another condition or illness.

(c) In this section

(1) "co-payment" means the portion of the cost to be paid by the insured;

SB 295

(2) "cost" means the lesser of the following:

(A) the actual charge for the treatment received for a mental or nervous condition; or

(B) the usual, customary and reasonable charge for the treatment in the judicial district of this state where the treatment was rendered;

(3) "health insurance policy" means a hospital or medical expense policy, or a nonprofit health care corporation plan;

(4) "inpatient treatment" means continuous treatment of more than 12 hours in a 24-hour period in the psychiatric unit of a general hospital licensed under AS 18.20, in a psychiatric hospital that is licensed under AS 18.20, or in a hospital in the state that is specifically exempt under AS 18.20.020 from the licensing requirements of the state;

(5) "mental or nervous condition" means an impairment of psychobiological processes that is severe enough to cause social, psychological, or biological malfunctioning; "mental or nervous condition" includes a substantial disorder of thought, mood, perception, orientation, or memory that significantly impairs judgment, behavior, capacity to recognize, or ability to cope with the ordinary demands of life; mental retardation, epilepsy, drug addiction, and alcoholism do not constitute a mental or nervous condition although a person who suffers from one or more of these conditions may also be suffering from a mental or nervous condition;

(6) "outpatient treatment" means treatment that is not inpatient treatment and that is provided under the supervision of

(A) a psychiatrist who is licensed as a physician in the state and certified in psychiatry by the American Board of Psychiatry and Neurology;

(B) a physician who is employed by the federal government in this state and certified in psychiatry by the American Board of Psychiatry and Neurology; or

(C) a psychologist or psychological associate licensed under AS 08.86.

* Sec. 2. AS 21.87.340 is amended to read:

Sec. 21.87.340. OTHER PROVISIONS APPLICABLE. In addition to the provisions contained or referred to previously in this chapter, the following chapters and provisions of this title also apply with respect to service corporations to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications of the express provisions, and for the purposes of the application the corporations shall be considered to be mutual "insurers":

(1) AS 21.03

(2) AS 21.06

(3) AS 21.09, except AS 21.09.090

(4) AS 21.18.010

(5) AS 21.18.030

(6) AS 21.18.040

(7) AS 21.18.120

(8) AS 21.21.321

(9) AS 21.36

(10) AS 21.69.400

(11) AS 21.69.520

(12) AS 21.69.600, 21.69.620, and 21.69.630

(13) AS 21.78

(14) AS 21.90

(15) AS 21.42.345 - 21.42.365 [AND 21.42.355]

(16) AS 21.89.040

(17) AS 21.89.060.

Blue Cross
of Washington and Alaska

3111 C Street, Suite 100
P.O. Box 10-2480
Anchorage, Alaska 99510-2480
(907) 561-5065

January 22, 1986

JAN 3 0 1986

The Honorable Jan Faiks
The Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Senator Faiks:

During the 1985 session of the legislature, you introduced Senate Bill 295, "an act requiring insurers to offer coverage for the treatment of a nervous and mental condition in certain health insurance policies."

Through the courtesy of your staff, I was asked to review the text of the bill, to point out areas which might be a problem to us, and to provide some general cost figures should such a benefit be elected by a group purchasing coverage for a nervous and mental condition from Blue Cross of Washington and Alaska. As I informed your staff, our Plan suggested four wording changes in the text of the bill. The first change appears on page 1, lines 15 and 16, "... condition of the insured or other person who would otherwise be covered by ...." We suggest the word "eligible" be inserted between the words "other" and "person" and that the phrase "who would otherwise be" be deleted. This addition and deletion would make the statement clearer as to who may be covered by the benefit.

The second change appears on page 2, lines 4-6. The bill reads "the usual, customary and reasonable charge for the treatment in the judicial district of the state where the treatment was rendered." This statement could put this section in conflict with the proposed usual, customary and reasonable part of the rules on unfair claims that are expected to be adopted by the Division of Insurance in late January or early February 1986. We suggest the deletion of the last 12 words of lines 4-6. It is important to Blue Cross of Washington and Alaska and other carriers to have uniform rules governing the administration of usual, customary and reasonable charges in order to avoid increased costs and confusion for the provider and patient alike.

BACK UP INFORMATION

Our third suggested change occurs where the word "certified" appears on both page 2, line 28 and page 3, line 2. We suggest the phrase "or eligible for certification" be added after the word "certified." This additional phrase may make it easier for a patient to access professional care. The eligible for certification language will access care from a physician who has completed their residency requirements in psychiatry but may be waiting for the results of the examinations.

The fourth wording change suggested by our Plan is found on page 3, lines 4 and 5, "a psychologist or psychological associate licensed under AS 08.86." I am suggesting the deletion of all words after "psychologist" on line 4. The scope of practice of the psychological associate (AS 08.64.164(a)(b)(c)and(d)) will prevent their providing services or supervision in situations unspecified by their license, registered with their board, or not approved by a supervising psychologist. It is important to the Plan that services for nervous and mental conditions be of high quality and provided in such a manner as to reduce excessive utilization.

Blue Cross of Washington and Alaska's Actuarial Department has made some general estimates regarding costs of providing this nervous and mental condition benefit to groups. These estimates are made without the knowledge of the mix of potential patients, locations of groups, or other medical or demographic information. More exact figures would be available if specific information were available. Using the following characteristics, Blue Cross of Washington and Alaska developed some very broad information on expected costs for this coverage.

Community size	11 to 24 persons
Deductable	$100.00
Co-insurance	20 percent

Limits of Coverage	Employee Only	Employee Spouse Children	Employee Spouse	Employee Children
45 days inpatient hospitalization	$0.65	$ 1.79	$ 1.30	$1.17
50 hours per year outpatient care	4.55	12.51	9.10	8.19
	$5.20	$14.30	$10.40	$9.36

The offering of benefits for specific situations, illnesses or conditions is an equitable method of providing coverage to groups and their members. The choice remains with the group where it may have been negotiated or otherwise determined by the group and its members. In this manner, the health benefit dollar can be utilized to provide the most appropriate benefits for that group. Requirements to provide coverage neglect consideration of the location of the group, the availability of competent providers, the needs of the employees and even the availability of funds to provide basic coverage.

I hope this letter will provide you with positive information for your consideration. If I can be of further assistance, please do not hesitate to contact me at the Anchorage District Office, 563-2728, or my Juneau home, 586-3141.

It will be a pleasure to work with you on the legislation.

Sincerely,

Martin E. Tirador, Senior Representative
Corporate Relations

Department of Commerce & Economic Development / POSITION PAPER

SB 295 "An Act requiring insurers to offer coverage for the treatment of a mental or nervous condition in certain health insurance policies."

The department does not favor the mandate of any kind of health insurance in a policy voluntarily purchased. The department has in the past supported legislation addressing provider discrimination or recipient discrimination. This proposal does not address a discrimination issue. It mandates specific levels of coverage for treatment of a nervous or mental condition.

While the bill does not directly impact the programs of the Division of Insurance, it does impact market availability of health insurance in this State. The areas of concern with this legislation include:

1. This bill conflicts with the ERISA preemption and the NLRA provisions relating to plans which are established pursuant to a collective bargaining agreement.

2. This bill will tend to force the small to medium sized insurer from the marketplace for lack of underwriting expertise relating to the mandated coverage or ability to write it economically.

3. A demand for the coverage has not become evident. If a coverage is economic and there is sufficient demand for it, competition will assure that coverage is available;

4. The bill does not apply to self-insurers and, since it does not, may lead to the self-insuring of risks that should not be self-insured.

5. The cost of the mandated coverage can be of such consequence as to discourage purchase at all or to force exclusion of more popular coverages such as vision care and dental care. To the degree that available dollars for health care are fixed, this bill has the effect of decreasing health care dollars for things now covered.

6. The Federal Government is currently considering a tax on the cost of benefits above a certain amount. It would be unfair to force a person into a position where coverages he or she dos not want or does not need cause taxation for coverages that are wanted and needed.

Loren H. Lounsbury, Commissioner

Date: 1/15/86

2227WB11586b

Bannister
2/13/86

[redacted] = CS changes

Original sponsor: Faiks

mv state opt. - private

BY THE LABOR AND COMMERCE COMMITTEE

IN THE SENATE

CS FOR SENATE BILL NO. 295 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring insurers to offer coverage for the treatment of a mental or nervous condition in certain health insurance policies."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.42 is amended by adding a new section to read:

Sec. 21.42.365. COVERAGE FOR TREATMENT OF A MENTAL OR NERVOUS CONDITION. (a) An insurer that issues for delivery, delivers, or renews a health insurance policy in the state after the effective date of this section shall offer the insured (agency) an option (a mandatory) to receive the following minimum coverage for treatment of a mental or nervous condition of the insured or other eligible person who would otherwise be covered by the insured's health insurance policy:

(1) 45 days a year of inpatient treatment for each covered individual;

hrs of equivalent treatment

(2) 30 [visits] a year of outpatient treatment for each covered individual.

(b) The health insurance policy may impose reasonable contract limitations, but may not require that the insured pay a higher deductible or co-payment for a cost for treatment of a mental or nervous condition than for a cost for treatment of another condition or illness.

(c) In this section

(1) "co-payment" means the portion of the cost to be paid by the insured;

(2) "cost" means the lesser of the following:

(A) the actual charge for the treatment received for a mental or nervous condition; or

(B) the usual, customary and reasonable charge for the treatment; IN the judicial district where treatment IS RENDERED.

(3) "health insurance policy" means a hospital or medical expense policy, or a nonprofit health care corporation plan;

(4) "inpatient treatment" means continuous treatment of more than 12 hours in a 24-hour period in the psychiatric unit of a general hospital licensed under AS 18.20, in a psychiatric hospital that is licensed under AS 18.20, or in a hospital in the state that is specifically exempt under AS 18.20.020 from the licensing requirements of the state;

(5) "mental or nervous condition" means an impairment of psychobiological processes that is severe enough to cause social, psychological, or biological malfunctioning; "mental or nervous condition" includes a substantial disorder of thought, mood, perception, orientation, or memory that significantly impairs judgment, behavior, capacity to recognize, or ability to cope with the ordinary demands of life; mental retardation, epilepsy, drug addiction, and alcoholism do not constitute a mental or nervous condition although a person who suffers from one or more of these conditions may also be suffering from a mental or nervous condition;

(6) "outpatient treatment" means treatment that is not inpatient treatment and that is provided under the supervision of

(A) a psychiatrist who is licensed as a physician in the state and certified, or eligible for certification, in psychiatry by the American Board of Psychiatry and Neurology;

(B) a physician who is employed by the federal

government in this state and certified in psychiatry by the American Board of Psychiatry and Neurology; or

(C) a psychologist licensed under AS 08.86. OR psychological ASSOCIATE

* Sec. 2. AS 21.87.340 is amended to read:

Sec. 21.87.340. OTHER PROVISIONS APPLICABLE. In addition to the provisions contained or referred to previously in this chapter, the following chapters and provisions of this title also apply with respect to service corporations to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications of the express provisions, and for the purposes of the application the corporations shal be considered to be mutual "insurers":

(1) AS 21.03

(2) AS 21.06

(3) AS 21.09, except AS 21.09.090

(4) AS 21.18.010

(5) AS 21.18.030

(6) AS 21.18.040

(7) AS 21.18.120

(8) AS 21.21.321

(9) AS 21.36

(10) AS 21.69.400

(11) AS 21.69.520

(12) AS 21.69.600, 21.69.620, and 21.69.630

(13) AS 21.78

(14) AS 21.90

(15) AS 21.42.345 - 21.42.365 [AND 21.42.355]

(16) AS 21.89.040

(17) AS 21.89.060.

Version #1
Bannister
4/15/86

Original sponsor: Faiks

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 295 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring insurers to offer certain coverage for the treatment of a mental or nervous condition in certain health insurance policies."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.42 is amended by adding a new section to read:

Sec. 21.42.365. COVERAGE FOR TREATMENT OF A MENTAL OR NERVOUS CONDITION. (a) An insurer that issues for delivery, delivers, or renews a health insurance policy in the state after January 1, 1987, shall offer the insured an option to receive the following minimum coverage for treatment of a mental or nervous condition of the insured or other person who would otherwise be covered by the insured's health insurance policy:

(1) 45 days a year of inpatient treatment for each covered individual;

(2) a total of 50 hours a year of outpatient treatment for each covered individual, accumulated in any increments of time.

(b) The health insurance policy may impose reasonable contract limitations, but may not require that the insured pay a higher deductible or co-payment for a cost for treatment of a mental or nervous condition than for a cost for treatment of another condition or illness.

(c) In this section

(1) "co-payment" means the portion of the cost to be paid by the insured;

(2) "cost" means the lesser of the following:

(A) the actual charge for the treatment received for a mental or nervous condition; or

(B) the usual, customary and reasonable charge for the treatment;

(3) "health insurance policy" means a hospital or medical expense policy, or a nonprofit health care corporation plan;

(4) "inpatient treatment" means continuous treatment during a 24-hour period in the psychiatric unit of a general hospital licensed under AS 18.20, a psychiatric hospital that is licensed under AS 18.20, or a hospital in the state that is specifically exempt under AS 18.20.020 from the licensing requirements of the state;

(5) "mental or nervous condition" means a mental disorder identified in

(A) the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) published by the American Psychiatric Association; or

(B) the ICD-9-CM (First Edition) published by the Commission on Professional and Hospital Activities;

(6) "outpatient treatment" means treatment that is not inpatient treatment and that is provided by one or more of the following, or by a person who is under the direct supervision of one or more of the following, has a master's or doctorate degree in psychology, nursing, or social work, and is employed by the same health care facility as the person or persons providing the direct supervision,

(A) a psychiatrist who is licensed as a physician in the state and certified, or eligible for certification, in psychiatry by the American Board of Psychiatry and Neurology;

(B) a physician who is employed by the federal

government in the state and certified or eligible for certification in psychiatry by the American Board of Psychiatry and Neurology; or

(C) a psychologist licensed under AS 08.86.

* Sec. 2. AS 21.36.090(d) is amended to read:

(d) Except to the extent necessary to comply with AS 21.42.365, a [A] person may not practice or permit unfair discrimination against a person who provides a service covered under a group disability policy that extends coverage on an expense incurred basis, or under a group service or indemnity type contract issued by a nonprofit corporation, if the service is within the scope of the provider's occupational license. In this subsection, "provider" means a state licensed physician, dentist, osteopath, optometrist, chiropractor, or nurse midwife.

* Sec. 3. AS 21.87.340 is amended to read:

Sec. 21.87.340. OTHER PROVISIONS APPLICABLE. In addition to the provisions contained or referred to previously in this chapter, the following chapters and provisions of this title also apply with respect to service corporations to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications of the express provisions, and for the purposes of the application the corporations shall be considered to be mutual "insurers":

(1) AS 21.03

(2) AS 21.06

(3) AS 21.09, except AS 21.09.090

(4) AS 21.18.010

(5) AS 21.18.030

(6) AS 21.18.040

(7) AS 21.18.120

(8) AS 21.21.321

(9) AS 21.36

(10) AS 21.69.400

(11) AS 21.69.520

(12) AS 21.69.600, 21.69.620, and 21.69.630

(13) AS 21.78

(14) AS 21.90

(15) AS 21.42.345 - 21.42.365 [AND 21.42.355]

(16) AS 21.89.040

(17) AS 21.89.060.

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740

JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

April 22, 1985

MEMORANDUM

TO: Members of Senate Labor and Commerce Committee

FROM: Senator Jan Faiks

SUBJECT: Background on Senate Bill 295

This bill will require insurers to offer their customers the opportunity to purchase minimum mental health coverage in all health insurance policies sold in Alaska.

Currently, twelve states have passed similar laws which require that policy holders be given the opportunity to purchase mental health insurance. Fourteen other states take a stronger position; they do not give the policy holders an option, but rather require that minimum mental health coverage be included in every health insurance policy.

This bill adopts the "mandatory option" approach because it allows subscribers to decide whether the benefits of mental health coverage are worth the added premium costs, and it preserves this option for the collective bargaining process.

Most states that require mental health coverage also define the minimum coverage that must be offered. Senate Bill 295 requires a minimum of 45 days of inpatient treatment and 30 visits of outpatient treatment per year.

These requirements are consistent with the requirements of other states. For inpatient services, four states require a minimum of 30 days, while two other states require 45 days. For outpatient services, minimum requirements are expressed in either visits (one other state calls for thirty per year) or dollar limits (six state have minimums ranging from $500 to $1000 per year). The remaining states require only that mental health benefits be on par with those offered for other illnesses.

When mental health coverage is offered, usually the benefits are much less tha those available for other treatment. Insurers will often require that their customers pay a higher deductible or a greater portion of the cost of mental health services.

In a 1980 survey of health insurance plans in Alaska, 87% offered inpatient coverage and 74% offered outpatient coverage for mental illness. If these plans follow a national pattern which was identified in a 1983 study, only half of our plans will offer inpatient and less than 10% will offer outpatient benefits that are equal to coverage that is offered for other illnesses.

In order that mental health coverage be given parity with other coverages, then, this bill requires that the former be offered under the same terms as the latter.

There are several myths that have impeded the requiring of mental health coverage in health insurance policies. According to one belief, the costs of psychiatric treatment are unpredictable and uncontrollable.

This belief stems in part from the common perception of mental illness in terms of only its more serious forms, like schizophrenia. However, only 15% of persons who are treated in private mental hospitals suffer from this acute disease. For most forms of mental illness, only one hospital stay with several follow-up visits are all that is needed for successful treatment.

From seven to ten percent of subscribers use mental health benefits when these are available in their policies. This is approximately the same rate that subscribers use extra care from other medical specialists.

There is no evidence that mental health benefits are abused at a rate that differs from other health benefits. If insurers are concerned about accountability, they can subscribe to peer review services that will review the validity of individual claims. These services have shown a costs-to-savings ratio of 1:100.

It is true that mental health coverage will mean higher premium cost to subscribers. However, this cost is not substantial. A national survey of 79 major corporate plans revealed that the average annual premium increase for each subscriber was $29.47.

On the other hand, psychotherapy produces savings in the form of increased employee productivity and reduced absenteeism. The Equitable Life Assurance Society has verified that every dollar invested in mental health treatment results in a three dollar increase in productivity.

Medical science has long recognized the correlation between physical disease and mental health. Many dollars that are now paid for other medical services are actually paid for the indirect treatment of mental impairments. In addition, studies have proven that direct treatment of mental problems results in lower costs for other medical care.

In a 1983 study, a moderate amount of psychotherapy was shown to significantly reduce hospital costs for persons suffering from four different types of chronic disease. Another study that same year showed that patients who received outpatient psychotherapy treatment used 56% fewer medical services than those who had not been treated.

Finally, there is a cost savings that will be enjoyed by the State of Alaska. Nationwide, the state governments pay about 50% of the total cost of our mental health bill. When subscribers are given access to mental health coverage on the same basis as other medical benefits, more of this burden will be shifted from the State to the private sector.

CHAIRMAN'S INFORMATION: SB 295

1) BILL TITLE: "An act requiring insurers to offer certain coverage for the treatment of a mental or nervous condition in certain health insurance policies."

   a) Introduced: Sen Faiks

   b) Co-sponsors:

2) INTENT: Measure requires insurers to offer an option for minimum mental health coverage in all health insurance policies sold in Alaska after Jan 1, 1987.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: HESS and Rules

4) PUBLIC HEARINGS:

   a) Sponsor:

   b) Public Witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from committee?
   d) Close public hearings?

6) COMMITTEE ACTION?

   a) amendments?
   b) CS adoption? Need to adopt the L&C CS for purposes of discussion.

#1

SCS CSHB 305(L&C)
Amendment #1
by Sackett
Zharoff and

Page 4, line 9, add a new Sec. 8 AS 08.13.140 is amended to read:

Section 08.13.140. Lapsed License. A lapsed license may be reinstated if the license has not been lapsed for a period of more than three years, or otherwise at the discretion of the Board, and all renewal and delinquent fees for the period during which the license has been lapsed are paid.

Renumber remaining sections accordingly

#2

AMENDMENT #2

by Sackett
Zharoff and

SCS CSHB 305(L&C), relating to barbers, hairdressers, and cosmetologists,

Page 3, line 6: following the word "instructor" delete the period, add a semi-colon and the word or, and on line 7, add a new subsection to read:

(6)have completed a combination of coursework and apprenticeship acceptable to the board. (Sec. 1 Ch 159 SLA 1980).

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 295 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring insurers to offer certain coverage for the treatment of a mental or nervous condition in certain health insurance policies."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.42 is amended by adding a new section to read:

Sec. 21.42.365. COVERAGE FOR TREATMENT OF A MENTAL OR NERVOUS CONDITION. (a) An insurer that issues for delivery, delivers, or renews a health insurance policy in the state after January 1, 1987, shall offer the insured an option to receive the following minimum coverage for treatment of a mental or nervous condition of the insured or other person who would otherwise be covered by the insured's health insurance policy:

(1) 45 days a year of inpatient treatment for each covered individual;

(2) a total of 50 hours a year of outpatient treatment for each covered individual, accumulated in any increments of time.

(b) The health insurance policy may impose reasonable contract limitations, but may not require that the insured pay a higher deductible or co-payment for a cost for treatment of a mental or nervous condition than for a cost for treatment of another condition or illness.

(c) In this section

(1) "co-payment" means the portion of the cost to be paid by the insured;

(2) "cost" means the lesser of the following:

(A) the actual charge for the treatment received for mental or nervous condition; or

(B) the usual, customary and reasonable charge for the treatment;

(3) "health insurance policy" means a hospital or medical expense policy, or a nonprofit health care corporation plan;

(4) "inpatient treatment" means continuous treatment during a 24-hour period in the psychiatric unit of a general hospital licensed under AS 18.20, a psychiatric hospital that is licensed under AS 18.20, or a hospital in the state that is specifically exempt under AS 18.20.020 from the licensing requirements of the state;

(5) "mental or nervous condition" means a mental disorder identified in

(A) the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) published by the American Psychiatric Association; or

(B) the ICD-9-CM (First Edition) published by the Commission on Professional and Hospital Activities;

(6) "outpatient treatment" means treatment that is not inpatient treatment and that is provided by one or more of the following, or by a person who is under the direct supervision of one or more of the following, has a master's or doctorate degree in psychology, nursing, or social work, and is employed by the same health care facility as the person or persons providing the direct supervision,

(A) a psychiatrist who is licensed as a physician in the state and certified, or eligible for certification, in psychiatry by the American Board of Psychiatry and Neurology;

(B) a physician who is employed by the federal

government in the state and certified or eligible for certification in psychiatry by the American Board of Psychiatry and Neurology; or

(C) a psychologist licensed under AS 08.86.

* Sec. 2. AS 21.36.090(d) is amended to read:

(d) Except to the extent necessary to comply with AS 21.42.365, a [A] person may not practice or permit unfair discrimination against a person who provides a service covered under a group disability policy that extends coverage on an expense incurred basis, or under a group service or indemnity type contract issued by a nonprofit corporation, if the service is within the scope of the provider's occupational license. In this subsection, "provider" means a state licensed physician, dentist, osteopath, optometrist, chiropractor, or nurse midwife.

* Sec. 3. AS 21.87.340 is amended to read:

Sec. 21.87.340. OTHER PROVISIONS APPLICABLE. In addition to the provisions contained or referred to previously in this chapter, the following chapters and provisions of this title also apply with respect to service corporations to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications of the express provisions, and for the purposes of the application the corporations shall be considered to be mutual "insurers":

(1) AS 21.03

(2) AS 21.06

(3) AS 21.09, except AS 21.09.090

(4) AS 21.18.010

(5) AS 21.18.030

(6) AS 21.18.040

(7) AS 21.18.120

(8) AS 21.21.321

(9) AS 21.36

(10) AS 21.69.400

(11) AS 21.69.520

(12) AS 21.69.600, 21.69.620, and 21.69.630

(13) AS 21.78

(14) AS 21.90

(15) AS 21.42.345 - 21.42.365 [AND 21.42.355]

(16) AS 21.89.040

(17) AS 21.89.060.

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4188 SLAB SB 297 - SB 312

1068

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

354

CC. Sen. Zharoff

February 12, 1986

Senator John Binkley
Alaska State Legislature
Pouch V (MS3100)
Juneau, Alaska 99811

FEB 1 8 1986

Dear John:

I would like your assistance on Senate Bill 354, "An Act relating to reinstatement of certain nonprofit historical aircraft corporations to corporate status; and providing for an effective date", I would like you to vote no on this bill.

As you know I have been in the aviation business for the past 10 years. I have always been interested in aviation history and have tried to work with all of the museums.

But the above bill deals strictly with a corporation, (Alaskan Historical Aircraft Society), that has been operating illegally for the past 5 years. The State of Alaska dissolved it for not filing there annual reports for 1979. But they have continued to act as a nonprofit museum to the general public. They have sought moneys and donations claiming to be a museum; received aircraft for the museum to have and preserve, but have turned around and sold them to people in California; are now trying to buy a 1930 vintage aircraft for $150,000. while the owners only paid $30,000. for the aircraft. The Internal Revenue Service is looking into the Society because of various complaints they have received about donations and tax write offs.

John, I hope you will help me by voting no on this bill and letting others know why. I can't believe that the legislature would introduce a bill defending such illegal actions.

Thank you for your time.

Sincerely,

Richard Odgers

Richard Odgers
Broke Aircraft & Salvage
Pouch 720
Kenai, Alaska 99611

18090-D

State of Alaska

Department of Commerce & Economic Development

THE ALASKAN HISTORICAL AIRCRAFT SOCIETY
Ted M. Spencer
2397 East 47th Ct.
Anchorage, Alaska 99507

CERTIFICATE OF INVOLUNTARY DISSOLUTION

The undersigned, as Commissioner of Commerce and Economic Development of the State of Alaska, and by virtue of the authority vested in him by law, and pursuant to Section 10.20.325, Alaska Statutes, of the Alaska Nonprofit Corporation Act, hereby dissolves the Certificate of Incorporation of

THE ALASKAN HISTORICAL AIRCRAFT SOCIETY

for the reason that the corporation has failed to file its annual reports, pay fees and penalties within the time prescribed, and/or failed to maintain a registered agent, as set forth below:

FAILED TO FILE 1979 ANNUAL REPORT **********

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at Juneau, the Capital, this 16th day of November, A.D. 1981.

Charles R. Webber

CHARLES R. WEBBER
COMMISSIONER OF COMMERCE
& ECONOMIC DEVELOPMENT

08-151, Rev. 11/81

Internal Revenue Service

District
Director

Department of the Treasury

310 K Street, Anchorage, Alaska 99501

Person to Contact:
Olga A. Rhodes

Telephone Number:
261-4396

Refer Reply to:
RM:D

Date:

OCT 22 1985

Paul A. Fox
United States Historical
Aircraft Preservation Museum
P.O. Box 6813
Anchorage, Alaska 99502

Dear Mr. Fox:

This is in response to your letter dated July 18, 1985 concerning the tax exempt status of the Alaskan Historical Aircraft Society.

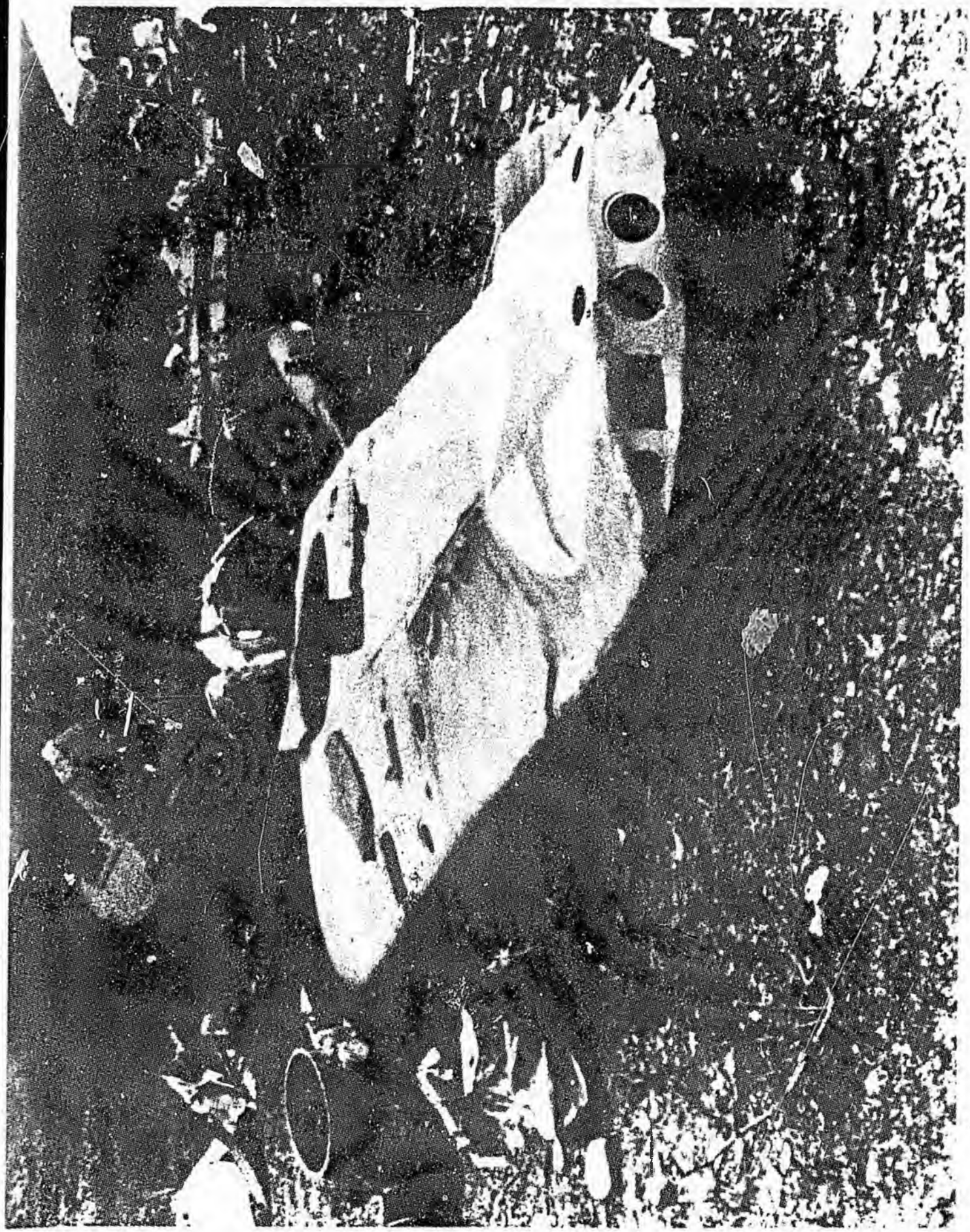
After extensive search efforts it has been determined that we have no record that the organization is a tax exempt organization under 501(a) of the Internal Revenue Code by virtue of an approved application; therefore we no documents responsive to your request.

Sincerely,

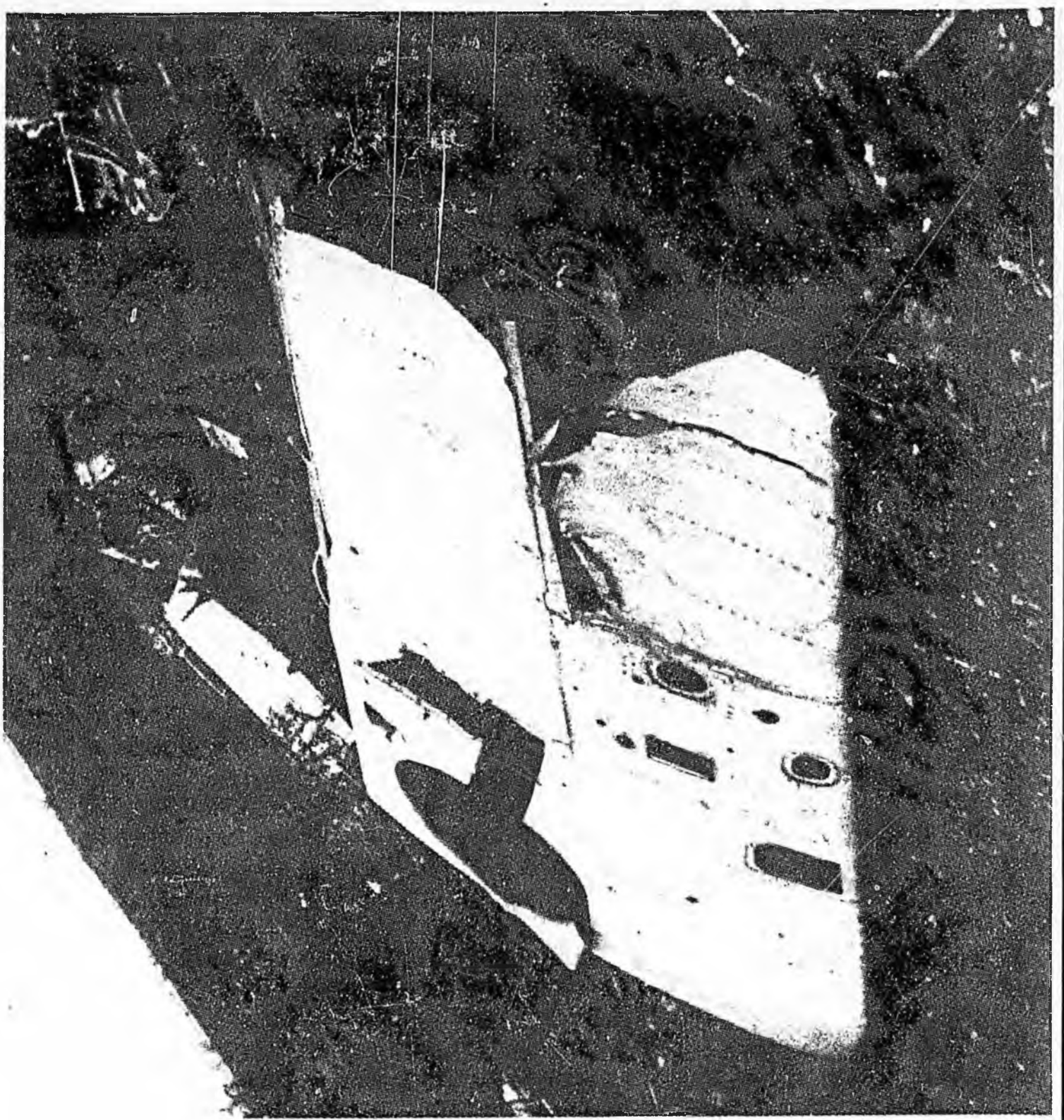
Olga A Rhodes

Olga A. Rhodes
Disclosure Officer

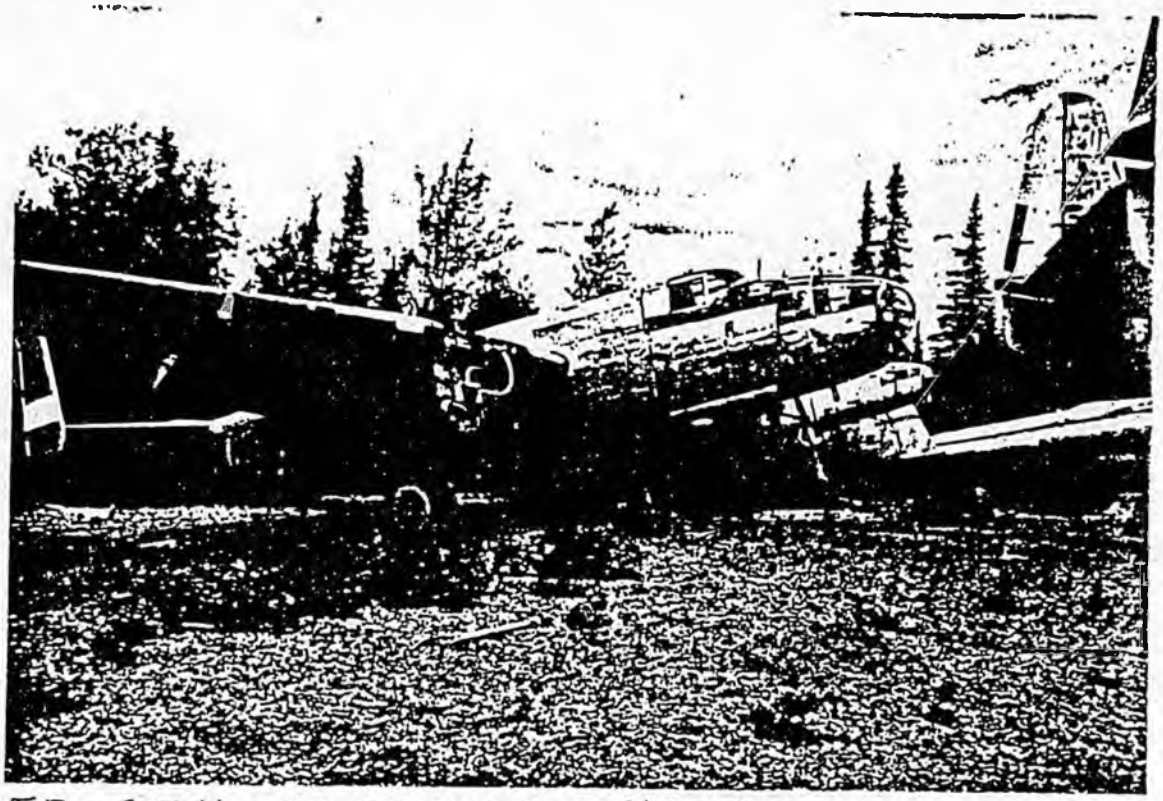
This PHOTO was taken & sent to me from a friend in Nome. This is the before shot.



This is the after shot, after Mr. Spencer took an ax to remove the STAR. ruining the wing. This wing was located in the Nome dump



These 2 aircraft are the ones sold.



TB-25N, 44-29943A, N9444Z

TB-25N, 44-30756, N9936Z

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

AIRCRAFT BILL OF SALE

12-1

0 0 0 0 0 0 2 2 2 6 5 8 6 6 0

FOR AND IN CONSIDERATION OF $ THE UNDERSIGNED OWNER(S) OF THE FULL LEGAL AND BENEFICIAL TITLE OF THE AIRCRAFT DESCRIBED AS FOLLOWS:

UNITED STATES REGISTRATION NUMBER: N9444Z

AIRCRAFT MANUFACTURER & MODEL: NORTH AMERICAN TB-25N

AIRCRAFT SERIAL No.: 44-29943A

DOES THIS 1ST DAY OF JAN, 19 81 HEREBY SELL, GRANT, TRANSFER AND DELIVER ALL RIGHTS, TITLE, AND INTERESTS IN AND TO SUCH AIRCRAFT UNTO:

CONVEYANCE RECORDED

Apr 17 8 30 AM '85

FEDERAL AVIATION ADMINISTRATION

Do Not Write In This Block
FOR FAA USE ONLY

PURCHASER

NAME AND ADDRESS
[IF INDIVIDUAL(S), GIVE LAST NAME, FIRST NAME, AND MIDDLE INITIAL]

ALASKAN HISTORICAL AIRCRAFT SOCIETY
6610 TESHLAR DRIVE
ANCHORAGE, ALASKA
99507

DEALER CERTIFICATE NUMBER

AND TO EXECUTORS, ADMINISTRATORS, AND ASSIGNS TO HAVE AND TO HOLD SINGULARLY THE SAID AIRCRAFT FOREVER, AND WARRANTS THE TITLE THEREOF.

IN TESTIMONY WHEREOF HAVE SET HAND AND SEAL THIS DAY OF 19

SELLER

NAME (S) OF SELLER (TYPED OR PRINTED)	SIGNATURE (S) (IN INK) (NOT REQUIRED FOR EXPEDITED FAA SERVICE)	TITLE (TYPED OR PRINTED)
COLGO AVIATION INC		PRESIDENT
		1ST AAS

ACKNOWLEDGMENT [NOT REQUIRED FOR INDIVIDUALS OR FOR RECORDING, BUT MAY BE REQUIRED BY LOCAL LAW FOR VALIDITY OF THE INSTRUMENT]

10.00 1
1606 255 1 02/09/81

ORIGINAL: TO FAA

AC FORM 8050-2 (OCT) [SUPERSEDES]

$5,000

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

AIRCRAFT BILL OF SALE

G58661 13-1

FOR AND IN CONSIDERATION OF $ 5,000. THE UNDERSIGNED OWNER(S) OF THE FULL LEGAL AND BENEFICIAL TITLE OF THE AIRCRAFT DESCRIBED AS FOLLOWS:

UNITED STATES REGISTRATION NUMBER N 9444Z

AIRCRAFT MANUFACTURER & MODEL
North American TB-25N

AIRCRAFT SERIAL No.
44-29943A

DOES THIS 20th DAY OF Feb. 19 85
HEREBY SELL, GRANT, TRANSFER AND DELIVER ALL RIGHTS, TITLE, AND INTERESTS IN AND TO SUCH AIRCRAFT UNTO:

CONVEYANCE RECORDED
APR 17 8 30 AM '85
FEDERAL AVIATION ADMINISTRATION
Do Not Write In This Block
FOR FAA USE ONLY

PURCHASER

NAME AND ADDRESS
(OF PERSON(S), GIVE LAST NAME, FIRST NAME, AND MIDDLE INITIAL)
Richard A. Berner, Jr.
P.O. BOX 875186
Wasilla, AK 99686

DEALER CERTIFICATE NUMBER

AND TO EXECUTORS, ADMINISTRATORS, AND ASSIGNS TO HAVE AND TO HOLD SINGULARLY THE SAID AIRCRAFT FOREVER, AND WARRANTS THE TITLE THEREOF.

IN TESTIMONY WHEREOF I HAVE SET MY HAND AND SEAL THIS DAY OF 19

SELLER

NAME (S) OF SELLER (TYPED OR PRINTED)	SIGNATURE (S) (IN INK) (IF CORPORATION, GIVE CORPORATE NAME, BY WHOM SIGNED AND CAPACITY)	TITLE (TYPED OR PRINTED)
Alaskan Historical		
Aircraft Society	Ted M. Spencer	President

ACKNOWLEDGMENT (NOT REQUIRED FOR AIRCRAFT NOT FOR HIRE OR COMMERCIAL OPERATION; HOWEVER, MAY BE REQUIRED BY LOCAL LAW FOR VALIDITY OF THIS INSTRUMENT.)

$5.00 REG

ORIGINAL: TO FAA 1:57 PM 5907 0 265 A 03/27/85

FORM APPROVED: OMB No. 04-R0076

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION—FEDERAL AVIATION ADMINISTRATION

AIRCRAFT REGISTRATION APPLICATION

TYPE OF REGISTRATION (Check one box) ☑ 1. Individual ☐ 2. Partnership ☐ 3. Corporation ☐ 4. Co-Owner ☐ 5. Gov't

CERT. ISSUE DATE

NATIONALITY AND REGISTRATION MARK N 0 6 5 7

AIRCRAFT MAKE AND MODEL North American B-25W

AIRCRAFT SERIAL No. 44-29943

6041785
FOR FAA USE ONLY

NAME OF APPLICANT (First name, middle initial, and last name if individual; or company name as shown on evidence of ownership)

BENNER RICHARD A. JR.

ADDRESS (Permanent mailing address for the applicant listed)

P.O. Box 875186

Number and street: P.O. Box

☐ CHECK HERE IF ADDRESS CHANGE

CITY	STATE	ZIP CODE
WASILLA	ALASKA	99687

(No fee required for revised Certificate of Registration)

ATTENTION! Read the following statement before signing this application. A false or dishonest answer to any question in this application may be grounds for punishment by fine and/or imprisonment (U.S. Code, Title 18, Sec. 1001).

CERTIFICATION

I/WE CERTIFY that the above described aircraft (1) is owned by the undersigned applicant(s), who is/are citizen(s) of the United States as defined in Sec. 101(13) of the Federal Aviation Act of 1958; (2) is not registered under the laws of any foreign country; and (3) legal evidence of ownership is attached or has been filed with the Federal Aviation Administration.

NOTE: All owners must sign this Certificate. All applicants must sign. Use reverse side if necessary.

EACH PART OF THIS APPLICATION MUST BE TYPED OR PRINTED IN INK

SIGNATURE	TITLE	DATE
[signature]	OWNER	3/15/85
SIGNATURE	TITLE	DATE
SIGNATURE	TITLE	DATE

NOTE: Pending receipt of the Certificate of Aircraft Registration, the aircraft may be operated for a period not in excess of 90 days, during which time the PINK copy of this application must be carried in the aircraft.

AC Form 8050-1 (4-71) (0033-428-9002)

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

AIRCRAFT BILL OF SALE

8-1

FOR AND IN CONSIDERATION OF $, THE UNDERSIGNED OWNER(S) OF THE FULL LEGAL AND BENEFICIAL TITLE OF THE AIRCRAFT DESCRIBED AS FOLLOWS

D55052

UNITED STATES REGISTRATION NUMBER N9936Z

AIRCRAFT MANUFACTURER & MODEL NORTH AMERICAN TB-25N

AIRCRAFT SERIAL No. 44-30756

DOES THIS 1ST DAY OF JANUARY, 81 HEREBY SELL, GRANT, TRANSFER AND DELIVER ALL RIGHTS, TITLE AND INTEREST IN AND TO SUCH AIRCRAFT UNTO

CONVEYANCE RECORDED

JAN 5 19 at 11:03 Book FOR FAA USE ONLY

PURCHASER

NAME AND ADDRESS

ALASKAN HISTORICAL AIRCRAFT SOCIETY
6610 Teshlar Drive
Anchorage, Alaska 99507

DEALER CERTIFICATE NUMBER

AND TO EXECUTORS, ADMINISTRATORS, AND ASSIGNS TO HAVE AND TO HOLD SINGULARLY THE SAID AIRCRAFT FOREVER, AND WARRANTS THE TITLE THEREOF

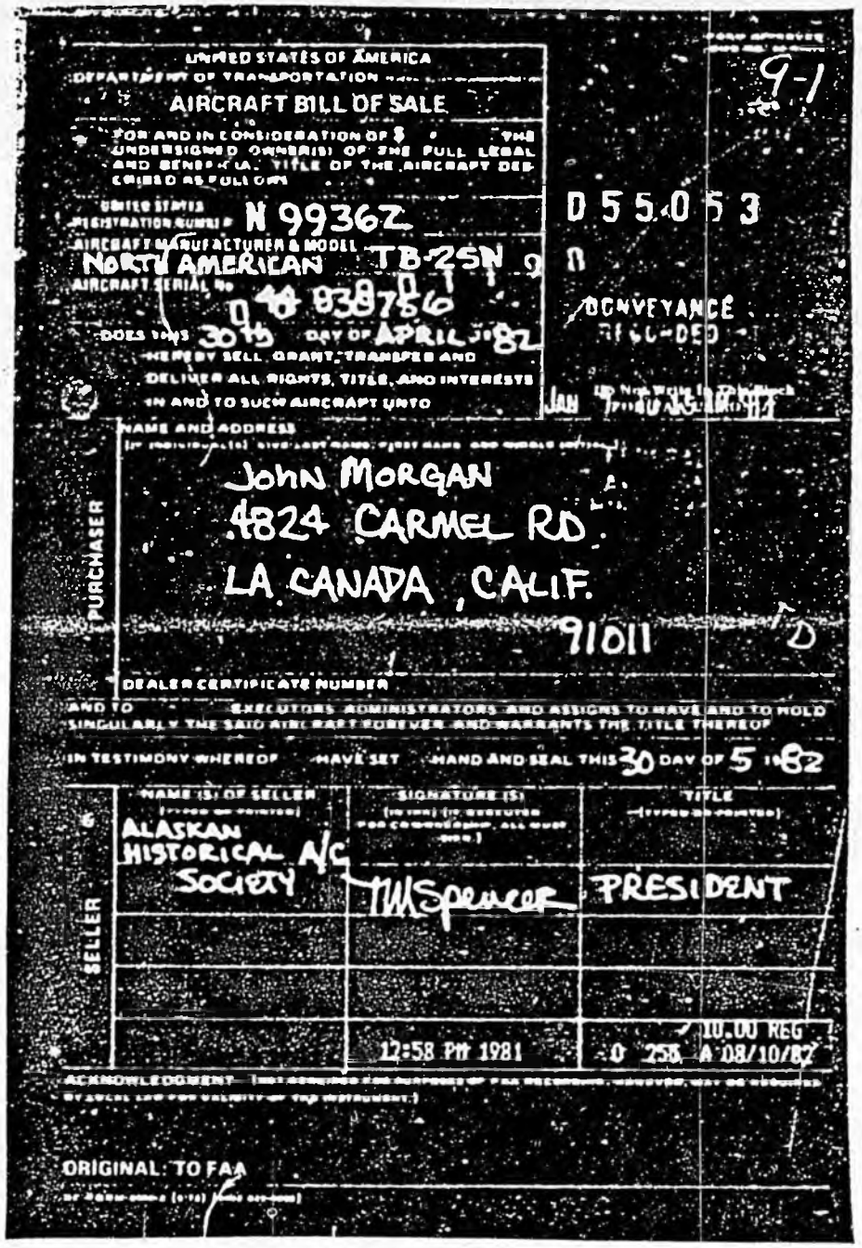
IN TESTIMONY WHEREOF HAVE SET HAND AND SEAL THIS DAY OF 19

SELLER

NAME (S) OF SELLER (TYPED OR PRINTED)	SIGNATURE (S)	TITLE (TYPED OR PRINTED)
COLCO AVIATION INC	[signature]	PRESIDENT

ACKNOWLEDGMENT [NOT REQUIRED FOR PURPOSES OF FAA RECORDING; HOWEVER, MAY BE REQUIRED BY LOCAL LAW FOR VALIDITY OF THIS INSTRUMENT.]

ORIGINAL: TO FAA



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

9-1

AIRCRAFT BILL OF SALE

FOR AND IN CONSIDERATION OF $ 0 THE UNDERSIGNED OWNER(S) OF THE FULL LEGAL AND BENEFICIAL TITLE OF THE AIRCRAFT DESCRIBED AS FOLLOWS

UNITED STATES REGISTRATION NUMBER: N 9936Z

D 55053

AIRCRAFT MANUFACTURER & MODEL: NORTH AMERICAN TB-25N

AIRCRAFT SERIAL No. 44 86756

CONVEYANCE RECORDED

DOES THIS 30th DAY OF APRIL 82

HEREBY SELL, GRANT, TRANSFER AND DELIVER ALL RIGHTS, TITLE, AND INTEREST IN AND TO SUCH AIRCRAFT UNTO

JAH

← JAN 83

PURCHASER

NAME AND ADDRESS
(IF INDIVIDUAL(S), GIVE LAST NAME, FIRST NAME AND MIDDLE INITIAL)

John Morgan
4824 Carmel Rd.
La Canada, Calif.
91011

D

DEALER CERTIFICATE NUMBER

AND TO EXECUTORS, ADMINISTRATORS AND ASSIGNS TO HAVE AND TO HOLD SINGULARLY THE SAID AIRCRAFT FOREVER, AND WARRANTS THE TITLE THEREOF

IN TESTIMONY WHEREOF I HAVE SET MY HAND AND SEAL THIS 30 DAY OF 5 1982

SELLER

NAME(S) OF SELLER (TYPED OR PRINTED)	SIGNATURE(S) (IN INK) (IF SECURITIES FOR CONVEYANCE, ALL OWNERS MUST.)	TITLE (TYPED OR PRINTED)
ALASKAN HISTORICAL A/C SOCIETY	TM Spencer	PRESIDENT
	12:58 PM 1981	10.00 REG 0 258 A 08/10/82

ACKNOWLEDGMENT — (NOT REQUIRED FOR PURPOSES OF FAA RECORDING, HOWEVER, MAY BE REQUIRED BY LOCAL LAW FOR VALIDITY OF THE INSTRUMENT.)

ORIGINAL: TO FAA

UNITED STATES OF AMERICA

AIRCRAFT REGISTRATION APPLICATION

12-1

CERT. ISSUE DATE

UNITED STATES REGISTRATION NUMBER: N 9936Z

AIRCRAFT MANUFACTURER & MODEL: NORTH AMERICAN TB-25N

AIRCRAFT SERIAL NO.: 44-30875

D 010583

FOR FAA USE ONLY

TYPE OF REGISTRATION (Check one box)

1. Individual 2. Partnership 3. Corporation 4. Co-owned 5. Government

NAME OF APPLICANT (Person(s) shown on bill of sale. If individual, give last name, first name, and middle initial.)

MORGAN, JOHN C.

ADDRESS (Permanent mailing address for first applicant listed.)

Number and Street: 4824 CARMEL ROAD

R.F.D. Route: P. O. Box 383

CITY: LA CANADA STATE: CALIF. ZIP CODE: 91011

☐ CHECK HERE IF YOU ARE ONLY REPORTING A CHANGE OF ADDRESS

ATTENTION! Read the following statement before signing this application.

A false or dishonest answer to any question in this application may be grounds for punishment by fine and/or imprisonment (U.S. Code, Title 18, Sec. 1001).

CERTIFICATION

I/WE CERTIFY that the above-described aircraft (1) is owned by the undersigned applicant(s) who is/are citizen(s) of the United States as defined in Sec. 101(16), of the Federal Aviation Act of 1958, (2) is not registered under the laws of any foreign country, and (3) legal evidence of ownership is attached or has been filed with the Federal Aviation Administration.

NOTE - If executed for corporate ownership all applicants must sign. Use reverse side if necessary.

SIGNATURE	John C. Morgan	PRESIDENT OF TIME DYNAMICS	DATE 8-6-82
SIGNATURE	John C Morgan	TITLE OWNER	DATE 10-15-82
SIGNATURE		TITLE	DATE

ORIG. TEMP. REGISTRATION EXTENDED 120 DAYS FROM 12-13-82

NOTE: Pending receipt of the Certificate of Aircraft Registration, the aircraft may be operated for a period not in excess of 90 days, during which time the PINK copy of this application must be carried in the aircraft.

AC Form 8050-1 (8-78) 0052-00-629-90041

$5000

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

AIRCRAFT BILL OF SALE

FOR AND IN CONSIDERATION OF $ 10.00 & OTHER
THE UNDERSIGNED OWNER(S) OF THE FULL LEGAL
AND BENEFICIAL TITLE OF THE AIRCRAFT, DES-
CRIBED AS FOLLOWS:

11-1

813

UNITED STATES REGISTRATION NUMBER: N 9936Z
AIRCRAFT MANUFACTURER & MODEL: North American T6-25J
AIRCRAFT SERIAL NO.: 44-30756

DOES THIS 7 DAY OF Sept 1984
HEREBY SELL, GRANT, TRANSFER AND
DELIVER ALL RIGHTS, TITLE, AND INTEREST
IN AND TO SUCH AIRCRAFT UNTO

DEC 11 1984

PURCHASER

NAME AND ADDRESS
WRIGHT, RALPH
P.O. Box 1776
KODIAK, ALASKA
99615

DEALER CERTIFICATE NUMBER

AND TO EXECUTORS, ADMINISTRATORS, AND ASSIGNS TO HAVE AND TO HOLD SINGULARLY THE SAID AIRCRAFT FOREVER, AND WARRANTS THE TITLE THEREOF.

IN TESTIMONY WHEREOF, I HAVE SET MY HAND AND SEAL THIS 7 DAY OF Sept 1984

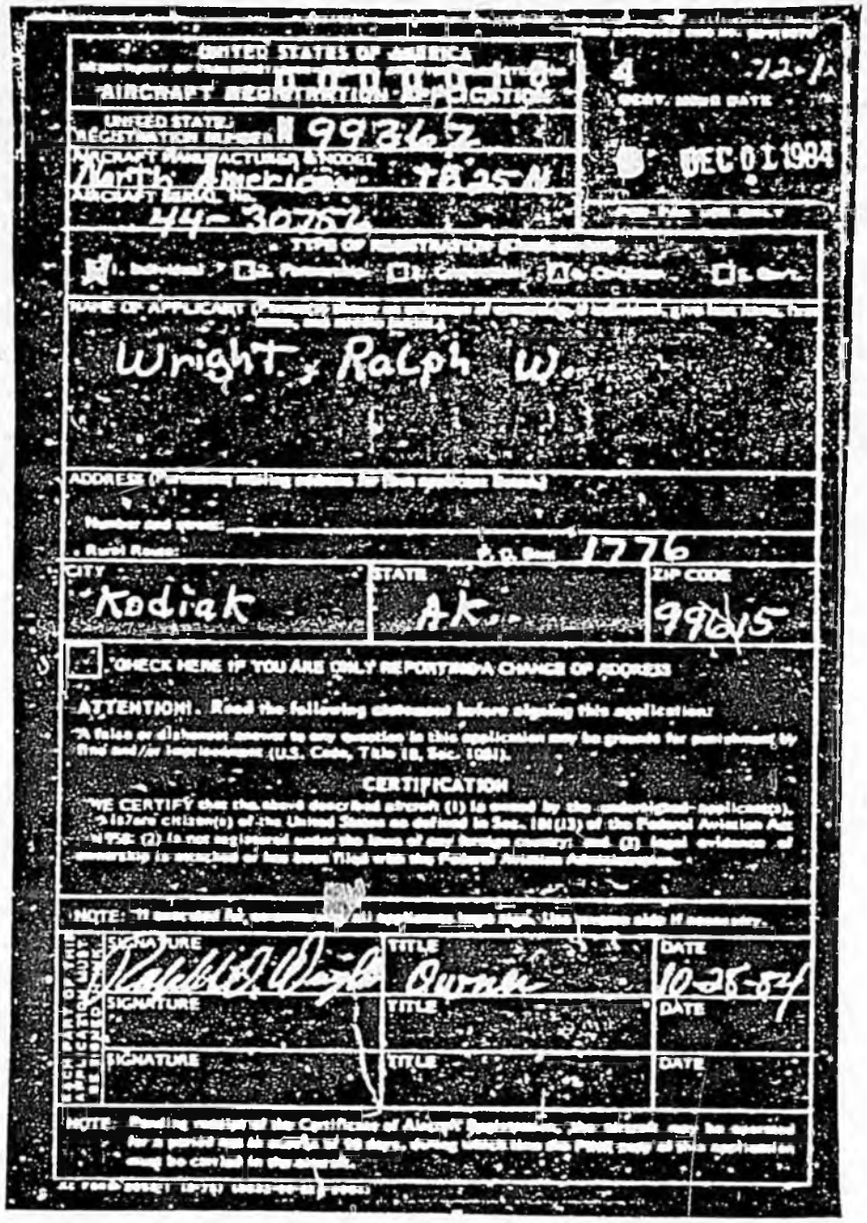
SELLER

NAME (S) OF SELLER (TYPED OR PRINTED)	SIGNATURE (S)	TITLE (IF SIGNING FOR CORPORATION)
JOHN C. MORGAN	John C. Morgan	

ACKNOWLEDGMENT

ORIGINAL: TO FAA

42158 PM 1259 0 255 A 11/07/84



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
AIRCRAFT REGISTRATION APPLICATION

4 -12-1
DEAV. MMDD DATE

UNITED STATES REGISTRATION NUMBER N 99367

DEC 0 1 1984

AIRCRAFT MANUFACTURER & MODEL North American T6/SNJ

AIRCRAFT SERIAL NO. 44-30764

TYPE OF REGISTRATION (Check one box)
1. Individual ☒ 2. Partnership ☐ 3. Corporation ☐ 4. Co-owner ☐ 5. Gov't ☐

NAME OF APPLICANT (First, Middle, Last) (If individual, give last name first)
Wright, Ralph W.

ADDRESS (Permanent mailing address for this applicant)
Number and street:
Rural Route: P.O. Box 1776

CITY	STATE	ZIP CODE
Kodiak	Ak	99615

☐ CHECK HERE IF YOU ARE ONLY REPORTING A CHANGE OF ADDRESS

ATTENTION! Read the following statement before signing this application:
"A false or dishonest answer to any question in this application may be grounds for punishment by fine and/or imprisonment (U.S. Code, Title 18, Sec. 1001)."

CERTIFICATION
"I/WE CERTIFY that the above described aircraft (1) is owned by the undersigned applicant(s), a citizen(s) of the United States as defined in Sec. 101(13) of the Federal Aviation Act of 1958; (2) is not registered under the laws of any foreign country; and (3) legal evidence of ownership is attached or has been filed with the Federal Aviation Administration."

NOTE: If aircraft is owned by co-partners, individuals, or corporations, attach list if necessary.

EACH PARTY OF A JOINT APPLICATION MUST BE SIGNED BELOW	SIGNATURE	TITLE	DATE
	Ralph W. Wright	Owner	10-25-84
	SIGNATURE	TITLE	DATE
	SIGNATURE	TITLE	DATE

NOTE: Pending receipt of the Certificate of Aircraft Registration, this aircraft may be operated for a period not to exceed 90 days during which time one (1) copy of this application may be carried in the aircraft.

AC Form 8050-1 (8/79) Obsolete Previous

cc: Sen. Zharoff

February 12, 1986

Senator Jan Faiks
Alaska State Legislature
Pouch V(MS3100)
Juneau, Alaska 99811

FEB 18 1986

Dear Senator Faiks:

I am writing to you in regards to Senate Bill 354. I understand this bill is to reinstated Ted Spencers Alaskan Historical Aircraft Society. I am asking you to vote "no".

As a small business person I have certain responsibilities to my clients and the general public. I am governed by many different agencies, federal, state and city. All of them require me to file annual reports and paperwork, and I know as a business I must file these to operate legally.

The Alaskan Historical Aircraft Society was dissolved by the State of Alaska in 1981 because they did not file there annual reports in 1979. The State waited 2 years before dissolving them. It now has been 6 years since those reports were to have been filed. I don't believe this cann be called an oversight on the part of the Alaskan Historical Aircraft Society.

Throughout these last 5 years they have been claiming to be a nonprofit museum, accepting and soliciting donations of money, aircraft and memorabilia, deceiving the public.

Two of these aircraft donated by Cal C. Aviation Inc. of Fairbanks (under the assumption the aircraft would be preserved as part of our heritage) have been sold to private individuals, one went to California and one to one of the Board of Directors.

IRS is presently investigating Ted Spencer and the Alaskan Historical Aircraft Society, because of the many complaints they have received from those who have donated to them and have found out they could not use there tax write offs they received from the Alaskan Historical Aircraft Society.

With this bill and especially lines 25 through 28 you would reinstate and grant a pardon for there fraudulent behavior. I hope you will receonsider and vote no on this bill, as I can not understand how the legislature could approve.

Sincerely,

Janie Munson
Grizzly Aircraft Services
330 Main Street Loop
Kenai, Ak. 99611

18090-D

State of Alaska

Department of Commerce & Economic Development

THE ALASKAN HISTORICAL AIRCRAFT SOCIETY
Ted M. Spencer
2397 East 47th Ct.
Anchorage, Alaska 99507

CERTIFICATE OF INVOLUNTARY DISSOLUTION

The undersigned, as Commissioner of Commerce and Economic Development of the State of Alaska, and by virtue of the authority vested in him by law, and pursuant to Section 10.20.325, Alaska Statutes, of the Alaska Nonprofit Corporation Act, hereby dissolves the Certificate of Incorporation of

THE ALASKAN HISTORICAL AIRCRAFT SOCIETY

for the reason that the corporation has failed to file its annual reports, pay fees and penalties within the time prescribed, and/or failed to maintain a registered agent, as set forth below:

FAILED TO FILE 1979 ANNUAL REPORT **********

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at Juneau, the Capital, this 16th day of November, A.D. 1981.

Charles R. Webber

CHARLES R. WEBBER
COMMISSIONER OF COMMERCE
& ECONOMIC DEVELOPMENT

08-151, Rev. 11/81

Internal Revenue Service

District
Director

Department of the Treasury

310 K Street, Anchorage, Alaska 99501

Person to Contact:
Olga A. Rhodes

Telephone Number:
261-4396

Refer Reply to:
RM:D

Date:

OCT 22 1985

Paul A. Fox
United States Historical
Aircraft Preservation Museum
P.O. Box 6813
Anchorage, Alaska 99502

Dear Mr. Fox:

This is in response to your letter dated July 18, 1985 concerning the tax exempt status of the Alaskan Historical Aircraft Society.

After extensive search efforts it has been determined that we have no record that the organization is a tax exempt organization under 501(a) of the Internal Revenue Code by virtue of an approved application; therefore we no documents responsive to your request.

Sincerely,

Olga A Rhodes

Olga A. Rhodes
Disclosure Officer

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

360

AS36.10.005 DOCUMENT
CHAPTER = 36.10
SECTION = 36.10.005
TITLE = 36
HEADINGS TITLE 36.
Public Contracts.
CHAPTER 10.
Employment Preference.
CITATION Sec. 36.10.005.
CATCH LINE
LEGISLATIVE FINDINGS.
TEXT (a) The legislature finds that

(1) because of its unique climate and its distance from the contiguous states, the state has historically suffered from unique social, seasonal, geographic, and economic conditions that result in an unstable economy;

(2) the unstable economy is a hardship on the residents of the state and is aggravated by the large numbers of seasonal and transient nonresident workers;

(3) the rate of unemployment among residents of the state is one of the highest in the nation;

(4) the state has one of the highest ratios of nonresident to resident workers in the nation;

(5) the state has a compelling interest in reducing the level of unemployment among its residents;

(6) the construction industry in the state accounts for a substantial percentage of the available employment;

(7) construction workers receive a greater percentage of all unemployment benefits paid by the state than is typical of other states;

(8) historically, the rate of unemployment in the construction industry in the state is higher than the rate of unemployment in other industries in the state;

(9) it is appropriate for the state to consider the welfare of its residents when it funds construction activity;

(10) it is in the public interest for the state to allocate public funds for capital projects in order to reduce unemployment among its resident construction workers;

(11) the influx of nonresident construction workers contributes to or causes the high unemployment rate among resident construction workers because nonresident workers compete with residents for the limited number of available construction jobs;

(12) nonresident workers displace a substantial number

of qualified, available, and unemployed Alaska workers on jobs on state funded public works projects;

(13) the state has a special interest in seeing that the benefits of state construction spending accrue to its residents;

(14) the natural resources of land owned by the state belong to the citizens of the state;

(15) Alaskans have chosen to use the majority of the royalties derived from the state's natural resources to fund state government;

(16) the vast majority of the state's revenue is derived from natural resource income rather than from other forms of taxation;

(17) because the state has no personal income tax or sales tax, nonresident workers use services provided by the state but do not contribute fairly to the costs of those services; and

(18) Alaskans, more than the residents of other states, suffer economically when nonresidents displace qualified residents since resident workers contribute local taxes as well as their share of the royalties from natural resources.

(b) The legislature further finds that

(1) the state and its political subdivisions, when acting as a market participant in funding public works projects, should give Alaska residents an employment preference to promote a more stable economy;

(2) the state and its political subdivisions have a duty of loyalty to their citizens and should fulfill this duty by giving residents preference for employment on public works projects they fund;

(3) there is a legitimate and compelling governmental interest and that the public health and welfare will suffer if state residents are not afforded employment preference in state-funded construction-related work.

HISTORY (Sec. 1 ch 69 SLA 1985)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS43.20.036 DOCUMENT
CHAPTER = 43.20
SECTION = 43.20.036
TITLE = 43
HEADINGS TITLE 43.
Revenue and Taxation.
CHAPTER 20.
Alaska Net Income Tax Act.
ARTICLE 1.
Persons Subject to Tax.
CITATION Sec. 43.20.036.
CATCH LINE
FEDERAL TAX DEDUCTIONS AND CREDITS.
TEXT (a) For purposes of calculating the income tax payable under this chapter, the taxpayer may not apply as a credit against his tax liability the foreign tax credit allowed as to federal taxes under 26 U.S.C. 33 (Internal Revenue Code).

(b) For purposes of calculating the income tax payable under this chapter, the taxpayer may apply as a credit against tax liability the investment credit allowed as to federal taxes under 26 U.S.C. 38 (Internal Revenue Code) upon only the first $20,000,000 of qualified investment, other than qualified investment for a special industrial incentive investment tax credit under AS 43.20.042, put into use in the state for each taxable year. This limitation does not apply to the amounts invested in equipment that meets the definition of a certified pollution control facility as defined in 26 U.S.C. 169 (Internal Revenue Code) as in effect on June 19, 1975, except that the date specified in 26 U.S.C. 169(d) (Internal Revenue Code) as a condition of qualifying a certified pollution control facility for a deduction does not apply.

(c) For purposes of calculating the income tax payable under this chapter, the taxpayer may apply as an exemption from his tax liability the tax exemption for domestic international sales corporations under 26 U.S.C. 991 (Internal Revenue Code), except those taxpayers who are engaged in the exportation of nonrenewable resources.

(d) _Repealed, sec. 10 ch 1 SSSLA 1980._
(e) _Repealed, sec. 10 ch 1 SSSLA 1980._
(f) _Repealed, sec. 10 ch 1 SSSLA 1980._
(g) _Repealed, sec. 10 ch 1 SSSLA 1980._
(h) _Repealed, sec. 10 ch 1 SSSLA 1980._
(i) _Repealed, sec. 10 ch 1 SSSLA 1980._

HISTORY (Sec. 1 ch 153 SLA 1975; sec. 1 ch 171 SLA 1975; am sec. 3 ch 22 SLA 1980; am sec. 10 ch 1 SSSLA 1980; am sec. 9 ch 2 SSSLA 1980; am sec. 1 ch 117 SLA 1981; am sec. 3 ch 60 SLA 1984)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS43.23.005 DOCUMENT
CHAPTER = 43.23
SECTION = 43.23.005
TITLE = 43
HEADINGS TITLE 43.
Revenue and Taxation.
CHAPTER 23.
Permanent Fund Dividends.
CITATION Sec. 43.23.005.
CATCH LINE
ELIGIBILITY.
TEXT (a) An individual is eligible to receive one permanent fund dividend each year in an amount to be determined under AS 43.23.025 if the individual applies to the department, and if on the date of application the individual

(1) is a state resident; and

(2) has been a state resident for a period of at least six consecutive months immediately preceding the date of application.

(b) In determining the minimum period of an individual's residency required under (a)(2) of this section, the department may include months of residency both in the current year and in the immediately preceding year.

(c) A parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated minor or on behalf of an incompetent individual who is eligible to receive a payment under this section.

HISTORY (Sec. 1 ch 102 SLA 1982)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 3/18/86

REQUEST
Bill/Resolution No: SS SB 360
Title: Local Hire Tax Credit

Sponsor: Faiks, Bennett, et. al.
Requestor: Labor and Commerce
Date of Request: March 14, 1986

FISCAL DETAIL
Agency Affected: Revenue
BRU:

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	42 -	-	-	-	-
* REVENUE	0	-33.2	-34.2	-35.4	-36.4	-38.1

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary (Revenue impacts are on a calendar year basis)

*Non-Petroleum Income Tax	0	-23,700	-24,700	-25,900	-27,300	-28,600
Petroleum Income Tax	0	- 9,500	- 9,500	- 9,500	- 9,500	- 9,500

See attached for narrative.

Prepared By: Al Zangri
Division: Research Section
Phone: 465-2173
Date: 3/18/86

Approved by Commissioner: Harold M. Heinbockel
Agency: Department of Revenue
Date: 3/18/86

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor

It is assumed that conditions are such that the bill will have its intended effect on employers. Specifically this implies the following assumptions. (1) Corporations that hire non-residents have enough tax liability to take advantage of at least some of the available credit. (2) Every employer takes full advantage of the available tax credit when making hiring decisions. (3) Projected non-petroleum corporate income taxes increase at the rate of inflation (i.e. constant real non-petroleum corporate income tax). (4) The distribution of projected corporate income taxes among industries remains constant. (5) The distribution of jobs between residents and non-residents for calendar year 1986 is the same as that shown for 1984 in the Department of Labor study of January 17, 1986[1] (6) Non-resident wages have grown at a rate equal to the inflation rate since 1984. (7) That the historic relationship between the unemployment rate in Alaska and the national unemployment rate continues.[2] It is also assumed that sufficient data is obtainable to establish causality between unemployment and significant social ills and between non-resident employment and resident unemployment.

The Department of Labor study shows a state-wide total of 63,280 jobs held by non-residents. Using the assumptions above to project taxes and non-resident wages by industry shows that if 14% of the positions held by non-residents are filled by State residents the non-petroleum corporate income tax will be reduced to zero. Additionally, if the oil and gas and mining industry fills all 3,156 of the non-resident jobs with State residents corporate petroleum income taxes will be reduced by $9.5 million. While the potential impact is to eliminate the corporate income tax the actual impact may differ depending upon: (1) how the Department of Labor determines unemployment areas, the cause of unemployment in underemployment areas and the existence of social ills in underemployment areas; (2) whether the increase in employed residents is enough to lower the unemployment rates in underemployment areas below the national average. The accompanying table shows the number and percentage of jobs now filled by non-residents that would need to be filled by residents in order to eliminate the corporate non petroleum income tax. The chart also shows the number of unemployment claims for each industry group and shows the number of those claims that come from residents if all industries employ the average percentage of non-resident workers.

---

1 Non-residents Working in Alaska, A Special Study to Measure the Economic Impact of Non-Residents on Alaska's Economy During Calendar Year 1984, Alaska Department of Labor, January 1986.

2 Since 1969 the only years that the Alaska, unemployment rate has been less than or equal to the national rate were 1975, 1976 and 1982. See Alaska's Economy Since Statehood: The ISER Map Economic Data Base, University of Alaska ISER February 1984. See also Annual Planning Information, Alaska Department of Labor, 1985.

Economic Impact

1. Increase in jobs available to Alaskans.
2. A drop in the instate unemployment rate due to drop in migration.
3. The tax credit may tend to increase job turnover as employers attempt to stay eligible for the credit.
4. Could tend to lower wages as employers require pay cuts to avoid layoffs.
5. Could provide a subsidy to union busting employers as the State picks up half of the first $6,000 in wages paid to new employees.
6. Incentives for fraudulent PFD claims may be greatly increased as employers may require proof of eligibility prior to hiring.
7. Could put pressure on the PFD program to certify eligibility more quickly and more often.

INDUSTRY GROUP	PROJECTED** Be TAX	PROJECTED* NONRESIDENT AVERAGE '86 WAGE	TOTAL* NONRESIDENT JOBS	JOBS TO ELIMINATE TAX	% OF JOBS TO ELIMINATE TAX		TOTAL**** UNEMPLOY-MENT CLAIMS 1984	ASSUMED***** RESIDENT CLAIMS 1984
MINING (INCLUDES OIL&GAS)	***	27335	***	***			2459	1838
CONSTRUCTION	3694898	17996	12642	1232	9.74%		21170	15878
LUMBER & WOOD MFG	548230	8715	260	183	70.29%		1933	1450
FOOD PROCESSING	92514	5429	12068	34	0.28%		5325	3994
OTHER MFG	2428778	10153	1642	809	49.27%		1766	1325
TRUCKING & WAREHOUSING	1664?6	16791	913	55	6.03%			
WATER TRANSPORTATION	696836	18726	517	233	45.06%			
AIR TRANSPORTATION	752023	15090	1624	251	15.44%			
OTHER TRANSPORTATION	224316	5480	350	82	23.39%		5738	4341
COMMUNICATIONS	215822	28219	799	72	9.00%			
UTILITIES	477261	18502	247	159	64.41%			
FISHING HUNTING & TRAPPING	260957	7471	177	87	49.14%		346	260
WHOLESALE TRADE	1946470	11997	1935	649	33.53%			
RETAIL TRADE	6336080	4450	14093	2848	20.21%		9245	6934
FINANCE, INSUR & REAL EST	3011566	8991	2017	1004	49.77%		2076	1557
SERVICES	2830521	8307	17996	961	6.67%		11901	8926
NON-PETROLEUM CORP TAX	23737697		83280	8659				

* Source: Dept of Labor study January 1986

** Source: Dept of Revenue calendar year projection-does not include any collections from prior years.

*** This is the only sector that could fully utilize the $3000 credit without completely eliminating it's income tax liability. There are 3154 nonresident jobs shown in the Dept of Labor study

**** Source: "Unemployment Insurance Actuarial Study And Financial Handbook", Alaska Dept of Labor, December 1985

***** The Dept of Labor January study shows that the state averages 25% nonresident unemployment claims. This column shows the distribution of resident unemployment claims if each industry has the same 25% average.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date 3/11/86

REQUEST
Bill/Resolution No: Sponsor Sub. SB 360
Title: An Act relating to tax credits for local hire and an effective date.
Sponsor: Faiks, Bennett, Zharoff, Rodey De Vries and P. Fischer
Date of Request: March 11, 1986

FISCAL DETAIL
Agency Affected: Department of Revenue
BRU: Audit

Components:
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
	OPERATING						
100	PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200	TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300	CONTRACTUAL	-0-	2.0	-0-	-0-	-0-	-0-
400	SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
500	EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600	LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700	GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800	MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL OPERATING	-0-	2.0	-0-	-0-	-0-	-0-
	CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
	REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-0-	-2.0	-0-	-0-	-0-	-0-
	FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
	OTHER	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL	-0-	-2.0	-0-	-0-	-0-	-0-

POSITIONS:

	FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
	PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
	TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: Please see attached.

Prepared By: Steven E. Kettel Steven E. Kettel Phone: 465-2320
Division: Audit Division Date: March 11, 1986

Approved by Commissioner: Date: 3/12/86
Agency: Revenue

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Operating 2.0

Contractual services - forms design & printing

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SS SB 360
Title : "An Act relating to tax credits for employing and training residents...

Sponsor : Faiks, et. al.
Requestor : Labor and Commerce
Date of Request : 3/7/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Administrative Services

Components : Special Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		76.5	76.5	76.5	76.5	76.5
TRAVEL		Ø	Ø	Ø	Ø	Ø
CONTRACTUAL		55.0	48.4	50.3	52.3	54.4
SUPPLIES		1.5	1.6	1.7	1.8	1.9
EQUIPMENT		3.2	Ø	Ø	Ø	Ø
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	136.2	126.5	128.5	130.6	132.8
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		136.2	126.5	128.5	130.6	132.8
FEDERAL FUNDS						
OTHER						
TOTAL	0	136.2	126.5	128.5	130.6	132.8

POSITIONS :

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Judy Knight
Division : Administrative Services Division
Phone : 465-2725
Date : 3/12/86

Approved by Commissioner : Jim Robison
Agency : Labor
Date : 3/12/86

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSSB 360

This legislation requires an annual report that designates areas as underemployment areas. The determination in Sec. 43.20.041 (c) (2) that "nonresident employment is a significant contributing cause of the high resident unemployment" will require this department to collect extensive occupational information by resident status. We would need two additional staff persons, a Labor Economist II and a Statistical Clerk, to complete the required report. Costs associated with these positions are shown on the attached - Request for New Position forms. In addition to the position costs we would require $35,000 for data processing operations, $10,000 for data processing applications, and $6,050 a year for equipment lease and maintenance. $8,500 of the data processing applications expense would be a one-time item, while the rest of the costs would be ongoing. The following assumptions were made in preparing the fiscal note:

1. An annual report designating underemployment areas would be completed by January 31 each year beginning in 1987.

2. On-going collection of occupational titles would be required from employers, and extensive computer matching would be necessary to determine residency status.

3. Beginning in 1988 occupational displacement information would be highlighted requiring continuation of both the existing occupational information budget levels, and the additional information on the occupational titles.

4. The collection of occupational titles from firms will be phased in over a three year period. Industries identified as having the highest dollar payments to nonresidents in 1984 would be targeted first:

   First Year - construction, oil and gas mining, and food processing;

   Second Year - all first year industries plus business services, local government, miscellaneous services, eating and drinking places, air transportation, and state government; and

   Third Year - all industries.

5. "Economic region" will be defined as the six economic regions for which economic data is published by the Alaska Department of Labor.

6. Costs to determine that "resident unemployment has caused significant social ills" for each of the economic regions annually has not been included at this time. A thorough analysis of the available social data which can be released from other departments will require additional time. Case data would be required on all social problems in the state.

The costs to accomplish this section will greatly exceed all of our other costs associated with this bill.

7. The Department of Revenue will be responsible for all enforcement actions and the collection of all wage and job training costs.

8. The list of approved training cost will be the same as that used for JTPA, and there will be coordination between employers and the Service Delivery Areas of JTPA to determine approved training programs.

9. Work would begin on the report on July 1, 1986.

10. Annual inflation of 4% on non-personal services items.

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Labor Economist II	1	16A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		Juneau				

Type of Expenditure		Amount
1	2	3
Salary	33,660	
Benefits	10,779	
Premium Pay		
Other		
Total Personal Services		44,439
Travel		0
Contractual		2,000
Commodities		500
Equipment		1,600
Other		
Total Cost		48,539

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	48,539
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position will have primary responsibility for the analysis of data and preparation of the annual resident hire report. Specifically the duties would include:

1. Coordinate the collection and monitor the validity of relevant resident hire related statistics from other agencies including the Department of Revenue and the Division of Labor Standards and Safety.
2. Coordinate the updating and crossmatching of resident hire related data files on the mainframe computer with the analyst programmer.
3. Analyze microcomputer resident hire data bases to generate resident hire related tables and reports. The reports will include data relating to occupational displacement of nonresidents by economic region and other related economic statistics associated with issue of resident hire.
4. Supervise the Statistical Clerk that will prepare the basic resident hire data tables for the report.
5. Prepare the annual resident hire report.

Contractual services costs include phone, training, printing, and other miscellaneous items. The equipment expense for a desk, chair, etc. would be a one time item.

Request For New Position

Agency: Labor
BRU: Administrative Services
Component: Special Services

Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disappr.
Statistical Clerk	1	8B	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
PFT	12		Juneau		

Type of Expenditure		Amount
1	2	3
Salary	23,580	
Benefits	8,458	
Premium Pay		
Other		
Total Personal Services		32,038
Travel		0
Contractual		2,000
Commodities		1,000
Equipment		1,600
Other		
Total Cost		36,638

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	36,638
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position will support the labor economist in preparing an annual report on the effect of nonresident employment on Alaskans. Secondarily this position would assist on the quality control of occupational titles which would be submitted by employers each quarter. Specifically the duties would be:

1. Update tables of economic information by resident status.
2. Load information into spreadsheets to show occupational displacement of residents by nonresidents.
3. Assist in the quality control of the occupational displacement of residents by nonresident workers.

The other position will work on the quality control of occupational titles which would be submitted by employers each quarter. Specifically the duties would be:

1. Review detailed edit listings.
2. Update edit data files.
3. Call employers for clarification when necessary.
4. Correct occupational titles.
5. Prepare computer summaries of results.

Contractual costs for this position includes phone, training, printing, etc. Equipment expense for desk, chair, cabinets, etc. would be a one time item.

Request For New Position

Agency: Labor
BRU: Administrative Services
Component: Special Services

FY 87

Introduced: 3/6/86
Referred: Labor and Commerce
and Finance

BY FAIKS, BENNETT, ZHAROFF,
DEVRIES, RODEY AND P.FISCHER

IN THE SENATE

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 360

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to tax credits for employing and training residents; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. PURPOSE. The legislature recognizes that the state has a significant unemployment problem. This Act is intended to better fulfill the state's duty of loyalty to its citizens, reduce unemployment among residents of the state, remedy social harms resulting from chronic unemployment, and encourage the training of state residents so that they are better qualified to compete for job opportunities.

* Sec. 2. LEGISLATIVE FINDINGS. The legislature finds:

(1) the findings made in AS 36.10.005 continue to accurately describe the social, economic, and employment situation in the state;

(2) nonresident workers displace a substantial number of qualified, available, and unemployed residents, and the displacement is a substantial contributing cause of the high rate of unemployment among state residents;

(3) high and persistent unemployment breeds severe social problems including alcoholism and domestic violence;

(4) the findings of the Department of Labor of the State of Alaska in its report entitled "Nonresidents Working in Alaska; A Special Study to Measure the Economic Impact of Nonresidents on Alaska's Economy During Calendar Year 1984" support the need for a resident hiring preference;

(5) private sector investment in job training and vocational education programs will help qualify unemployed Alaskans for higher-skilled job opportunities.

* Sec. 3. AS 43.20.036 is amended by adding a new subsection to read:

(j) For purposes of calculating the income tax payable under this chapter, the taxpayer may apply as a credit against tax liability an Alaska hire credit under AS 43.20.041, for employment of state residents who satisfy the eligibility requirements, equal to the sum of

(1) 50 percent of the qualified first-year wages, as defined in 26 U.S.C. 51(b)(2), to a maximum credit of $3,000 for each eligible employee, paid or incurred by the employer during the taxable year;

(2) 25 percent of the qualified second-year wages, as defined in 26 U.S.C. 51(b)(3), to a maximum credit of $3,000 for each eligible employee, paid or incurred by the employer during the taxable year; and

(3) 50 percent of the verifiable job training costs, as determined by regulations adopted by the commissioner of labor, to a maximum credit of $3,000 for each eligible first-year employee, and 25 percent of the verifiable job training costs to a maximum credit of $3,000 for each eligible second year employee.

* Sec. 4. AS 43.20 is amended by adding a new section to read:

Sec. 43.20.041. ALASKA HIRE TAX CREDIT. (a) An employer is entitled to claim an Alaska hire credit under AS 43.20.036(j) if the employer hires an eligible state resident.

(b) An employee is eligible under this section if the employee satisfies the residency requirements for eligibility for a permanent fund dividend under AS 43.23.005 on the date immediately preceding the

date of hire and on that date the employee was a resident of an underemployment area and

(1) was receiving unemployment benefits under AS 23.20 or would have been eligible to receive benefits but had exhausted them;

(2) was not employed and had registered to find work with a public or private employment agency or a local hiring hall;

(3) was underemployed or marginally employed as determined under regulations adopted by the Department of Labor; or

(4) had completed a job training program approved by the Department of Labor and is either not employed or is engaged in employment that does not use the skills acquired in the job training program.

(c) The Department of Labor shall prepare an annual report that designates areas as underemployment areas. The department shall examine each economic region of the state and shall find that an area is an underemployment area if

(1) the area suffers from a resident unemployment rate that is higher than the national average;

(2) nonresident employment is a significant contributing cause of the high resident unemployment; and

(3) resident unemployment has caused significant social ills.

* Sec. 5. This Act applies to employees first hired by an employer on or after January 1, 1986.

* Sec. 6. This Act is retroactive to January 1, 1986.

* Sec. 7. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 1/23/86
Referred: Labor and Commerce
and Finance

IN THE SENATE

BY FAIKS, BENNETT, ZHAROFF, DEVRIES, RODEY AND P. FISCHER

SENATE BILL NO. 360

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to tax credits for employing residents; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 43.20.036 is amended by adding a new subsection to read:

(j) For purposes of calculating the income tax payable under this chapter, the taxpayer may apply as a credit against tax liability an Alaska hire credit, for employment of state residents who satisfy the residency requirements for eligibility for a permanent fund dividend under AS 43.23.005 on the date immediately preceding the date of hire, equal to the sum of

(1) 50 percent of the qualified first-year wages, as defined in 26 U.S.C. 51(b)(2), to a maximum of $6,000 in wages for each eligible employee, paid or incurred by the employer during the taxable year; and

(2) 25 percent of the qualified second-year wages, as defined in 26 U.S.C. 51(b)(3), to a maximum of $6,000 in wages for each eligible employee, paid or incurred by the employer during the taxable year.

* Sec. 2. Section 1 of this Act is retroactive to January 1, 1986.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

WORK DRAFT WORK DRAFT WORK DRAFT

Cramer
4/14/86

Original sponsors: Faiks, Bennett,
Zharoff, et al

IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 360 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to tax credits for employing and training residents; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. PURPOSE. The legislature recognizes that the state has a significant unemployment problem. This Act is intended to better fulfill the state's duty of loyalty to its citizens, reduce unemployment among residents of the state, remedy social harms resulting from chronic unemployment, and encourage the training of state residents so that they are better qualified to compete for job opportunities. If the courts find that a portion of AS 43.20.036(j) or 43.20.041 is unconstitutional, the public interest requires that the remaining portions be implemented as fully as possible.

* Sec. 2. LEGISLATIVE FINDINGS. The legislature finds:

(1) the findings made in AS 36.10.005 continue to accurately describe the social, economic, and employment situation in the state;

(2) nonresident workers displace a substantial number of qualified, available, and unemployed residents, and the displacement is a peculiar source of the high rate of unemployment among state residents;

(3) high and persistent unemployment breeds severe social problems including alcoholism and domestic violence;

(4) the findings of the Department of Labor of the State of Alaska in its report entitled "Nonresidents Working in Alaska; A Special Study to Measure the Economic Impact of Nonresidents on Alaska's Economy

During Calendar Year 1984" support the need for a resident hiring preference;

(5) private sector investment in job training and vocational education programs will help qualify unemployed Alaskans for higher-skilled job opportunities.

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* Sec. 4. AS 43.20 is amended by adding a new section to read:

Sec. 43.20.041. ALASKA HIRE TAX CREDIT. (a) An employer is entitled to claim an Alaska hire credit under AS 43.20.036(j) if the employer employs an eligible state resident for at least six consecutive months for a tax credit on first-year wages and 18 consecutive

months for a tax credit on second-year wages. The credit for first-year wages may only be claimed in the tax year in which the resident completes 12 consecutive months of employment with the employer, or in which the last day of the resident's consecutive employment with the employer occurs, whichever comes first. The credit for second-year wages may only be claimed in the tax year in which the resident completes 24 consecutive months of employment with the employer, or in which the last day of the resident's consecutive employment with the employer occurs, whichever comes first.

(b) An employee is eligible under this section if the employee satisfies the residency requirements of AS 43.23.005(a) on the date immediately preceding the date of hire and on that date the employee was a resident of an underemployment area designated under (c) of this section and

(1) was receiving unemployment benefits under AS 23.20 or would have been eligible to receive benefits but had exhausted them; or

(2) was not employed and had registered to find work with a public or private employment agency or a local hiring hall.

(c) The Department of Labor shall report annually to the legislature and the governor on the status of employment in the state, the effect of nonresident employment on the employment of residents in the state, and methods to increase resident hire. The report may designate areas as underemployment areas. A designation is valid for two years immediately following a determination by the commissioner of labor. The commissioner of labor shall determine that an economic region of the state or the state as a whole is an underemployment area if the commissioner finds that

(1) the rate of unemployment within the area is

substantially higher than the national rate of unemployment;

(2) the lack of employment opportunities in the area has contributed to serious social or economic problems in the area; and

(3) employment of workers who are not residents is a peculiar source of the unemployment of residents of the area.

(d) An employer may not claim a tax credit under this section if the employer terminated the employment of a resident in the expectation of receiving a greater tax credit under AS 43.20.036(j). If an employer terminates the employment of a resident and then hires a resident to fill the position within three months after the termination and if the employer would be entitled to a greater tax credit under AS 43.20.036(j) for the subsequent employment, there is a presumption that the employer acted in expectation of a greater tax credit. The employer may overcome the presumption by showing by clear and convincing evidence that the employer terminated the employee for cause or that the employee left the employment voluntarily.

* Sec. 5. If a provision of AS 43.20.036(j) or 43.20.041, or the application of a provision to a person or circumstance, is held invalid, the remainder and the application to other persons or circumstances is not affected by the holding. The remainder shall be enforced to the greatest extent constitutionally permissible under the constitutions of the United States and the State of Alaska.

Jan 31st possible deletion

* Sec. 6. This Act applies to employees first hired by an employer on or after January 1, 1986.

* Sec. 7. This Act is retroactive to January 1, 1986.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Cramer
5/6/86

Original sponsors: Faiks, Bennett,
Zharoff, et al

IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 360 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

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* Section 1. PURPOSE. The legislature recognizes that the state has a significant unemployment problem. This Act is intended to better fulfill the state's duty of loyalty to its citizens, reduce unemployment among residents of the state, remedy social harms resulting from chronic unemployment, and encourage the training of state residents so that they are better qualified to compete for job opportunities.

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(1) the findings made in AS 36.10.005 continue to accurately describe the social, economic, and employment situation in the state;

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(3) high and persistent unemployment breeds severe social problems including alcoholism and domestic violence;

(4) the findings of the Department of Labor of the State of Alaska in its report entitled "Nonresidents Working in Alaska; A Special Study to Measure the Economic Impact of Nonresidents on Alaska's Economy During Calendar Year 1984" support the need for a resident hiring preference;

(5) private sector investment in job training and vocational

education programs will help qualify unemployed Alaskans for higher-skilled job opportunities.

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(1) 50 percent of the qualified first-year wages, as defined in 26 U.S.C. 51(b)(2), to a maximum credit of $3,000 for each eligible employee, paid or incurred by the employer during the taxable year;

(2) 25 percent of the qualified second-year wages, as defined in 26 U.S.C. 51(b)(3), to a maximum credit of $3,000 for each eligible employee, paid or incurred by the employer during the taxable year; and

(3) 50 percent of the verifiable job training costs, as determined by regulations adopted by the commissioner of labor, to a maximum credit of $3,000 for each eligible first-year employee, and 25 percent of the verifiable job training costs to a maximum credit of $3,000 for each eligible second-year employee.

* Sec. 4. AS 43.20 is amended by adding a new section to read:

Sec. 43.20.041. ALASKA HIRE TAX CREDIT. (a) An employer is entitled to claim an Alaska hire tax credit under AS 43.20.036(j) on first-year wages if the employer employs an eligible state resident for at least six consecutive months. An employer is entitled to claim an Alaska hire tax credit under AS 43.20.036(j) on second-year wages if the employer employs an eligible state resident for at least 18 consecutive months.

(b) The tax credit for first-year wages under (a) of this section may only be claimed in the tax year in which the resident completes 12 consecutive months of employment with the employer, or in which the last day of the resident's consecutive employment with the employer occurs, whichever comes first. The tax credit for second-year wages under (a) of this section may only be claimed in the tax year in which the resident completes 24 consecutive months of employment with the employer, or in which the last day of the resident's consecutive employment with the employer occurs, whichever comes first.

(c) An employee is eligible under this section if on the date immediately preceding the date of hire

(1) the employee satisfies the residency requirements of AS 43.23.005(a);

(2) the employee was a resident of a zone of underemployment designated under (d) of this section, the place of employment was located in that zone of underemployment, and the employee

(A) was receiving unemployment benefits under AS 23.20 or would have been eligible to receive benefits but had exhausted them; or

(B) was not employed and had registered to find work with a public or private employment agency or a local hiring hall.

(d) The Department of Labor shall report annually to the legislature and the governor on the status of employment in the state, the effect of nonresident employment on the employment of residents in the state, and methods to increase resident hire. The report may designate areas as underemployment areas. A designation is valid immediately and for the next two fiscal years following a determination by

the commissioner of labor. The commissioner of labor shall determine that a zone of underemployment exists if the commissioner finds that

(1) the rate of unemployment in the zone is substantially higher than the national rate of unemployment;

(2) a substantial number of residents in the zone have experience or training in occupations in which nonresidents are employed;

(3) the lack of employment opportunities in the zone has contributed to serious social or economic problems in the zone; and

(4) employment of workers who are not residents is a peculiar source of the unemployment of residents of the zone.

(d) An employer may not claim a tax credit under this section if the employer terminated the employment of a resident in the expectation of receiving a greater tax credit under AS 43.20.036(j). If an employer terminates the employment of a resident and then hires a resident to fill the position within three months after the termination and if the employer would be entitled to a greater tax credit under AS 43.20.036(j) for the subsequent employment, there is a presumption that the employer acted in expectation of a greater tax credit. The employer may overcome the presumption by showing by clear and convincing evidence that the employer terminated the employee for cause or that the employee left the employment voluntarily.

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* Sec. 6. This Act takes effect immediately in accordance with

AS 01.10.070(c).

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740

JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

MAY 5 1986

May 2, 1986

MEMORANDUM

TO: Senator Zharoff, Chairman
Senate Labor and Commerce Committee

FROM: Senator Jan Faiks

SUBJECT: Revised CS for Senate Bill 360, an Act relating to tax credits for employing and training residents

My staff met with Bob Landau of the Department of Labor concerning their suggestions for improving Senate Bill 360. Together, they agreed on the following changes to the 4-14-86 committee substitute.

I would appreciate your having these drafted into a new committee substitute and scheduling the bill for a rehearing.

1. Wherever the words "unemployment area(s)" or "area(s)" appear, replace these with "underemployment zone(s)" or "zone(s)".

2. On page 3, line 24, after the word "two", add the word "fiscal".

3. On page 4, add the following subsection to (c): (d) a substantial number of residents in the zone have experience or training in occupations in which nonresidents are employed.

The above changes will make SB 360 uniform with other local hire bills.

4. On page 3, rewrite or place into another section the language dealing with the tax years in which the credits can be claimed. The current placement after the provision

dealing with required consecutive employment has confused readers.

5. On page 3, in subsection (b) beginning line 10, add the following additional criterion: on the date immediately preceding the date of hire the place of employment was located in the same underemployment zone as the employee's place of residence. This will prevent employers from discriminating against local unemployed residents in favor unemployed residents from other areas of the state.

6. On page 4, please delete sections 6 and 7. These sections are unnecessary because employees will not be eligible for a tax credit until after the Department of Labor designates underemployment areas. According to the Department, the earliest that a designation could be made would be January 31, 1987.

Thank you.

CHAIRMAN'S INFORMATION: SSSB 360

1) BILL TITLE: "An act relating to tax credits for employing and training residents; and providing for an effective date."

a) Introduced: Fiaks, Bennett, Zharoff, Devries, Rodey, and P Fischer

b) Co-sponsors:

2) INTENT: This measure creates an "Alaskan Hire Tax Credit" for an employer who hires an eligible resident. The bill enacts a series of tax credits, including a credit for training costs (maximum of $3,000), and details the eligibility criteria.

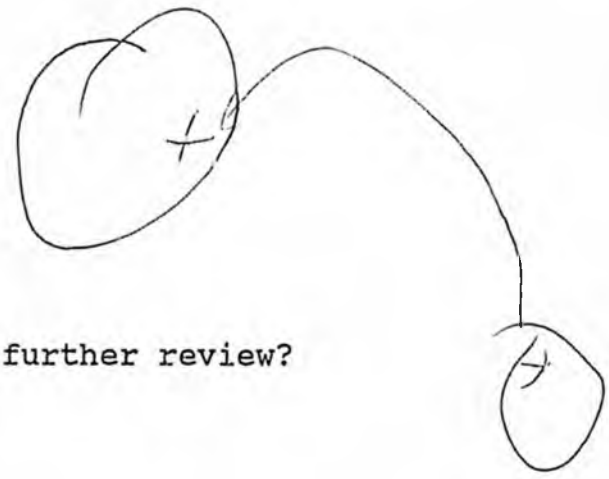
FISCAL NOTE: 2 from the Department of Revenue (- $33.2 million in revenue and $2.0 contractual) and a DOL F/N of $136.2

3) ADDITIONAL REFERRALS: Finance, Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:



5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

RECEIVED APR 14 1986

INSTITUTE OF SOCIAL AND ECONOMIC RESEARCH
UNIVERSITY OF ALASKA, ANCHORAGE
707 A Street, Suite 206 • Anchorage, Alaska 99501
Phone (907) 278-4621

10 April 1986

Senator Jan Faiks
Senate Finance Committee
Pouch V
Capitol Building
Juneau, Alaska 99811

Re: Analysis of the Economic Effect of SB 360

Dear Senator Faiks,

In response to a request from Stephen White of your staff, I am enclosing a short analysis of the economic effect of SB 360, a bill providing tax credits for the hiring of resident Alaskans.

The basic equation for calculating the economic effect of displacing a nonresident worker, as measured by the change in income to Alaska residents, is the sum of two parts, as follows:

Change in income of Alaska residents	=	Net increase in income of newly hired Alaska resident	+	Multiplier effect of increased income spent in Alaska

The net increase in income of the newly hired Alaska resident is the salary he receives minus any public benefits foregone, typically unemployment insurance payments.

Net increase in income of newly hired Alaska resident	=	Salary at new job	-	Foregone public benefits

The multiplier effect (the increase in income of other Alaskans) is calculated using the additional income spent locally due to the displacement of the nonresident as the base to which an economic multiplier is applied.

Multiplier effect of increased income spent in Alaska	=	[multiplier]	x	[Net increase in income of newly hired Alaska resident	-	Local spending by nonresident]

For example, if we assume the following:

weekly salary of Alaskan = $557 (average weekly earnings of recipients of unemployment compensation in 1984)

public benefits foregone = $140 (average weekly unemployment compensation in 1984)

local spending of nonresident = 25% of earnings _

multiplier = .5

then the impact on Alaskan resident income of displacing a non-resident for one week by one unemployed resident would be about $557--$417 going to the resident worker and $139 to Alaskans in other industries because of the multiplier effect.

[$557 - $140] + .5 [$557 - $140 - $139] =

$417 + $139 ≈ $557

In this analysis, the income of the nonresident has no value.

In applying this formula to an analysis of SB 360, the critical variable is the percentage of credits which would be used to hire unemployed residents who would not otherwise get a job. In other words, how many credits "hit the target" for which they are designed. This depends upon the ability of the Department of Labor to designate as "underemployment areas" regions which do not have significant seasonal fluctuations in employment and high job turnover rates from other causes.

Absent such sharp designations, it seems likely on the basis of limited evidence that a large portion of the credits would be used to hire unemployed Alaskans who would have found jobs in the absence of the credits.

Alaska Department of Labor data show that in 1984, 45,453 persons submitted initial unemployment compensation claims and only 45.6 percent of these people exhausted their benefits. The remaining 24,749 either found employment prior to exhausting their benefits or dropped out of the labor market (79 percent [36,063] of these claims were from within the state, but the percentage of these claimants exhausting their benefits is not reported [ADOL, Unemployment Insurance Actuarial Study and Financial Handbook, December 1985]).

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8072

4190 SLAB SB 360 - SB 367

1070

Because of the seasonal nature of a number of Alaska industries, it is not surprising that a large portion of people filing for unemployment would find new jobs before their benefits were exhausted. These hirings would in general be eligible for the credit. In addition, there is a normal turnover of people in any industry as employers and employees continually strive to improve their circumstances. This phenomenon also accounts for some of the unemployment and hiring of individuals who have not exhausted benefits.

An estimate (very rough) of the potential for the credits to be used up by this rehiring process, in the absence of targeting, is provided by comparing first payments of unemployment compensation by industry in 1984 (p. 46 of the ADOL, Unemployment Insurance Actuarial Study and Financial Handbook) with the Department of Revenue (DOR) "fiscal note," attached to SB 360, an analysis of the number of resident hirings by industry necessary to eliminate the tax. With a few notable exceptions, the number of credits necessary to reduce the tax liability to zero is small compared to either the number of individuals receiving unemployment compensation or the apparent number rehired before exhaustion of benefits. For example, 11,376 people who said their occupation was construction received unemployment compensation, and apparently about half were rehired before their payments expired. In contrast, DOR estimated that only 1,232 job credits would be necessary to eliminate all tax liability for that industry. The major exceptions to this imbalance are the oil and gas, trade, and finance industries, where the number of claimants is commensurate with the DOR estimates. For example, there were only 1,170 first-time unemployment compensation payments to Alaskans in mining (primarily oil and gas) while DOR estimated 3,156 nonresident jobs displaced would not be enough to eliminate the tax liability in that industry.

Thus, the potential range of impact is great and largely dependent upon targeting. With "perfect targeting," complete use of the credits, and nonresident displacement consistent with the DOR job mix, the direct income displaced from nonresidents to residents would be $171.1 million ($86.3 in oil and gas, $22.2 in construction, and the remainder in other industries). This is the result of hiring 3,156 Alaskans in oil and gas and 8,559 Alaskans in other industries at the same wage as the displaced nonresidents. Assuming a multiplier of .5 and a 25 percent local spending factor for nonresidents, the total impact on Alaska income would be equal to $171 million, or about $5 for each $1 of state tax income foregone.

A more likely result is that "targeting" would be difficult to achieve. Many of those hired to receive a tax credit would be unemployed Alaskans who would have been hired eventually anyway. If one-fourth of the credits are "on target" for oil and gas and

one-fifth for other industries (a rough judgment based solely on a comparison of the DOR analysis of the number of jobs needed to eliminate the tax and the Department of Labor figures for the unemployed by industry) and if the credits were fully utilized, the impact on resident income would be $39 million, about $1.22 of income for each public dollar lost.

I am not in a position to offer any comments on the reduction in public expenditures which would result from the passage of SB 360. Since the unemployment insurance program is not funded out of the state general fund, a reduction in unemployment benefits paid would not directly impact the state treasury. The question of reduced payments for the treatment of social ills arising from unemployment is best addressed by an expert in the field.

I hope this information is useful to you as you consider this and other legislation relating to the issue of local hire.

Sincerely,

Scott Goldsmith

Oliver Scott Goldsmith
Professor of Economics

Faiks seeks local hire tax break

by Bruce Scandling
Associated Press

JUNEAU — Employers would get a tax break for hiring state residents, according to a new proposal introduced less than a week after the Alaska Supreme Court tossed out the state's local hire law.

Companies could deduct up to $6,000 a year from their tax bills for each newly hired Alaskan, under a plan drafted by Sen. Jan Faiks, an Anchorage Republican who co-chairs the Senate Finance Committee.

The deduction would apply only to workers hired after the law was enacted. The tax break would be good for the first two years a worker was on the job.

"I couldn't think of a better way to encourage employers to hire Alaskans," said Faiks, who modeled the law after a federal tax code providing incentives for the hire of minority and disadvantaged workers.

Although the financial ramifications of the bill have not been calculated, the proposal would likely cost the state millions of dollars in lost tax revenue.

According to the state Department of Revenue, 3,000 corporations in Alaska reported taxable income in 1982, the last year for which complete records are available.

"Presumably, there will be some fiscal impact," said Bruce Botelho, deputy commissioner in the Revenue Department. "I'm sure we're going to be asked for the impact on that."

Faiks said employers would determine the residency of workers according to their eligibility for an Alaska Permanent Fund dividend. A person who has lived

See Proposal, page A-8

Proposal

Continued from page A-1

in Alaska for six months and plans to stay is eligible for the dividend.

The new proposal comes less than a week after the Alaska Supreme Court struck down the state's local hire law. In a unanimous opinion, the court said attempts to give Alaskans priority for jobs on state-funded projects is discriminatory, and a violation of the U.S. Constitution.

Ron Zobel, the Anchorage attorney who successfully argued against the local hire law, said Thursday he has questions about tax incentives which would work against non-residents.

"I would not be willing to say that a court would uphold such a scheme, although in this instance the law is a little more complicated," Zobel said.

He said the state supreme court and other courts have continually ruled that efforts to keep jobs away from non-residents are against the law.

"That very purpose of preventing the disposition of jobs (to non-residents) is constitutionally unenforceable," Zobel said.

Faiks said she still supports current attempts in the legislature to rewrite the local hire law with new figures showing the drastic economic impact of non-resident hire in Alaska. But the tax-incentive proposal could be a more well-received approach, she said.

"I think the courts have said that you can't just force people to hire Alaskans," said Faiks.

The measure would also provide incentives for companies to train Alaska workers, she said.

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 360 (L&C)

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FOURTEENTH LEGISLATURE - SECOND SESSION

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(b) An employee is eligible under this section if the employee satisfies the residency requirements of AS 43.23.005(a) on the date immediately preceding the date of hire and on that date the employee was a resident of an underemployment area designated under (c) of this section and

(1) was receiving unemployment benefits under AS 23.20 or would have been eligible to receive benefits but had exhausted them; or

(2) was not employed and had registered to find work with a public or private employment agency or a local hiring hall. [;]

[(3)] [(4)]

(c) The Department of Labor shall report annually to the legislature and the governor on the status of employment in the state, the effect of nonresident employment on the employment of residents in the state, and methods to increase resident hire. The report may designate areas as underemployment areas. A designation is valid for two years immediately following a determination by the commissioner of labor. The commissioner of labor shall determine that an economic region of the state or the state as a whole is an underemployment area if the commissioner finds that

(1) the rate of unemployment within the area is

substantially higher than the national rate of unemployment;

(2) the lack of employment opportunities in the area has contributed to serious social or economic problems in the area; and

(3) employment of workers who are not residents is a peculiar source of the unemployment of residents of the area.

(d) An employer may not claim a tax credit under this section if the employer terminated the employment of a resident in the expectation of receiving a greater tax credit under AS 43.20.036(j). If an employer terminates the employment of a resident and then hires a resident to fill the position within three months after the termination and if the employer would be entitled to a greater tax credit under AS 43.20.036(j) for the subsequent employment, there is a presumption that the employer acted in expectation of a greater tax credit. The employer may overcome the presumption by showing by clear and convincing evidence that the employer terminated the employee for cause or that the employee left the employment voluntarily.

* Sec. 5. If a provision of AS 43.20.036(j) or 43.20.041, or the application of a provision to a person or circumstance, is held invalid, the remainder and the application to other persons or circumstances is not affected by the holding. The remainder shall be enforced to the greatest extent constitutionally permissible under the constitutions of the United States and the State of Alaska.

* Sec. 6. This Act applies to employees first hired by an employer on or after January 1, 1986.

* Sec. 7. This Act is retroactive to January 1, 1986.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

CS SSSB 360(L&C): Sectional Analysis

Section 1) Purpose Section

Section 2) Legislative Findings relating to unemployment among state residents, social "costs" associated with unemployment, and the need for private sector investment in job training and voc ed programs to help qualify unemployed Alaskans for higher skilled job opportunities.

Section 3) Adds a new section which provides for an Alaskan hire tax credit for employers who satisfy specific requirements.

Tax credit to be computed as follows:

Tax credit equal to the sum of:

50% of the first year wages, or a maximum of $3,000 for each eligible employee;

25% of second year wages, up to $3,000 for each eligible employee;

50% of the verifiable job training costs, as determined by DOL regs, up to a max of $3,000 for first year employees; 25% of the job training costs for a maximum of $3,000 for each eligible second year employee.

Section 4) Entitlement for the Alaska Hire Tax Credit. An employer is entitled to a "first year" tax credit if he hires an eligible state resident for at least 6 consecutive months, and a "second year" tax credit, on second year wages, after 18 consecutive months of employment.

First year wage credits may only be claimed in the tax year in which the employee completes 12 months of consecutive employment or is terminated, whichever comes first.

Tax credit for second year wages may only be claimed in the tax year in which the employee completes 24 consecutive months of employment with the employer, or the resident employee is terminated, whichever comes first.

An employee is eligible under this section who satisfies the PFD residency requirements, (on the date immediately preceding the date of hire) and is a resident of an area which is defined as "underemployed". Employee must also meet the following additional requirements:

1) is either receiving UI benefits or would be recieving them if the resident had not exhausted them;

2) not employed but has registered for work;

DOL shall make an annual report designating underemployment areas

DOL to examine each economic region of the state to determine if an area is an "underemployment" area. The criteria for underemployment area is as follows:

1) resident unemployment is substantially higher than the national average;

2) lack of employment opportunities in the area has contributed to serious social and economic problems in the area.

3) nonresident hire is a peculiar source of high resident unemployment.

Employer may not claim a tax credit if the employer terminated an employee in expectation of getting a larger tax credit. Defines situations in which it can be "presumed" that the employer terminated an employee in hopes of getting a greater tax credit. Also provides a method of overturning such a "presumption", based on clear and convincing evidence.

Section 5) If a provision of this act is held invalid, the remainder shall be enforced to the greatest extent permissable under the US and Alaskan Constitutions.

Section 6) Application: Applies to employees first hired by an employer on or after January 1, 1986.

Section 7) Retroactive to January 1, 1986

Section 8) Immediate effective date.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smoky
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

365

AS21.27.200 DOCUMENT
CHAPTER = 21.27
SECTION = 21.27.200
TITLE = 21
HEADINGS TITLE 21.
Insurance.
CHAPTER 27.
Agents, Brokers, Solicitors, and Adjusters.
CITATION Sec. 21.27.200.
CATCH LINE
BROKER'S AUTHORITY AND COMMISSIONS.
TEXT (a) A broker, as such, is not an agent or other representative of an insurer, and does not have power as a broker to bind the insurer upon any risk or with reference to any insurance contract. Nothing in this section is intended to alter the common law of agency as applied to transactions under this title.

(b) An insurer or agent has the right to pay to a broker licensed under this title, or under the laws of another state or a province, and the broker has the right to receive from the insurer or agent, the customary commissions upon insurances placed in the insurer by the broker.

HISTORY (Sec. 1 ch 120 SLA 1966)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : 377-022-86 SB365
Title : Broker is the Agent of Insurer for payment of premium.

Sponsor : _____
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Comm. & Economic Dev
BRU : Insurance

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : John L. George Phone : 465-2515
Division : Insurance Date : 11/27/85

Approved by Commissioner : Loren H. Lounsbury Date : _____
Agency : Commerce and Economic Development

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor

Introduced: 1/27/86
Referred: Labor and Commerce

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 365

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing that a broker is the agent of an insurer for payment of premium; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.27.200(a) is amended read:

(a) Except as provided in (c) of this section, a [A] broker, as such, is not an agent or other representative of an insurer, and does not have power as a broker to bind the insurer upon any risk or with reference to any insurance contract. Nothing in this section is intended to alter the common law of agency as applied to transactions under this title.

* Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

(c) Notwithstanding a statute, or a provision in the policy or contract, to the contrary, a payment of premium to a broker is considered to be payment to the insurer.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Ford
3/26/86

Original sponsor: Rules/Governor

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 365 (L & C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing that a broker is the agent of an insurer for payment of premium; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.27.200(a) is amended read:

(a) Except as provided in (c) of this section, a (1) [A] broker, as such, is not an agent or other representative of an insurer, and does not have power as a broker to bind the insurer upon any risk or with reference to any insurance contract. (2) Nothing in this section is intended to alter the common law of agency as applied to transactions under this title.

* Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

(c) Notwithstanding a statute, or a provision in the policy or contract to the contrary, payment of a premium to the broker is considered to be payment to the insurer, if the payment to the broker is supported by competent evidence.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c). Nothing in this subsection is intended to limit the right of the insurer to recover premium from the broker which the insurer has not received.

Ford
4/2/86

Original sponsor: Rules/Governor

IN THE SENATE BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 365 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing that a broker is the agent of an insurer for payment of premium; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.27.200(a) is amended read:

(a) Except as provided in (c) of this section,

(1) a [A] broker, as such, is not an agent or other representative of an insurer, and does not have power as a broker to bind the insurer upon any risk or with reference to any insurance contract; and

(2) nothing [. NOTHING] in this section is intended to alter the common law of agency as applied to transactions under this title.

* Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

(c) For purposes of determining an insured's entitlement to coverage, a premium paid to the broker is considered to be received by the insurer, if the payment to the broker is designated for specific coverage from a specifically named insurer and is supported by competent evidence.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

BILL SHEFFIELD
GOVERNOR

SB 365

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 27, 1986

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the authority of insurance brokers.

This bill will add a new AS 21.27.200(c), to provide that, for purposes of receiving payment of an insurance premium, a broker is legally considered an agent of the insurance company. Upon payment, the person who made the payment to the broker is immediately covered by the policy. This will be true even if the broker fails to forward the premium to the insurance company.

This bill will offer insureds greater protection against disreputable brokers who collect premiums and then fail to place the actual insurance coverage.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

TRANSMITTAL LETTER

Department of Commerce & Economic Development / POSITION PAPER

SB 365: "An Act providing that a broker is the agent of an insurer for payment of premium; and providing for an effective date."

This is a Governor's bill and the department supports the bill. It would provide that, for purposes of receiving payment of an insurance premium, a broker is legally considered an agent of the insurance company. This legislation does not give the broker the ability to bind coverage with an insurance company that has not given him that authority.

Alaska insurance law currently recognizes and licenses several types of insurance producer. These are agent, broker, solicitor, general agent, and surplus lines broker. Three of these, the agent, the solicitor of an agent, and the general agent, have a direct contractual relationship with the insurance company in which it places business. The effect of this is that when an agent, solicitor under an agent, or general agent receives premium from an insured, it is the same as though the insurance company had received the funds, even if the insurance company never receives the money.

The situation with a broker is not as clear. The broker by definition represents the insured, not the insurance company. It is possible that a legal argument could be made to attempt to treat the broker as an agent of the insurer, but it would not be a strong argument and not uniformly applicable. This was recognized when the surplus lines model law was drafted by the National Association of Insurance Commissioners in 1983 and adopted in Alaska law in 1984. Alaska Statute 21.34.130 provides that collection of premium by a surplus lines broker is considered collection by the insurance company writing the coverage.

During the past two years, it has become clear that a similar law is needed for brokers. Two large broker insolvencies have occurred where insureds have paid the broker who in turn has failed to remit those funds to the insurer resulting in cancellation of coverage for nonpayment of premium. The insured then suffers a loss of coverage and monies. In most cases, the insured person did not know in which capacity the producer was acting, let alone understand and appreciate the distinction.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

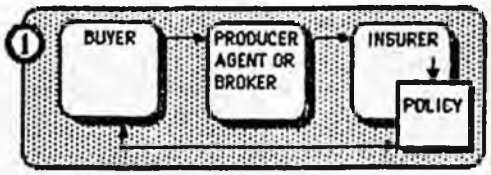
Date: 2/28/86

John L. George, Director of Insurance

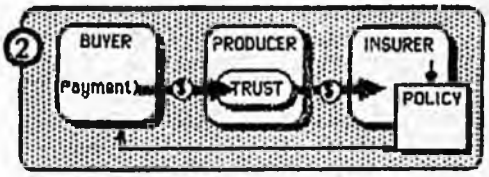
Date: 2/28/86

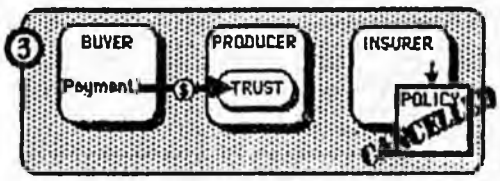
INSURANCE PURCHASE TRANSACTIONS COMMENTS FOR SB 365

In the typical insurance purchase transaction, the buyer (insured) places an order with a producer (agent or broker), who in turn places the order with an insurance company who issues the policy. See Figure 1.



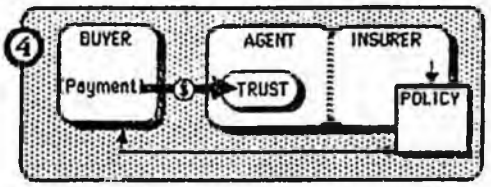
As part of the transaction, the prospective insured and the producer arrive at an agreement concerning the terms of payment for the insurance policy, usually paying in full within 30 days of effecting coverage. These funds, when paid to the producer, are received in a trust account, accounted for and paid to the appropriate party when due. This requirement is found in AS 21.27.360. The producer is responsible for payment of those monies to the insurer by 30 to 45 days following the end of the month in which the transaction was effective. That means that the money is not due to the insurance company from the producer until 31 to 75 days after the effective date of coverage and sometimes more. See Figure 2. Most transactions, except direct bill, occur in this manner.



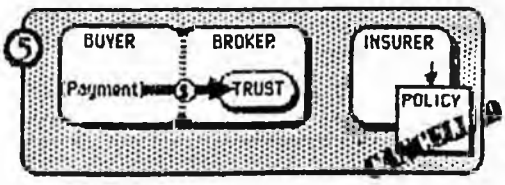


In some cases, the producer violates the law and misappropriates the premium monies to his own use and does not forward them to the insurance company. Normally, the insurance company will send a notice of cancellation for nonpayment of premium when that occurs. See Figure 3.

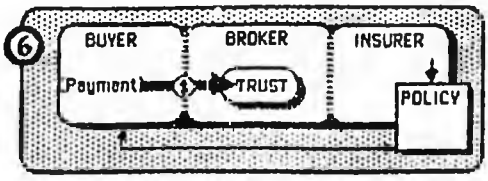
The buyer of insurance will usually not know whether his insurance person has a license as an insurance agent, insurance broker, or both. The buyer will rarely know which license of a producer is being used on a particular transaction. Further, the distinction between the two is unlikely to be understood by most buyers of insurance. Yet, this distinction may be and has been a critical point when a misappropriation occurs, because the public protection is different with the two types of license.



If the buyer conducts his transaction with a producer acting under his agents license, the buyer has protection from the misappropriation of the agent. Since the insurer has appointed the producer to act as its agent, any collection of premium IS collection by the insurer. Any misappropriation by the agent of an insurer will have no impact on the insurance policy. Thus any cancellation by the insurer would be rescinded as soon as the the insured had made payment to the agent. See Figure 4.



When the buyer conducts his transaction with a producer acting under his brokers license, the buyer has no protection from the misappropriation of the broker. The broker is the representative of the buyer, not the insurer. A misappropriation by the broker results in cancellation of any coverage. See Figure 5. During the past two years, there have been several massive misappropriations resulting in loss to buyers in excess of $500,000. Currently, several more similar situations are under investigation.



SB 365 proposes to provide protection to the buyer by establishing a special relationship between the broker and the insurer. The broker would be the agent of the insurer for the purpose of the collection of premium only. When the broker collects premium from the buyer for a policy he has placed, it would be the same as though the buyer had paid the insurer directly. The logic behind this proposal, is that the insurer is in a position to control the monetary actions of the broker or certainly influence them more readily than is possible for the buyer. See Figure 6. We urge passage of this legislation.

PREPARED BY: ALASKA DIVISION OF INSURANCE
March 24, 1986

* Need to move the "2nd" L&C CS.

THIS MEASURE WILL OFFER CONSUMERS (INSUREDS) GREATER PROTECTION AGAINST BROKERS WHO COLLECT MONEY FOR PREMIUMS AND THEN FAIL TO PLACE INSURANCE COVERAGE. RECENT BROKER INSOLVENCIES HAVE RESULTED IN SITUATIONS WHERE THE INSURED HAS PAID MONEY TO THE BROKER, AND THE BROKER HAS FAILED TO PAY THE PREMIUM TO THE INSURANCE COMPANY. THIS IN TURN HAS RESULTED IN THE CANCELLATION OF POLICIES, (FOR NONPAYMENT OF PREMIUM), AND THE CONSUMER HAS LOST BOTH THE INSURANCE COVERAGE AND HIS MONEY.

IF THERE ARE TECHNICAL QUESTIONS ABOUT THE L&C CS:

THE L&C CS MADE TECHNICAL CHANGES IN SECTION 1 TO CLARIFY THE EXEMPTION WHICH OCCURS IN SECTION 2 OF THE MEASURE. SECTION 2 OF THE MEASURE HAS BEEN REPHRASED TO CLARIFY THE RELATIONSHIP BETWEEN THE BROKER AND INSURER, I.E. COMPETENT EVIDENCE OF PAYMENT FOR SPECIFIC COVERAGE FROM A SPECIFICALLY NAMED INSURER.

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 365: Summary

This bill will offer consumers (insureds) greater protection against brokers who collect money for premiums and then fail to place insurance coverage. Recent broker insolvencies have resulted in situations where the insured has paid money to the broker, and the broker has failed to pay the premium to the insurance company. This in turn has resulted in the cancellation of policies (for nonpayment of premium) and the insured has lost both the insurance coverage and his money.

The L&C CS separated the sentences in section 1 to clarify that the exemption referenced in (c) pertains to both (1) and (2).

Section 2) of the CS was also rephrased to make clear the relationship between the broker and the insurer. i.e. competent evidence of payment for specific coverage from a specifically named insurer.

CHAIRMAN'S INFORMATION: CSSB 365 (L&C)

1) BILL TITLE: "An act providing that a broker is the agent of an insurer for payment of premium; and providing for an effective adte"

a) Introduced: Governor

b) Co-sponsors:

2) INTENT: This measure will offer consumers (insureds) greater protection against brokers who collect money for premiums and then fail to place insurance coverage.

The L&C CS separated the sentences in section 1 to clarify that the exemption referenced in (c) pertained to both (1) and (2).

Section 2) of the CS was also rephrased to make clear the relationship between the broker and the insurer. i.e. competent evidence of payment for specific coverage from a specifically named insurer.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Sen Rules

4) PUBLIC HEARINGS: Both L&C and Rules

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt the L&C CS

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

367

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2700

March 11, 1986

Mr. Michael Thill
Labor and Commerce Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Michael:

This is in response to your request for information on Senate Bill No. 367 and its companion bill, House Bill No. 466.

Senate Bill 367 would establish three new types of resident employment preferences on public construction projects to replace the current resident employment preference in AS 36.10.010 which has been found to be unconstitutional by the Alaska Supreme Court.

As the State agency charged with the administration and enforcement of resident hire preferences, the Department of Labor strongly supports the creation of these new employment preferences. The Department believes that because the new preference categories are much more narrowly focused than existing law, they stand a much better chance of being factually and legally supported in the event of a challenge. The preferences are specifically tailored to benefit only those unemployed and disadvantaged Alaskans who are most in need of employment.

Under this bill, the Department of Labor will have substantial research and enforcement responsibilities. In order to provide the necessary factual foundation to support each of the new employment preferences, the Department will have a continuing obligation to research and compile economic and statistical data on various aspects of employment and unemployment in Alaska. Because many of the criteria which would trigger application of the preferences cannot be substantiated with currently available information, the department's research staff will be required to go well beyond the bounds of its recent study on nonresidents working in Alaska.

Enclosed is a listing of the amendments which would be required to Senate Bill No. 367 to align it with the amendments that have so far been made or offered to House Bill No. 466. Of course, not all of these amendments were initiated by the Department of Labor. Nonetheless, we do support them and would recommend that they be incorporated into Senate Bill No. 367.

House Bill No. 466 is continuing to be refined so other amendments to it will no doubt follow.

Thank you for your interest.

Sincerely,

Eileen Plate
Special Assistant

EP:kmc
07001

Enclosure

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSSB 367: Sectional Analysis

Section 1) Purpose Section

Section 2) Legislative finding that the ratio of employees on a payroll who were refused or did not apply for a PFD to those who received a PFD is a reasonable indicator of the nonresidents/residents employed on a public works project.

When determining the nonresident/resident ratios on a public works project, the commsiioner may consider on site surveys, interviews, questionaires, examination of employees vehicle registrations, and payroll information.

The following are reasonable indicators of resident/nonresident ratios:

1) the ratio of applicants for UI benefits who list out of state residences/in state residences;

2) the ratio of UI covered employees who did not apply for or were denied PFD's/eligible employees for PFD's;

Further Legislative Findings:

1) the number of residents unable to find work is considerably higher than unemployment rates based on nationally accepted measures;

2) rural residents work search efforts do not meet the federal definitions of unemployment because of a continuing lack of opportunities in the rural areas of the state.

Section 3) An employer subject to the hiring requirements of this chapter may request assistance from DOL in locating qualified employees. After a request for assistance, DOL shall refer qualified applicants to the employer. Employer shall cooperate with the Department.

If DOL is unable to refer a sufficient number of qualified residents, the commissioner may approve the hiring of residents ineligible for the hiring preference and non residents to fill the work force needs.

Section 4) Commissioner of DOL shall adopt regs to encourage and require the hiring of residents to the maximum extent permitted by law.

Section 5) Adds new sections to 36.10

36.10.130: The AG and the Commissioner of DOL shall report every 2 years to the Legislature and the Governor on the status of employment in the state, the effect of nonresident employment on employment of residents, and methods to increase resident hire. Report to be submitted by Jan 31 of the first session of a legislature.

36.10.140: Eligibility for Preference:

A resident is eligible if he registers with DOL, and:

1) is receiving UI benefits or has exhausted them;

2) is not working and has registered to find work;

3) underemployed or marginally employed;

4) has completed an OJT program, approved by DOL; and is unemployed or marginally employed in relation to the skills acquired;

Requires employer, subject to this chapter, to certify with DOL that resident employees are eligible for the preference.

36.10.150: Determination of Underemployed Areas:

After the Commissioner of DOL determines that an economic region of the state, or the whole state, is an "underemployed area", for the next 2 years qualified local residents shall be granted work preference on projects within the local area.

Commissioner determines that an economic region is an underemployed area if:

1) Rate of unemployment exceeds the national rate of unemployment;

2) substantial number of residents desire work that would be done on a public works project;

3) lack of work has contributed to social and economic problems in the area;

4) employment of nonresidents results in unemployment of residents;

36.10.160: Economically Distressed Area Preference

After a determination by the Commissioner of DOL that an area is economically distressed, for the next 2 years qualified residents shall be given preference for at least 50% of work on a project which is located within the area. This preference applies to worker hours on a craft by craft basis.

Commissioner to determine economically distressed area:

1) unemployment in the area exceeds the national average by 5% points;

2) lack of employment results in social and economic problems;

3) nonresident employment results in unemployment for residents;

36.10.170 Economically Disadvantaged Minority Preference

After commissioner determines that minority residents of an economic region are economically disadvantaged, for the next 2 years they shall be given a preference for at least 25% of the work on each project within the area. Preference applies to worker hours on a craft by craft basis.

Commissioner to determine whether minority residents of an area are economically disadvantaged as follows:

1) civilian minority population of the area exceeds the average civilian minority population of the state;

2) either the % of unemployment of civilian minority residents of the area is 2 times the % of unemployment of nonminority residents, or the civilian minority population has suffered past economic discrimination;

3) economic disadvantage of minority residents has contributed to social and economic problems in the area.

4) employment of nonresidents results in the unemployment of civilian minority residents of the area;

Defines minority as a Black, Hispanic, Asian or Pacific Islander, American Indian, or Alaska Native, as those terms are defined by the EEO Commission.

36.10.180: Projects Subject to Preference

1) contracts let by a municipality

2) construction project funded wholly or partly with state money

3) public works project under a grant to a municipality;

4) public works project under a grant to a named recipient;

5) public works project under a grant to an unincorporated community;

If the Governor declares an economic disaster then the preference under that chapter supercedes the preference for contracts awarded by the state.

Commissioner shall define the boundaries of an economic region or area where the preference applies;

36.10.190: Penalties

Person who makes a false sworn statement for eligibility certification is subject to criminal prosectuion for perjury. (Class B Felony)

Person who makes an unsworn falsification is subject to perjury (Class A misdemeanor);

In addition to criminal penalties, a person who is guilty of falsifying statements of certification, whose conviction is not reversed, shall forfeit future rights for employment preference under this chapter.

36.10.900: Effect of Judicial Decisions

If a provision of this chapter is held invalid, the remainder of this chapter shall not be affected by that holding. The remainder shall be enforced to the greatest extent possible under the Alaska and US Constitutions.

36.10.990: Definition "qualified"

Section 6) Adds definitions of "craft' and "resident"

Section 7) DOL to require compliance with this chapter for a municipal grant for a public works project;

Section 8) DOL to require compliance with this chapter on grants to named recipients;

Section 9) DOL to require compliance with this chapter for public works projects funded by grants to unincorporated communities;

Section 10) Provisions of this act do not apply to a contract entered into before the effective date of this act, unless the contracts require compliance with resident hire provisions that take effect during the term of the contract.

Section 11) repealer

Section 12) repealer

Section 13) Effective date for the repealer in section 12 conditioned upon actions of the court and its consideration of appeal on the Robison vs Francis decision.

Section 14) Sections 1-11 have an immediate effective date;

CHAIRMAN'S INFORMATION: CSSB 367(L&C)

1) BILL TITLE: "An act relating to Alaskan resident employment preference; and providing for an effective date."

a) Introduced: Faiks, Josephson, Sturgulewski, and V Fischer.

b) Co-sponsors:

2) INTENT: This measure establishes a resident hire preference for public works projects and details the eligibility criteria. The CS contains extensive Purpose and Findings sections and creates a series of "preference" situations. These include:

1) Eligibility for preference

2) Determination of "Underemployed Areas".

3) "Preference for Residents of Economically Distressed Areas".

4) "Preference for Economically Disadvantaged Minorities"

The CS details what projects will be subject to preference, and what the penalties shall be for false certification. The bill requires the Department of Labor to assist employers in locating qualified resident workers, and it contains an "escape" mechanism for those employers who are unable to fill their work force needs with residents.

CS incorporates amendments proposed by the Dept of Labor to put the bill in accord with the House version;

FISCAL NOTE: 2 from the Department of Labor $331.9 + $161.3 for a total of $493.2

3) ADDITIONAL REFERRALS: Judiciary, Rules

N.B. NEEDS A FINANCE REFERRAL

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt L&C CS

14-1651
Cramer
3/14/86 ✓

Original sponsors: Faiks, Josephson,
Sturgulewski and V.Fischer

IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 367 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to Alaskan resident employment preference; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. PURPOSE. The legislature recognizes that the state has a significant unemployment problem. This Act is intended to better fulfill the state's duty of loyalty to its citizens, reduce unemployment among residents of the state, remedy social harms resulting from chronic unemployment, and assist economically and socially disadvantaged residents. If the courts find that a portion of AS 36.10 is unconstitutional, the public interest requires that the remaining portions be implemented as fully as possible.

* Sec. 2. AS 36.10.005 is amended by adding new subsections to read:

(c) The legislature further finds that the ratio of employees on a certified payroll who did not apply for or were refused a permanent fund dividend under AS 43.23 to employees who were found eligible to receive a dividend is a reasonable but not exclusive indicator of the ratio of nonresident to resident employees on a public works project.

(d) When determining the ratio of nonresident to resident employees working on a public works project, the commissioner may consider information gathered from on-site surveys of public works projects including individual interviews, questionnaires, examination of the state of registration of vehicles owned or operated by employees, and other information acquired from inspection of certified payrolls.

(e) The legislature finds that the following factors are reasonable but not exclusive indicators of the ratio of nonresident to resident employees in the state:

(1) the ratio of applicants for unemployment insurance who list out-of-state residences to applicants who list residences in the state;

(2) the ratio of employees who are subject to unemployment insurance coverage and who did not apply for or were denied a permanent fund dividend to employees who were found eligible for a dividend.

(f) The legislature finds that

(1) the number of state residents who are unable to find work is considerably higher than is reflected by unemployment rates based on nationally accepted measures;

(2) many rural state residents who wish to work do not seek employment as frequently as necessary to meet federal definitions of unemployment because of continuing lack of employment opportunities in rural areas of the state.

* Sec. 3. AS 36.10.070 is repealed and reenacted to read:

Sec. 36.10.070. UNAVAILABILITY OF PREFERRED WORKERS. (a) An employer subject to hiring requirements under this chapter may request the Department of Labor to assist in locating qualified, eligible employees. After receiving a request for assistance, the department shall refer qualified, eligible, available residents to the employer to fill the employer's hiring needs. The employer shall cooperate with the department.

(b) If the department is unable to refer a sufficient number of qualified, eligible, available residents able to perform the work, the commissioner of labor may approve the hiring of residents who are not

eligible for preference and nonresidents for the balance of the request.

* Sec. 4. AS 36.10.075 is amended by adding a new subsection to read:

(b) The commissioner of labor shall adopt regulations to encourage and require the hiring of residents to the maximum extent permitted by law.

* Sec. 5. AS 36.10 is amended by adding new sections to read:

Sec. 36.10.130. RESIDENT HIRE REPORT. The attorney general and the commissioner of labor shall report biennially to the legislature and the governor on the status of employment in the state, the effect of nonresident employment on the employment of residents in the state, and methods to increase resident hire. The report shall be submitted by January 31 of the first session of a legislature.

Sec. 36.10.140. ELIGIBILITY FOR PREFERENCE. (a) A person is eligible for an employment preference under this chapter if the person registers as required by the Department of Labor, is a resident, and

(1) is receiving unemployment benefits under AS 23.20 or would be eligible to receive benefits but has exhausted them;

(2) is not working and has registered to find work with a public or private employment agency or a local hiring hall;

(3) is underemployed or marginally employed as defined by the department; or

(4) has completed a job-training program approved by the department and is either not employed or is engaged in employment that does not use the skills acquired in the job-training program.

(b) An employer subject to a resident hiring requirement under this chapter shall certify that persons employed as residents under the preference are eligible for the preference.

Sec. 36.10.150. DETERMINATION OF UNDEREMPLOYED AREA. (a)

Immediately following a determination by the commissioner of labor that an economic region of the state is an underemployed area or that the state as a whole is an underemployed area, and for the next two years after the determination, qualified residents of the area who are eligible under AS 36.10.140 shall be given preference for work on each project under AS 36.10.180 that is wholly or partially sited within the area.

(b) The commissioner shall determine that an economic region of the state or the state as a whole is an underemployed area if the commissioner finds that

(1) the rate of unemployment within the area is substantially higher than the national rate of unemployment;

(2) a substantial number of residents in the area desire work in occupations that would be employed on a public works project;

(3) the lack of employment opportunities in the area has contributed to social or economic problems in the area; and

(4) employment of workers who are not residents is a peculiar source of the unemployment of residents of the area.

Sec. 36.10.160. PREFERENCE FOR RESIDENTS OF ECONOMICALLY DISTRESSED AREAS. (a) Immediately following a determination by the commissioner that an economic region of the state is an economically distressed area, and for the next two years after the determination, qualified residents of the area who are eligible under AS 36.10.140 shall be given preference for at least 50 percent of employment on each project under AS 36.10.180 that is wholly or partially sited within the economically distressed area. The preference applies to worker hours on a craft-by-craft basis.

(b) The commissioner shall determine that an area is an economically distressed area if the commissioner finds that

(1) the unemployment rate in the area exceeds the national rate of unemployment by at least five percentage points;

(2) the lack of employment opportunities in the area has contributed to social or economic problems in the area; and

(3) employment of workers who are not residents is a peculiar source of unemployment of residents of the area.

Sec. 36.10.170. PREFERENCE FOR ECONOMICALLY DISADVANTAGED MINORITY RESIDENTS. (a) Immediately following a determination by the commissioner that the minority residents of an economic region are economically disadvantaged, and for the next two years after the determination, qualified minority residents of the area who are eligible under AS 36.10.140 shall be given preference for at least 25 percent of employment on each project under AS 36.10.180 that is wholly or partially sited within the area. The preference applies to worker hours on a craft-by-craft basis.

(b) The commissioner shall determine that minority residents of an area are economically disadvantaged if the commissioner finds that

(1) the civilian minority population of the area exceeds the average civilian minority population for the state;

(2) either the percent of unemployment of civilian minority residents of the area is at least two times the percent of unemployment of nonminority residents of the area or the civilian minority population of the area has suffered past economic discrimination;

(3) the economic disadvantage of civilian minority residents of the area has contributed to social or economic problems in the area;

(4) employment of workers who are not residents is a peculiar source of unemployment of civilian minority residents of the area.

(c) In this section, a person is considered to be a member of a minority if the person is black but not of Hispanic origin, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native, as those terms are defined by the Equal Employment Opportunity Commission.

Sec. 36.10.180. PROJECTS SUBJECT TO PREFERENCE. (a) The preferences established in AS 36.10.150 - 36.10.170 apply to

(1) the performance of contracts let by a municipality for construction, repair, preliminary surveys, engineering studies, consulting, maintenance work, or any other retention of services necessary to complete a given project;

(2) a construction project that is partly or wholly funded by state money if the state or an agency of the state, a department, office, agency, state board, commission, regional school board with respect to an educational facility under AS 14.11.020, public corporation, or other organizational unit of or created under the executive, legislative or judicial branch of state government, including the University of Alaska and the Alaska Railroad Corporation, is a signatory to the construction contract;

(3) work performed on a public works project under a grant to a municipality under AS 37.05.315;

(4) work performed on a public works project under a grant to a named recipient under AS 37.05.316; and

(5) work performed on a public works project under a grant to an unincorporated community under AS 37.05.317.

(b) If the governor has declared an area to be an area impacted by an economic disaster under AS 44.33.285, then the preference for residents of the area established under AS 44.33.285 - 44.33.310 supercedes the preference under AS 36.10.150 and 36.10.160 for contracts awarded by the state.

(c) The commissioner shall define the boundaries of an economic region or an area within which a preference applies.

Sec. 36.10.190. PENALTIES. (a) A person who makes a false sworn statement in connection with a certification of eligibility for an employment preference under this chapter is subject to criminal prosecution for perjury as provided in AS 11.56.200.

(b) A person who makes an unsworn falsification, with the intent to mislead a public servant in the performance of a duty, in connection with a certification of eligibility for an employment preference under this chapter, is subject to criminal prosecution as provided in AS 11.56.210.

(c) In addition to criminal penalties imposed by state law, if a person is convicted of a crime in connection with a false statement made in a certification required under AS 36.10.140, and the conviction is not reversed, that person shall forfeit all future rights to eligibility for an employment preference under this chapter.

Sec. 36.10.900. EFFECT OF JUDICIAL DECISIONS. If a provision of this chapter, or the application of a provision to a person or circumstance, is held invalid, the remainder of this chapter and the application to other persons or circumstances shall not be affected by the holding. The remainder shall be enforced to the greatest extent constitutionally permissible under the constitutions of the United States and the State of Alaska.

Sec. 36.10.990. DEFINITION. In this chapter "qualified" means possesses the requisite education, training, skills, or experience to perform the work.

* Sec. 6. AS 36.95.010 is amended by adding new paragraphs to read:

(9) "craft" means a recognized construction trade;

(10) "resident" means a person who establishes residency

under AS 01.10.055.

* Sec. 7. AS 37.05.315 is amended by adding a new subsection to read:

(e) The Department of Labor shall require a municipality awarded a grant for a public works project under (a) of this section to comply with the hiring preferences under AS 36.10.150 - 36.10.170 for employment generated by the grant.

* Sec. 8. AS 37.05.316 is amended by adding a new subsection to read:

(b) The Department of Labor shall require a recipient awarded a grant for a public works project under (a) of this section to comply with the hiring preferences under AS 36.10.150 - 36.10.170 for employment generated by the grant.

* Sec. 9. AS 37.05.317 is amended by adding a new subsection to read:

(b) The Department of Labor shall require the qualified incorporated entity awarded a grant or agents or contractors with whom the Department of Community and Regional Affairs contracts under (a) of this section to comply with the requirements of AS 36.10.150 - 36.10.-170 for employment generated by the grant or contract if the grant or contract is for a public works project.

* Sec. 10. The provisions of this Act do not apply to a contract entered into before the effective date of this Act unless the contract includes a provision requiring compliance with laws regarding the hiring of Alaska residents that take effect during the term of the contract.

* Sec. 11. AS 36.95.010(4) and (5) are repealed.

* Sec. 12. AS 36.10.010 is repealed.

* Sec. 13. Section 12 of this Act takes effect April 17, 1986, or immediately, in accordance with AS 01.10.070(c), whichever is later, if the final decision of the Alaska Supreme Court in Robison v. Francis, File No. S-493, Opinion No. 3011, January 17, 1986, is not submitted for review to the United States Supreme Court. If the decision is submitted for review

but the United States Supreme Court declines to accept review, then sec. 12 of this Act takes effect on the date of the order of the United States Supreme Court declining to accept review. If the United States Supreme Court accepts review, then sec. 12 of this Act takes effect on the date of a final decision of the United States Supreme Court affirming the decision of the Alaska Supreme Court.

* Sec. 14. Sections 1 - 11 of this Act take effect immediately in accordance with AS 01.10.070(c).

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 3/17/86

REQUEST

Bill/Resolution No. : CSSB 367 (L&C)
Title : "An Act relative to Alaskan resident employment preference..."

Sponsor : Faiks, Josephson, et. al.
Requestor : Labor and Commerce
Date of Request : 3/14/86

FISCAL DETAIL

Agency Affected : Labor
Administrative Services
RSU :

Components : Special Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		108.5	108.5	108.5	108.5	108.5
TRAVEL						
CONTRACTUAL		218.2	225.5	246.2	242.5	251.2
SUPPLIES		1.2	1.2	1.3	1.3	1.4
EQUIPMENT		4.0	.8	.9	.9	1.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	331.9	336.0	356.9	353.2	362.1
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		331.0	336.0	356.9	353.2	362.1
FEDERAL FUNDS						
OTHER						
TOTAL	0	331.9	336.0	356.9	353.2	362.1

POSITIONS :

FULL-TIME	0	3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : By Judy G. Knight
Judy G. Knight, Director
Phone : 465-2720
Division : Administrative Services
Date : 3/17/86

Approved by Commissioner : By RW Jandan for Jim Robison
Date : 3/17/86
Agency : Labor

Distribution (by Agency preparing fiscal note) :
Legislative Finance

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 367 (L&C)

This legislation requires a biennial report that designates eligible areas. Determination that "employment of workers who are not residents is a peculiar source of the unemployment of residents of the area" will require this department to collect extensive occupational information by resident status. Two statistical clerks and one Labor Economist II would complete the report. Request for New Position forms are attached which explain position duties and costs.

The contractual services costs are detailed as follows:

Description	FY 87	FY 88	FY 89	FY 90	FY 91
Key Entry	$ 40.0	$ 60.0	$ 62.0	$ 64.0	$ 66.0
DP operations	120.0	135.0	150.0	153.0	156.0
DP applications	30.0	4.5	4.7	4.9	5.1
Printing	4.5	2.0	4.5	2.1	5.0
Phone (Toll service)	12.0	12.5	13.0	6.0	6.2
Equipment lease	8.0	8.3	8.7	9.0	9.4
Equipment maintenance	.8	.8	.9	.9	.9
Training, shipping, & misc.	2.9	2.4	2.4	2.6	2.6
	$218.2	$225.5	$246.2	$242.5	$251.2

The following assumptions were made in preparing this fiscal note:

1. An annual report designating underemployment areas would be completed by January 31 of the first session of each legislature year beginning in 1987.

2. On-going collection of occupational titles would be required from employers, and extensive computer matching would be necessary to determine residency status.

3. Beginning in 1988, occupational displacement information would be highlighted requiring continuation of both the existing occupational information budget levels, and the additional information on occupational titles.

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 367

4. The collection of occupational titles from firms will be phased in over a three year period. Industries identified as having the highest dollar payments to nonresidents in 1984 would be targeted first:

   First Year - construction, oil and gas mining, and food processing;

   Second Year - all first year industries plus business services, local government, miscellaneous services, eating and drinking places, air transportation, and state government; and

   Third Year - all industries.

5. In addition to the occupational information, reporting of the residency status by industry and area would be necessary.

6. All minority demographic and economic information, except that required from contractors on state funded construction projects, will be derived from the decennial census. No costs are included for this in this fiscal note.

7. Work would begin on the first report July 1, 1986.

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp
Labor Economist II	1	16A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
PFT	12.0		Juneau		

Type of Expenditure		Amount
1	2	3
Salary	33,660	
Benefits	10,779	
Premium Pay		
Other		
Total Personal Services		44,439
Travel		0
Contractual		1,000
Commodities		500
Equipment		2,000
Other		
Total Cost		47,939

Receipt Code	Funding Source		Amount
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	47,939
	I/A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ - ___ - ___ - ___ - ___

Justification

This position will have primary responsibility for the analysis of data and preparation of the annual resident hire report. Specifically the duties would include:

1. Coordinate the collection and monitor the validity of relevant resident hire related statistics from other agencies including the Department of Revenue and the Division of Labor Standards and Safety.
2. Coordinate the updating and crossmatching of resident hire related data files on the mainframe computer with the analyst programmer.
3. Analyze microcomputer resident hire data bases to generate resident hire related tables and reports. The reports will include data relating to occupational displacement of nonresidents by census area and other related economic statistics associated with issue of resident hire.
4. Supervise the Statistical Clerk that will prepare the basic resident hire data tables for the report.
5. Prepare the annual resident hire report.

Contractual services costs include phone, training, and other miscellaneous items.

Request For New Position

Agency: Labor
BRU: Administrative Services
Component: Special Services

Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Govt.	Approv.	Disapp
Statistical Clerk	2	8B	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
PFT	12.0		Juneau		

Type of Expenditure		Amount
1	2	3
Salary	47,160	
Benefits	16,914	
Premium Pay		
Other		
Total Personal Services		64,074
Travel		0
Contractual		2,700
Commodities		700
Equipment		2,000
Other		
Total Cost		69,474

Receipt Code	Funding Source		Amount
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	69,474
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

Justification

One position will support a labor economist to prepare an annual report on the effect of nonresident employment on Alaskans. Secondarily this position would assist on the quality control of occupational titles which would be submitted by employers each quarter. Specifically the duties would be:

1. Update tables of economic information by resident status.
2. Load information into spreadsheets to show occupational displacement of residents by nonresidents.
3. Assist in the quality control of the occupational displacement of results by nonresident workers.

The other position will work on the quality control of occupational titles which would be submitted by employers each quarter. Specifically the duties would be:j

1. Review detailed edit listings.
2. Update edit data files.
3. Call employers for clarification when necessary.
4. Correct occupational titles.
5. Prepare computer summaries of results.

Contractual costs for these positions include phone, training, and other miscellaneous items.

Request For New Position

Agency Labor

BRU Administrative Services

Component Special Services

Revised Date

FY 87

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSB 367 (L&C)
Title : "An Act relating to Alaskan resident employment preference.."

Sponsor : Faiks, Josephson, et. al.
Requestor : Labor and Commerce
Date of Request : 3/14/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Labor Standards & Safety

Components : Wage & Hour

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		114.8	101.7	105.8	110.0	114.4
SUPPLIES						
EQUIPMENT		46.5	Ø	Ø	Ø	Ø
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	Ø	161.3	101.7	105.8	110.0	114.4
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	Ø	161.3	101.7	105.8	110.0	114.4
FEDERAL FUNDS						
OTHER						
TOTAL	Ø	161.3	101.7	105.8	110.0	114.4

POSITIONS :

FULL-TIME	Ø	Ø	Ø	Ø	Ø	Ø
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Bob Bacolas, Director — Phone : 465-4870
Division : Labor Standards & Safety — Date : 3/14/86

Approved by Commissioner : Jim Robison — Date : 3/14/86
Agency : Labor

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS for SB 367 (L&C)

Currently the Division of Labor Standards and Safety (LS&S) receives weekly certified payroll documents for all public construction projects as required in AS 36. Under this bill the department will use the public construction certified payroll forms as source documents to determine the legal domicile of persons employed on public construction projects. In certain cases the department will also be scrutinizing the ethnic makeup of the employees to determine the utilization of minorities.

These certified payroll documents are now collected and summarized manually by the Division of Labor Standards and Safety. This fiscal note will fund the automation of the certified payroll documents. This will allow a more timely determination of residency status of persons employed on public construction projects. This automation will also assist in providing a list of employees with incomplete or questionable data. The existing investigative staff will then resolve the questionable items through personal contact with employees and employers.

Reports will be developed for the Research and Analysis Section to allow them to do crossmatch reviews with other data sources (e.g. Permanent Fund Dividend).

Specific costs are as follows:

Contractual Services

Professional fees for data entry	80.0
DP Applications/programming development (one time only $17.0)	20.0
DP Support (misc. chargeback)	3.0
DP Telecommunications	.8
Communications (phone and postage)	5.0
Equipment repair and maintenance	5.0
Other miscellaneous	1.0
	114.8

Equipment (one time only)

4 workstations	21.6
3 printers	5.4
3 modems	15.0
75 Mega byte disk pack	1.5
Telecommunication software	3.0
	46.5
Total	161.3

A contract for data entry services will be required for entry of all payroll records into the new automated system.

Equipment upgrades and improved telecommunication links between Juneau, Fairbanks and Anchorage will allow online review and audit of certified payroll data in each location. The equipment will be a one time purchase. Other cost are projected to future years at 4% inflation.

AS11.56.200 DOCUMENT
CHAPTER = 11.56
SECTION = 11.56.200
TITLE = 11
HEADINGS TITLE 11.
Criminal Law.
CHAPTER 56.
Offenses Against Public Administration.
ARTICLE 2.
Perjury and Related Offenses.
CITATION Sec. 11.56.200.
CATCH LINE
PERJURY.
TEXT (a) A person commits the crime of perjury if the person makes a false sworn statement which the person does not believe to be true.
(b) In a prosecution under this section, it is not a defense that
(1) the statement was inadmissible under the rules of evidence; or
(2) the oath or affirmation was taken or administered in an irregular manner.
(c) Perjury is a class B felony.
HISTORY (Sec. 6 ch 166 SLA 1978)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS11.56.210 DOCUMENT
CHAPTER = 11.56
SECTION = 11.56.210
TITLE = 11
HEADINGS TITLE 11.
Criminal Law.
CHAPTER 56.
Offenses Against Public Administration.
ARTICLE 2.
Perjury and Related Offenses.
CITATION Sec. 11.56.210.
CATCH LINE
UNSWORN FALSIFICATION.
TEXT (a) A person commits the crime of unsworn falsification if, with the intent to mislead a public servant in the performance of a duty, the person submits a false written or recorded statement

which the person does not believe to be true

(1) in an application for a benefit; or

(2) on a form bearing notice, authorized by law, that false statements made in it are punishable.

(b) Unsworn falsification is a class A misdemeanor.

HISTORY (Sec. 6 ch 166 SLA 1978)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS35.10.070 DOCUMENT
CHAPTER = 35.10
SECTION = 35.10.070
TITLE = 35
HEADINGS TITLE 35.
Public Buildings, Works, and Improvements.
CHAPTER 10.
Public Works.
ARTICLE 1.
Public Works Planning and Construction.
CITATION Sec. 35.10.070.
CATCH LINE
RESEARCH ON PUBLIC WORKS.
TEXT The department may gather, investigate and compile information concerning the use, construction and maintenance of public works, the practices and methods of efficient organization, financing and such other information, data and statistics of the state and the extent of natural resources of building materials in the state. The department shall disseminate this information, together with recommendations it considers advisable.
HISTORY (Sec. 6 art III title III ch 152 SLA 1957)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS36.10.005 DOCUMENT
CHAPTER = 36.10
SECTION = 36.10.005
TITLE = 36
HEADINGS TITLE 36.
Public Contracts.
CHAPTER 10.
Employment Preference.
CITATION Sec. 36.10.005.
CATCH LINE
LEGISLATIVE FINDINGS.
TEXT (a) The legislature finds that

(1) because of its unique climate and its distance from the contiguous states, the state has historically suffered from unique social, seasonal, geographic, and economic conditions that result in an unstable economy;

(2) the unstable economy is a hardship on the residents of the state and is aggravated by the large numbers of seasonal and transient nonresident workers;

(3) the rate of unemployment among residents of the state is one of the highest in the nation;

(4) the state has one of the highest ratios of nonresident to resident workers in the nation;

(5) the state has a compelling interest in reducing the level of unemployment among its residents;

(6) the construction industry in the state accounts for a substantial percentage of the available employment;

(7) construction workers receive a greater percentage of all unemployment benefits paid by the state than is typical of other states;

(8) historically, the rate of unemployment in the construction industry in the state is higher than the rate of unemployment in other industries in the state;

(9) it is appropriate for the state to consider the welfare of its residents when it funds construction activity;

(10) it is in the public interest for the state to allocate public funds for capital projects in order to reduce unemployment among its resident construction workers;

(11) the influx of nonresident construction workers contributes to or causes the high unemployment rate among resident construction workers because nonresident workers compete with residents for the limited number of available construction jobs;

(12) nonresident workers displace a substantial number of qualified, available, and unemployed Alaska workers on jobs on state funded public works projects;

(13) the state has a special interest in seeing that the benefits of state construction spending accrue to its residents;

(14) the natural resources of land owned by the state belong to the citizens of the state;

(15) Alaskans have chosen to use the majority of the royalties derived from the state's natural resources to fund state government;

(16) the vast majority of the state's revenue is derived from natural resource income rather than from other forms of taxation;

(17) because the state has no personal income tax or sales tax, nonresident workers use services provided by the state but do not contribute fairly to the costs of those services; and

(18) Alaskans, more than the residents of other states, suffer economically when nonresidents displace qualified residents since resident workers contribute local taxes as well as their share of the royalties from natural resources.

(b) The legislature further finds that

(1) the state and its political subdivisions, when acting as a market participant in funding public works projects, should give Alaska residents an employment preference to promote a more stable economy;

(2) the state and its political subdivisions have a duty of loyalty to their citizens and should fulfill this

duty by giving residents preference for employment on public works projects they fund;

(3) there is a legitimate and compelling governmental interest and that the public health and welfare will suffer if state residents are not afforded employment preference in state-funded construction-related work.

HISTORY (Sec. 1 ch 69 SLA 1985)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS36.05.010 DOCUMENT
CHAPTER = 36.05
SECTION = 36.05.010
TITLE = 36
HEADINGS TITLE 36.
Public Contracts.
CHAPTER 05.
Wages and Hours of Labor.
CITATION Sec. 36.05.010.
CATCH LINE
WAGE RATES ON PUBLIC CONSTRUCTION.
TEXT A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done. The current prevailing rate of wages for each pay period is that contained in the latest determination of prevailing rate of wages issued by the Department of Labor before the end of the pay period.
HISTORY (Sec. 14-2-1 ACLA 1949; am sec. 1 ch 142 SLA 1972; am sec. 1 ch 89 SLA 1976)

END OF DOCUMENT

AS36.95.010 DOCUMENT
CHAPTER = 36.95
SECTION = 36.95.010
TITLE = 36
HEADINGS TITLE 36.
Public Contracts.
CHAPTER 95.
General Provisions.
CITATION Sec. 36.95.010.
CATCH LINE
DEFINITIONS.
TEXT In this title unless the context requires otherwise

(1) "contractor" means the contractor including subcontractors performing work necessary to facilitate public construction;

(2) "laborer, mechanic, or field surveyor" means a person who engages in work which is basically physical or unskilled in nature; or who engages in work, requiring the

use of tools or machines, which basically consists of the shaping and working of materials into some type of structure, machine or other object; or who engages in outdoor tasks related to the operation of findings and delineating contour, dimensions, position, topography, as of any part of the earth's surface, by preparation of measured plan or description of any area or other portion of country or of road or line through any area or other portion of country;

(3) "public construction" or "public works" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board;

(4) "qualified" means a person who, except for apprentices, is a journeyman mechanic in that person's particular trade;

(5) "resident" means a person who maintains a domicile in the state; domicile is the true and permanent home of a person from which that person has no present intention of removing and to which that person intends to return whenever away from that home;

(6) "state or a political subdivision of the state" means any state department, state agency, state university, borough, city, village, school district or other state subdivision;

(7) "wages" includes fringe benefits;

(8) "retainage" means money withheld from a contractor until completion of a contract or satisfaction of other contingency as evidenced by approval of the applicable pay estimate.

HISTORY (Sec. 16 ch 142 SLA 1972; am sec. 3 ch 89 SLA 1976; am sec. 16 ch 147 SLA 1978; am sec. 2 ch 85 SLA 1982; am sec. 92 ch 6 SLA 1984)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS37.05.315 DOCUMENT
CHAPTER = 37.05
SECTION = 37.05.315
TITLE = 37
HEADINGS TITLE 37.
Public Finance.
CHAPTER 05.
Fiscal Procedures Act.
ARTICLE 4.
General Provisions.
CITATION Sec. 37.05.315.
CATCH LINE
GRANTS TO MUNICIPALITIES.
TEXT (a) When an amount is appropriated or allocated as a grant to a municipality, the Department of Administration shall promptly notify the municipality of the availability of the grant. When the Department of Administration receives an

agreement executed by the municipality which provides that the municipality (1) will spend the grant for the purposes specified in the appropriation or allocation; (2) will allow, on request, an audit by the state of the uses made of the grant; and (3) assures that, to the extent consistent with the purpose of the appropriation or allocation, the facilities and services provided with the grant will be available for the use of the general public, the Department of Administration shall pay the grant directly to the municipality. The agreement executed by a municipality under this section shall be on a form furnished by the Department of Administration and shall be executed within 60 days after the effective date of the appropriation or allocation.

(b) An appropriation or allocation for a grant to a municipality for construction of a public facility lapses if substantial, ongoing work on the project has not begun within five years after the effective date of the appropriation or allocation.

(c) In accepting a grant of money for construction of a public facility, a municipality covenants with the state that it will operate and maintain the facility for the practical life of the facility and that the municipality will not look to the state to operate or maintain the facility or pay for its operation or maintenance. This requirement does not apply to a grant of money for repair or improvement of an existing facility operated or

AS37.05.315 DOCUMENT

maintained by the state at the time the grant is accepted if the repair or improvement for which the grant is made will not substantially increase the operating or maintenance costs to the state.

(d) Not less than 20 percent of a grant shall be paid to a municipality within 10 days of the effective date of the agreement under (a) of this section. The remainder of the grant shall be paid either in monthly installments equal to the amount of grant money the municipality expended in the previous month or in a lump sum as determined by the Department of Administration.

HISTORY (Sec. 1 ch 156 SLA 1980; am sec. 1 ch 4 SLA 1982)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS37.05.316 DOCUMENT
CHAPTER = 37.05
SECTION = 37.05.316
TITLE = 37
HEADINGS TITLE 37.
Public Finance.
CHAPTER 05.
Fiscal Procedures Act.
ARTICLE 4.
General Provisions.
CITATION Sec. 37.05.316.
CATCH LINE

GRANTS TO NAMED RECIPIENTS.

TEXT When an amount is appropriated or allocated to a department as a grant for a named recipient which is not a municipality, the department to which the appropriation or allocation is made shall promptly notify the named recipient of the availability of the grant and request the named recipient to submit a proposal to provide the goods or services specified in the appropriation act, or both, for which the appropriation or allocation is made. At the same time, the department may issue a request for proposals from other qualified persons to provide the same goods or services, or both, in the same area. The department shall contract with the named recipient unless the Office of the Governor, with due regard for any local expertise or experience among those making proposals, determines that an award of the contract to a different party would better serve the public interest. If the contract is awarded to another party than that named by the legislature, the basis of that action shall be stated in writing at the time the grant is issued and a copy of the written statement shall be sent to the Legislative Budget and Audit Committee. A contract shall be executed within 60 days after the effective date of the appropriation or allocation. The purchase of the goods or services, or both, shall be in accordance with AS 37.05.230(1)(B).

HISTORY (Sec. 2 ch 4 SLA 1982)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS37.05.317 DOCUMENT= 1 OF 1 PAGE = 1 OF 2

CHAPTER = 37.05
SECTION = 37.05.317
TITLE = 37

HEADINGS TITLE 37.
Public Finance.
CHAPTER 05.
Fiscal Procedures Act.
ARTICLE 4.
General Provisions.

CITATION Sec. 37.05.317.

CATCH LINE
GRANTS TO UNINCORPORATED COMMUNITIES.

TEXT When an amount is appropriated or allocated as a grant under this section to an unincorporated community, it shall be disbursed as follows:

(1) Within 45 days after the effective date of the appropriation or allocation, the Department of Community and Regional Affairs shall notify the governing body of the unincorporated community, if any, that a grant is available.

(2) The Department of Community and Regional Affairs shall determine if there is a qualified incorporated entity in the community area that will agree to receive the grant and administer it, subject to terms generally applicable to private grantees. If there is more than one such entity, the Department of Community and Regional Affairs shall select the

most qualified and the grant shall be awarded to that incorporated entity for the purposes specified in the appropriation act. However, the Department of Community and Regional Affairs shall give preference to a nonprofit corporation organized by a community for receipt of the grant.

(3) If there is no incorporated entity qualified to receive the grant, the Department of Community and Regional Affairs shall administer the program as specified in the appropriation act directly or through agents or contractors with whom it may contract in the community area.

HISTORY (Sec. 2 ch 4 SLA 1982)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS44.33.285 DOCUMENT
CHAPTER = 44.33
SECTION = 44.33.285
TITLE = 44
HEADINGS TITLE 44.
State Government.
CHAPTER 33.
Department of Commerce and Economic Development.
ARTICLE 5.
Areas Impacted by Economic Disaster.
CITATION Sec. 44.33.285.
CATCH LINE
ACTION BY GOVERNOR.
TEXT The governor may, upon recommendation of the commissioner of commerce and economic development, designate by proclamation an area as an area impacted by an economic disaster. When an area is so designated, the legislature may appropriate money for assistance grants and the governor may recommend in the governor's budget submission that capital projects planned for the area be accelerated and that new projects be funded for the area. The proclamation may provide that waivers of capital projects requirements, as authorized in AS 44.33.300, become effective only to the extent set out in the proclamation.
HISTORY (Sec. 1 ch 277 SLA 1976; am sec. 35 ch 113 SLA 1982)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986

4191 SLAB SB 377

1621

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Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

377

Department of Commerce & Economic Development / POSITION PAPER

SB 377: "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 11, 49, 52, 58, 68, and 82; and providing for an effective date."

This bill is focused on a variety of tort reforms. The position of the department on these issues is neutral.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 2/28/86

John L. George, Director of Insurance

Date: 2/28/86

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

CSSB 377(L&C): Sectional Analysis

Section 1) Creates a new chapter which provides for limits on amounts and recoveries through civil action.

CAP ON NON ECONOMIC DAMAGES

09.17.010: limits non economic damages to $250,000 for each claim based on a separate incident or injury.

09.17.020: Requires that verdicts be itemized between economic and noneconomic loss. Further provides that economic losses include certain categories of compensation and that a verdict must determine compensation for existing and future losses.

STRUCTURED SETTLEMENTS/PERIODIC PAYMENTS

09.17.030 Requires that an award of future damages, at the request of a judgement creditor, in excess of $50,000 must be paid to the maximum extent feasible by periodic payments rather than lump sum payments. Requires the court to make specific findings regarding periodic payment, and provides the court may require the judgement debtor to post security. A judgement requiring periodic payment must specify the recipient, amount, interval between payments, and number of payments to be made. Judgement may be modified only if the creditor dies, in which case the payments go to persons the judgement creditor owed a duty of support prior to death. Allows the court to penalize a judgement debtor who fails to make required payments. Upon expiration of the obligation, any security given reverts to the judgement debtor. The judgement may be recorded but does not become a lien before payment is due.

Modification in the latest CS removes an interest rate provision for increasing periodic payments at an annual rate of 5% from the date that judgement is entered.

09.17.040 Establishes by statute the rule already established by case law, that contributory fault diminishes recovery, but does not bar a plaintiff from seeking compensation.

SEVERAL LIABILITY

09.17.050 Requires the jury or court to apportion damages between each party to the lawsuit, if there is more than one party to the action. Each party is assigned a percentage of fault, and damages are awarded based on the percentage. Changes the existing rule of joint and several liability to one of several liability only.

SEVERAL LIABILITY

09.17.060 Provides that if a person settles a claim, the settlement does not release anyone else unless the agreement so provides. However the sum of the total claim is reduced by the amount of the released persons share of the damages determined under 09.17.050 (several liability).

09.17.900: Definition of "fault"

MANDATORY ARBITRATION

Section 2) Requires personal injury actions seeking damages less than $100,000, exclusive of costs, interest, and attorney fees, must first be arbitrated under 09.43, before a lawsuit can be commenced.

PREJUDGEMENT INTEREST

Section 3) Provides that if a party defending against a claim makes an offer of settlement that is more favorable than the judgement finally entered, the claim shall bear no interest from the date of offer of settlement, to the date of judgement.

Section 4) MANDATORY ARBITRATION provides that an award made under arbitration may be appealed to the proper court.

60 DAY APPEAL TO THE MANDATED ARBITRATION

Section 5) Provides that an appeal of an arbitration award must be filed within 60 days of an award. Also requires a new trial of the issues, if an appeal is filed.

AMENDMENT TO CIVIL RULE 82

Section 6) Provides that attorney fees c not be awarded unless the court finds malice ad faith, or reckless disregard of the rig s of another in causing the injury. The curre.t CS also defines "reckless disregard of the rights o another".

Section 7) amendment on mandatory arbitration following from section 4)

Section 8) Repeals current 09.16, the existing chapter concerning contribution among joint torfeasors

Section 9) provides for the amendment of Civil Rule 49; requires the jury to answer special questions on the amount of damages, percentages of fault, and to itemize the verdict between economic and noneconomic damage.

Section 10) Provides for the amendment of Civil rule 52; requires court to make findings regarding amount of damages and percentage of fault to be allocated among parties.

Section 11) Provides for the amendment of Civil Rule 58; requires the court to include a specific item in its judgement.

Section 12) Provides for the amendment of Civil Rule 68; on prejudgement interest;

Section 13) Provides for the amendment of Civil Rule 82; would only allow for attorneys fees and costs in an action after findings of bad faith, malice, or reckless disregard for another in causing the injury.

Section 14) Applicability section

Section 15) Review requirements on the effect of tort reform changes. Legislature requests the Governor to direct the Division of Insurance to assess the effects of of this act on premiums being charged for liability insurance. Reports would be due on March 1st, 87, 88, and 89.

Section 16) Immediate effective date.

AMENDMENT 2

Page 2, line 23, through page 3, line 2, delete all material and insert the following:

Sec. 09.17.020. PUNITIVE DAMAGES. (a) Punitive damages may not be awarded in an action, whether in tort, contract, or otherwise, unless supported by clear and convincing evidence. Fifty percent of any punitive or exemplary damages that may be adjudged against the party defending the claim shall be awarded to the benefit of the state and when paid deposited in the general fund.

(b) The amount of punitive damages awarded to the state shall be considered a part of the amount recovered by the claiming party for purposes of calculating an award of attorney fees.

(c) Except for purposes of seeking execution on a judgment, the state may not bring or be joined in an action based on punitive damages that may be awarded under this section.

2. Punitive Damages. Throughout the debate in the legislature, the major issue surrounding punitive damages was whether to raise the level of standard of proof from a "preponderance of the evidence" to "clear and convincing evidence" and also whether those damages (since they are like fines) should go to the state or to the individual who is injured. The compromise embodied in this amendment provides that the standard of proof will be raised to "clear and convincing evidence" and that 50 percent of the damages will go to the state, thus providing public benefits while at the same time retaining an incentive for an injured party to sue for the damages.

The Senate Finance version went at the problem from a wholly different direction. It provides that the plaintiff keeps all of the punitive damages, but he can only receive them if he can prove that the conduct complained of was malicious, deliberate or constitutes a felony. This is a major change in present law.

Punitive damages under present law can be awarded when a party's conduct is in "reckless disregard" of the rights of others, in addition to acts done with malice toward another. The Senate Finance bill also requires a pre-hearing on whether punitive damages may even be claimed. This adds an unnecessary and costly step to the process.

The ultimate effect of these two changes from existing law is that no one will ever claim them, even in circumstances where the defendant's behavior is outrageous or reckless.

This amendment does not change the general circumstances under which punitive damages may be awarded but does affect who gets them.

AMENDMENT 3

Page 4, line 2 through page 5, line 7, delete all material.

3. Periodic Payments. To understand the periodic payments section of the bill, you have to understand how damages are computed in tort actions under present law. Under present law, if a 55 year old man is permanently disabled and he is making $10,000 a year, his wage loss is figured at his present salary over his remaining useful work life, i.e. $10,000 for 10 years or $100,000. No account is made under the present system of the fact that due to inflation, the injured party would probably be making $15,000 in the sixth year, $17,500 in the eighth year and more in the tenth year. In addition, no account is taken of the fact that through normal advancement in his job he would receive higher pay over time than he received when he was injured. The theory is that if you give him now all the money he would have earned over time computed on the basis of his present salary, he can invest that sum and stay even with inflation and what he might have earned through advancement.

Other states reduce the lump sum to present value since it is compensation for future losses. But other states compute future wage loss to reflect inflation and advancement. Alaska law does not permit reduction of awards for future wage loss to present value. But it also does not allow awards to reflect inflation or future advancement.

Thus, the results in Alaska are roughly equal to those in other states.

The section of the Senate Finance bill regarding periodic payments really has nothing to do with the fact that payments are spread out over time. Most large settlements today are paid periodically as a voluntary matter. What this section really does is to vastly reduce the amount injured parties receive by paying over time only a fraction of the amounts they would have received in wages if they had not been injured, even with the cost of living adjustment provided for in the bill. For example, information from the firm of Legal Ecomonic Evaluations of Palo Alto indicates that if a jury awards $500,000 to a 20 year old person with a future life expectancy of 59.5 years, the base annual periodic payment would be $8,403 ($500,000 divided by 59.5 years). Assuming 3% annual inflation, the value of the $500,000 judgment is effectively reduced under the mandatory periodic payments provisions of this bill to $129,082, the amount that needs to be invested now to produce $8,403 per year. Similarly, a $500,000 award to a 50 year old with a life expentancy of 31.07 years, would mean a base annual periodic payment of $16,092. Again assuming 3% inflation, the value of the $500,000 judgment in

that case is effectively reduced under this bill to $215,028.

This amendment eliminates the provision on periodic payments since they are already being done voluntarily and the only real reason for treating the subject in the legislation is to reduce the amount that plaintiffs would receive over time. If people are not allowed to show a jury what their future damages really would have been, it makes no sense to reduce the award for future damage to "present value." The system we have is not broken; it does not require fixing in this area.

AMENDMENT 4

Page 7, line 28, delete "several liability" and insert, "joint and several liability, except that a party who is allocated less than 50 percent of the total fault of all the parties may not be jointly liable for more than twice the percentage of fault allocated to that party."

4. Apportionment of Damages. Under present law, if three defendants are held liable for an injury to a plaintiff, they each bear full responsibility for the total amount of the damage. This is "joint and several" liability. If one of the defendants pays the full amount of the judgment he has rights under law to contribution from the other defendants. If one of those defendants has no money, the courts uniformly conclude that the problem of insolvency is one that the remaining defendants who contributed to the accident will have to bear, rather than reducing the award of an injured plaintiff who is not at fault. That is, the defendants will get less contribution from one another, but the plaintiff's award will not be reduced.

Some persons are concerned that juries are holding some defendants, like states and cities with "deep pockets," only minimally liable, but the result under joint and several liability is that they end up getting stuck for the whole judgment. Accordingly, this amendment seeks a compromise which would insure that defendants only minimally liable would not be held responsible for all the damage, while still providing a cushion for innocent parties who were seriously injured by multiple defendants, some of whom might be insolvent. The amendment continues the rule of joint and

several liability but changes it to provide that a defendant is never more responsible in damages than for twice his percentage of fault for the injury. If in fact then a defendant is only liable for five percent of an injury, he cannot be held responsible for more than ten percent of the total damages. Only if a defendant is responsible for at least 50 percent of the injury can he be held liable for the entire amount of the damages. Even then, he would still have the right to seek contribution from the other defendants who were also liable for the injury.

The proposed Senate Finance version would limit responsibility on the basis of "several" liability by saying that you are responsible in damages only for your percentage of fault as decreed by a jury. Even if the allocation of fault were an exact science, which it is not, this proposal would entirely shift the risk of insolvent defendants from the remaining defendants who are at fault to a plaintiff who is blameless and injured. The issue here is not whether a party should be responsible in damages for more than their percent of fault; the issue is when a party who is at fault has no money, who should bear the risk -- the plaintiff or other parties at fault. This amendment attempts to compromise that issue; the Senate Finance version, which to

our knowledge has been adopted no where in the U.S., does not.

AMENDMENT 7

Page 10, line 24, through page 11, line 2, delete all material and renumber remaining sections accordingly.

Page 11, line 29 through page 12, line 3, delete all material and renumber remaining sections accordingly.

7. Award of Attorney Fees - Rule 82. This amendment would delete the provision concerning the award of attorney fees, and thus leaves in place Rule 82 of the Supreme Court which permits the court to award at least a token fee to the victorious party in a lawsuit. Rule 82 is the major weapon against persons who file frivolous lawsuits. Coverage for Rule 82 - attorney fees is generally exempted in most insurance policies already so its existence or nonexistence will have no impact on insurance rates. The Senate Finance version eliminates Rule 82 for negligence and product liability actions. This means if some one sues you without cause for negligence and you win, you will not be able to receive even minimal help in paying your attorney fees. The Senate Judiciary version is clearly better.

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association
of alaska

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FORMERLY
alaska state hospital association

May 1, 1986

Honorable Fred Zharoff
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Zharoff:

Senate Bill 377 is before you on the Senate Floor for consideration. The Health Association of Alaska respectfully requests your favorable consideration of this legislation.

We support the Finance Committee substitute which has been reported to the floor. We request that you vote for it in its present form and vote against any amendments. It is a bill which is not everything we would like to see, but it is in a form that we believe will assist markedly in relieving the crisis in liability insurance availability while being sensitive to the rights of individuals.

We believe that the fiscal note that was prepared for the Finance Committee demonstrates the potential savings from the reforms included in SB 377. Additionally, it should be noted that in California where many of these reforms have been applied to medical cases there has been a measurable difference in both price and availability of insurance.

Thank you for your consideration in this matter.

Sincerely,

Dennis L. DeWitt
Executive Director

P1 lines 18&19
P2 lines 6&7
P6 lines 24-27

Original sponsors: Kelly, Abood,
Bennett, et al

BY THE LABOR AND
COMMERCE COMMITTEE

IN THE SENATE

CS FOR SENATE BILL NO. 377 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49, 52, 58, 68, and 82; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 09 is amended by adding a new chapter to read:

CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to recover damages for personal injury based on negligence, damages for noneconomic losses shall be limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life and other nonpecuniary damage.

(b) The amount of damages awarded by a court or jury under (a) of this section may not exceed $250,000 for each claim based on a separate incident or injury.

Sec. 09.17.020. ITEMIZED VERDICTS. In every case where damages for personal injury are awarded by the court or jury, the verdict shall be itemized between economic loss and noneconomic loss, if any, and economic loss shall be further itemized by category. Itemization of economic loss by category includes: (1) amounts intended to compensate for reasonable expenses that have been incurred, or which will be incurred, for necessary medical, surgical, x-ray, dental, or other health or rehabilitative services, drugs, and therapy; (2) amounts intended to compensate for lost wages or loss of earning capacity; and (3) all other economic losses claimed by the plaintiff or granted by

the jury. A verdict shall further determine the amounts intended to compensate for injury or losses incurred before the verdict and amounts intended to compensate for losses that will be incurred in the future.

Sec. 09.17.030. PERIODIC PAYMENTS. (a) In an action to recover damages for personal injury, the court shall, at the request of a judgment creditor, enter judgment ordering that amounts awarded for future damages be paid to the maximum extent feasible by periodic payments rather than by a lump-sum payment if the award equals or exceeds $50,000 in future damages. The court may require a judgment debtor to post security adequate to assure full payment of future damages awarded by judgment.

(b) A judgment ordering payment of future damages by periodic payments shall specify the recipient, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. The court that rendered the original judgment, may, upon petition of a party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this section.

(c) If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make payments under (b) of this section, the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the judgment debtor to pay the judgment creditor any damages caused by the failure to make periodic payments, including costs and attorney fees.

(d) Following expiration of all obligations specified in the periodic payment judgment, the obligation of the judgment debtor to make further payments shall cease and security given under (a) of this section shall revert to the judgment debtor.

(e) A certified copy of a judgment or order of the court issued under this section may be recorded under AS 09.30.010, but may not become a lien upon real property before the date that payment becomes due.

Sec. 09.17.040. EFFECT OF CONTRIBUTORY FAULT. In an action based on fault seeking to recover damages for injury or death to person or harm to property, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault, but does not bar recovery.

Sec. 09.17.050. APPORTIONMENT OF DAMAGES. (a) In all actions involving fault of more than one party to the action, including third-party defendants and persons who have been released under AS 09.17.-060, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

(1) the amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and

(2) the percentage of the total fault of all of the parties to each claim that is allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under AS 09.17.060; for this purpose the court may determine that two or more persons are to be treated as a single party.

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault

and the extent of the causal relation between the conduct and the damages claimed.

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.17.060, and enter judgment against each party liable on the basis of rules of several liability. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.

Sec. 09.17.060. EFFECT OF RELEASE. A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from liability to the claimant, but it does not discharge another person liable upon the same claim unless the release, covenant not to sue, or similar agreement provides for discharge. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, determined in accordance with the provisions of AS 09.17.050.

Sec. 09.17.900. DEFINITIONS. In this chapter

(1) "fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability; the term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages; legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault;

(2) "future damages" includes damages for future medical

treatment, care or custody; loss of future earning capacity; or any future noneconomic loss.

* Sec. 2. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.075. PERSONAL INJURY ACTIONS THAT MUST BE ARBITRATED. A person may not bring an action for damages based on personal injury when the amount in controversy is less than $100,000, exclusive of costs, interest and attorney fees, unless the controversy is first arbitrated under AS 09.43.

* Sec. 3. AS 09.30.065 is amended to read:

Sec. 09.30.065. OFFERS OF JUDGMENT. On or before the 60th day following the filing of an answer in a civil action, and on the fifth day following the day discovery closes as ordered by the court, [EITHER THE PARTY MAKING A CLAIM OR] the party defending against a claim may serve upon the <u>party making the claim</u> [ADVERSE PARTY] an offer to allow judgment to be entered in complete satisfaction of the claim <u>against that defending party</u> for the money or property or to the effect specified in the offer, with cost then accrued. If within 10 days after the service of the offer the <u>claiming</u> [ADVERSE] party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is not more favorable to the <u>claiming party</u> [OFFEREE] than the offer, <u>the claim may not bear interest from the date of the offer to the date of judgment</u> [THE INTEREST AWARDED UNDER AS 45.45.010(a) AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED AS FOLLOWS:

(1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE REDUCED BY TWO PERCENT A YEAR;

(2) IF THE OFFEREE IS THE PARTY DEFENDING AGAINST THE CLAIM, THE INTEREST RATE SHALL BE INCREASED BY TWO PERCENT A YEAR].

* Sec. 4. AS 09.43.110 is amended to read:

Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application of a party, the court shall confirm an award unless

(1) within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130; or

(2) an appeal is taken under AS 09.43.160(c).

* Sec. 5. AS 09.43.160 is amended by adding a new subsection to read:

(c) An award made as a result of arbitration required by AS 09.-10.075 may be appealed to the proper court. The appeal shall be filed within 60 days after notice of an award is made under AS 09.43.080. The court shall grant a trial de novo if an appeal is filed under this subsection.

* Sec. 6. AS 09.60.010 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, the court may not award attorney fees to a prevailing party in an action for damages to the person or to property in the absence of a specific finding that the party at fault acted with malice, in bad faith, or with reckless disregard of the rights of another in causing the injury. In this subsection, "reckless disregard of the rights of another" means a lack of consideration of the rights of another in a manner that is reasonably likely to cause damage to the person or property of another.

* Sec. 7. AS 22.10.020(d) is amended to read:

(d) The superior court has jurisdiction in all matters appealed

to it (1) from a subordinate court; (2) by a party to an arbitration award under AS 09.43.160(c); [,] or (3) an administrative agency when appeal is provided by law. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

* Sec. 8. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and 09.16.060 are repealed.

* Sec. 9. AS 09.17.020 and 09.17.050 enacted in sec. 1 of this Act have the effect of amending Alaska Rule of Civil Procedure 49 by requiring the jury to answer the special interrogatories listed in AS 09.17.050 regarding the amount of damages and the percentages of fault to be allocated among the parties and to itemize the verdict regarding economic and noneconomic loss as specified in AS 09.17.020.

* Sec. 10. AS 09.17.050 enacted in sec. 1 of this Act has the effect of amending Alaska Rule of Civil Procedure 52 by requiring the court to make specific findings regarding the amount of damages and the percentages of fault to be allocated among the parties.

* Sec. 11. AS 09.17.020, 09.17.030 and 09.17.050 enacted in sec. 1 of this Act have the effect of amending Alaska Rule of Civil Procedure 58 by requiring the court to include a specific item in its judgment.

* Sec. 12. AS 09.30.065 as amended by sec. 3 of this Act has the effect of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment interest stops accruing from the date of an offer by a defending party that a claiming party fails to increase at judgment.

* Sec. 13. AS 09.60.010 as amended by sec. 6 of this Act has the effect of amending Alaska Rule of Civil Procedure 82 by allowing costs and attorney fees in an action for personal injury or property damage only after a specific finding of malice, bad faith, or reckless disregard of the rights

of another in causing the injury.

* Sec. 14. APPLICABILITY. Sections 1 - 7 of this Act apply to all causes of action accruing after the effective date of this Act.

* Sec. 15. LEGISLATIVE INTENT. The legislature intends that the changes made in this Act to the code of civil procedure should be reviewed three years after the effective date of the Act, to determine if additional modifications or changes are necessary. To achieve effective review, the legislature requests that the governor direct the division of insurance to monitor the effect of this Act on premiums being charged for liability insurance and to report the effect to the legislature no later than March 1, in 1987, 1988, and 1989.

* Sec. 16. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Tamarie

P2 IN 11-12
P8 IN 3-10

Victim rights
Evidence lawsuits
Punitive damages
Regulation of C
2) - cancellation
6) disclosure

Forde
3/14/86

Original sponsors: Kel , Abood, Bennett, et al

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 377 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49, 52, 58, 68, and 82; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 09 is amended by adding a new chapter to read:

CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to recover damages for personal injury based on negligence, damages for noneconomic losses shall be limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life and other nonpecuniary damage.

(b) The amount of damages awarded by a court or jury under (a) of this section may not exceed $250,000. per incident / per suit

Sec. 09.17.020. ITEMIZED VERDICTS. In every case where damages for personal injury are awarded by the court or jury, the verdict shall be itemized between economic loss and noneconomic loss, if any, and economic loss shall be further itemized by category. Itemization of economic loss by category includes: (1) amounts intended to compensate for reasonable expenses that have been incurred, or which will be incurred, for necessary medical, surgical, x-ray, dental, or other health or rehabilitative services, drugs, and therapy; (2) amounts intended to compensate for lost wages or loss of earning capacity; and (3) all other economic losses claimed by the plaintiff or granted by the jury. A verdict shall further determine the amounts intended to

→ Re-phrased plus substantive change on interest payments;

compensate for injury or losses incurred before the verdict and amounts intended to compensate for losses that will be incurred in the future.

Sec. 09.17.030. PERIODIC PAYMENTS. (a) In an action to recover damages for personal injury, the court shall, at the request of a party, enter judgment ordering that amounts awarded a judgment creditor for future damages be paid to the maximum extent feasible by periodic payments rather than by a lump-sum payment if the award equals or exceeds $50,000 in future damages. A judgment ordering the payment of future damages by periodic payments must also require that each periodic payment be increased at the annual rate of five percent from the date that judgment is entered. The court may require a judgment debtor to post security adequate to assure full payment of future damages awarded by judgment.

(b) A judgment ordering payment of future damages by periodic payments shall specify the recipient, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. The court that rendered the original judgment, may, upon petition of a party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this section.

(c) If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make payments under (b) of this section, the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the

judgment debtor to pay the judgment creditor any damages caused by the failure to make periodic payments, including costs and attorney fees.

(d) Following expiration of all obligations specified in the periodic payment judgment, the obligation of the judgment debtor to make further payments shall cease and security given under (a) of this section shall revert to the judgment debtor.

(e) A certified copy of a judgment or order of the court issued under this section may be recorded under AS 09.30.010, but may not become a lien upon real property before the date that payment becomes due.

Sec. 09.17.040. EFFECT OF CONTRIBUTORY FAULT. In an action based on fault seeking to recover damages for injury or death to person or harm to property, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault, but does not bar recovery.

Sec. 09.17.050. APPORTIONMENT OF DAMAGES. (a) In all actions involving fault of more than one party to the action, including third-party defendants and persons who have been released under AS 09.17.060, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

(1) the amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and

(2) the percentage of the total fault of all of the parties to each claim that is allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under AS 09.17.060; for this purpose the court may determine that two or more persons are to be treated as a single party.

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed.

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.17.060, and enter judgment against each party liable on the basis of rules of several liability. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.

Sec. 09.17.060. EFFECT OF RELEASE. A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from liability to the claimant, but it does not discharge another person liable upon the same claim unless the release, covenant not to sue, or similar agreement provides for discharge. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, determined in accordance with the provisions of AS 09.17.050.

Sec. 09.17.900. DEFINITIONS. In this chapter

(1) "fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability; the term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages; legal requirements of causal relation apply both to fault as the basis for

liability and to contributory fault;

(2) "future damages" includes damages for future medical treatment, care or custody; loss of future earning capacity; or any future noneconomic loss.

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* Sec. 2. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.075. PERSONAL INJURY ACTIONS THAT MUST BE ARBITRATED. A person may not bring an action for damages based on personal injury when the amount in controversy is less than $100,000, exclusive of costs, interest and attorney fees, unless the controversy is first arbitrated under AS 09.43.

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* Sec. 3. AS 09.30.065 is amended to read:

Sec. 09.30.065. OFFERS OF JUDGMENT. On or before the 60th day following the filing of an answer in a civil action, and on the fifth day following the day discovery closes as ordered by the court, [EITHER THE PARTY MAKING A CLAIM OR] the party defending against a claim may serve upon the <u>party making the claim</u> [ADVERSE PARTY] an offer to allow judgment to be entered in complete satisfaction of the claim <u>against that defending party</u> for the money or property or to the effect specified in the offer, with cost then accrued. If within 10 days after the service of the offer the <u>claiming</u> [ADVERSE] party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is not more favorable to the <u>claiming party</u> [OFFEREE] than the offer, <u>the claim may not bear interest from the date of the offer to the date of judgment</u> [THE

INTEREST AWARDED UNDER AS 45.45.010(a) AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED AS FOLLOWS:

(1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE REDUCED BY TWO PERCENT A YEAR;

(2) IF THE OFFEREE IS THE PARTY DEFENDING AGAINST THE CLAIM, THE INTEREST RATE SHALL BE INCREASED BY TWO PERCENT A YEAR].

* Sec. 4. AS 09.43.110 is amended to read:

Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application of a party, the court shall confirm an award unless

(1) within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130; or

(2) an appeal is taken under AS 09.43.160(c).

* Sec. 5. AS 09.43.160 is amended by adding a new subsection to read:

(c) An award made as a result of arbitration required by AS 09.-10.075 may be appealed to the proper court. The appeal shall be filed within 60 days after notice of an award is made under AS 09.43.080. The court shall grant a trial de novo if an appeal is filed under this subsection.

* Sec. 6. AS 09.60.010 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, the court may not award attorney fees to a prevailing party in an action for damages to the person or to property in the absence of a specific finding that the party at fault acted with malice, in bad faith, or with reckless disregard of the rights of another in causing the injury.

* Sec. 7. AS 22.10.020(d) is amended to read:

(d) The superior court has jurisdiction in all matters appealed to it (1) from a subordinate court; (2) by a party to an arbitration

award under AS 09.43.160(c); [,] or (3) an administrative agency when appeal is provided by law. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

* Sec. 8. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and 09.16.060 are repealed.

* Sec. 9. AS 09.17.020 and 09.17.050 enacted in sec. 1 of this Act have the effect of amending Alaska Rule of Civil Procedure 49 by requiring the jury to answer the special interrogatories listed in AS 09.17.050 regarding the amount of damages and the percentages of fault to be allocated among the parties and to itemize the verdict regarding economic and noneconomic loss as specified in AS 09.17.020.

* Sec. 10. AS 09.17.050 enacted in sec. 1 of this Act has the effect of amending Alaska Rule of Civil Procedure 52 by requiring the court to make specific findings regarding the amount of damages and the percentages of fault to be allocated among the parties.

* Sec. 11. AS 09.17.020, 09.17.030 and 09.17.050 enacted in sec. 1 of this Act have the effect of amending Alaska Rule of Civil Procedure 58 by requiring the court to include a specific item in its judgment.

* Sec. 12. AS 09.30.065 as amended by sec. 3 of this Act has the effect of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment interest stops accruing from the date of an offer by a defending party that a claiming party fails to increase at judgment.

* Sec. 13. AS 09.60.010 as amended by sec. 6 of this Act has the effect of amending Alaska Rule of Civil Procedure 82 by allowing costs and attorney fees in an action for personal injury or property damage only after a specific finding of malice, bad faith, or reckless disregard of the rights

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* Sec. 14. APPLICABILITY. Sections 1 - 7 of this Act apply to all causes of action accruing after the effective date of this Act.

* Sec. 15. LEGISLATIVE INTENT. The legislature intends that the changes made in this Act to the code of civil procedure should be reviewed three years after the effective date of the Act, to determine if additional modifications or changes are necessary. To achieve effective review, the legislature requests that the governor direct the division of insurance to monitor the effect of this Act on premiums being charged for liability insurance and to report the effect to the legislature no later than March 1, in 1987, 1988, and 1989.

* Sec. 16. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Ford
3/7/86 ✓

Original sponsors: Kelly, Abood,
Bennett, et al

IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 377 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49, 52, 58, 68, and 82; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 09 is amended by adding a new chapter to read:

CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to recover damages for personal injury based on negligence, damages for noneconomic losses shall be limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life and other nonpecuniary damage.

(b) The amount of damages awarded by a court or jury under (a) of this section may not exceed $250,000.

Sec. 09.17.020. ITEMIZED VERDICTS. In every case where damages for personal injury are awarded by the court or jury, the verdict shall be itemized between economic loss and noneconomic loss, if any, and economic loss shall be further itemized by category. Itemization of economic loss by category includes: (1) amounts intended to compensate for reasonable expenses that have been incurred, or which will be incurred, for necessary medical, surgical, x-ray, dental, or other health or rehabilitative services, drugs, and therapy; (2) amounts intended to compensate for lost wages or loss of earning capacity; and (3) all other economic losses claimed by the plaintiff or granted by the jury. A verdict shall further determine the amounts intended to

compensate for injury or losses incurred before the verdict and amounts intended to compensate for losses that will be incurred in the future.

Sec. 09.17.030. PERIODIC PAYMENTS. (a) In an action to recover damages for personal injury, the court shall, at the request of a party, enter judgment ordering that amounts awarded a judgment creditor for future damages be paid to the maximum extent feasible by periodic payments rather than by a lump-sum payment if the award equals or exceeds $50,000 in future damages. In entering judgment ordering the payment of future damages by periodic payments, the court shall make a specific finding as to the dollar amount of periodic payments that will compensate the judgment creditor for future damages. The court may require a judgment debtor to post security adequate to assure full payment of future damages awarded by judgment.

(b) A judgment ordering payment of future damages by periodic payments shall specify the recipient, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. The court that rendered the original judgment, may, upon petition of a party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this section.

(c) If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make payments under (b) of this section, the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the

judgment debtor to pay the judgment creditor any damages caused by the failure to make periodic payments, including costs and attorney fees.

(d) Following expiration of all obligations specified in the periodic payment judgment, the obligation of the judgment debtor to make further payments shall cease and security given under (a) of this section shall revert to the judgment debtor.

(e) A certified copy of a judgment or order of the court issued under this section may be recorded under AS 09.30.010, but may not become a lien upon real property before the date that payment becomes due.

Sec. 09.17.040. EFFECT OF CONTRIBUTORY FAULT. In an action based on fault seeking to recover damages for injury or death to person or harm to property, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault, but does not bar recovery.

Sec. 09.17.050. APPORTIONMENT OF DAMAGES. (a) In all actions involving fault of more than one party to the action, including third-party defendants and persons who have been released under AS 09.17.060, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

(1) the amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and

(2) the percentage of the total fault of all of the parties to each claim that is allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under AS 09.17.060; for this purpose the court may determine that two or more persons are to be treated as a single party.

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed.

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.17.060, and enter judgment against each party liable on the basis of rules of several liability. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.

Sec. 09.17.060. EFFECT OF RELEASE. A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from liability to the claimant, but it does not discharge another person liable upon the same claim unless the release, covenant not to sue, or similar agreement provides for discharge. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, determined in accordance with the provisions of AS 09.17.050.

Sec. 09.17.900. DEFINITIONS. In this chapter

(1) "fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability; the term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages; legal requirements of causal relation apply both to fault as the basis for

liability and to contributory fault;

(2) "future damages" includes damages for future medical treatment, care or custody; loss of future earning capacity; or any future noneconomic loss.

* Sec. 2. AS 09.16 is amended by adding new sections to read:

Sec. 09.16.011. RIGHT TO CONTRIBUTION. (a) Except as otherwise provided in this chapter, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than that tortfeasor's pro rata share of the common liability, and the total recovery of that tortfeasor is limited to the amount paid in excess of the pro rata share. A tortfeasor is not compelled to make contribution beyond the tortfeasor's pro rata share of the entire liability.

(c) There is no right of contribution in favor of a tortfeasor who has intentionally caused or contributed to the injury or wrongful death.

(d) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to an amount paid in a settlement that is in excess of what was reasonable.

(e) A liability insurer, who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in

excess of the tortfeasor's pro rata share of the common liability. This provision does not limit or impair a right of subrogation arising from any other relationship.

(f) This chapter does not impair the right of indemnity under existing law. If one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of the indemnity obligation.

(g) This chapter does not apply to breaches of trust or of other fiduciary obligation.

Sec. 09.16.021. PRO RATA SHARES. In determining the pro rata shares of tortfeasors in the entire liability

(1) their relative degrees of fault may not be considered;

(2) if equity requires, the collective liability of some as a group constitutes a single share; and

(3) principles of equity applicable to contribution generally shall apply.

Sec. 09.16.031. ENFORCEMENT. (a) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(b) Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

(c) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, a separate action by that tortfeasor to enforce contribution must be commenced within one year

after the judgment has become final by lapse of time for appeal or after appellate review.

(d) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, the right of contribution is barred unless that tortfeasor has either

(1) discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against the tortfeasor and has commenced the action for contribution within one year after payment; or

(2) agreed while action is pending against the tortfeasor to discharge the common liability and has within one year after the agreement paid the liability and commenced the action for contribution.

(e) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(f) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death is binding as among the defendants in determining their right to contribution.

Sec. 09.16.041. RELEASE OR COVENANT NOT TO SUE. When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any

amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

Sec. 09.16.051. UNIFORMITY OF INTERPRETATION. This chapter shall be so interpreted and construed as to effectuate as far as practical the general purpose of making uniform the law of those states that enact it.

Sec. 09.16.061. SHORT TITLE. This chapter may be cited as the Alaska Uniform Contribution among Tortfeasors Act.

* Sec. 3. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.075. PERSONAL INJURY ACTIONS THAT MUST BE ARBITRATED. A person may not bring an action for damages based on personal injury when the amount in controversy is less than $100,000, exclusive of costs, interest and attorney fees, unless the controversy is first arbitrated under AS 09.43.

* Sec. 4. AS 09.30.065 is amended to read:

Sec. 09.30.065. OFFERS OF JUDGMENT. On or before the 60th day following the filing of an answer in a civil action, and on the fifth day following the day discovery closes as ordered by the court, [EITHER THE PARTY MAKING A CLAIM OR] the party defending against a claim may serve upon the <u>party making the claim</u> [ADVERSE PARTY] an offer to allow judgment to be entered in complete satisfaction of the claim <u>against that defending party</u> for the money or property or to the effect specified in the offer, with cost then accrued. If within 10 days after the service of the offer the <u>claiming</u> [ADVERSE] party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted

within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is not more favorable to the claiming party [OFFEREE] than the offer, the claim may not bear interest from the date of the offer to the date of judgment [THE INTEREST AWARDED UNDER AS 45.45.010(a) AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED AS FOLLOWS:

(1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE REDUCED BY TWO PERCENT A YEAR;

(2) IF THE OFFEREE IS THE PARTY DEFENDING AGAINST THE CLAIM, THE INTEREST RATE SHALL BE INCREASED BY TWO PERCENT A YEAR].

* Sec. 5. AS 09.30.065 is repealed and reenacted to read:

Sec. 09.30.065. OFFERS OF JUDGMENT. On or before the 60th day following the filing of an answer in a civil action, and on the fifth day following the day discovery closes as ordered by the court, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with cost then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is not more favorable to the offeree than the offer, the interest awarded under AS 45.45.010(a) and

accrued up to the date judgment is entered shall be adjusted as follows:

(1) if the offeree is the party making the claim, the interest rate shall be reduced by two percent a year;

(2) if the offeree is the party defending against the claim, the interest rate shall be increased by two percent a year.

* Sec. 6. AS 09.43.110 is amended to read:

Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application of a party, the court shall confirm an award unless

(1) within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130; or

(2) an appeal is taken under AS 09.43.160(c).

* Sec. 7. AS 09.43.110 is repealed and reenacted to read:

Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application of a party, the court shall confirm an award unless within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130.

* Sec. 8. AS 09.43.160 is amended by adding a new subsection to read:

(c) An award made as a result of arbitration required by AS 09.-10.075 may be appealed to the proper court. The appeal shall be filed within 60 days after notice of an award is made under AS 09.43.080. The court shall grant a trial de novo if an appeal is filed under this subsection.

* Sec. 9. AS 09.60.010 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, the court may not award attorney fees to a prevailing party in an action for damages to the

person or to property in the absence of a specific finding that the party at fault acted with malice, in bad faith, or with reckless disregard of the rights of another in causing the injury.

* Sec. 10. AS 22.10.020(d) is amended to read:

(d) The superior court has jurisdiction in all matters appealed to it (1) from a subordinate court; (2) by a party to an arbitration award under AS 09.43.160(c); [,] or (3) an administrative agency when appeal is provided by law. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

* Sec. 11. AS 22.10.020(d) is repealed and reenacted to read:

(d) The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

* Sec. 12. The following laws are repealed: AS 09.10.075; AS 09.17.-010, 09.17.020, 09.17.030, 09.17.040, 09.17.050, 09.17.060, 09.17.900; AS 09.43.160(c); and AS 09.60.010(b).

* Sec. 13. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and 09.16.060 are repealed.

* Sec. 14. AS 09.17.020 and 09.17.050 enacted in sec. 1 of this Act have the effect of amending Alaska Rule of Civil Procedure 49 by requiring the jury to answer the special interrogatories listed in AS 09.17.050 regarding the amount of damages and the percentages of fault to be allocated among the parties and to itemize the verdict regarding economic and

noneconomic loss as specified in AS 09.17.020.

* Sec. 15. AS 09.17.050 enacted in sec. 1 of this Act has the effect of amending Alaska Rule of Civil Procedure 52 by requiring the court to make specific findings regarding the amount of damages and the percentages of fault to be allocated among the parties.

* Sec. 16. AS 09.17.020, 09.17.030 and 09.17.050 enacted in sec. 1 of this Act have the effect of amending Alaska Rule of Civil Procedure 58 by requiring the court to include a specific item in its judgment.

* Sec. 17. AS 09.30.065 as amended by sec. 4 of this Act has the effect of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment interest stops accruing from the date of an offer by a defending party that a claiming party fails to increase at judgment.

* Sec. 18. AS 09.60.010 as amended by sec. 9 of this Act has the effect of amending Alaska Rule of Civil Procedure 82 by allowing costs and attorney fees in an action for personal injury or property damage only after a specific finding of malice, bad faith, or reckless disregard of the rights of another in causing the injury.

* Sec. 19. APPLICABILITY. Sections 1, 3, 4, 6, 8, 9, and 10 of this Act apply to all causes of action accruing after the effective date of this Act.

* Sec. 20. APPLICABILITY. Sections 2, 5, 7, and 12 of this Act apply to all causes of action accruing on or after July 1, 1989.

* Sec. 21. Sections 2, 5, 7, 11, and 12 of this Act take effect July 1, 1989.

* Sec. 22. Sections 1, 3, 4, 6, 8, 9, 10, and 13 - 19 of this Act take effect immediately in accordance with AS 01.10.070(c).

CHAPTER = 09.30
SECTION = 09.30.065
TITLE = [illegible]
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 30.
Judgments.
ARTICLE 1.
Judgments.
CITATION Sec. 09.30.065.
CATCH LINE
OFFERS OF JUDGMENT.
TEXT On or before the 60th day following the filing of an answer in a civil action, and on the fifth day following the day discovery closes as ordered by the court, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with cost then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is not more favorable to the offeree than the offer, the interest awarded under AS 45.45.010(a) and accrued up to the date judgment is entered shall be adjusted as follows:

(1) if the offeree is the party making the claim, the interest rate shall be reduced by two percent a year;

(2) if the offeree is the party defending against the claim, the interest rate shall be increased by two percent a year.

HISTORY (Sec. 3 ch 107 SLA 1980; am sec. 1 ch 48 SLA 1981)

CHAPTER = 09.43
SECTION = 09.43.010
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.010.
CATCH LINE
ARBITRATION AGREEMENTS VALID; APPLICATION OF ARTICLE.
TEXT A written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration a subsequent controversy between the parties is valid, enforceable and irrevocable, except upon grounds which exist at law or in equity for the revocation of a contract. However, AS 09.43.010 - 09.43.180 do not apply to a labor-management contract unless they are incorporated into the contract by reference or their application is provided for by statute.
HISTORY (Sec. 1 ch 232 SLA 1968; am sec. 3 ch 113 SLA 1972)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.020
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.020.
CATCH LINE

PROCEEDINGS TO COMPEL OR STAY ARBITRATION.

TEXT (a) On application of a party showing an agreement described in AS 09.43.010, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue and if the agreement is found to exist shall order arbitration.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. The issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if no agreement is found to exist. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue subject to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under (a) of this section, the application shall be made in that court. Otherwise the application may be made in any court of competent jurisdiction.

(d) An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application for the order has been made under this section or, if the issue is severable, the stay may be with respect to the issue only.

(e) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or because a fault or ground for the claims sought to be arbitrated has not been shown.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.030
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.030.
CATCH LINE
APPOINTMENT OF ARBITRATORS BY COURT.
TEXT If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method of appointment is provided, or if the agreed method fails or for any reason cannot be followed, or when before the hearing an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.040
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.040.
CATCH LINE
MAJORITY ACTION BY ARBITRATORS.
TEXT The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by AS 09.43.010 - 09.43.180.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.050
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.050.
CATCH LINE
HEARING.
TEXT Unless otherwise provided by the agreement,

(1) the arbitrators shall set a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing; appearance at the hearing waives the notice; the arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date; the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a properly notified party to appear;

(2) the parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing;

(3) the hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award; if, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals shall continue with the hearing and determination of the controversy.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.060
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.060.
CATCH LINE
REPRESENTATION BY ATTORNEY.
TEXT A party has the right to be represented by an attorney at a proceeding or hearing under this chapter. A waiver of the right before the proceeding or hearing is ineffective.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.070
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.070.
CATCH LINE
WITNESSES, SUBPOENAS, DEPOSITIONS.
TEXT (a) The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and have the power to administer oaths. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the superior court.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.080
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.080.
CATCH LINE
AWARD.
TEXT (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed by the agreement or, if not so fixed, within the time the court orders on application of a party. The parties may extend the time in writing either before or after the expiration of the time. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of the objection before the delivery of the award to that party.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.090
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.090.
CATCH LINE
MODIFICATION OF AWARD BY ARBITRATORS.
TEXT On application to the arbitrators by a party or, if an application to the court by a party is pending under AS 09.43.110 - 09.43.130 on submission to the arbitrators by the court under the conditions the court may order, the arbitrators may modify or correct the award upon the grounds stated in AS 09.43.130(a)(1) and (3), or for the purpose of clarifying the award. An application to the arbitrators by a party shall be made within 20 days after delivery of the award to the applicant. Written notice of the application shall be given promptly to the opposing party, stating that objections to the application must be served within 10 days from the notice. A modified or corrected award is subject to the provisions of AS 09.43.110 - 09.43.130.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.100
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.100.
CATCH LINE
FEES AND EXPENSES OF ARBITRATION.
TEXT Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.110
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.110.
CATCH LINE
CONFIRMATION OF AN AWARD.
TEXT Upon application of a party, the court shall confirm an award unless within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.120
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.120.
CATCH LINE
VACATING AN AWARD.
TEXT (a) On application of a party, the court shall vacate an award if

(1) the award was procured by fraud or other undue means;

(2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;

(3) the arbitrators exceeded their powers;

(4) the arbitrators refused to postpone the hearing upon sufficient cause being shown for postponement or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as to prejudice substantially the rights of a party; or

(5) there was no arbitration agreement and the issue was not adversely determined in proceedings under AS 09.43.020 and the party did not participate in the arbitration hearing without raising the objection.

(b) The fact that the relief is such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(c) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant. However, if the application is predicated upon corruption, fraud or other undue means by either the opposing party or an arbitrator, it shall be made within 90 days after the grounds are known or should have been known.

(d) In vacating the award on grounds other than those stated in (a)(5) of this section the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of a provision in the agreement, by the court in accordance with AS 09.43.030, or, if the award is vacated on grounds set out in (a)(3) or (4) of this section, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with AS 09.43.030. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(e) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.130
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.130.
CATCH LINE

MODIFICATION OR CORRECTION OF AWARD BY COURT.

TEXT (a) On application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if

(1) there was an evident miscalculation of figures or an evident mistake in the description of a person, thing or property referred to in the award;

(2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.140
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.140.
CATCH LINE
JUDGMENT OR DECREE ON AWARD.
TEXT Upon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered in conformity with the award and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent to the application, and disbursements may be awarded by the court.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.150
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.150.
CATCH LINE
APPLICATIONS TO COURT.
TEXT An application to the court under AS 09.43.010 09.43.180 shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.
HISTORY (Sec. 1 ch 232 SLA 1968)
END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.160
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.160.
CATCH LINE
APPEALS.
TEXT (a) An appeal may be taken from
(1) an order denying an application to compel arbitration made under AS 09.43.020;
(2) an order granting an application to stay arbitration made under AS 09.43.020(b);
(3) an order conforming or denying confirmation of an award;
(4) an order modifying or correcting an award;
(5) an order vacating an award without directing a rehearing; or
(6) a judgment or decree entered under the provisions of AS 09.43.010 - 09.43.180.
(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.170
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.170.
CATCH LINE
COURT, JURISDICTION.
TEXT In AS 09.43.010 - 09.43.180, the term "court" means the superior court of this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the superior court to enforce the agreement under AS 09.43.010 - 09.43.180 and to enter judgment on an award under the agreement.
HISTORY (Sec. 1 ch 232 SLA 1968)
END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.180
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 1.
Uniform Arbitration Act.
CITATION Sec. 09.43.180.
CATCH LINE
SHORT TITLE.
TEXT AS 09.43.010 - 09.43.180 may be cited as the Uniform Arbitration Act.
HISTORY (Sec. 1 ch 232 SLA 1968; am sec. 1 ch 94 SLA 1972)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.190
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 2.
Arbitration of Small Claims.
CITATION Sec. 09.43.190.
CATCH LINE
ARBITRATION UNDER COURT RULES.
TEXT The supreme court may provide by rule for compulsory arbitration of a cause of action filed in a superior or district court, demanding only a money judgment, when it appears that the demand on the cause of action is for $3,000 or less, exclusive of costs, or when it appears to the trial court as a result of a pretrial conference that the amount which will be recovered on the cause is not likely to exceed $3,000.
HISTORY (Sec. 2 ch 94 SLA 1972)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.200
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 2.
Arbitration of Small Claims.
CITATION Sec. 09.43.200.
CATCH LINE
APPOINTMENT AND COMPENSATION OF ARBITRATOR.
TEXT Arbitration of actions shall be by either a member of the Alaska Bar Association or a magistrate appointed and compensated by the court as provided by its rules.
HISTORY (Sec. 2 ch 94 SLA 1972)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.210
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 2.
Arbitration of Small Claims.
CITATION Sec. 09.43.210.
CATCH LINE
PRACTICE AND PROCEDURE.
TEXT The practice and procedure for conducting arbitration, the powers of the arbitrators and the assessment of costs shall be prescribed by the court rules.
HISTORY (Sec. 2 ch 94 SLA 1972)

END OF DOCUMENT

CHAPTER = 09.43
SECTION = 09.43.220
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 43.
Arbitration.
ARTICLE 2.
Arbitration of Small Claims.
CITATION Sec. 09.43.220.
CATCH LINE
JUDGMENTS AND APPEALS.
TEXT Unless an appeal is taken from the award to the court which ordered arbitration as provided by the court rules, the court shall enter and enforce judgment in accordance with the award of the arbitrator. Any party aggrieved by the award may appeal. All appeals shall be determined in the manner permitted by the rules.
HISTORY (Sec. 2 ch 94 SLA 1972)
R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

CHAPTER = 09.60
SECTION = 09.60.010
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 60.
Costs.
CITATION Sec. 09.60.010.
CATCH LINE
COSTS ALLOWED PREVAILING PARTY.
TEXT Except as otherwise provided by statute, the supreme court shall determine by rule or order what costs, if any, including attorney fees, shall be allowed the prevailing party in any case.
HISTORY (Sec. 5.14 ch 101 SLA 1962)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

CHAPTER = 09.16
SECTION = 09.16.010
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Pr-edure.
CHAPTER 16.
Contribution Among Joint Tortfeasors.
CITATION Sec. 09.16.010.
CATCH LINE
RIGHT TO CONTRIBUTION.
TEXT (a) Except as otherwise provided in this chapter, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than that tortfeasor's pro rata share of the common liability, and the total recovery of that tortfeasor is limited to the amount paid in excess of the pro rata share. No tortfeasor is compelled to make contribution beyond the tortfeasor's pro rata share of the entire liability.

(c) There is no right of contribution in favor of any tortfeasor who has intentionally caused or contributed to the injury or wrongful death.

(d) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

(e) A liability insurer, who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

(f) This chapter does not impair any right of indemnity under existing law. If one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of the indemnity obligation.

(g) This chapter does not apply to breaches of trust or of other fiduciary obligation.

HISTORY (Sec. 1 ch 80 SLA 1970; am sec. 13 ch 59 SLA 1982)

END OF DOCUMENT

CHAPTER = 09.16
SECTION = 09.16.020
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 16.
Contribution Among Joint Tortfeasors.
CITATION Sec. 09.16.020.
CATCH LINE
PRO RATA SHARES.
TEXT In determining the pro rata shares of tortfeasors in the entire liability

(1) their relative degrees of fault shall not be considered;

(2) if equity requires, the collective liability of some as a group constitutes a single share; and

(3) principles of equity applicable to contribution generally shall apply.

HISTORY (Sec. 1 ch 80 SLA 1970)
END OF DOCUMENT

CHAPTER = 09.16
SECTION = 09.16.030
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 16.
Contribution Among Joint Tortfeasors.
CITATION Sec. 09.16.030.
CATCH LINE
ENFORCEMENT.
TEXT (a) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(b) Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

(c) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by that tortfeasor to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review.

(d) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, the right of contribution is barred unless that tortfeasor has either

(1) discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against the tortfeasor and has commenced the action for contribution within one year after payment; or

(2) agreed while action is pending against the tortfeasor to discharge the common liability and has within one year after the agreement paid the liability and commenced the action for contribution.

(e) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(f) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death is binding as among the defendants in determining their right to contribution.

HISTORY (Sec. 1 ch 80 SLA 1970)

END OF DOCUMENT

CHAPTER = 09.16
SECTION = 09.16.040
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 16.
Contribution Among Joint Tortfeasors.
CITATION Sec. 09.16.040.
CATCH LINE
RELEASE OR COVENANT NOT TO SUE.
TEXT When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

HISTORY (Sec. 1 ch 80 SLA 1970)

END OF DOCUMENT

CHAPTER = 09.16
SECTION = 09.16.050
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 16.
Contribution Among Joint Tortfeasors.
CITATION Sec. 09.16.050.
CATCH LINE
UNIFORMITY OF INTERPRETATION.
TEXT This chapter shall be so interpreted and construed as to effectuate as far as practical the general purpose of making uniform the law of those states that enact it.
HISTORY (Sec. 1 ch 80 SLA 1970)

END OF DOCUMENT

CHAPTER = 09.16
SECTION = 09.16.060
TITLE = 09
HEADINGS TITLE 9.
Code of Civil Procedure.
CHAPTER 16.
Contribution Among Joint Tortfeasors.
CITATION Sec. 09.16.060.
CATCH LINE
SHORT TITLE.
TEXT This chapter may be cited as the Alaska Uniform Contribution among Tortfeasors Act.
HISTORY (Sec. 1 ch 80 SLA 1970)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

CHAPTER = 22.10
SECTION = 22.10.020
TITLE = 22
HEADINGS TITLE 22.
Judiciary.
CHAPTER 10.
The Superior Court.
CITATION Sec. 22.10.020.
CATCH LINE
JURISDICTION OF THE SUPERIOR COURT.
TEXT (a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including probate and guardianship of minors and incompetents. Except for a petition for injunctive relief under AS 25.35.010 or 25.35.020, an action that falls within the concurrent jurisdiction of the superior court and the district court may not be filed in the superior court, except as provided by rules of the supreme court.

(b) The jurisdiction of the superior court extends over the whole of the state.

(c) The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition, habeas corpus and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court.

(d) The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

(e) An appeal to the superior court is a matter of right, but an appeal from a subordinate court may not be taken by the defendant in a criminal case after a plea of guilty, except on the ground that the sentence was excessive. The state has no right to appeal in criminal cases, except to test the sufficiency of an indictment or information or to appeal a sentence on the ground it is too lenient.

(f) An appeal to the superior court may be taken on the ground that a sentence of imprisonment of 90 days or more was excessive and the superior court in the exercise of this jurisdiction has the power to reduce the sentence. When a sentence is appealed by the state on the ground it is too lenient, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

(g) In case of an actual controversy in the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought. The declaration has the force and effect of a final judgment or decree and is reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against an adverse party whose rights have been determined by the judgment.

(h) The superior court, in an action for divorce, separation, or child support, affecting inalienable stock in a corporation organized under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement Act), may order the stock transferred to the spouse, a child, or a guardian or custodian for a child, but may not order it sold on the open market or transferred to other persons.

(i) The superior court is the court of original jurisdiction over all causes of action arising under the provisions of AS 18.80. A person who is injured or aggrieved by an act, practice or policy which is prohibited under AS 18.80 may apply to the superior court for relief. The person aggrieved or injured may maintain an action on behalf of that person or on behalf of a class consisting of all persons who are aggrieved or injured by the act, practice or policy giving rise to the action. In an action brought under this subsection, the court may grant relief as to any act, practice or policy of the defendant which is prohibited by AS 18.80, regardless of whether each act, practice or policy, with respect to which relief is granted, directly affects the plaintiff, so long as a class or members of a class of which the plaintiff is a member are or may be aggrieved or injured by the act, practice or policy. The court may enjoin any act, practice or policy which is illegal under AS 18.80 and may order any other relief, including the payment of money, that is appropriate.

HISTORY (Sec. 17(1) (2) ch 50 SLA 1959; am sec. 2 ch 117 SLA 1969; am sec. 1 ch 240 SLA 1970; am sec. 3 ch 70 SLA 1972; am sec. 8 ch 12 SLA 1980; am sec. 78 ch 6 SLA 1984; am sec. 2 ch 17 SLA 1985)

END OF DOCUMENT

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4192 SLAB SB 379 - SB 384

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RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

379

CHAIRMAN'S INFORMATION: SB 379

1) BILL TITLE: "An act relating to the premium tax for domestic insurers"

a) Introduced: By Governor

b) Co-sponsors:

2) INTENT: Current law provides that domestic insurers pay a 1.5% premium tax on gross premiums, while non domestic are required to pay 3%. A recent US Supreme Court case raised consitutional questions concerning the differential rate of these tax structures, and the Department of Law estimates that the state is exposed to a potential liability of approximately $14.5 million if this statute is not corrected.

FISCAL NOTE: 0 operating; FY87 1,142.3 generated in revenue

N.B. NO EFFECTIVE DATE CLAUSE

3) ADDITIONAL REFERRALS: Finance, Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

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85 US 76, 81
87 S Ct 271]
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S Ct 1004] (1965);
F2d 340, 345–346
5 [56 L Ed 2d 84,
359, 372, n 4, 74
73 (Marshall, J.,

METROPOLITAN LIFE INSURANCE COMPANY, et al., Appellants

v

W. G. WARD, Jr., et al.

470 US —, 84 L Ed 2d 751, 106 S Ct —

[No. 83-1274]

Argued October 31, 1984. Decided March 26, 1985.

Decision: State statute taxing out-of-state insurance companies at a higher rate than domestic insurance companies held not to have legitimate state purpose for purposes of equal protection clause.

SUMMARY

A group of foreign insurance companies filed claims with Alabama state insurance authorities contending that an Alabama statute imposing a substantially higher gross premiums tax on out-of-state insurance companies than on domestic companies, and allowing the out-of-state companies to reduce their tax rate by investing certain percentages of their total assets in specified state assets and securities, violated the equal protection clause as applied to them. The Circuit Court for Montgomery County, Alabama, upheld the denial of these claims, ruling that the statute was rationally related to the legitimate state purposes of encouraging the formation of new domestic insurance companies and encouraging capital investment in the state by foreign insurance companies. The Court of Civil Appeals of Alabama affirmed as to the legitimacy of these purposes but remanded for an evidentiary hearing on the issue of rational relationship. The insurance companies waived their right to such a hearing and appealed as to the legitimacy of the stated legislative purposes. The Supreme Court of Alabama denied certiorari, and judgment was subsequently entered in favor of the state and the intervenor domestic companies.

On appeal, the United States Supreme Court reversed and remanded. In an opinion by POWELL, J., joined by BURGER, Ch. J., and WHITE, BLACKMUN, and STEVENS, JJ., the court held that the Alabama statute could not be sustained under the equal protection clause ruling that the promotion of domestic business within a state by discriminating against foreign corpora-

tions that wish to compete by doing business there is not a legitimate state purpose, and that the encouragement of capital investment in state assets and securities also is not a legitimate state purpose when furthered by discrimination.

O'CONNOR, J., joined by BRENNAN, MARSHALL, and REHNQUIST, JJ., dissented, expressing the view that the majority opinion was unsupported by precedent and distorted the constitutional balance, threatening the freedom of both state and federal legislative bodies to fashion appropriate classifications in economic legislation.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

36 Am Jur 2d, Foreign Corporations §§ 227, 228; 43 Am Jur 2d, Insurance § 38

Am Jur Proof of Facts

Am Jur Trials

USCS, Constitution, 14th Amendment

US L Ed Digest, Constitutional Law § 369; Insurance § 6

L Ed Index to Annos, Equal Protection of the Laws; Insurance; Taxation

ALR Quick Index, Equal Protection of Law; Insurance; Taxes

Federal Quick Index, Equal Protection of the Laws; Insurance; State Taxes

Auto-Cite®: Any case citation herein can be checked for form, parallel references, later history and annotation references through the Auto-Cite computer research system.

ANNOTATION REFERENCES

Supreme Court's application of Fourteenth Amendment's equal protection clause to foreign corporations. 49 L Ed 2d 1296.

Validity, construction, and application of McCarran-Ferguson Act (15 USCS §§ 1011–1015) dealing with regulation of insurance business by state or federal law. 21 L Ed 2d 936.

Construction, application, and operation of state "retaliatory" statutes imposing special taxes or fees on foreign insurers doing business within the state. 30 ALR4th 873.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Constitutional Law § 369; Insurance § 6 — equal protection — foreign corporations — insurance companies — illegitimacy of purposes of discriminatory tax law

1a–1f. A state law imposing a higher premiums tax on foreign insurance companies than on domestic insurance companies, and allowing foreign companies to reduce but not eliminate the disparity in tax rates by investing certain proportions of their assets in state assets and securities, cannot be justified under the equal protection clause by its asserted purpose of promoting domestic business within the state, which is not a legitimate state purpose for purposes of the equal protection clause where it is accomplished by discriminating against foreign corporations that wish to compete by doing business in the state, or by its asserted purpose of encouraging investment in state assets, which is also not a legitimate state purpose when furthered by discrimination. (O'Connor, J., and Brennan, Marshall, and Rehnquist, JJ., dissented from this holding.)

Constitutional Law § 349 — equal protection — state discrimination against nonresidents

2. The equal protection clause forbids a state to discriminate in favor of its own residents solely by burdening the residents of other state members of the federation.

Constitutional Law § 369; Insurance § 6 — equal protection — insurance companies — McCarran-Ferguson Act

3. Although the McCarran-Ferguson Act, 15 USCS §§ 1011–1015, exempts the insurance industry from commerce clause restrictions, it does not purport to limit in any way the applicability of the equal protection clause.

Commerce § 144; Constitutional Law § 313 — commerce clause and equal protection clause — comparison of tests governing validity of state laws

4. Under commerce clause analysis, the state's interest served by a state law, if legitimate, is weighed against the burden the state law would impose on interstate commerce; in the equal protection context, however, if the state's purpose is found to be legitimate, the state law stands as long as the burden it imposes is found to be rationally related to that purpose.

SYLLABUS BY REPORTER OF DECISIONS

An Alabama statute imposes a substantially lower gross premiums tax rate on domestic insurance companies than on out-of-state (foreign) insurance companies. The statute permits foreign companies to reduce but not to eliminate the differential by investing in Alabama assets and securities. Appellant foreign insurance companies filed claims for refunds of taxes paid, contending that the statute, as applied to them, violated the Equal Protection Clause. The State Commissioner of Insurance denied the claims. On consolidated appeals to a county Circuit Court, in which several domestic

companies intervened, the statute was upheld on summary judgment. The court ruled that the statute did not violate the Equal Protection Clause because, in addition to raising revenue, it served the legitimate state purposes of encouraging the formation of new insurance companies in Alabama and capital investment by foreign insurance companies in Alabama assets and securities, and that the distinction between foreign and domestic companies was rationally related to those purposes. The Alabama Court of Civil Appeals affirmed the finding as to legitimate state purposes, but remanded for an evidentiary hearing on the issue of rational relationship. On certiorari to the Alabama Supreme Court, appellants waived their rights to such an evidentiary hearing, and the court entered judgment for the State and the intervenors on appellants' equal protection challenge to the statute.

Held: The Alabama domestic preference tax statute violates the Equal Protection Clause as applied to appellants.

(a) Under the circumstances of this case, promotion of domestic business by discriminating against nonresidents is not a legitimate state purpose. Western & Southern Life Ins. Co. v State Board of Equalization of California, 451 US 648, 68 L Ed 2d 514, 101 S Ct 2070, distinguished. Alabama's aim to promote domestic industry is purely and completely discriminatory, designed only to favor domestic industry within the State, no matter what the cost to foreign corporations also seeking to do business there. Alabama's purpose constitutes the very sort of parochial discrimination that the Equal Protection Clause was intended to prevent. A State may not constitutionally favor its own residents by taxing foreign corporations at a higher rate solely because of their residence. Although the McCarran-Ferguson Act exempts the insurance industry from Commerce Clause restrictions, it does not purport to limit the applicability of the Equal Protection Clause. Equal protection restraints are applicable even though the *effect* of the discrimination is similar to the type of burden with which the Commerce Clause also would be concerned. Pp 6–12.

(b) Nor is the encouragement of the investment in Alabama assets and securities a legitimate state purpose. Domestic insurers remain entitled to the more favorable tax rate regardless of whether they invest in Alabama assets. Moreover, since the investment incentive provision does not enable foreign insurers to eliminate the statute's discriminatory effect, it does not cure but reaffirms the impermissible classification based solely on residence.

—— So 2d ——, reversed and remanded.

Powell, J., delivered the opinion of the Court, in which Burger, C. J., and White, Blackmun, and Stevens, JJ., joined. O'Connor, J., filed a dissenting opinion, in which Brennan, Marshall, and Rehnquist, JJ., joined.

APPEARANCES OF COUNSEL

Matthew J. Zinn argued the cause for appellants.

Warren B. Lightfoot argued the cause for appellees.

Justice Powell delivered the opinion of the Court.

[1a] This case presents the question whether Alabama's domestic preference tax statute, Ala Code §§ 27-4-4 and 27-4-5 (1975), that taxes out-of-state insurance companies at a higher rate than domestic insurance companies, violates the Equal Protection Clause.

I

Since 1955,[1] the State of Alabama has granted a preference to its domestic insurance companies by imposing a substantially lower gross premiums tax rate on them than on out-of-state (foreign) companies.[2] Under the current statutory provisions, foreign life insurance companies pay a tax on their gross premiums received from business conducted in Alabama at a rate of 3 percent, and foreign companies selling other types of insurance pay at a rate of 4 percent. Ala Code § 27-4-4(a) (1975). All domestic insurance companies, in contrast, pay at a rate of only 1 percent on all types of insurance premiums. § 27-4-5(a).[3] As a result, a foreign insurance company doing the same type and volume of business in Alabama as a domestic company generally will pay three to four times as much in gross premiums taxes as its domestic competitor.

Alabama's domestic preference tax statute does provide that foreign companies may reduce the differential in gross premiums taxes by investing prescribed percentages of their worldwide assets in specified Alabama assets and securities. § 27-4-4(b). By investing 10 percent or more of its total assets in Alabama investments, for example, a foreign life insurer may reduce its gross premiums tax rate from 3 to 2 percent. Similarly, a foreign property and casualty insurer may reduce its tax rate from 4 to 3 percent. Smaller tax reductions are available based on investment of smaller percentages of a company's assets. Ibid. Regardless of how much of its total assets a foreign company places in Alabama investments, it can never reduce its gross premiums tax rate to the same level paid by comparable domestic companies. These are entitled to the 1 percent tax rate even if they have no investments in the State. Thus, the investment pro-

1. The origins of Alabama's domestic preference tax statute date back to 1849, when the first tax on premiums earned by insurance companies doing business in the State was limited to companies not chartered by the State. Act No. 1, 1849 Ala Acts 5. A domestic preference tax was imposed on and off throughout the years until 1945, when the State restored equality in taxation of insurance companies in response to this Court's decision in United States v South-Eastern Underwriters Assn. 322 US 533, 88 L Ed 1440, 64 S Ct 1162 (1944). Act No. 156, 1945 Ala Acts 196–197. In 1955, the tax was reinstated, Act No. 77, 1955 Ala Acts 193 (2d Sp Sess), and with minor amendments, has remained in effect until the present.

2. For domestic preference tax purposes, Alabama defines a domestic insurer as a company that both is incorporated in Alabama and has its principal office and chief place of business within the State. Ala Code § 27-4-1(3) (1975). A corporation that does not meet both of these criteria is characterized as a foreign insurer. § 27-4-1(2).

3. There are two exceptions to these general rules concerning the rates of taxation of insurance companies. For annuities, the tax rate is one percent for both foreign and domestic insurers, Ala Code § 27-4-4(a) (1975), and for wet marine and transportation insurance, the rate is three-quarters of one percent for both foreign and domestic insurance companies, § 27-4-6(a).

vision permits foreign insurance companies to reduce, but never to eliminate, the discrimination inherent in the domestic preference tax statute.

II

Appellants, a group of insurance companies incorporated outside of the State of Alabama, filed claims with the Alabama Department of Insurance in 1981, contending that the domestic preference tax statute, as applied to them, violated the Equal Protection Clause. They sought refunds of taxes paid for the tax years 1977 through 1980. The Commissioner of Insurance denied all of their claims on July 8, 1981.

Appellants appealed to the Circuit Court for Montgomery County, seeking a judgment declaring the statute to be unconstitutional and requiring the Commissioner to make the appropriate refunds. Several domestic companies intervened, and the court consolidated all of the appeals, selecting two claims as lead cases[4] to be tried and binding on all claimants. On cross-motions for summary judgment, the court ruled on May 17, 1982, that the statute was constitutional. Relying on this Court's opinion in Western & Southern Life Ins. Co. v State Board of Equalization of California, 451 US 648, 68 L Ed 2d 514, 101 S Ct 2070 (1981), the court ruled that the Alabama statute did not violate the Equal Protection Clause because it served "at least two purposes, in addition to raising revenue: (1) encouraging the formation of new insurance companies in Alabama, and (2) encouraging capital investment by foreign insurance companies in the Alabama assets and governmental securities set forth in the statute." App to Juris Statement 20a-21a. The court also found that the distinction the statute created between foreign and domestic companies was rationally related to those two purposes and that the Alabama Legislature reasonably could have believed that the classification would have promoted those purposes. Id., at 21a.

After their motion for a new trial was denied, appellants appealed to the Court of Civil Appeals. It affirmed the Circuit Court's rulings as to the existence of the two legitimate state purposes, but remanded for an evidentiary hearing on the issue of rational relationship, concluding that summary judgment was inappropriate on that question because the evidence was in conflict. 437 So 2d 535 (1983). Appellants petitioned the Supreme Court of Alabama for certiorari on the affirmance of the legitimate state purpose issue, and the State and the intervenors petitioned for review of the remand order. Appellants then waived their right to an evidentiary hearing on the issue whether the statute's classification bore a rational relationship to the two purposes found by the Circuit Court to be legitimate, and they requested a final determination of the legal issues with respect to their equal protection challenge to the statute. The Supreme Court denied certiorari on all claims. Appellants again waived their rights to an evidentiary hearing on the rational relationship issue and filed a joint motion with the

4. Metropolitan Life Insurance Co., a New York corporation, was chosen to represent the life insurance claimants, and Prudential Property and Casualty Co., a New Jersey corporation, was chosen as representative of the non-life claimants. See App 314-315.

other parties seeking rehearing and entry of a final judgment. The motion was granted, and judgment was entered for the State and the intervenors. This appeal followed, and we noted probable jurisdiction. 466 US ——, 80 L Ed 2d 455, 104 S Ct 1905 (1984). We now reverse.

III

Prior to our decision in Western & Southern Life Ins. Co. v State Board of Equalization of California, supra, the jurisprudence of the applicability of the Equal Protection Clause to discriminatory tax statutes had a somewhat checkered history. Lincoln National Life Ins. Co. v Read, 325 US 673, 89 L Ed 1861, 65 S Ct 1220 (1945), held that so-called "privilege" taxes, required to be paid by a foreign corporation before it would be permitted to do business within a State, were immune from equal protection challenge. That case stood in stark contrast, however, to the Court's prior decisions in Southern R. Co. v Greene, 216 US 400, 54 L Ed 536, 30 S Ct 287 (1910), and Hanover Fire Ins. Co. v Harding, 272 US 494, 71 L Ed 372, 47 S Ct 179, 49 ALR 713 (1926), as well as to later decisions, in which the Court had recognized that the Equal Protection Clause placed limits on other forms of discriminatory taxation imposed on out-of-state corporations solely because of their residence. See, e.g., WHYY, Inc. v Glassboro, 393 US 117, 21 L Ed 2d 242, 89 S Ct 286 (1968); Allied Stores of Ohio, Inc. v Bowers, 358 US 522, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959); Wheeling Steel Corp. v Glander, 337 US 562, 93 L Ed 1544, 69 S Ct 1291, 40 Ohio Ops 101, 55 Ohio L Abs 305 (1949).

In Western & Southern, supra, we reviewed all of these cases for the purpose of deciding whether to permit an equal protection challenge to a California statute imposing a retaliatory tax on foreign insurance companies doing business within the State, when the home States of those companies imposed a similar tax on California insurers entering their borders. We concluded that Lincoln was no more than "a surprising throwback" to the days before enactment of the Fourteenth Amendment and in which incorporation of a domestic corporation or entry of a foreign one had been granted only as a matter of privilege by the State in its unfettered discretion. 451 US, at 665, 68 L Ed 2d 514, 101 S Ct 2070. We therefore rejected the longstanding but "anachronistic" rule of Lincoln and explicitly held that the Equal Protection Clause imposes limits upon a State's power to condition the right of a foreign corporation to do business within its borders. Id., at 667, 68 L Ed 2d 514, 101 S Ct 2070. We held that "[w]e consider it now established that, whatever the extent of a State's authority to exclude foreign corporations from doing business within its boundaries, that authority does not justify imposition of more onerous taxes or other burdens on foreign corporations than those imposed on domestic corporations, unless the discrimination between foreign and domestic corporations bears a rational relation to a legitimate state purpose." Id., at 667–668, 68 L Ed 2d 514, 101 S Ct 2070.

[1b] Because appellants waived their right to an evidentiary hearing on the issue whether the classification in the Alabama domestic preference tax statute bears a rational relation to the two purposes upheld

by the Circuit Court, the only question before us is whether those purposes are legitimate.[5]

A

(1)

The first of the purposes found by the trial court to be a 'egitimate reason for the statute's classification between foreign and domestic corporations is that it encourages the formation of new domestic insurance companies in Alabama. The State, agreeing with the Court of Civil Appeals, contends that this Court has long held that the promotion of domestic industry, in and of itself, is a legitimate state purpose that will survive equal protection scrutiny. In so contending, it relies on a series of cases, including Western & Southern, that are said to have upheld discriminatory taxes. See Bacchus Imports, Ltd. v Dias, 468 US ——, 82 L Ed 2d 200, 104 S Ct 3049 (1984); Pike v Bruce Church, Inc., 397 US 137, 25 L Ed 2d 174, 90 S Ct 844 (1970); Allied Stores of Ohio, Inc. v Bowers, supra; Parker v Brown, 317 US 341, 87 L Ed 315, 63 S Ct 307 (1943); Carmichael v Southern Coal & Coke Co. 301 US 495, 81 L Ed 1245, 57 S Ct 868, 109 ALR 1327 (1937); Board of Education v Illinois, 203 US 553, 51 L Ed 314, 27 S Ct 171 (1906).

The cases cited lend little or no support to the State's contention. In Western & Southern, the case principally relied upon, we did not hold as a general rule that promotion of domestic industry is a legitimate state purpose under equal protection analysis.[6] Rather, we held that Cali-

5. The State and the intervenors advanced some 15 additional purposes in support of the Alabama statute. As neither the Circuit Court nor the Court of Civil Appeals ruled on the legitimacy of those purposes, that question is not before us, and we express no view as to it. On remand, the State will be free to advance again its arguments relating to the legitimacy of those purposes.

As the dissent finds our failure to resolve whether Alabama may continue to collect its tax "baffling," post, at 4, we reemphasize the procedural posture of the case: it arose on a motion for summary judgment. The Court of Civil Appeals upheld the Circuit Court's ruling that the two purposes identified by it were legitimate, but the appellate court remanded on the issue of rational relationship as to those purposes because it found the evidence in conflict. In order to obtain an expedited ruling, appellants waived their right to an evidentiary hearing only as to the purposes "which the lower courts have determined to be legitimate." App to Juris St, at 2a. Thus, for this Court to resolve whether Alabama may continue to collect the tax, it would have to decide de novo whether any of the other purposes was legitimate, and also whether the statute's classification bore a rational relationship to any of these purposes—all this, on a record that the Court of Civil Appeals deemed inadequate.

6. We find the other cases on which the State relies also to be inapposite to this inquiry. Bacchus Imports, Pike, and Parker discussed whether promotion of local industry is a valid state purpose under the Commerce Clause. The Commerce Clause, unlike the Equal Protection Clause, is integrally concerned with whether a state purpose implicates local or national interests. The Equal Protection Clause, in contrast, is concerned with whether a state purpose is impermissibly discriminatory; whether the discrimination involves local or other interests is not central to the inquiry to be made. Thus, the fact that promotion of local industry is a legitimate state interest in the Commerce Clause context says nothing about its validity under equal protection analysis. See infra, at ——-——, 84 L Ed 2d 760–761.

Moreover, neither Bacchus nor Pike ruled that a State's ability to promote domestic industry was unlimited, even under the Commerce Clause. Thus, in Bacchus, although we observed as a general matter that "a State may enact laws pursuant to its police powers that have the purpose and effect of encouraging domestic industry," 468 US ——, ——, 82 L Ed 2d 200, 104 S Ct 3049 (1984), we held

taxes. See Bacchus Dias, 468 US ——, 82 104 S Ct 3049 (1984); Church, Inc., 397 US 2d 174, 90 S Ct 844 Stores of Ohio, Inc. v Parker v Brown, 317 Ed 315, 63 S Ct 307 hael v Southern Coal 01 US 495, 81 L Ed : 868, 109 ALR 1327 of Education v Illinois, 51 L Ed 314, 27 S Ct

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fornia's purpose in enacting the retaliatory tax—to promote the *interstate* business of domestic insurers by deterring other States from enacting discriminatory or excessive taxes—was a legitimate one. 451 US, at 668, 68 L Ed 2d 514, 101 S Ct 2070. In contrast, Alabama asks us to approve its purpose of promoting the business of its domestic insurers in Alabama by penalizing foreign insurers who also want to do business in the State. Alabama has made no attempt, as California did, to influence the policies of other States in order to enhance its domestic companies' ability to operate interstate; rather, it has erected barriers to foreign companies who wish to do interstate business in order to improve its domestic insurers' ability to compete at home.

[2] The crucial distinction between the two cases lies in the fact that Alabama's aim to promote domestic industry is purely and completely discriminatory, designed only to favor domestic industry within the State, no matter what the cost to foreign corporations also seeking to do business there. Alabama's purpose, contrary to California's, constitutes the very sort of parochial discrimination that the Equal Protection Clause was intended to prevent. As Justice Brennan, joined by Justice Harlan, observed in his concurrence in Allied Stores of Ohio, Inc. v Bowers, 358 US 522, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959), this Court always has held that the Equal Protection Clause forbids a State to discriminate in favor of its own residents solely by burdening "the residents of other state members of our federation." Id., at 533, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. Unlike the retaliatory tax involved in Western & Southern, which only burdens residents of a State that imposes its own discriminatory tax on outsiders, the domestic preference tax gives the "home team" an advantage by burdening *all* foreign corporations seeking to do business within the State, no matter what they or their States do.

The validity of the view that a State may not constitutionally favor its own residents by taxing foreign corporations at a higher rate solely because of their residence is confirmed by a long line of this Court's cases so holding. WHYY, Inc v Glassboro, 393 US, at 119–120, 21 L Ed 2d 242, 89 S Ct 286; Wheeling Steel Corp. v Glander, 337 US, at 571, 93 L Ed 1544, 69 S Ct 1291, 40

that in so doing, a State may not constitutionally impose a discriminatory burden upon the business of other States, merely to protect and promote local business, id., at ——, 82 L Ed 2d 200, 104 S Ct 3049. Accord Armco Inc. v Hardesty, 467 US ——, ——, 81 L Ed 2d 540, 104 S Ct 2620 (1984). Likewise, in Pike, the Court held that the state statute promoting a legitimate local interest must "regulat[e] evenhandedly." 397 US, at 142, 25 L Ed 2d 174, 90 S Ct 844.

Other cases cited by the State are simply irrelevant to the legitimacy of promoting local business at all. Carmichael relates primarily to the validity of a state unemployment compensation scheme, and Board of Education deals with the State's ability to regulate matters relating to probate. Bowers is the only one of the State's cases that involves the validity under the Equal Protection Clause of a tax that discriminates on the basis of residence of domestic *versus* foreign corporations. That case does little, however, to support the State's contention that promotion of domestic business is a legitimate state purpose. It was concerned with encouraging nonresidents—who are not competitors of residents—to build warehouses within the State. See infra, at ——-——, 84 L Ed 2d 760.

Ohio Ops 101, 55 Ohio L Abs 305; Hanover Fire Ins. Co. v Harding, 272 US, at 511, 71 L Ed 372, 47 S Ct 179, 49 ALR 713; Southern R. Co. v Greene, 216 US, at 417, 54 L Ed 536, 30 S Ct 287. See Reserve Life Ins. Co. v Bowers, 380 US 258, 13 L Ed 2d 959, 85 S Ct 951 (1965) (per curiam). As the Court stated in Hanover Fire Ins. Co., with respect to general tax burdens on business, "the foreign corporation stands equal, and is to be classified with domestic corporations of the same kind." 272 US, at 511, 71 L Ed 372, 47 S Ct 179, 49 ALR 713. In all of these cases, the discriminatory tax was imposed by the State on foreign corporations doing business within the State solely because of their residence, presumably to promote domestic industry within the State.[7] In relying on these cases and rejecting Lincoln in Western & Southern, we reaffirmed the continuing viability of the Equal Protection Clause as a means of challenging a statute that seeks to benefit domestic industry within the State only by grossly discriminating against foreign competitors.

The State contends that Allied Stores of Ohio, Inc. v Bowers, supra, shows that this principle has not always held true. In that case, a domestic merchandiser challenged on equal protection grounds an Ohio statute that exempted foreign corporations from a tax on the value of merchandise held for storage within the State. The Court upheld the tax, finding that the purpose of encouraging foreign companies to build warehouses within Ohio was a legitimate state purpose. The State contends that this case shows that promotion of domestic business is a legitimate state purpose under equal protection analysis.

[1c] We disagree with the State's interpretation of Allied Stores and find that the case is not inconsistent with the other cases on which we rely. We agree with the holding of Allied Stores that a State's goal of bringing in new business is legitimate and often admirable. Allied Stores does not, however, hold that promotion of domestic business by *discriminating* against foreign corporations is legitimate. The case involves instead a statute that *encourages nonresidents*—who are not competitors of residents—to build warehouses within the State. The discriminatory tax involved did not favor residents by burdening outsiders; rather, it granted the nonresident businesses an exemption that residents did not share. Since the foreign and domestic companies involved were not competing to provide warehousing services, granting the former an exemption did not even directly affect adversely the domestic companies subject to the tax. On its facts, then, Allied Stores is not inconsistent with our holding here that promotion of domestic business within a State, by discriminating against foreign corporations that wish to compete by doing business there, is not a legitimate state purpose. See 358 US, at 532–533, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (Brennan, J., concurring).

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[3] The State argues nonetheless

7. Although the promotion of domestic business was not a purpose advanced by the States in support of their taxes in these cases, such promotion is logically the primary reason for enacting discriminatory taxes such as those at issue there.

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that it is impermissible to view a discriminatory tax such as the one at issue here as violative of the Equal Protection Clause. This approach, it contends, amounts to no more than "Commerce Clause rhetoric in equal protection clothing." Brief for Appellee Ward 22. The State maintains that because Congress, in enacting the McCarran-Ferguson Act, 15 USC §§ 1011–1015 [15 USCS §§ 1011–1015], intended to authorize States to impose taxes that burden interstate commerce in the insurance field, the tax at issue here must stand. Our concerns are much more fundamental than as characterized by the State. Although the McCarran-Ferguson Act exempts the insurance industry from Commerce Clause restrictions, it does not purport to limit in any way the applicability of the Equal Protection Clause. As noted above, our opinion in Western & Southern expressly reaffirmed the viability of equal protection restraints on discriminatory taxes in the insurance context.[8]

[4] Moreover, the State's view ignores the differences between Commerce Clause and equal protection analysis and the consequent different purposes those two constitutional provisions serve. Under Commerce Clause analysis, the State's interest, if legitimate, is weighed against the burden the state law would impose on interstate commerce. In the equal protection context, however, if the State's purpose is found to be legitimate, the state law stands as long as the burden it imposes is found to be rationally related to that purpose, a relationship that is not difficult to establish. See Western & Southern, 451 US, at 674, 68 L Ed 2d 514, 101 S Ct 2070 (if purpose is legitimate, equal protection challenge may not prevail so long as the question of rational relationship is "'at least debatable'" (quoting United States v Carolene Products Co. 304 US 144, 154, 82 L Ed 1234, 58 S Ct 778 (1938)).

The two constitutional provisions perform different functions in the analysis of the permissible scope of a State's power—one protects interstate commerce, and the other protects persons[9] from unconstitutional discrimination by the States. See Bethlehem Motors Corp. v Flynt, 256 US 421, 423–424, 65 L Ed 1029, 41 S Ct 571 (1921). The effect of the statute at issue here is to place a discriminatory tax burden on foreign insurers who desire to do business within the State, thereby also incidentally placing a burden on interstate commerce. Equal protection restraints are applicable even though the *effect* of the discrimination in this case is similar to the type of burden with which the Commerce Clause also would be concerned. We reaffirmed the importance of the Equal Protection Clause in the in-

8. In fact, as we noted in Western & Southern, the legislative history of the McCarran-Ferguson Act reveals that the Act was Congress's response only to United States v South-Eastern Underwriters Assn. 322 US 533, 88 L Ed 1440, 64 S Ct 1162 (1944), and that Congress did not intend thereby to give the States any power to tax or regulate the insurance industry other than what they had previously possessed. Thus Congress expressly left undisturbed this Court's decisions holding that the Equal Protection Clause places limits on a State's ability to tax out-of-state corporations. See 451 US, at 655, n 6, 68 L Ed 2d 514, 101 S Ct 2070.

9. It is well established that a corporation is a "person" within the meaning of the Fourteenth Amendment. E.g., Western & Southern, supra, at 660, n 12, 68 L Ed 2d 514, 101 S Ct 2070.

surance context in Western & Southern and see no reason now for reassessing that view.

[1d] In whatever light the State's position is cast, acceptance of its contention that promotion of domestic industry is always a legitimate state purpose under equal protection analysis would eviscerate the Equal Protection Clause in this context. A State's natural inclination frequently would be to prefer domestic business over foreign. If we accept the State's view here, then any discriminatory tax would be valid if the State could show it reasonably was intended to benefit domestic business.[10] A discriminatory tax would stand or fall depending primarily on how a State framed its purpose—as benefiting one group or as harming another. This is a distinction without a difference, and one that we rejected last term in an analogous context arising under the Commerce Clause. Bacchus Imports, Ltd. v Dias, 468 US, at ——, 82 L Ed 2d 200, 104 S Ct 3049. See n 6, supra. We hold that under the circumstances of this case, promotion of domestic business by discriminating against nonresident competitors is not a legitimate state purpose.

B

[1e] The second purpose found by the courts below to be legitimate was the encouragement of capital investment in the Alabama assets and governmental securities specified in the statute. We do not agree that this is a legitimate state purpose when furthered by discrimination. Domestic insurers remain entitled to the more favorable rate of tax regardless of whether they invest in Alabama assets. Moreover, the investment incentive provision of the Alabama statute does not enable foreign insurance companies to eliminate the discriminatory effect of the statute. No matter how much of their assets they invest in Alabama, foreign insurance companies are still required to pay a higher gross premiums tax than domestic companies. The State's investment incentive provision therefore does not cure, but reaffirms, the statute's impermissible classification based solely on residence. We hold that encouraging investment in Alabama assets and securities in this plainly discriminatory manner serves no legitimate state purpose.

IV

[1f] We conclude that neither of the two purposes furthered by the Alabama domestic preference tax statute and addressed by the Circuit Court for Montgomery County, see supra, at 3, is legitimate under the Equal Protection Clause to justify the imposition of the discriminatory tax at issue here. The judgment of the Alabama Supreme Court accordingly is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

10. Indeed, under the State's analysis, *any* discrimination subject to the rational relation level of scrutiny could be justified simply on the ground that it favored one group at the expense of another. This case does not involve or question, as the dissent suggests, post, at ——, 84 L Ed 2d 774, the broad authority of a State to promote and regulate its own economy. We hold only that such regulation may not be accomplished by imposing discriminatorily higher taxes on nonresident corporations solely because they are nonresidents.

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Justice **O'Connor,** with whom Justice Brennan, Justice Marshall and Justice **Rehnquist** join, dissenting.

This case presents a simple question: Is it legitimate for a state to use its taxing power to promote a domestic insurance industry and to encourage capital investment within its borders? In a holding that can only be characterized as astonishing, the Court determines that these purposes are illegitimate. This holding is unsupported by precedent and subtly distorts the constitutional balance, threatening the freedom of both state and federal legislative bodies to fashion appropriate classifications in economic legislation. Because I disagree with both the Court's method of analysis and its conclusion, I respectfully dissent.

I

Alabama's legislature has chosen to impose a higher tax on out-of-state insurance companies and insurance companies incorporated in Alabama that do not maintain their principal place of business or invest assets within the State. Ala Code § 27-4-4 et seq. (1975). This tax seeks to promote both a domestic insurance industry and capital investment in Alabama. App to Juris Statement 20a-21a. Metropolitan Life Insurance Company, joined by many other out-of-state insurers, alleges that this discrimination violates its rights under the Equal Protection Clause of the Fourteenth Amendment, which provides that a State shall not "deny to any person within its jurisdiction the equal protection of the laws." Appellants rely on the Equal Protection Clause because, as corporations, they are not "citizens" protected by the privileges and immunities clauses of the Constitution. Hemphill v Orloff, 277 US 537, 548–550, 72 L Ed 978, 48 S Ct 577 (1928). Similarly, they cannot claim Commerce Clause protection because Congress in the McCarran-Ferguson Act, 59 Stat 33, 15 USC § 1011 et seq. [15 USCS §§ 1011 et seq.], explicitly suspended Commerce Clause restraints on state taxation of insurance and placed insurance regulation firmly within the purview of the several States. Western & Southern Life Ins. Co. v State Board of Equalization, 451 US 648, 655, 68 L Ed 2d 514, 101 S Ct 2070 (1981).

Our precedents impose a heavy burden on those who challenge local economic regulation solely on Equal Protection Clause grounds. In this context, our long-established jurisprudence requires us to defer to a legislature's judgment if the classification is rationally related to a legitimate state purpose. Yet the Court evades this careful framework for analysis, melding the proper two-step inquiry regarding the State's purpose and the classification's relationship to that purpose into a single unarticulated judgment. This tactic enables the Court to characterize State goals that have been legitimated by Congress itself as improper solely because it disagrees with the concededly rational means of differential taxation selected by the legislature. This unorthodox approach leads to further error. The Court gives only the most cursory attention to the factual and legal bases supporting the State's purposes and ignores both precedent and significant evidence in the record establishing their legitimacy. Most trou-

bling, the Court discovers in the Equal Protection Clause an implied prohibition against classifications whose purpose is to give the "home team" an advantage over interstate competitors even where Congress has authorized such advantages. Ante, at ——, 84 L Ed 2d 759.

The Court overlooks the unequivocal language of our prior decisions. "Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest." New Orleans v Dukes, 427 US 297, 303, 49 L Ed 2d 511, 96 S Ct 2513 (1976). See, e.g., Lehnhausen v Lake Shore Auto Parts Co. 410 US 356, 35 L Ed 2d 351, 93 S Ct 1001 (1973). Judicial deference is strongest where a tax classification is alleged to infringe the right to equal protection. "[I]n taxation, even more than in other fields, legislatures possess the greatest freedom in classification." Madden v Kentucky, 309 US 83, 88, 84 L Ed 590, 60 S Ct 406, 125 ALR 1383 (1940). "Where the public interest is served one business may be left untaxed and another taxed, in order to promote the one or to restrict or suppress the other." Carmichael v Southern Coal & Coke Co. 301 US 495, 512, 81 L Ed 1245, 57 S Ct 868, 109 ALR 1327 (1937) (citations omitted). As the Court emphatically noted in Allied Stores of Ohio, Inc. v Bowers:

> "[I]t has repeatedly been held and appears to be entirely settled that a statute which encourages the location within the State of needed and useful industries by exempting them, though not also others, from its taxes is not arbitrary and does not violate the Equal Protection Clause of the Fourteenth Amendment. Similarly, it has long been settled that a classification, though discriminatory, is not arbitrary or violative of the Equal Protection Clause of the Fourteenth Amendment if any state of facts reasonably can be conceived that would sustain it." 358 US 522, 528, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959) (citations omitted).

See also Western & Southern Life Ins. Co. v State Board of Equalization, supra, at 674, 68 L Ed 2d 514, 101 S Ct 2070; Minnesota v Clover Leaf Creamery Co. 449 US 456, 464, 66 L Ed 2d 659, 101 S Ct 715 (1981).

Appellants waived their right to an evidentiary hearing and conceded that Alabama's classification was rationally related to its purposes of encouraging the formation of domestic insurance companies and bringing needed services and capital to the State. Thus the only issue in dispute is the legitimacy of these purposes. Yet it is obviously legitimate for a State to seek to promote local business and attract capital investment, and surely those purposes animate a wide range of legislation in all 50 States.

The majority evades the obvious by refusing to acknowledge the factual background bearing on the legitimacy of the State's purpose or to address the many collateral public benefits advanced by Alabama. Instead, the Court dismisses the

State's arguments by merely stating that they were not ruled on by the courts below. Ante, at ——, n 5, 84 L Ed 2d 758. In point of fact, the full range of purposes documented before this Court was also argued and documented before the Alabama Circuit Court. See Record, Vols VI, VII, VIII. That court found "*at least* two purposes, in addition to raising revenue: (1) encouraging the formation of new insurance companies in Alabama, and (2) encouraging capital investment by foreign insurance companies in the Alabama assets and governmental securities set forth in the statute." App to Juris Statement 20a-21a (emphasis added). As appellants concede, these purposes are simply a step in achieving the "larger set of purposes [whose] premise . . . is that domestic insurance companies, on the whole, benefit the state in ways which foreign companies do not." Brief for Appellants 31.

In any event, it is settled law that the appellee may assert any argument in support of the judgment in his favor, regardless of whether it was relied upon by the court below. Dandridge v Williams, 397 US 471, 475, n 6, 25 L Ed 2d 491, 90 S Ct 1153 (1970). The Court's failure actually to resolve whether Alabama may continue to collect its tax, see ante, at ——, n 10, 84 L Ed 2d 762, is all the more baffling, since appellants took the exceptional step of conceding the factual issues to assure a speedy resolution of numerous pending lawsuits disruptive of industry stability. See Brief for State of Alaska et al. as Amici Curiae 1–2. Our precedents do not condone such a miserly approach to review of statutes adjusting economic burdens. See, e.g. Allied Stores of Ohio, Inc. v Bowers, supra, at 528–529, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312; McGowan v Maryland, 366 US 420, 425, 6 L Ed 2d 393, 81 S Ct 1101, 17 Ohio Ops 2d 151 (1961); United States v Carolene Products Co. 304 US 144, 152–153, 82 L Ed 1234, 58 S Ct 778 (1938); Borden's Farm Products Co. v Baldwin, 293 US 194, 209, 79 L Ed 281, 55 S Ct 187 (1934). The Court had consistently reviewed the validity of such statutes based on whatever "may reasonably have been the purpose and policy of the State Legislature, in adopting the proviso." Allied Stores of Ohio, Inc. v Bowers, supra, at 528–529, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. It is to that inquiry that I now turn.

Alabama claims that its insurance tax, in addition to raising revenue and promoting investment, promotes the formation of new domestic insurance companies and enables them to compete with the many large multistate insurers that currently occupy some 75% to 85% of the Alabama insurance market. App 80. Economic studies submitted by the State document differences between the two classes of insurers that are directly relevant to the well-being of Alabama's citizens. See id., at 46–129. Foreign insurers typically concentrate on affluent, high volume, urban markets and offer standardized national policies. In contrast, domestic insurers such as intervenors American Educators Life Insurance Company and Booker T. Washington Life Insurance Company are more likely to serve Alabama's rural areas, and to write low-cost industrial and burial policies not offered by the larger

national companies.[1] Additionally, Alabama argues persuasively that it can more readily regulate domestic insurers and more effectively safeguard their solvency than that of insurers domiciled and having their principal places of business in other states.

Ignoring these policy considerations, the Court insists that Alabama seeks only to benefit local business, a purpose the Court labels invidious. Yet if the classification chosen by the State can be shown *actually* to promote the public welfare, this is strong evidence of a legitimate State purpose. See Note, Taxing Out-of-State Corporations After Western & Southern: An Equal Protection Analysis, 34 Stan L Rev 877, 896 (1982). In this regard, Justice Frankfurter wisely observed that:

> "[T]he great divide in the [equal protection] decisions lies in the difference between emphasizing the actualities or the abstractions of legislation.
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> "To recognize marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic." Morey v Doud, 354 US 457, 472, 1 L Ed 2d 1485, 77 S Ct 1344 (1957) (Frankfurter, J., dissenting).

A thoughtful look at the "actualities of [this] legislation" compels the conclusion that the State's goals are legitimate by any test.

II

The policy of favoring local concerns in State regulation and taxation of insurance, which the majority condemns as illegitimate, is not merely a recent invention of the States. The States initiated regulation of the business of insurance as early as 1851. See Report of the Comptroller General, Issues and Needed Improvements in State Regulation of the Insurance Business, GAO Report B-192813, p 5 (Oct. 9, 1979) (GAO Report). In 1944, however, this Court overruled a long line of cases holding that the business of insurance was an intrastate activity beyond the scope of the Commerce Clause. United States v South-Eastern Underwriters Assn. 322 US 533, 88 L Ed 1440, 64 S Ct 1162. "The decision provoked widespread concern that the States would no longer be able to engage in taxation and effective regulation of the insurance industry. Congress moved quickly, enacting the McCarran-Ferguson Act within a year of the decision in South-Eastern Underwriters." St. Paul Fire & Marine Insurance Co. v Barry, 438 US 531, 539, 57 L Ed 2d 932, 98 S Ct 2923 (1978). See H R Rep No 143, 79th Cong, 1st Sess, 2 (1945); 91 Cong Rec 479–480 (1945) (remarks of Sen. Ferguson); id., at 487 (remarks of Sen. Ellender).

The drafters of the Act were sensitive to the same concerns Alabama now vainly seeks to bring to this Court's attention: the greater responsiveness of local insurance com-

1. "Industrial insurance" is the trade term for a low face-value policy typically sold door-to-door and maintained through home collection of monthly or weekly premiums. Alabama currently has more industrial insurance in force than any other State. Burial insurance is another form of insurance popular in rural Alabama that is offered exclusively by local insurers. By contrast, Metropolitan Life, like many multistate insurers, has discontinued writing even whole-life policies with face values below $15,000. App 173–176.

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panies to local conditions, the different insurance needs of rural and industrial states, the special advantages and constraints of state-by-state regulation, and the importance of insurance license fees and taxes as a major source of State revenues. See, e.g., Hearings on S 1362 before the Senate Subcommittee on the Judiciary, 78th Cong, 1st Sess, 3, 10, 16–17 (1943) (letter of Gov. Sharpe of South Dakota stressing role of domestic insurers that provide "poor man" and rural policies adapted to farming concerns); 90 Cong Rec 6564 (1944) (remarks of Rep Vorhis). "As this Court observed shortly afterward, '[o]bviously Congress' purpose was broadly to give support to the existing and future state systems for regulating and taxing the business of insurance.' Prudential Insurance Co. v Benjamin, 328 US 408, 429 [90 L Ed 1342, 66 S Ct 1142, 164 ALR 476] (1946)." St. Paul Fire & Marine Insurance Co. v Barry, supra, at 539, 57 L Ed 2d 932, 98 S Ct 2923.

The majority opinion correctly notes that Congress did not intend the McCarran-Ferguson Act to give the States any power to tax or regulate the insurance industry other than they already possessed. But the legislative history cited by the majority, ante, at ——, n 7, 84 L Ed 2d 760, relates not to differential taxation but to decisions of this Court that had invalidated State taxes on contracts of insurance entered into outside the State's jurisdiction. See H R Rep No. 143, 79th Cong, 1st Sess, 3 (1945). The Court fails to mention that at the time the Act was under consideration the taxing schemes of Alabama, Arizona, Arkansas, Illinois, Kansas, Kentucky, Maine, Michigan, Mississippi, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Washington, and Wisconsin all incorporated tax differentials favoring domestic insurers. See App 377–379.

Any doubt that Congress' intent encompassed taxes that discriminate in favor of local insurers was dispelled in Prudential Insurance Co. v Benjamin. Cf. Note, Congressional Consent to Discriminatory State Legislation, 45 Colum L Rev 927 (1945) (discussing the issues of constitutional power posed by the Act). There a foreign insurer challenged a tax on annual gross premiums imposed on foreign but not domestic insurers as a condition for renewal of its license to do business. Congress, the foreign insurer argued, was powerless to sanction the tax at issue because "the commerce clause 'by its own force' forbids discriminatory state taxation." Prudential Insurance Co. v Benjamin, 328 US 408, 426, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476 (1946). A unanimous Court rejected the argument that exacting a 3% gross premium tax from foreign insurers was invalid as "somehow technically of an inherently discriminatory character." Id., at 432, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476. The Court concluded that the McCarran-Ferguson Act's effect was "clearly to sustain the exaction and that this can be done without violating *any* constitutional provision." Id., at 427, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476 (emphasis added).

Benjamin expressly noted that nothing in the Equal Protection Clause forbade the State to enact a law such as the tax at issue. Id., at 438, and n 50, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476. In this regard the Court relied in part on Hanover Fire Ins. Co. v Harding, 272 US 494,

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71 L Ed 372, 47 S Ct 179, 49 ALR 713 (1926), a decision that explicitly recognized that differential taxation of revenues of foreign corporations may not be arbitrary or without reasonable basis. See Western & Southern Life Ins. Co. v State Board of Equalization, 451 US, at 664, n 17, 68 L Ed 2d 514, 101 S Ct 2070. The Commerce Clause, Benjamin emphasized, is not a "one way street" but encompasses congressional power "to discriminate against interstate commerce and in favor of local trade," "subject only to the restrictions placed upon its authority by other constitutional provisions." 328 US, at 434, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476. Where the States and Congress have acted in concert to effect a policy favoring local concerns, their action must be upheld unless it unequivocally exceeds "some explicit and compelling limitation imposed by a constitutional provision or provisions designed and intended to outlaw the action taken entirely from our constitutional framework." Id., at 435–436, 90 L Ed 2d 1342, 66 S Ct 1142, 164 ALR 476.

Our more recent decision in Western & Southern in no way undermines the force of the analysis in Benjamin. Western & Southern confirms that differential premium taxes are not immune from review as "privilege" taxes, but it also teaches that the Constitution requires only that discrimination between domestic and foreign corporations bear a rational relationship to a legitimate state purpose. Benjamin clearly recognized that differentially taxing foreign insurers to promote a local insurance industry was a legitimate State purpose completely consonant with Congress' purpose in the McCarran-Ferguson Act.

The contemporary realities of insurance regulation and taxation continue to justify a uniquely local perspective. Insurance regulation and taxation must serve local social policies including assuring the solvency and reliability of companies doing business in the State and providing special protection for those who might be denied insurance in a free market, such as the urban poor, small businesses and family farms. GAO Report 10–13; State Insurance Regulation, Hearing before the Subcommittee on Antitrust, Monopoly and Business Rights of the Senate Committee on the Judiciary, 96th Cong, 1st Sess, 19–21 (1979) (hereinafter Insurance Regulation). Currently at least 28 of the 50 States employ a combination of investment incentives and differential premium taxes favoring domestic insurers to encourage local investment of policyholders' premiums and to partially shelter smaller domestic insurers from competition with the large multistate companies. App 66.

State insurance commissions vary widely in manpower and expertise. GAO Report 14. In practice, the State of incorporation exercises primary oversight of the solvency of its insurers. Id., at 36–38. See generally Dunne, Risk, Reality, and Reason in Financial Services Deregulation: A State Legislative Perspective, 2 J Ins Reg 342 (1984) (prepared by the Conference of Insurance Legislators). See, e.g. Ala Code § 27-2-21 (Supp 1984); Ill Rev Stat, ch 73, ¶ 745 (1983); (power to examine books of domestic insurers); Ala Code § 27-32-1 et seq. (1975); Ill Rev Stat, ch 73, ¶¶ 799, 800 (1983) (commissioner's authority to assume control to prevent insolvency); see generally Wis Stat Ann, ch 620, Prefatory Commit-

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tee Comment—1971, pp 536, 546 (1980) (noting lesser control over nondomestic's financial operations). Even the State-of-incorporation's efforts to regulate a multistate insurer may be seriously hampered by the difficulty of gaining access to records and assets in forty-nine other States. Dunne, supra, at 356. Thus the security of Alabama's citizens who purchase insurance from out-of-state companies may depend in part on the diligence of another State's insurance commissioner, over whom Alabama has no authority and limited influence. In the event of financial failure of a foreign insurer the State may have difficulty levying on out-of-state assets. See, e.g., South Carolina ex rel Phoenix Life Ins. Co. v McMaster, 237 US 63, 73, 59 L Ed 839, 35 S Ct 504 (1915). Since each State maintains its own insurance guarantee fund, the domestic insurers of the States where a multistate insurer is admitted to do business may ultimately be forced to absorb local policyholders' losses. Dunne, supra, at 372–373.

Many have sharply criticized this piecemeal system, see, e.g., GAO Report i-iii; Schmalz, The Insurance Exemption: Can it be Modified Successfully?, 48 ABA Antitrust L J 579 (1979), but Congress has resisted suggestions that it modify the McCarran-Ferguson Act to permit greater federal intervention. See GAO Report 1; Insurance Regulation, supra. This Court cannot ignore the exigencies of contemporary insurance regulation outlined above simply because it might prefer uniform federal regulation. Given the distinctions in ease of regulation and services rendered by foreign and domestic insurers, we cannot dismiss as illegitimate the State's goal of promoting a healthy local insurance industry sensitive to regional differences and composed of companies that agree to subordinate themselves to the Alabama Commissioner's control and to maintain a principal place of business within Alabama's borders. Though economists might dispute the efficacy of Alabama's tax, "[p]arties challenging legislation under the Equal Protection Clause cannot prevail so long as 'it is evident from all the considerations presented to [the legislature], and those of which we may take judicial notice, that the question is at least debatable.'" Western & Southern Life Ins. Co. v State Board of Equalization, 451 US, at 674, 68 L Ed 2d 514, 101 S Ct 2070, quoting United States v Carolene Products Co. 304 US, at 154, 82 L Ed 1234, 58 S Ct 778. Moreover, appellants waived their right to challenge the tax measure's effectiveness.

III

Despite abundant evidence of a legitimate state purpose, the majority condemns Alabama's tax as "purely and completely discriminatory" and "the very sort of parochial discrimination that the Equal Protection Clause was intended to prevent." Ante, at ——, 84 L Ed 2d 759. Apparently, the majority views any favoritism of domestic commercial entities as inherently suspect. The majority ignores a long line of our decisions. In the past this Court has not hesitated to apply the rational basis test to regulatory classifications that distinguish between domestic and out-of-state corporations or burden foreign interests to protect local concerns. The Court has always recognized that there are certain legitimate restrictions or policies in which, "[b]y definition, dis-

crimination against nonresidents would inhere." Arlington County Board v Richards, 434 US 5, 7, 54 L Ed 2d 4, 98 S Ct 24 (1977) (per curiam). For example, where state of incorporation or principal place of business affect the State's ability to regulate or exercise its jurisdiction, a State may validly discriminate between foreign and domestic entities. See G. D. Searle & Co. v Cohn, 455 US 404, 71 L Ed 2d 250, 102 S Ct 1137 (1982) (difficulty of obtaining jurisdiction over nonresident corporation provides a rational basis for excepting such corporations from statute of limitations); Metropolitan Casualty Ins. Co. v Brownell, 294 US 580, 79 L Ed 1070, 55 S Ct 538 (1935) (domicile of insurer relevant to statute of limitations as foreign insurers offices and funds generally located outside state); Board of Education v Illinois, 203 US 553, 562, 51 L Ed 314, 27 S Ct 171 (1906) (State's greater control over domestic than foreign nonprofit corporations justifies discriminatory tax).

A State may use its taxing power to entice useful foreign industry, see Allied Stores of Ohio, Inc. v Bowers, 358 US, at 528, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312, or to make residence within its boundaries more attractive, see Zobel v Williams, 457 US 55, 67-68, 72 L Ed 2d 672, 102 S Ct 2309 (1982) (Brennan, J., concurring). Though such measures might run afoul of the Commerce Clause, "[n]o one disputes that a State may enact laws pursuant to its police powers that have the purpose and effect of encouraging domestic industry." Bacchus Imports, Ltd. v Dias, 468 US ——, ——, 82 L Ed 2d 200, 104 S Ct 3049 (1984); Western & Southern Life Ins. Co. v State Board of Equalization, supra, at 668, 68 L Ed 2d 514, 101 S Ct 2070. Cf. Edgar v MITE Corp. 457 US 624, 646, 73 L Ed 2d 269, 102 S Ct 2629 (1982) (Powell, J. concurring in part) (noting State's interest in protecting regionally based corporations from acquisition by foreign corporations).

Moreover, the Court has held in the dormant commerce clause context that a State may provide subsidies or rebates to domestic but not to foreign enterprises if it rationally believes that the former contribute to the State's welfare in ways that the latter do not. Hughes v Alexandria Scrap Corp. 426 US 794, 49 L Ed 2d 220, 96 S Ct 2488 (1976). Although the Court has divided on the circumstances in which the dormant Commerce Clause allows such measures, see id., at 817, 49 L Ed 2d 220, 96 S Ct 2488 (Brennan, J., dissenting), surely there can be no dispute that they are constitutionally permitted where Congress itself has affirmatively authorized the States to promote local business concerns free of Commerce Clause constraints. Neither the Commerce Clause nor the Equal Protection Clause bars Congress from enacting or authorizing the States to enact legislation to protect industry in one State "from disadvantageous competition" with less stringently regulated businesses in other States. Hodel v Indiana, 452 US 314, 329, 69 L Ed 2d 40, 101 S Ct 2376 (1981). See also Western & Southern, supra, at 669, 68 L Ed 2d 514, 101 S Ct 2070 (with congressional approval, States may promote domestic insurers by seeking to deter other States from enacting discriminatory or excessive taxes).

The majority's attempts to distinguish these precedents are unconvincing. First the majority suggests

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that a State purpose might be legitimate for purposes of the Commerce Clause but somehow illegitimate for purposes of the Equal Protection Clause. No basis is advanced for this theory because no basis exists. The test of a legitimate State purpose must be whether it addresses valid State concerns. To suggest that the purpose's legitimacy, chameleon-like, changes according to the constitutional clause cited in the complaint is merely another pretext to escape the clear message of this Court's precedents.

Next the majority asserts that "a State may not constitutionally favor its own residents by taxing foreign corporations at a higher rate solely because of their residence," citing cases that rejected discriminatory ad valorem property taxes, defended as taxes on the "privilege" of doing business. Ante, at ——, 84 L Ed 2d 759–760. See, e.g., WHYY, Inc. v Glassboro, 393 US 117, 21 L Ed 2d 242, 89 S Ct 286 (1968); Wheeling Steel Corp. v Glander, 337 US 562, 93 L Ed 1544, 69 S Ct 1291, 40 Ohio Ops 101, 55 Ohio L Abs 305 (1949); Hanover Fire Ins. Co. v Harding, 272 US 494, 71 L Ed 372, 47 S Ct 179, 49 ALR 713 (1926); Southern R. Co. v Greene, 216 US 400, 54 L Ed 536, 30 S Ct 287 (1910). These decisions were addressed in Western & Southern, and the classifications were characterized as impermissibly discriminatory because they did not "'rest on differences pertinent to the subject in respect of which the classification is made.'" 451 US, at 668, 68 L Ed 2d 514, 101 S Ct 2070, quoting Power Manufacturing Co. v Saunders, 274 US 490, 494, 71 L Ed 1165, 47 S Ct 678 (1927). As the majority concedes, none of these decisions intimates that the tax statutes at issue in the decisions rested on relevant differences between domestic and foreign corporations or had purposes other than the raising of revenue at the out-of-state corporations' expense.

In fact, the Court noted in several of these opinions that foreign corporations *may* validly be taxed at a higher rate if the classification is based on some relevant distinction. No such distinction, however, had been demonstrated or even alleged. See WHYY, Inc. v Glassboro, supra, at 120, 21 L Ed 2d 242, 89 S Ct 286 ("This is not a case in which the exemption was withheld by reason of the foreign corporation's failure or inability to benefit the State in the same measure as do domestic nonprofit corporations"); Wheeling Steel Corp. v Glander, 337 US, at 572, 93 L Ed 1544, 69 S Ct 1291, 40 Ohio Ops 101, 55 Ohio L Abs 305 ("the inequality is not because of the slightest difference in Ohio's relation to the decisive transaction"); Southern R. Co. v Greene, 216 US, at 416–417, 54 L Ed 536, 30 S Ct 287 (parties conceded that the business of the foreign and domestic corporations was precisely the same).[2] Lack-

2. The only cited authority that arguably addressed the issue raised in the instant case is a per curiam reversal and remand without opinion of a decision upholding a discriminatory ad valorem tax on a foreign insurer's fixtures and other tangible property. See Reserve Life Ins. Co. v Bowers, 380 US 258, 13 L Ed 2d 959, 85 S Ct 951 (1965). A reversal and remand is more enigmatic even than a summary affirmance, which has precedential value only as to "the precise issues necessarily presented and necessarily decided." Mandel v Bradley, 432 US 173, 176, 53 L Ed 2d 199, 97 S Ct 2238 (1977). Decisions without opinion may not be equated with "an opinion by this Court treating the question on the merits." See Edelman v Jordan, 415 US 651, 670–671, 39 L Ed 2d 662, 94 S Ct 1347 (1974).

ing the threshhold requirement of an articulated distinction relevant to an asserted purpose, the classifications at issue in these decisions could never have survived rational basis scrutiny and no such analysis was even attempted. These precedents do not answer the question posed by this case: whether a legislature may adopt differential tax treatment of domestic and foreign insurers not simply to raise additional revenue but with the purpose of affecting the market as an "instrument of economic and social engineering"? P. Hartman, Federal Limitations on State and Local Taxation § 3:2 (1981). The majority's suggestion that these cases necessarily decided the issue before us, as promotion of domestic business is "logically the primary reason for enacting discriminatory taxes such as those at issue [in the cited cases]," is mere speculation. See ante, at ——, n 6, 84 L Ed 2d ——.

In treating these cases as apposite authority, the majority again closes its eyes to the facts. Alabama does *not* tax at a higher rate solely on the basis of residence; it taxes insurers, domestic as well as foreign, who do not maintain a principal place of business or substantial assets in Alabama, based on conceded distinctions in the contributions of these insurers *as a class* to the State's insurance objectives. The majority obscures the issue by observing that a given "foreign insurance company doing the same type and volume of business in Alabama as a domestic company" will pay a higher tax. Ante, at ——, 84 L Ed 2d 755. Under our precedents, tax classifications need merely "res[t] upon some reasonable consideration of difference or policy." Allied Stores of Ohio, Inc. v Bowers, supra, at 527, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. Rational basis scrutiny does not require that the classification be mathematically precise or that *every* foreign insurer or *every* domestic company fit to perfection the general profile on which the classification is based. "[T]he Equal Protection Clause does not demand a surveyor's precision" in fashioning classifications. Hughes v Alexandria Scrap Corp, 426 US at 814, 49 L Ed 2d 220, 96 S Ct 2488.

IV

Because Alabama's classification bears a rational relationship to a legitimate purpose, our precedents demand that it be sustained. The Court avoids this clear directive by a remarkable evasive tactic. It simply declares that the ends of promoting a domestic insurance industry and attracting investments to the State *when accomplished through the means of discriminatory taxation* are not legitimate state purposes. This bold assertion marks a drastic and unfortunate departure from established equal protection doctrine. By collapsing the two prongs of the rational basis test into one, the Court arrives at the ultimate issue—whether the *means* are constitution—without ever engaging in the deferential inquiry we have adopted as a brake on judicial impeachment of legislative policy choices. In addition to unleashing an undisciplined form

"Indeed, upon fuller consideration of an issue under plenary review, the Court has not hesitated to discard a rule which a line of summary affirmances may appear to have established." Fusari v Steinberg, 419 US 379, 392, 42 L Ed 2d 521, 95 S Ct 533 (Burger, C. J., concurring) (1975).

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of Equal Protection Clause scrutiny, the Court's approach today has serious implications for the authority of Congress under the Commerce Clause. Groping for some basis for this radical departure from equal protection analysis, the Court draws heavily on Justice Brennan's concurring opinion in Allied Stores v Bowers, 358 US 522, 530, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959), as support for its argument that 'the Equal Protection Clause forbi a State to discriminate in fav of its own residents solely by b dening 'the residents of other sta members of o r federation.'" Ant at ——, 84 L Ed 2d 759, quotir 3 US, at 533, 3 L Ed 2d 480, 79 S . 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312.

As noted in Western & Southern, Justice Brennan's interpretation has not been adopted by the Court, "which has subsequently required no more than a rational basis for discrimination by States against out-of-state interests in the context of equal protection litigation." 451 US, at 667, n 21, 68 L Ed 2d 514, 101 S Ct 2070. More importantly, to the extent the Court today purports to find in the Equal Protection Clause an instrument of federalism, it entirely misses the point of Justice Brennan's analysis. Justice Brennan reasoned that "[t]he Constitution furnishes the structure for the operation of the States with respect to the National Government and with respect to each other" and that "the Equal Protection Clause, among its other roles, operates to maintain this principle of federalism." 358 US, at 532, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. Favoring local business as an end in itself might be "rational" but would be antithetical to federalism. Accepting arguendo this interpretation, we have shown that the measure at issue here does not benefit local business as an end in itself but serves important ulterior goals. Moreover, any federalism component of equal protection is fully vindicated where Congress has explicitly validated a parochial focus. Surely the Equal Protection Clause was not intended to supplant the Commerce Clause, foiling Congress' decision under its commerce powers to "affirmatively permit [some measure of] parochial favoritism" when necessary to a healthy federation. White v Massachusetts Council of Construction Employers, 460 US 204, ——, 75 L Ed 2d 1, 103 S Ct 1042, (1983). Such a view of the Equal Protection Clause cannot be reconciled with the McCarran-Ferguson Act and our decisions in Western & Southern and Benjamin.

Western & Southern established that a state may validly tax out-of-state corporations at a higher rate if its goal is to promote the ability of its domestic businesses to compete in *interstate* markets. Nevertheless, the Court today concludes that the converse policy is forbidden, striking down legislation whose purpose is to encourage the *intrastate* activities of local business concerns by permitting them to compete effectively on their home turf. In essence, the Court declares "We will excuse an unequal burden on foreign insurers if the State's purpose is to foster its domestic insurers activities in *other* States, but the same unequal burden will be unconstitutional when employed to further a policy that places a higher social value on the domestic insurer's *homestate* than interstate activities." This conclusion is

not drawn from the Commerce Clause, the textual source of constitutional restrictions on State interference with interstate competition. Reliance on the Commerce Clause would, of course, be unavailing here in view of the McCarran-Ferguson Act. Instead the Court engrafts its own economic values on the Equal Protection Clause. Beyond guarding against arbitrary or irrational discrimination, as interpreted by the Court today this Clause now prohibits the effectuation of economic policies, even where sanctioned by Congress, that elevate local concerns over interstate competition. Ante, at ——, 84 L Ed 2d ——. "But a constitution is not intended to embody a particular economic theory . . . . It is made for people of fundamentally differing views." Lochner v New York, 198 US 45, 75–76, 49 L Ed 937, 25 S Ct 539 (1905) (Holmes, J., dissenting). In the heyday of economic due process, Justice Holmes warned:

> "Courts should be careful not to extend [the express] prohibitions [of the Constitution] beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain." Tyson & Brother v Banton, 273 US 418, 445–446, 71 L Ed 718, 47 S Ct 426, 58 ALR 1236 (1927) (Holmes, J., dissenting, joined by Brandeis, J.) (emphasis added).

Ignoring the wisdom of this observation, the Court fashions its own brand of economic equal protection. In so doing, it supplants a legislative policy endorsed by both Congress and the individual States that explicitly sanctioned the very parochialism in regulation and taxation of insurance that the Court's decision holds illegitimate. This newly unveiled power of the Equal Protection Clause would come as a surprise to the Congress that passed the McCarran-Ferguson Act and the Court that sustained the Act against constitutional attack. In the McCarran-Ferguson Act, Congress expressly sanctioned such economic parochialism in the context of state regulation and taxation of insurance.

The doctrine adopted by the majority threatens the freedom not only of the States but also of the Federal Government to formulate economic policy. The dangers in discerning in the Equal Protection Clause a prohibition against barriers to interstate business irrespective of the Commerce Clause should be self-evident. The Commerce Clause is a flexible tool of economic policy that Congress may use as it sees fit, letting it lie dormant or invoking it to limit as well as promote the free flow of commerce. Doctrines of equal protection are constitutional limits that constrain the acts of federal and state legislatures alike. See, e.g., Califano v Webster, 430 US 313, 51 L Ed 2d 360, 97 S Ct 1192 (1977); Cohen, Congressional Power to Validate Unconstitutional State Laws: A Forgotten Solution to an Old Enigma, 35 Stan L Rev 387, 400–413 (1983). The Court's analysis casts a shadow over numerous congressional enactments that adopted as federal policy "the type of parochial favoritism" the Court today finds unconstitutional. White v Massachusetts Council of Construction Employers, 460 US, at ——, 75 L Ed 2d 1, 103 S Ct 1042. Contrary to the reasoning in Benjamin, the Court today indicates the Equal Protection Clause stands as an independent barrier if

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courts should determine that either Congress or a State has ventured the "wrong" direction down what has become, by judicial fiat, the one-way street of the Commerce Clause. Nothing in the Constitution or our past decisions supports forcing such an economic straight-jacket on the federal system.

V

Today's opinion charts an ominous course. I can only hope this unfortunate adventure away from the safety of our precedents will be an isolated episode. I had thought the Court had finally accepted that

> "the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines; in the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment. New Orleans v Dukes, 427 US, at 303–304, 49 L Ed 2d 511, 96 S Ct 2513 (citations omitted).

Because I believe that the Alabama law at issue here serves legitimate State purposes through concededly rational means, and thus is neither invidious nor arbitrary, I would affirm the court below. I respectfully dissent.

Introduced: 1/31/86
Referred: Labor and Commerce
and Finance

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 379

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the premium tax for domestic insurers."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.09.210(b) is amended to read:

(b) Each insurer, and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state, shall pay a tax on the total direct premium income received during the year ending on the preceding December 31 and paid for the insurance of property or risks resident or located in the state other than wet marine and transportation insurance, after deducting from the total direct premium income the applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policy holders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. No deductions may be made of cash surrender value of policies. Considerations received on annuity contracts are [SHALL] not [BE] included in the direct premium income and are [SHALL] not [BE] subject to tax. The tax must [SHALL] be paid to the director annually before April 1, and, except as provided in AS 21.69.390(c), is computed at the rate of

(1) [FOR DOMESTIC COMPANIES, 1 PER CENT;]

(2) for hospital and medical service corporations, 6 percent of their gross premiums, less claims paid;

(3) for companies other than [DOMESTIC AND] hospital and

medical service corporations, 3 percent.

* Sec. 2. This Act applies to the tax due by April 1, 1987 for the tax year beginning January 1, 1986 and to the tax due for subsequent tax years.

Alaska State Legislature

Senate

Committee on Labor & Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

SB 379: Summary

Current law provides that domestic insurers pay a 1.5% premium tax on gross premiums, while nondomestic companies are required to pay 3%. A recent US Supreme Court case raised constitutional questions concerning the differential rate of these tax structures, and the Department of Law estimates that the state is exposed to a potential liability of approximately $14.5 million if this statute is not corrected.

BILL SUMMARY

Department of Commerce & Economic Development / POSITION PAPER

SB 379: "An Act relating to premium tax for domestic insurers."

This legislation eliminates the the tax preference currently granted to domestic insurance companies by standardizing the rate for domestic and nondomestic insurance companies.

AS 21.09.210(b) provides that domestic insurance companies pay premium tax at the rate of one and one-half percent of gross premiums, while nondomestic companies pay three percent of gross premiums. A recent U.S. Supreme Court case, Metropolitan Life Insurance Co. v. Ward, U.S., 53 U.S.L.W. 4699 (June 10, 1985), raises serious questions concerning constitutionality of the differential rate structure. This bill is proposed to correct the problem and not jeopardize our premium tax law. The bill has the further benefit of raising the total amount of premium tax collected. We are in favor of the legislation.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 2/21/86

John L. George, Director of Insurance

Date:

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST SB 375

Bill/Resolution No. : 377-069-86
Title : Premium tax for domestic insurers.

Sponsor : _____
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Commerce & Economic Dev.
BRU : Insurance

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE	-0-	1,142.3	1,200.4	1,260.0	1,323.4	1,389.6

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : John L. George
Division : Insurance
Phone : 465-2515
Date : 11/27/85

Approved by Commissioner : _____
Date : _____
Agency : Commerce and Economic Development

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ALASKA FOREIGN INSURANCE COMPANY TAX PAYMENTS
ESTIMATED REFUNDS
1974 - 1984

	FOREIGN LIFE 3%	REFUND 1 - 1/2	P & C 3% Paid	REFUND 1 - 1/2	COMBINED TOTAL REFUND
1984					
1983	4,438,315	2,219,158	8,818,990	4,409,495	6,628,653
1982	3,707,727	1,853,864	7,729,096	3,864,548	5,718,412
1981	3,360,555	1,680,278	6,018,707	3,009,353	4,689,631
1980	3,178,322	1,589,161	4,843,581	2,421,790	4,010,951
1979	2,921,795	1,460,898	4,999,852	2,499,926	3,960,824
1978	2,912,980	1,456,490	5,050,350	2,525,175	3,981,665
1977	2,897,452	1,448,726	4,736,774	2,368,387	3,817,113
1976	2,329,917	1,164,958	3,910,087	1,955,043	3,120,001
1975	2,049,788	1,024,879	2,818,755	1,409,378	2,434,257
1974	1,586,349	793,175	2,235,308	1,117,604	1,910,779
	29,383,200	14,691,585	51,161,400	25,580,699	40,272,284
PLUS					
1984 Revised 2/24/86	4,861,829	2,430,914	9,644,148	4,822,074	7,252,988
	GRAND TOTAL				47,525,272

1RefundLGJOBS2/25/86a

REQUEST FOR REFUNDS RECEIVED TO DATE
FEBRUARY 1986

	YEAR(S)	TOTAL REQUEST
Horace Mann Insurance Company	1981	20,611
Horace Mann Life Insurance Company	1981	2,913
Union Mutual Stock Life	1984	8,500
	1983	5,006
States West Life Insurance Company	1982, 1983, 1984	13,380
Northern Life Insurance Company	1980 - 1985	27,198
Dairyland Insurance Company	1982 - 1984	8,294
Mutual Protective Insurance Company	1980 - 1984	1,138
Physicians Mutual Insurance Company	1980 - 1984	45,857
Medico Life Insurance Company	1979 - 1984	347
Motors Insurance Company	1979 - 1984	80,395
MIC Life Insurance Company	1983 - 1984	1,684
CIM Insurance Corporation	1979 - 1984	3,774
Philadelphia Life	1983 - 1984	809
Philadelphia American Life	1983 - 1984	386
American Bankers Insurance Company	1982	1,383
American Bankers Life Insurance Company	1982	13,201
Cudis Insurance	1982, 1983, 1984	28,692
CUNA Mutual Insurance Society	1982, 1983, 1984	40,463
Union Mutual Life Insurance Company	1983, 1984	1,118
Mutual Life Insurance Company of New York*	1984	84,170
Combined Insurance Company of America	1974 - 1984	112,380
Ranger Insurance	1982 and 1984	9,201
Industrial Indemnity	1981	70,472
Atlantic International Insurance Company	1984	3,249
Provident Mutual Life Insurance Company	1981 - 1984	2,547
Phoenix Mutual Life	1981	1,153
26 Companies - TOTAL		588,321

* Also Party to Suit

Total 3%

Foreign Premium Tax Paid for 1984 Premium Tax	14,505,977
1 - 1/2% Refund	7,252,988

2RefundLGJOBS2/25/86a

TAX CASE 1JV-81 CIV
1JV-83 616 CIV

	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	COMPANY TOTAL
Equitable Life Assurance	53,257	69,938	77,232	111,053	126,228	167,917	180,448	140,897	151,959	175,413	145,314	1,399,656
John Hancock Mutual Life	19,741	21,945	26,172	30,303	30,698	42,025	45,757	55,155	60,886	58,426	55,144	446,252
Metropolitan Life	91,777	119,376	139,195	206,468	215,247	207,039	228,356	152,843	73,428	54,020	52,191	1,539,940
Mutual Life Insurance Co. of NY	75,274	88,935	95,935	102,149	117,873	115,665	116,697	126,447	131,829	154,141	168,340	1,293,285
New York Life Insurance Company	170,823	177,683	218,659	241,937	272,951	290,766	310,683	362,120	418,880	533,434	619,912	3,617,848
Prudential Insurance Company	83,940	59,309	64,797	75,964	136,627	139,440	124,976	174,767	190,130	188,765	185,030	1,423,745
Travelers Insurance Co. - Life	60,575	79,380	126,850	169,402	190,928	164,736	167,953	190,193	178,529	209,098	261,946	1,799,590
Accident Department	14,954	37,110	28,450	60,601	62,617	32,973	17,430	98,462	38,566	140,358	105,352	636,873
Travelers Indemnity	14,994	29,460	26,958	16,872	41,896	21,622	52,619	25,328	55,335	122,366	129,339	536,789
Aetna Life & Annuity Corp.	-	-	281	153	32	32	24	559	1,885	4,685	22,509	30,160
Aetna Casualty & Surety	10,253	25,930	46,798	90,325	79,928	29,921	43,816	79,686	92,797	102,665	76,768	678,887
Aetna Life Insurance Company	188,875	231,309	259,582	354,978	343,980	393,051	460,910	523,186	564,299	904,663	773,698	4,998,531
Standard Fire Insurance Co.	7,209	5,565	5,260	15,628	20,743	5,323	6,683	6,040	21,876	108,512	78,362	281,201
Automobile Ins. Co. of Hartford	-	-	29	17	-	-	-	-	-	11	968	1,025
Accidential Life Ins. Co. (Transamerica)	55,590	51,432	53,948	60,968	66,284	82,365	98,332	97,674	104,026	124,586	90,071	885,276
Massachusetts Mutual Life Insurance Company	9,399	13,108	15,421	16,345	18,887	22,489	23,004	24,720	25,063	19,948	22,372	210,756
Connecticut Mutual Life Insurance Company	5,291	6,528	7,860	9,631	11,567	13,426	16,270	19,063	17,753	17,201	16,656	141,246
3% TAX PAID	846,958	987,548	1,166,469	1,545,922	1,694,600	1,707,168	1,841,339	2,051,812	2,071,906	2,795,926	2,674,633	19,384,281
GRAND TOTAL	861,952	1,017,008	1,193,427	1,562,794	1,736,496	1,728,790	1,893,958	2,077,140	2,127,241	2,918,292	2,803,972	19,921,070
REFUND @ 1 1/2% (domestic rate)	430,796	508,504	596,713	781,397	868,248	864,395	946,979	1,038,570	1,063,620	1,459,146	1,401,986	9,960,534

3RefundLGJ0852/25/86a

BILL SHEFFIELD
GOVERNOR

d379

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 31, 1986

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the premium tax paid by domestic insurers.

Under present law, AS 21.09.210(b) provides that domestic insurers pay premium tax at the rate of one and one-half percent of gross premiums, while nondomestic companies pay three percent of gross premiums. A recent U.S. Supreme Court case, Metropolitan Life Insurance Co. v. Ward, ___ U.S. ___, 53 U.S.L.W. 4699 (June 10, 1985), raises serious questions concerning the constitutionality of the differential rate structure. In order to correct this problem and not jeopardize our premium tax laws, this bill will eliminate the preference for domestic insurers by standardizing the rate at three percent for both categories of insurance companies. The bill has the further benefit of raising the total amount of premium taxes collected. I urge your support of this bill.

Sincerely,

Bill Sheffield
Governor

TRANSMITTAL LETTER

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☒ *POUCH K - STATE CAPITOL*
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 7, 1986

The Honorable Fred Zharoff
Chair, Senate Labor and Commerce
Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SB 379 (Premium tax for domestic insurers)

Dear Chairman Zharoff:

As indicated in the governor's transmittal letter dated January 31, 1986, this bill is necessary due to a recent United States Supreme Court case, Metropolitan Life Insurance Co., v. Ward, 105 S.Ct. 1676 (1985), which calls into serious doubt the constitutionally of the present Alaska premium tax law.

Enclosed is a chart prepared from data compiled by the division of insurance, Department of Commerce and Economic Development, showing the amount of premium taxes collected by the state from foreign insurance companies between 1974 and 1984. As you can see, the state collected approximately $14.5 million in 1985, for the 1984 tax year.

We can assume this figure is a good indication of the premium amount the state will collect in future years. Foreign insurance companies, claiming the entire tax is unconstitutional, are now making their entire tax payments under protest. Thus, the state is currently exposed to possible liability in excess of $14.5 million per year until the statute is corrected. 1/

1/ A good argument can be made that if a refund is required, it should be only one-half of all taxes paid, or approximately $7.25 million annually. This represents the difference between the amount paid by the companies (three percent) and the amount they would have paid, were they domestic companies (one and one-half percent).

Given the state's declining revenues, it is very important that this bill be passed this year, to prevent possible future state losses of $7 - 14 million per year.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Jeffrey W. Bush
Assistant Attorney General

HMB:JWB:cck

Enclosure

cc w/ enc.:

Jim Ayres, Director
Legislative Relations
Office of the Governor

Art Peterson
Legislation/Regulations Attorney
Department of Law

John George, Director
Division of Insurance
Department of Commerce
and Economic Development

ALASKA FOREIGN INSURANCE COMPANY TAX PAYMENTS

1974 - 1984

TAX YEAR	FOREIGN LIFE (3%)	PROP & CAS (3%)	TOTAL TAX PAID	AMT. WOULD HAVE PAID AT DOM. RATE
1984	4,861,829	9,644,148	14,505,977	7,252,989
1983	4,438,315	8,818,990	13,257,305	6,628,653
1982	3,707,727	7,729,096	11,436,823	5,718,412
1981	3,360,555	6,018,707	9,379,262	4,689,631
1980	3,178,322	4,843,581	8,021,903	4,010,952
1979	2,921,795	4,999,852	7,921,647	3,960,824
1978	2,912,980	5,050,350	7,963,330	3,981,665
1977	2,897,452	4,736,774	7,634,226	3,817,113
1976	2,329,917	3,910,087	6,240,004	3,120,002
1975	2,049,788	2,818,755	4,868,543	2,434,272
1974	1,586,349	2,235,308	3,821,657	1,910,829
	34,245,029	60,805,548	95,[illegible]0,577	47,525,288

RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB

382

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 382
Title: Civil Actions

Sponsor: Kerttula
Requester: John L. George
Date of Request: 2/28/86

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Insurance

Components: Public Protection

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

Prepared by: John L. George, Director
Division: Division of Insurance
Phone: 465-2515
Date: 2/28/86

Approved by Commissioner: Loren H. Lounsbury
Agency: Department of Commerce & Economic Development
Date: 2/28/86

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Department of Commerce & Economic Development / POSITION PAPER

SB 382: "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49, 52, 54, 58, and 82; and providing for an effective date."

This bill is focused on a variety of tort reforms. The position of the department on these issues is neutral.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 2/28/86

John L. George, Director of Insurance

Date: 2/28/86

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RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB
394

ch 394

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February ... 1986

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the electric cooperative and telephone cooperative taxes.

This bill will amend AS 10.25.540 to expressly authorize the Department of Revenue to use standard tax assessment and collection procedures in enforcing the electric cooperative and telephone cooperative taxes. At the present time, this section does not expressly provide for the levy of penalties or interest if the taxpayer fails to file a return or pay the tax on time. Without this change, there is little incentive for a taxpayer to comply with this tax statute. This bill will correct that problem, and I urge your support.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: 377-052-86 SB39E
Title: Amend electric and telephone cooperative tax
Sponsor: Governor
Requestor: Senate Rules
Date of Request: December 31, 1985

FISCAL DETAIL
Agency Affected: Department of Revenue
BRU: Audit Administration
Components:
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
	OPERATING						
100	PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200	TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300	CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400	SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
500	EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600	LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700	GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800	MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
	CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
	REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
	FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
	OTHER	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
	PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
	TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: This bill adopts the standard assessment and collection procedures for the electric and telephone cooperative tax, and will allow the Department of Revenue to include penalty and interest provisions of AS 43.05 in its administration of the tax law

Prepared By: Martin J. Richard Phone: 465-2320
Division: Audit Division Date: December 31, 1985

Approved by Commissioner: Date: Dec 31, 1985
Agency: Revenue

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

430

Department of Commerce & Economic Development / POSITION PAPER

CSHB 430 (HESS) "An Act regulating audiologists, hearing aid dealers and the dispensing of hearing aids.

The Department of Commerce and Economic Development, Division of Occupational Licensing, supports the regulation of audiologists, hearing aid dealers, and the dispensing of hearing aids.

Although the division is aware of only 12 audiologists and approximately 10 legitimate hearing aid dealers, complaints filed with Consumer Protection in the Department of Law, the Communicable Disease Control Section of the Department of Health & Social Services and the Office of the Ombudsman document that Alaskan consumers have been financially harmed by many fly-by-night individuals.

The elderly population is the most vulnerable to abuse by fly-by-night individuals. Therefore, in the interest of public protection, the department feels that regulation of audiologists and hearing aid dealers may be one instance where the need for licensure outweighs the small number of practitioners.

Nancy Dunn, Director 465-2534
Division of Occupational Licensing

Date: 5/1/86

Lorer H. Lounsbury, Commissioner
Department of Commerce and
Economic Development

Date: 5/1/86

2920W5196b

POSITION PAPER

CSHB 430 (Fin) Sectional Analysis

Section 1) Legislative Findings and Purpose Section

Section 2) Adds audiologists and hearing aid dealers to the centralized licensing chapter.

Section 3) Adds audiologists and hearing aid dealers to those provided with services by the department, without requiring a board or commission.

Section 4) Adds audiologists and hearing aid dealers to the list of those subject to regulation, investigation, and enforcement procedures required by the department.

Section 5) Redefines license and occuptaion to include trades or professions listed in the amended centralized licensing chapter that are not covered by a board or commission.

Section 6) Adds audiologists to the professional designation requirements.

Section 7) Adds the following sections to the chapter:

08.11.010: provides for qualifications for the licensing of professional audiologists

08.11.020: addresses temporary license to practice audiology

08.11.030: provides for duration and renewal of licenses

08.11.040: provides for display of current license

08.11.050: empowers the department to set fees for licensing;

08.11.070: allows audiologists to fit and sell hearing aids. Requires audiologists to comply with applicable provisions of consumer protection language of the bill.

08.11.080: defines grounds for disciplinary actions against audiologists;

08.11.090: lists disciplinary sanctions

08.11.100: lists prohibited acts

08.11.120: provides for exemptions under this chapter; prevents those individuals who may be exempt, but who are not audiologists, from representing themselves as audiologists;

08.11.200: Definition section

Section 8) Adds a new chapter to AS 08 concnerning hearing aid dealers

08.55.010: licens[illegible]ualifications

08.55.020: duration and renewal of license;

08.55.030: requires bonding of hearing aid dealers

08.55.040: empowers the department to set fees;

08.55.050: requires a hearing aid dealer, when entering into a contract with a consumer for the purchase or lease of a hearing aid, to provide the consumer with an instruction brochure; the dealers registration number, specifications, make model, and serial number of the hearing aid; a clear statement of the contract; written information on complaint rights; and the address of the department.

Also requires that any used or reconditioned hearing aid be clearly labeled as such, and specify what guarantee may be offered;

08.55.060: Requires a medical evaluation prior to the sale or lease of a hearing aid; allows the consumer, if 18 or older, to waive the medical evaluation by signing a statement; provides language for the evaluation waiver statement form; requires the hearing aid dealer to retain statement or medical evaluation for 4 years after the sale of a hearing aid.

08.55.070: provides for method of mailing hearing aids to consumer.

08.55.080: Allows consumer to file a complaint within 3 years of purchase date.

08.55.100: requires hearing aid dealers to keep audiometers calibrated to national standards.

08.55.110: outlines cancellation requirements for purchase or lease of hearing aids;

08.55.120: restricts type of hearing testing allowed by hearing aid dealers; requires all dealers to specify, in their advertising, what type of hearing testing they are allowed to perform.

08.55.130: grounds for disciplinary sanctions

08.55.140: lists disciplinary sanctions department may impose.

08.55.150: lists prohibited acts;

08.55.160: makes violations of prohibited acts a class B misdemeanor;

08.55.170: requires a hearing aid dealer to provide the department with an address of their regular place of business.

08.55.180: Admin Procedures act applies to this chapter;

08.55.200: definitions section

Section 9) adds audiologists to the definition of health care provider under AS 09.55.560

Section 10) adds audiologists to the definition of health care provider under AS 21. 88.900

Section 11) adds audiologists to AS 44.62.330(a) application of procedure by boards, commissions, and officers.

Section 12) Adds 08.55 to the unlawful acts and practices section of Trade and Commerce Statutes

Section 13) Adds "dealing in hearing aids" to the definition section of Trade and Commerce Statutes

Section 14) Adds audiologists and hearing aid dealers ot 47.17.090(9) as practitioners of the healing arts.

CHAIRMAN'S INFORMATION: SCS CSHB 430(L&C)

1) BILL TITLE: "An act regulating audiologists, hearing aid dealers, and the dispensing of hearing aids."

   a) Introduced: Rep Navarre

   b) Co-sponsors:

2) INTENT: This measure provides for the regulation of audiologists, hearing aid dealers, and the dispensing of hearing aids. This bill is a public protection measure seeking to protect the elderly who have been abused by "fly by night" hearing aid dealers.

FISCAL NOTE: 10.3

3) ADDITIONAL REFERRALS: Finance and Rules

4) PUBLIC HEARINGS:

   a) Sponsor:

   b) Public Witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from committee?
   d) Close public hearings?

6) COMMITTEE ACTION?

   a) amendments?
   b) CS adoption? Need to adopt the L&C SCS.

WORK DRAFT WORK DRAFT WORK DRAFT

Bannister
4/30/86

Original sponsors: Navarre, Gruenberg, Hurley, et al

IN THE HOUSE

SENATE CS FOR CS FOR HOUSE BILL NO. 430 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act regulating audiologists, hearing aid dealers and the dispensing of hearing aids."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. LEGISLATIVE FINDINGS, PURPOSE. (a) The legislature finds that the practice of audiology and the dispensing of hearing aids affects the health, safety and welfare of the public and requires regulation and control by the state in the public interest.

(b) The purpose of this Act is to establish the procedures necessary to ensure that the public is protected from the incompetent, unprofessional, improper, and unauthorized practice of audiology and dispensing of hearing aids, and to assure the availability of the highest possible quality audiology and hearing aid services for the hearing impaired persons of the state.

* Sec. 2. AS 08.01.010 is amended by adding new paragraphs to read:

(24) regulation of audiologists under AS 08.11;

(25) regulation of hearing aid dealers under AS 08.55.

* Sec. 3. AS 08.01.050(a) is amended to read:

(a) The department shall provide the following administrative and budgetary services when appropriate:

(1) collect fees and issue receipts;

(2) maintain records and files;

(3) issue and receive application forms;

(4) notify applicants of acceptance or rejection of applicants as determined by the board or as determined by the department

under AS 08.11 for audiologists or under AS 08.55 for hearing aid dealers;

(5) designate dates examinations are to be held and notify applicants;

(6) publish notice of examination;

(7) arrange space for holding examinations;

(8) notify applicants of results of examinations;

(9) issue licenses and certificates or temporary licenses or certificates as authorized by the board or as authorized by the department under AS 08.11 for audiologists or under AS 08.55 for hearing aid dealers;

(10) issue duplicate licenses or certificates upon proof by the licensee of loss of the original and payment by the licensee of a fee of $2 except as otherwise provided in this title;

(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;

(12) compile and maintain current a register of licenses;

(13) answer routine inquiries;

(14) maintain files relating to individual licensees;

(15) arrange for printing and advertising;

(16) purchase supplies;

(17) employ secretarial help when needed;

(18) perform other services that [WHICH] may be requested by the board;

(19) provide investigative services to the boards established under AS 08.04, AS 08.20, AS 08.36, AS 08.64, AS 08.68, AS 08.70, AS 08.71, AS 08.72, AS 08.80, AS 08.84, and AS 08.86, for the purpose of assisting those boards in matters of professional discipline and in responding to consumer complaints.

* Sec. 4. AS 08.01.087 is amended to read:

Sec. 08.01.087. POWERS AND DUTIES OF DEPARTMENT. (a) The department may, upon its own motion, conduct investigations to determine whether a [ANY] person has violated a provision of this chapter or a regulation adopted under it, or a provision of [A CHAPTER IN] this title or regulation adopted under this title dealing with an occupation or board [ONE OF THE BOARDS] listed in AS 08.01.010 [OR A REGULATION ADOPTED BY ONE OF THOSE BOARDS], or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or a provision of this title or regulation adopted under this title dealing with an occupation or board [OR ANY OF THE LAWS PERTAINING TO OR REGULATIONS ADOPTED BY THE BOARDS] listed in AS 08.01.010, the commissioner may, if the commissioner considers it in the public interest, and after notification of a proposed order or action by telephone or telegraph to all board members, if a board regulates the act or practice involved, [BY TELEPHONE OR TELEGRAPH OF A PROPOSED ORDER OR ACTION] unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice

is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or the commissioner's designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, [OR] an order issued under it, or with a provision of this title or regulation adopted under this title dealing with an occupation or board [OR ANY OF THE LAWS PERTAINING TO OR REGULATIONS ADOPTED BY THE BOARDS] listed in AS 08.01.010;

(3) examine or have examined the books and records of a [ANY] person whose business activities require licensure by a board listed in AS 08.01.010, or whose occupation is listed in AS 08.01.010; the commissioner [AND HE] may require the [THAT] person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents.

* Sec. 5. AS 08.01.110 is amended to read:

Sec. 08.01.110. DEFINITIONS. In this chapter

(1) "board" includes the boards and commissions listed in AS 08.01.010;

(2) "department" means the Department of Commerce and Economic Development;

(3) "commissioner" means the commissioner of commerce and economic development;

(4) "license" means a [ANY] license, certificate, permit, or registration or similar evidence of authority issued for an occupation or by one of the boards listed in AS 08.01.010;

(5) "licensee" means a [ANY] person who holds a license;

(6) "occupation" means a trade or profession [ANY OF THE TRADES OR PROFESSIONS FOR WHICH LICENSURE IS REQUIRED BY ONE OF THE BOARDS] listed in AS 08.01.010.

* Sec. 6. AS 08.02.010(a) is amended to read:

(a) An audiologist licensed under AS 08.11, a [A] person licensed in the state as a chiropractor under AS 08.20, a dentist under AS 08.36, a medical practitioner or osteopath under AS 08.64, a registered nurse under AS 08.68, an optometrist under AS 08.72, a registered pharmacist under AS 08.80, a registered physical therapist under AS 08.84, or a psychologist under AS 08.86, shall use as professional identification appropriate letters or a title after that person's name which represents that person's specific field of practice. The letters or title shall appear on all signs, stationery or other advertising in which the person offers or displays personal professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy under AS 08.64.380(2), or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and uses the letters "M.D." or the title "doctor" or "physician" or another [ANY OTHER] title that [WHICH] tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist", "radiologist", "audiologist", "naturopath", or the like.

* Sec. 7. AS 08 is amended by adding a new chapter to read:

CHAPTER 11. AUDIOLOGISTS.

Sec. 08.11.010. QUALIFICATIONS FOR AUDIOLOGIST LICENSE. The department shall issue a license to practice audiology to an individual who

(1) is 18 years of age or older;

(2) applies on a form provided by the department;

(3) pays the fee required under AS 08.11.050;

(4) furnishes evidence satisfactory to the department that the person

(A) has not engaged in conduct that is a ground for imposing disciplinary sanctions under AS 08.11.080;

(B) holds a master's degree or doctorate in audiology from an accredited educational institution approved by the department; and either has

(i) a Certificate of Clinical Competence in Audiology from the American Speech-Language-Hearing Association or the equivalent of the certificate; or

(ii) practiced audiology for two years as of January 1, 1986, or is in the process of completing the year of supervised clinical experience required for the Certificate of Clinical Competence of the American Speech-Language-Hearing Association.

Sec. 08.11.020. TEMPORARY LICENSE TO PRACTICE AUDIOLOGY AS AN AUDIOLOGIST. (a) On receipt of the completed application the department shall issue a temporary license for the practice of audiology as an audiologist to an individual who is licensed to practice audiology in another state and has submitted to the department an application for a license under AS 08.11.010.

(b) The department may issue a temporary license to the following:

(1) a nonresident for the practice of audiology as an audiologist in the state for 30 days or less in a calendar year, if the individual is licensed to practice audiology in another state,

territory of the United States, foreign country, or province that has requirements for a license to practice audiology that are substantially equivalent to or higher than the requirements of AS 08.11.010;

(2) a nonresident for the practice of audiology as an audiologist in the state for 30 days or less in a calendar year, if the individual meets the qualifications and requirements for a license under AS 08.11.010, and resides in a state or territory of the United States or a foreign country or province that does not license individuals to practice audiology.

(c) The department may impose by regulation additional limitations that it determines appropriate on a temporary license issued under this section.

Sec. 08.11.030. DURATION AND RENEWAL OF LICENSE. (a) A license issued under this chapter is subject to renewal every four years on a date set by the department. The department shall renew the license of an individual licensed under this chapter who applies for renewal and pays the renewal fee.

(b) If an individual fails to renew a license under (a) of this section, the license lapses.

(c) The department may reinstate a lapsed license if the license has lapsed for less than two years and if the individual submits to the department an application for renewal and pays a delinquency fee in addition to the renewal fee.

(d) A suspended license is subject to expiration and must be renewed as provided in this section, but the renewal does not entitle the individual while the license remains suspended to practice audiology or to engage in other activity or conduct that violates the order or judgment that suspended the license.

Sec. 08.11.040. DISPLAY OF LICENSE. (a) An individual licensed

to practice audiology as an audiologist in the state shall display the license in a prominent place at each place of business of the individual.

(b) If an audiologist has more than one place of business, the department shall, on request and payment of a fee, issue a duplicate license for each place of business of the individual.

Sec. 08.11.050. FEES. The department shall set fees under AS 08.01.065 for each of the following:

(1) application;

(2) credential review;

(3) audiologist license;

(4) temporary license;

(5) renewal of license;

(6) delinquency;

(7) reinstatement;

(8) duplicate license.

Sec. 08.11.070. DEALING IN HEARING AIDS. An audiologist may deal in hearing aids as a hearing aid dealer without being licensed as a hearing aid dealer under AS 08.55, but shall comply with AS 08.55.-050, 08.55.070, 08.55.100, 08.55.110(a), 08.55.110(b)(3) and (c) - (h), and 08.55.130(7) - (13) when dealing in hearing aids.

Sec. 08.11.080. GROUNDS FOR IMPOSITION OF DISCIPLINARY SANCTIONS ON AN AUDIOLOGIST. After a hearing, the department may impose a disciplinary sanction on an audiologist when the department finds that the licensee

(1) secured a license through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation in the course of practicing audiology;

(3) advertised professional services in a false or misleading manner;

(4) has been convicted of a felony or other crime that affects the person's ability to continue to practice competently and safely;

(5) continued to practice audiology after becoming unfit due to

(A) professional incompetence;

(B) use of drugs or alcohol in a manner that affects the person's ability to practice audiology competently and safely;

(C) physical or mental disability;

(6) permitted another person to use the licensee's license;

(7) employed a person who does not have a valid current license to practice audiology to perform work covered by this chapter;

(8) failed to comply with a provision of this chapter or a regulation adopted under this chapter, or an order of the department.

Sec. 08.11.090. DISCIPLINARY SANCTIONS. (a) When it finds that an audiologist has committed an act listed in AS 08.11.080, the department may impose the following sanctions singly or in combination:

(1) permanently revoke a license to practice;

(2) suspend a license for a determinate period of time;

(3) censure a licensee;

(4) issue a letter of reprimand;

(5) place a licensee on probationary status and require the licensee to

(A) report regularly to the department on matters involving the basis of probation;

(B) limit practice to those areas prescribed;

(C) continue professional education until a satisfactory degree of skill has been attained in those areas determined by the department to need improvement;

(6) impose limitations or conditions on the practice of a licensee.

(b) The department may withdraw a limitation, condition, or probationary status if it finds that the deficiency that required the sanction has been remedied.

(c) The department may summarily suspend a license before final hearing or during the appeals process if the department finds that the licensee poses a clear and immediate danger to the public welfare and safety if the licensee continues to practice. An individual whose license is suspended under this subsection is entitled to a hearing by the department no later than seven days after the effective date of the order. The individual may appeal the suspension after the hearing to the superior court.

(d) The department may reinstate a license that has been suspended or revoked if the department finds after a hearing that the individual is able to practice with reasonable skill and safety.

(e) One year after revocation of a license issued under this chapter, the individual whose license was revoked may reapply for the license. The department may require an examination for reinstatement.

Sec. 08.11.100. PROHIBITED ACTS. Unless a person is licensed under this chapter, the person may not

(1) practice audiology;

(2) use a title indicating or representing that the person practices as an audiologist;

(3) advertise that the person practices audiology.

Sec. 08.11.110. PENALTY. A person who violates AS 08.11.100 is

guilty of a class B misdemeanor.

Sec. 08.11.120. EXEMPTIONS. (a) This chapter does not apply to an individual who practices audiology consistent with the accepted standards and code of ethics of the individual's profession as part of the individual's duties as

(1) a physician licensed under AS 08.64;

(2) an employee of the federal government who is required to practice audiology during the employment, if

(A) the employer maintains appropriate supervision of the individual's practice of audiology;

(B) the individual practices audiology as part of the duties for which the individual is employed;

(C) the individual practices audiology in the facility where the individual is employed or under the supervision of the federal governmental unit where the individual is employed; and

(D) the individual does not render or offer to render audiology services to the public for compensation in addition to the salary the individual receives from the federal governmental unit;

(3) a student, intern, or resident pursuing a course of study in audiology at an accredited college or a clinical training facility approved by the department, if the activities of the student, intern, or resident constitute part of a supervised course of study and the student, intern, or resident is designated as an "audiology intern," "audiology trainee," or other title approved by the department that clearly indicates that the person is training to be an audiologist.

(b) Notwithstanding the provisions of this chapter,

(1) a nurse licensed under AS 08.68 may perform hearing

sensitivity evaluations;

(2) an individual licensed as a hearing aid dealer under AS 08.55 may deal in hearing aids;

(3) an individual holding a class A certificate issued by the Conference of Executives of American Schools of the Deaf may teach the hearing impaired;

(4) an individual may engage in the testing of hearing as part of a hearing conservation program that complies with the regulations of the Occupational Safety and Health Administration of the federal government if the individual is certified to do the testing by a state or federal agency acceptable to the Occupational Safety and Health Administration.

(c) An individual who is not an audiologist, but who is exempt under this section may not use a title or description stating or implying that the person is an audiologist.

(d) An individual exempt under (a)(2) of this section may consult with and disseminate research findings and scientific information to accredited academic institutions or governmental agencies, and offer lectures to the public for a fee, monetary or otherwise, without being licensed under this chapter.

(f) An individual who is not licensed under this chapter but who teaches the practice of audiology in an audiology training program at a college or university may use the title "audiologist" but may not practice audiology.

Sec. 08.11.130. PROCEDURES. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter.

Sec. 08.11.200. DEFINITIONS. In this chapter, unless the context indicates otherwise,

(1) "audiologist" means an individual who is licensed under

AS 08.11.010 to practice audiology in the state;

(2) "dealing in hearing aids" has the meaning given in AS 08.55.200;

(3) "department" means the Department of Commerce and Economic Development;

(4) "hearing aid" has the meaning given in AS 08.55.200;

(5) "practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, habilitation, rehabilitation, counseling and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory training, speech reading and the recommendation, evaluation, fitting, and sale of hearing aids, including the fitting of ear molds.

* Sec. 8. AS 08 is amended by adding a new chapter to read:

CHAPTER 55. HEARING AID DEALERS.

Sec. 08.55.010. QUALIFICATIONS FOR LICENSE. (a) The department shall issue a license to act as a hearing aid dealer to an individual who

(1) is 18 years of age or older;

(2) applies on a form provided by the department;

(3) has a high school diploma or the equivalent;

(4) has a business license issued under AS 43.70.020;

(5) furnishes evidence satisfactory to the department that the individual has not engaged in conduct that is a ground for imposing disciplinary sanctions under AS 08.55.130;

(6) submits with the application a statement disclosing whether the applicant

(A) has, during the five-year period immediately

preceding the date of the application been convicted of a felony, or had a final judgment entered against the applicant in a civil action, if the felony or civil action involved fraud, embezzlement, or misappropriation of property;

(B) is subject to an injunctive order that is currently in effect from a pending proceeding or action brought by a public agency;

(C) is a defendant in a pending criminal or civil action relating to fraud, embezzlement, misappropriation of property, or the antitrust or trade regulation laws of the United States or a state;

(D) has, during the five-year period immediately preceding the date of the application, been reorganized, had a debt adjustment, or has been adjudicated a bankrupt under bankruptcy proceedings due to insolvency or was a principal executive officer or general partner of a business that has been reorganized, had a debt adjustment, or has been adjudicated a bankrupt due to insolvency during the five-year period;

(7) furnishes a description of each item in (6) of this subsection that the applicant disclosed as being applicable to the applicant.

(b) An individual who is a physician or an audiologist may deal in hearing aids without being licensed under this chapter, but shall comply with AS 08.55.050, 08.55.070, 08.55.100, 08.55.110(a), 08.55.-110(b)(3) and (c) - (h), and 08.55.130(7) - (13) when dealing in hearing aids.

(c) If an individual licensed under this chapter has more than one place of business, the department shall, on request and payment of a fee, issue a duplicate license for each place of business of the

individual.

Sec. 08.55.020. DURATION AND RENEWAL OF LICENSE. (a) A license to act as a hearing aid dealer is valid for one year and is subject to renewal.

(b) On or before the expiration of one year after the issuance of a license under this chapter, a licensee may apply for renewal of the license, and the department shall renew the license if the licensee pays the renewal fee, has a current business license to act as a hearing aid dealer under AS 43.70.020, and provides evidence satisfactory to the department that the individual has not engaged in conduct that is a ground for imposing disciplinary sanctions under AS 08.55.130.

(c) If a licensee fails to renew a license under (b) of this section, the license lapses.

(d) The department may reinstate a lapsed license under (b) of this section if the license has not lapsed for more than two years and if the person pays a delinquency fee in addition to the renewal fee.

Sec. 08.55.030. BOND REQUIRED. (a) An applicant for a license under AS 08.55.010 shall at the time of applying for the license file with the department a surety bond in the amount of $5,000 running to the state and conditioned on the applicant's promise to pay all

(1) taxes and contributions due the state and political subdivisions of the state;

(2) amounts that may be adjudged against the applicant by reason of negligently or improperly dealing in hearing aids or breaching a contract when dealing in hearing aids.

(b) In lieu of the surety bond the applicant may file with the department a cash deposit or other negotiable security acceptable to the department in the amount specified for the bond.

(c) The bond required by this section remains in effect until cancelled by action of the surety, the principal, or the department. A person may not commence an action on the bond later than three years after cancellation of the bond.

Sec. 08.55.040. FEES. The department shall set fees under AS 08.01.065 for each of the following:

(1) application;

(2) hearing aid dealer license;

(3) renewal of license;

(4) renewal delinquency;

(5) duplicate license.

Sec. 08.55.050. ITEMS TO BE PROVIDED BY HEARING AID DEALER. (a) A hearing aid dealer shall give the following items to a consumer at the time the consumer contracts with the hearing aid dealer to buy or lease a hearing aid:

(1) an instructional brochure that contains operating instructions, purchase privileges, and performance data for the hearing aid;

(2) a statement of the dealer's registration number;

(3) a statement of the manufacturer's specifications, make, model, and serial number for the hearing aid;

(4) a clear statement of the full terms of the contract; and

(5) a written statement indicating that the consumer may file a written complaint about a hearing aid or a hearing aid dealer with the department and giving the mailing address and location address of the department.

(b) Before the sale of a used hearing aid, the hearing aid dealer shall clearly mark the receipt and the container for the

hearing aid as "used" or "reconditioned," whichever is applicable, and with the terms of a guarantee that the dealer provides.

Sec. 08.55.060. PRIOR MEDICAL EVALUATION. (a) A hearing aid dealer who is not a physician may not sell or lease a hearing aid unless the prospective user of the hearing aid presents to the hearing aid dealer a written statement signed by a physician stating that the physician has evaluated the prospective user's hearing and that the prospective user is a candidate for a hearing aid.

(b) The exam on which the physician bases the statement required in (a) of this section must have occurred within the six months immediately preceding the date when the prospective user presents the statement to the hearing aid dispenser.

(c) If the prospective user is 18 years of age or older, the hearing aid dealer may afford the prospective user an opportunity to waive in writing the evaluation required by (a) of this section if the hearing aid dealer

(1) informs the prospective user that the exercise of the waiver is not in the best interest of the prospective user's health;

(2) does not actively encourage the prospective user to waive the evaluation; and

(3) affords the prospective user the opportunity to sign the following statement:

> I have been advised by (HEARING AID DEALER'S NAME) that it would be in my best interest if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing or leasing a hearing aid.
>
> _____
>
> (PROSPECTIVE USER'S SIGNATURE)

(d) The hearing aid dealer shall retain the evaluation statement of the physician, or the prospective user's signed waiver statement for four years after the date of the sale of the hearing aid.

Sec. 08.55.070. TRANSMITTAL OF HEARING AID BY MAIL. If a hearing aid dealer mails a hearing aid to a customer, the dealer shall send the hearing aid by certified mail.

Sec. 08.55.080. COMPLAINTS. (a) A person may file a complaint with the department about a hearing aid or a hearing aid dealer within three years from the date of the cause of the complaint.

(b) A hearing aid dealer shall prominently display in the business establishment of the dealer a sign indicating that a person may file a complaint with the department about a hearing aid or a hearing aid dealer and giving the mailing and location address of the department.

Sec. 08.55.100. CALIBRATION REQUIREMENTS. A hearing aid dealer shall maintain in conformity with the standards set by the American National Standard Institute the calibration of each audiometer used by the hearing aid dispenser, and shall keep a record of the results of the annual calibration of each audiometer used by the dealer.

Sec. 08.55.110. CANCELLATION OPTION. (a) In addition to the cancellation allowed under AS 45.02.350, a person who has purchased or leased a hearing aid from a hearing aid dealer may cancel the sale or lease as provided under (b) of this section or by giving written notice of the intention to cancel the sale or lease to the dealer not later than 30 days following the later of (1) the date the person receives the hearing aid, or (2) the date the hearing aid dealer provides the person with the notice under (c) of this section. The person may use the notice received under (c) of this section to cancel the sale or lease by signing the form where indicated.

(b) In addition to the other rights and remedies the purchaser or lessee of a hearing aid may have, the purchaser or lessee of a hearing aid has the right to cancel the sale or lease by giving written notice of the cancellation to the hearing aid dealer if

(1) the hearing aid dealer is not a physician or an audiologist, and within 60 days from the receipt by the purchaser or lessee of the hearing aid or the notice to be provided under (c) of this section, whichever receipt is later, a physician or an audiologist advises the person in writing to cancel the sale or lease and specifies in writing the medical or audiological reason for the advice; or

(2) the hearing aid dealer, if not a physician or audiologist, has violated a provision of this chapter in the sale or lease of the hearing aid to the person;

(3) the hearing aid dealer who is a physician or audiologist has violated (a) or (c) - (h) of this section or AS 08.55.050, 08.55.070, 08.55.100, or 08.55.130(7) - (13) in the sale or lease of the hearing aid to the person.

(c) A hearing aid dealer shall give a person who has purchased or leased a hearing aid from the dealer notice of the right to cancel the purchase or lease that is substantially identical to the following form with all of the information filled in except the signature and date lines for the purchaser or lessee:

NOTICE OF RIGHT TO CANCEL

_____

Name of Hearing Aid Dealer

_____

Address of Hearing Aid Dealer

_____

Date of Sale or Lease

You may cancel this transaction within 30 days from the date you receive the hearing aid or this notice, whichever is later.

You may also cancel this transaction within 60 days from the date you receive the hearing aid or this notice, whichever is later, if the hearing aid dealer is not a licensed physician or a licensed audiologist and if a licensed physician or a licensed audiologist advises you in writing to cancel this transaction.

If you cancel this transaction, the property you traded in, the payments you made under the sale or lease (less certain costs allowed by state law) and any negotiable instrument executed by you will be returned within 20 days following receipt by the hearing aid dealer of your cancellation notice, and the hearing aid dealer will cancel any security interest arising out of the sale or lease.

If you cancel, you must make available to the hearing aid dealer, in as good a condition as when received, less normal wear and tear, the goods delivered to you under this sale or lease, unless the dealer notifies you to keep the goods or to hold them until the dealer collects them.

If the goods have been damaged, the hearing aid dealer may deduct from any refund due you the reasonable costs incurred in repairing the goods to make them suitable for resale. If the goods have been damaged beyond repair, you are liable for the full purchase

price, even if you are just leasing the goods.

If you make the goods available for the hearing aid dealer to collect after your cancellation, and within 20 days of receiving your cancellation the hearing aid dealer does not collect them from you or provide you with instructions for returning the goods by mail, you may retain or dispose of the goods without further obligation to the hearing aid dealer. If you fail to make the goods available for the hearing aid dealer to collect after your cancellation, then the sale or lease is not cancelled and you remain liable for performance of the obligations of the sale or lease.

To cancel this transaction, mail (by certified mail, return receipt requested) or deliver a signed and dated copy of this notice or another written notice to (name of hearing aid dealer), at (address of hearing aid dealer's place of business) and (hearing aid dealer's telephone number) no later than midnight of (Date).

I hereby cancel this transaction.

(Date) _____

_____

(Purchaser's or Lessee's signature)

I have read and understand the terms of cancellation of this purchase/lease.

_____

Purchaser's or Lessee's signature

_____

Date

(d) If a purchaser or lessee of a hearing aid cancels the purchase or lease under (a) or (b) of this section, the hearing aid dealer shall within 20 days of receipt of a notice of the cancellation

(1) refund to the purchaser or lessee all deposits, including the downpayment, less (A) 10 percent of the total purchase price for each 30 days that the purchaser or lessee had the hearing aid, to pay for the reasonable rental value of the hearing aid; (B) the reasonable price of ear molds or custom casings prepared for the purchaser or lessee; and (C) the reasonable costs actually incurred by the hearing aid dealer to make goods that were traded in by the purchaser or lessee ready for sale; the hearing aid dealer may retain the money allowed under this paragraph only up to the amount of a downpayment made by the purchaser or lessee;

(2) return to the purchaser or lessee all goods traded in to the hearing aid dealer as part of the sale or lease;

(3) return to the purchaser or lessee a negotiable instrument signed by the purchaser or lessee; and

(4) cancel a security interest taken by the hearing aid dealer for the purchase or lease.

(e) If the hearing aid returned by the purchaser or lessee has been damaged, the hearing aid dealer may deduct from any refund due the purchaser or lessee the reasonable costs incurred in repairs necessary to make the hearing aid suitable for resale. If the hearing aid is damaged beyond repair, the purchaser or lessee is liable for the full purchase price.

(f) The purchaser or lessee may retain or dispose of the hearing aid if within 20 days of receipt of the notice of cancellation, the hearing aid dealer fails

(1) to collect the hearing aid from the purchaser or lessee; or

(2) to provide the purchaser or lessee with instructions for returning the hearing aid by mail.

(g) If a purchaser or lessee of a hearing aid fails to make the hearing aid available for the hearing aid dealer to collect, the purchaser or lessee remains liable for the purchase or lease.

(h) To give written notice under this section, a person shall deliver the notice to the hearing aid dealer in person or to the place of business of the dealer, or mail the notice to the place of business of the dealer by certified mail, return receipt requested.

Sec. 08.55.120. TESTING OF HEARING. (a) A hearing aid dealer may take threshold measurements to determine the need for a hearing aid, but may not perform diagnostic procedures to determine the cause of a hearing impairment or charge a fee for a hearing measurement.

(b) A hearing aid dealer shall include in every printed advertisement for the services of the dealer the following statement bordered in black:

Alaska law permits a hearing aid dealer who is not a licensed physician or a licensed audiologist to test hearing only for the purpose of selling or leasing hearing aids; the tests given by a hearing aid dealer are not to be used to diagnose the cause of a hearing impairment.

Sec. 08.55.130. GROUNDS FOR IMPOSITION OF DISCIPLINARY SANCTIONS. After a hearing, the department may impose a disciplinary sanction on an individual licensed under this chapter when the department finds that the person

(1) secured a license through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities;

(3) advertised professional services in a false or misleading manner;

(4) has been convicted of a felony or other crime that affects the individual's ability to continue to practice competently and safely;

(5) failed to comply with a provision of this chapter or a regulation adopted under this chapter, or an order of the department;

(6) continued to practice after becoming unfit due to

(A) professional incompetence;

(B) addiction to or severe dependency on alcohol or another drug that impairs the individual's ability to practice safely;

(C) physical or mental disability;

(7) employed a person who did not have a valid current license to deal in hearing aids to perform work covered by this chapter;

(8) failed or refused to honor a representation, promise, agreement or warranty made by the person while dealing in hearing aids;

(9) advertised a model, type, or kind of hearing aid for sale that the person does not sell;

(10) failed to maintain a business address and telephone number at which the individual could normally be reached during regular business hours;

(11) included in a contract or receipt for the purchase or lease of a hearing aid a confession of judgment or a waiver of a right

of the consumer under this chapter;

(12) used undue influence, coercion, or other wilful act or representation to interfere with the exercise by the consumer of the rights provided in this chapter;

(13) negotiated, transferred, sold, or assigned a note or other evidence of indebtedness to a finance company or other third party within two months of delivering a hearing aid to a purchaser or lessee of the hearing aid by mail or in person;

(14) permitted another person to use the licensee's license;

(15) dealt in hearing aids while suffering from a serious disease that was contagious or infectious.

Sec. 08.55.140. DISCIPLINARY SANCTIONS. (a) When it finds that a licensee has committed an act listed in AS 08.55.130, the department may impose the following sanctions singly or in combination:

(1) permanently revoke a license to practice;

(2) suspend a license for a determinate period of time;

(3) censure a licensee;

(4) issue a letter of reprimand;

(5) place a licensee on probationary status and require the licensee to

(A) report regularly to the department on matters involving the basis of probation;

(B) limit practice to those areas prescribed;

(C) continue professional education until a satisfactory degree of skill has been attained in those areas determined by the department to need improvement;

(6) impose limitations or conditions on the practice of a licensee.

(b) The department may withdraw a limitation, condition, or

probationary status if it finds that the deficiency that required the sanction has been remedied.

(c) The department may summarily suspend a license before final hearing or during the appeals process if the department finds that the licensee poses a clear and immediate danger to the public welfare and safety if the licensee continues to practice. A person whose license is suspended under this subsection is entitled to a hearing by the department no later than seven days after the effective date of the order. The person may appeal the suspension after the hearing to the superior court.

(d) The department may reinstate a license that has been suspended or revoked if the department finds after a hearing that the applicant is able to deal in hearing aids with reasonable skill and safety.

Sec. 08.55.150. PROHIBITED ACTS. (a) Unless a person is licensed under this chapter or AS 08.11, the person may not

(1) deal in hearing aids;

(2) use a title indicating or representing that the person deals in hearing aids or is licensed to deal in hearing aids;

(3) advertise that the person deals in hearing aids.

(b) A person may not

(1) sell, barter, or offer to sell or barter a license issued under this chapter;

(2) purchase or obtain by barter a license issued under this chapter with the intent to use it as evidence of the holder's qualification to deal in hearing aids;

(3) materially alter a license issued under this chapter with fraudulent intent;

(4) use or attempt to use as valid a license to deal in

hearing aids that has been purchased, fraudulently obtained, counterfeited, or materially altered.

Sec. 08.55.160. PENALTY. A person who violates AS 08.55.150 is guilty of a class B misdemeanor.

Sec. 08.55.170. NOTICE OF PLACE OF BUSINESS. A person who holds a license under this chapter shall notify the department in writing of the regular address of the place or places where the person deals or intends to deal in hearing aids.

Sec. 08.55.180. PROCEDURES. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter.

Sec. 08.55.200. DEFINITIONS. In this chapter

(1) "audiologist" means an individual licensed as an audiologist under AS 08.11;

(2) "dealing in hearing aids" means the sale or lease, or attempted sale or lease of hearing aids, and the recommendation, selection, fitting, or adaptation of hearing aids;

(3) "department" means the Department of Commerce and Economic Development;

(4) "hearing aid" means a prosthetic instrument or device designed for or represented as aiding, improving, or correcting defective human hearing and the parts, attachments, or accessories of the instrument or device; "hearing aid" does not include cochlear implants, middle-ear implants, vibro-tactile speech-reading aids, other aids for cued speech, or group or individual auditory training units and assistive devices;

(5) "hearing aid dealer" means an individual licensed under AS 08.55.010;

(6) "physician" means a person licensed as a physician under AS 08.64.

* Sec. 9. AS 09.55.560(1) is amended to read:

(1) "health care provider" means an audiologist licensed under AS 08.11; a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital; a corporate entity covered under AS 21.88.050(b)(12); and an employee of a health care provider acting within the course and scope of employment;

* Sec. 10. AS 21.88.900(a)(9) is amended to read:

(9) "health care provider" means an audiologist licensed under AS 08.11; a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital; a corporate entity covered under AS 21.88.050(b)(11); an employee of a health care provider acting within the course and scope of employment;

* Sec. 11. AS 44.62.330(a) is amended by adding new paragraphs to read:

(53) Department of Commerce and Economic Development concerning the licensing and regulation of audiologists (AS 08.11);

(54) Department of Commerce and Economic Development concerning the licensing and regulation of hearing aid dealers (AS 08.-55).

* Sec. 12. AS 45.50.471(b) is amended by adding a new paragraph to read:

(27) dealing in hearing aids and failing to comply with AS 08.55.

* Sec. 13. AS 45.50.561 is amended by adding new paragraphs to read:

(10) "dealing in hearing aids" has the meaning given in AS 08.55.200;

(11) "hearing aid" has the meaning given in AS 08.55.200.

* Sec. 14. AS 47.17.070(9) is amended to read:

(9) "practitioner of the healing arts" includes chiropractors, dental hygienists, dentists, health aides, nurses, nurse practitioners, optometrists, osteopaths, physical therapists, physicians, physician's assistants, psychiatrists, psychologists, psychological associates, <u>audiologists licensed under AS 08.11, hearing aid dealers licensed under AS 08.55,</u> religious healing practitioners, and surgeons;

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4/23/86

REQUEST

Bill/Resolution No.: CSHB 430 (HESS)
Title: Regulating Audiologists, Hearing Aid Dealers and dispensing of hearing aids;
Sponsor: House HESS
Requester:
Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components:

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE		1.8	1.1	1.3	2.0	1.6

FUNDING: (Thousands of dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

The bill charges the department with the responsibility of licensing audiologists and hearing aid dealers. Information received indicates that the number of practitioners affected by the bill are few--12 audiologists and 10 legitimate hearing aid dealers. Apparently, fly-by-night individuals have harmed Alaskan consumers as documented by complaints on file with Consumer Protection in the

Prepared by: Jennifer Strickler, Management Analyst Phone: 465-2144
Division: Occupational Licensing Date: 4/23/86

Approved by Commissioner: Date:
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 430 (HESS)

Department of Law, the Office of the Ombudsman, and the Department of Health and Social Services, Communicable Disease Control Section. Licensing of Audiologists and Hearing Aid Dealers may be one instance where the need for licensure out-weighs the small number of practitioners.

An estimate of operating costs derived from comparing qualifications and numbers of practitioners with a similar existing license function indicate the costs to total $1.4 each year. Of the yearly costs, $.1 is expected to be new costs as a result of this legislation, for printing of application and statute booklets. The remainder consists largely of personal services costs which would be absorbed by the division through funding already included in the agency's operating budget. The fiscal note will be zero.

The following fee schedule was developed so that fees generated over the four-year renewal cycle would match, as closely as possible, costs over the same period. These fees are still estimates at this time.

Revenues were estimated on the following fee schedule:

Application/Credentials Review fee	$20
Temporary Permit fee	$25
Audiologists License/Renewal fee	$50 - quadrennially
Hearing Aid Dealers License/Renewal	$80 - annually

As a result of quadrennial licenses issued to Audiologists, revenues collected in FY 87 essentially covers a portion of the costs in FY 88 to FY 91. A detailed description follows:

FY 87:

		Distribution across quadrennial renewal:
12 Audiologists seeking licensure ($50 x 12) =	$ .6	
10 Hearing Aid Dealers ($80 x 10) =	.8	
22 Application/Credentials Review ($20 x 22) =	.4	
	$ 1.8	$ 1.8
		- 1.4 costs
		$ .4 balance

FY 88:

Assuming there will be two new applicants seeking Audiology Temporary Permits ($25 x 2)	$ .05	
2 new Hearing Aid Dealers:		
Application/Credentials Review Fee ($20 x 2)	.04	
Hearing Aid Dealers License ($80 x 2)	.2	
10 Hearing Aid Dealers renewing ($80 x 10)	.8	
	$ 1.1	$ .4
		+ 1.1
		$ 1.5
		- 1.4 costs
		$ .1 balance

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 430 (HESS)

FY 89:

Assuming there will be two new applicants seeking Audiology Temporary Permits ($25 x 2)	$ .05		
2 new Hearing Aid Dealers:			
Application/Credentials Review Fee ($20 x 2)	.04		
Hearing Aid Dealers License ($80 x 2)	.2		
12 Hearing Aid Dealers renewing ($80 x 12)	1.0		
	$ 1.3	$ .1	balance forward
		+ 1.3	
		$ 1.4	
		- 1.4	costs
		$ Ø	balance

FY 90:

Assuming there will be two new applicants seeking Audiology Temporary Permits ($25 x 2)	$ .05		
2 new Hearing Aid Dealers:			
Application/Credentials Review Fee ($20 x 2)	.04		
Hearing Aid Dealers License ($80 x 2)	.2		
12 Audiologists renewing ($50 x 12)	.6		
14 Hearing Aid Dealers renewing ($80 x 14)	1.1		
	$ 2.0	$.Ø	
		+ 2.0	
		$ 2.0	
		- 1.4	costs
		$ .6	balance

FY 91:

Assuming there will be one new applicant seeking licensure as an Audiologist ($50 x 1)	$ .05		
2 new Hearing Aid Dealers ($80 x 2)	.2		
3 paying Application/Credentials Review ($20 x 3)	.06		
16 Hearing Aid Dealers renewing ($80 x 16)	1.3		
	$ 1.6	$ .6	
		+ 1.6	
		$ 2.2	
		- 1.4	costs
		$ .8	balance

NOTE:

The revision in this fiscal note from the previous version is in the total estimated annual costs to administer the function. The original estimate was based on $4.5 annually. As a result of adjusting costs in relation to the number of licensees, this revised fiscal note is based on $1.4 annual expenditures.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 4/3/86

REQUEST

Bill/Resolution No. : CSHB 430 (FIN)
Title : Regulating audiologists, hearing aid dealers & dispensing of hearing aids
Sponsor : House HESS
Requestor : House Finance Committee
Date of Request : 4/3/86

FISCAL DETAIL

Agency Affected : Commerce & Econ. Dev.
BRU : Occupational Licensing
Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		0	0	0	0	0
TRAVEL		0	0	0	0	0
CONTRACTUAL		0	0	0	0	0
SUPPLIES		0	0	0	0	0
EQUIPMENT		0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE		10.3	2.7	3.1	3.5	10.1

FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS		0	0	0	0	0
OTHER		0	0	0	0	0
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME		0	0	0	0	0
PART-TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

ANALYSIS : Attach a separate page if necessary

The $100 estimated as needed for printing of applications and statute booklets can be absorbed within the Department's FY 87 budget.

APA

Prepared by : Al Adams, Chair — Phone : 465-3706
Division : House Finance Committee — Date : 4/3/86

Approved by Commissioner : _____ Date : _____
Agency : _____

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Protection in the Department of Law, the Office of the Ombudsman, and the Department of Health and Social Services, Communicable Disease Control Section. Licensing of Audiologists and hearing aid dealers may be one instance where the need for licensure out-weighs the small number of practitioners.

An estimate of operating costs derived from comparing qualifications and numbers of practitioners with a similar existing license function indicate the costs to total $4.5 each year. Of the yearly costs; $.1 is expected to be new costs as a result of this legislation, for printing of application and statute booklets. The remainder of $4.4 consists largely of personal services costs which would be absorbed by the division through funding already included in the agency's operating budget.

The following fee schedule was developed so that fees generated over the four-year renewal cycle would match, as closely as possible, costs over the same period.

Revenues were estimated on the following fee schedule:

Application Fee	$ 30	
Credentials Review Fee	20	
Temporary Permit Fee	100	
Audiologist:		
License & Renewal Fee	520	quadrennially ($130 annually)
Hearing Aid Dealers	200	annually

As a result of quadrennial licenses issued to Audiologists, revenues collected in FY 87 essentially covers a portion of the costs in FY 88 to FY 90. A detailed description follows:

FY 87:		Distribution across quadrennial renewal:	
12 Audiologists seeking licensure	$ 6.2		
10 Hearing Aid Dealers	2.0		
22 Application/Credentials Review	1.1		
	$ 9.3	$ 9.3	
		- 4.5	costs
		$ 4.8	balance
FY 88:			
Assuming there will be two new applicants seeking Audiology temporary permits	$ .2		
2 new Hearing Aid Dealers:			
Application & Credentials Review Fee	.1		
License fee	.4		
10 Hearing Aid Dealers renewing	2.0	$ 4.8	balance forward
	$ 2.7	2.7	
		$ 7.5	
		- 4.5	costs
		$ 3.0	balance

FY 89:

Assuming there will be two new applicants seeking Audiology temporary permits	$ .2		
2 new Hearing Aid Dealers:			
Application & Credentials Review Fee	.1		
License Fee	.4		
12 Hearing Aid Dealers	2.4	$ 3.0	balance forward
	$ 3.1	3.1	
		$ 6.1	
		- 4.5	costs
		$ 1.6	balance

FY 90:

Assuming there will be two new applicants seeking Audiology temporary permits	$ .2		
2 new Hearing Aid Dealers:			
Application & Credentials Review Fee	.1		
License Fee	.4		
14 Hearing Aid Dealers renewing	2.8	$ 1.6	balance forward
	$ 3.5	3.5	
		$ 5.1	
		- 4.5	costs
		$ .6	balance

FY 91 will be the start of a new quadrennial license period for Audiologists, and is the reason for revenues increasing from $3.5 in FY 90 to $10.1 in FY 91.

FY 91:

Assuming there will be one new applicant seeking licensure as an Audiologist	$ .5
2 new Hearing Aid Dealers, license fee	.4
Application & Credentials fee for 3 new applicants	.2
12 Audiologists renewing	6.2
14 Hearing Aid Dealers renewing	2.8
	$10.1

The FTC And The Hearing Aid Industry

by Rocky Stone

In the United States, the role of government in regulating industry and providing consumer protection has usually been contentious, time-consuming—and costly! Way back in June 1975, the Federal Trade Commission (FTC) initiated a proceeding for promulgation of a Trade Regulation Rule for the Hearing Aid Industry. Ten years later (August 1985), the FTC recommended against the proposed rule. What happened?

FTC conducted 58 days of hearings on the proposed rule. It heard 203 witnesses and compiled almost 60,000 pages of documents. The final Staff report to the Commission, along with the Proposed Trade Regulation Rule was published in two volumes during September 1978. The report contains the staff's analysis of the record which forms part of the basis for the Commission's final determination. In transmitting the report to the Commission, the Director, Bureau of Consumer Protection, observed, "While I am somewhat uncomfortable with the manner in which the staff has characterized some of the record evidence, I support their recommendation that a trade regulation rule is necessary and that the rule is supported by the record evidence.

"There appears to be sufficient record evidence to establish the conclusion that the over 14.5 million (1978 figure) hearing impaired individuals suffer a lack of information about hearing loss, hearing aids, and the variety of individuals and their respective qualifications who dispense and sell hearing aids. Hearing aids can benefit some, but not all of these hearing impaired individuals. In addition, periods of adjustment are almost always required. The record also reveals the prevalence of a variety of *deceptive* and *unfair* marketing techniques that take advantage of the existing consumer ignorance or vulnerability to mislead consumers into the belief that the hearing aid can offer greater benefits than may in fact be true. (Words like "deception" and "unfair" have long been the basis on which the FTC takes action against a particular company or industry. The problem is that such words can be interpreted differently and they can cover an awful lot of territory. When James C. Miller III was FTC Chairman, he asked Congress to limit the FTC's discretion by providing a legal definition of both terms as they pertain to the agency's jurisdiction over business practices. Miller felt that "unguided discretion creates great ambiguity about how the law will be applied.")

"The recommended rule attempts to remedy the documented problems by a comprehensive approach to the advertising and marketing of hearing aids. Of critical importance is the buyer's right to cancel. This portion of the rule requires retailers to provide each buyer with the opportunity to cancel the purchase within 30 days after delivery of the aid and receive a refund less certain allowable charges. The record clearly reveals that consumers can only assess the benefits the aid will offer by actual use. The trial period should thus allow consumers adequate opportunity to inspect the aid, adjust to its use (and limitations), and verify whether or not it will, in fact, offer them some benefit. The trial period should also provide disincentives that will inhibit sellers from engaging in deceptive techniques to market aids. If claims are not borne out through actual experience, sellers will have to refund the purchase price. In addition, any returned hearing aids will have to be sold as used rather than new aids."

1978—The Director, Bureau of Consumer Protection

"While I am somewhat uncomfortable with the manner in which the Staff has characterized some of the record evidence, I support their recommendation that a trade regulation rule is necessary and that the rule is supported by the record evidence.

For the next six years the FTC staff analyzed and reanalyzed the record, gathered additional post-hearing documents (another 4,000 pages) and sent two proposed rules to the Commissioners for consideration. During this time, staff and commissioners changed, political differences emerged, points of view shifted. The process was also characterized by recrimination, bitterness, invective and a general sense of guerrilla warfare. In 1979, Robert Petosky, a Carter appointee found the staff's case plagued by "bias" and sent it back for further review. In April 1983, George W. Douglas, a conservative Democrat from Texas appointed by Reagan, took charge of the case. He sat on it for more than a year and then in May 1984, sent it back to the staff without taking it to the full commission for debate. By 1984, the process had consumed more than 50,000 staff hours of time and probably cost about $700,000 according to FTC figures cited by the Washington Post.

The final act in the saga of the hearing aid rule was opened with Commissioner Douglas' request for a new survey of

Given the limitations of the study, it is hard to understand why the FTC staff should have been led to its sanguine view that the marketplace will do the job of protecting the hearing impaired consumer.

consumers to gather information on the industry, hearing aid users, and their perceptions of the product. The main focus was to be on the consumer trial period since several commissioners felt that events had overtaken the proposed rule. A Food and Drug Administration regulation placed new conditions on hearing aid sales (see *Shhh*, November/December 1984, page 8), many states had passed new legislation regarding consumer protection, and some hearing aid dispensers had adopted a voluntary 30-day trial period.

The issue was whether market forces could be relied on to insure that consumers have a chance to try a hearing aid before purchasing it. Thus, the survey aimed at comparing the reports of hearing impaired persons living in states having mandatory trial periods with those of persons living in states where no such requirement exists.

The principal finding of the survey, as reported to the Commission by the Bureau of Consumer Protection, was that "in states that required trial periods, only 62% of the respondents said a trial period was available. Yet, in states that did not have this requirement, 65% of hearing aid purchasers had access to a trial period. *Thus, market forces appear to have been as effective as legal requirements in promoting the proliferation of trial periods.*" (Emphasis SHHH.)

We could rest in confidence in the small discrepancy this three percentage point difference represents—except for the fact that the survey was not designed to support this kind of a comparison. The study was done by Market Facts, a highly regarded consumer and market research firm. Nonetheless, the sampling plan for the study had severe limitations for purposes of this comparison upon which the FTC staff rests its recommendation.

First, the survey was of persons who were part of a "panel" of consumers, i.e., had agreed to participation in periodic surveys by Market Facts for its diverse clients. The sample is not a true cross-section of the American public. There is a bias in the exclusion of persons who declined to join the panel for one reason or another. Moreover, to the extent participants in the panel were involved in Market Facts studies prior to the FTC survey, they tend to become more self-conscious about their behavior as consumers. Thus, it is highly probable that they are more attentive to the terms of their purchases, thereby yielding a degree of measured awareness about the trial period that is artificially inflated.

Second, the survey was conducted by mail. As a result it suffers the expected problem of people not responding. There are ways survey researchers deal with this problem, but there is no evidence that Market Facts or the FTC staff made such an effort.

Third, and most important, only five states and the District of Columbia have mandatory trial periods. Given the design of the sample, only 74 respondents were produced living in these jurisdictions. So small a number of cases greatly limits the comparisons that are valid with the experience of those living in areas where no required trial periods exist. Specifically, a difference of at least twelve percentage points between the two percentages would be needed to be able to conclude that the difference did not occur by chance. With a three percentage point difference found in the survey, there is no way the conclusion of the FTC staff can be supported with any statistical confidence. Given the limitations of the study, it is hard to understand why the FTC staff should have been led to its sanguine view that the marketplace will do the job of protecting the hearing impaired consumer.

Conclusion: Unfortunately, we are dealing in extremes. According to a number of people with different points of view, the 1978 report *was* biased. The staff seemed to be throwing the baby out with the bath water. The situation was not as bad as it was portrayed. Now the Market Facts survey indicates that everything is okay. It isn't. That's the other extreme. Our mail convinces us that the situation today, is neither as bad nor as good as the FTC has variously represented it. Good consumer education is probably the best consumer protection. But there is a large group of elderly hearing impaired persons who remain vulnerable and who will never be able, adequately to protect themselves. How we get the use of amplification to them in a fair context, is our challenge.

According to the White House Office of Consumer Affairs:

96% of unhappy customers never complain.

91% of those will not buy again from the business that offended them.

The average unhappy customer will tell at least nine others and 13% tell more than 20 people.

In a market as complicated, emotionally charged, yet in dire need of the product, hearing aid dispensers should not take too much satisfaction from the final decision of the FTC. People, not laws, will continue to determine the sales volume of hearing aids and the dispenser's image—rightly or wrongly—has yet a way to go.

. . . there is a large group of elderly hearing impaired persons who remain vulnerable and who will never be able, adequately to protect themselves. How we get the use of amplification to them in a fair context, is our challenge.

You will note the issue here was not the quality of hearing aids but how they are marketed. Hearing aids today do pretty much what they are supposed to do but they remain inadequate for many people. As Gerry Williams notes, "To expect

the tiny hearing aid microphone, located in or behind the ear, to pick up sound from the front of a classroom, from a distant stage or from a speaker standing 50 to 100 feet away is beyond the state of the art.

"The small microphone simply cannot be made with sufficient directionality to exclude all the reverberant sounds that compete with the desired sound. The shotgun microphones used at sports events to pick up and isolate distant sounds employ highly sophisticated technology, which allows them to zero in on the desired sound and exclude most others. The hearing-aid microphone, because of its size limitations, cannot be expected to produce a comparable performance.

"A person who has lost hearing in one ear will experience the same problem of selectively discriminating sounds. So merely amplifying a mixture of desired and undesired sounds will only increase the loudness of confused sound.

"The problem boils down to having the desired signal sufficiently louder than the background noise so that people can hear it." That's where assistive listening devices come in.

So, the issue here revolves around market practices.

Exactly five years ago we wrote: "We can agree with The National Hearing Aid Society (NHAS) that hearing aid dealers—like the rest of us (including audiologists)—are human. Some are more (or less) ethical than others. We, as consumers, need to know enough about the subject to avoid being victimized. Or, if we are victimized, we need to have adequate recourse to correct the situation.

"Assuming that we will always have some abuse in the current system, NHAS would be well advised not to defend dealers generically but to help remove those dealers who are proven unethical. They are the ones who give hearing aid dealers, as a group, a poor image.

"The same thing would be true of audiologists who dispense hearing aids. Being human, some will certainly abuse their trust. They should be dealt with promptly and effectively. Self-policing methods often are not successful. But if users of hearing aids begin to speak with one voice, all service providers in the field of hearing loss will find themselves under increased pressure to satisfy better a clientele which has heretofore been characterized as being 'vulnerable, easily intimidated, passive'—in short, people who don't make waves. That time may soon be past."

Not yet. But soon.

In a memorandum to the FTC, Deputy Director Amanda B. Pedersen, discusses trial periods being available to those who want them. She says, "The National Hearing Aid Society, whose members are estimated to sell 75% of the hearing aids sold in this country, requires its members to offer trial periods upon request under most circumstances."

THE CONSUMER SHOULD ASK for a 30-day trial period with money-back guarantee (less a previously agreed to charge). If a dealer won't give it to you—find one who will.

In discussing allegedly unfair sales practices including generating leads or gaining entry for home sales, Pedersen notes that "less than 1% of all respondents indicated that the seller had come to their home without calling first."

The consumer should not permit hearing aid salespersons into their homes without prior appointments. If there is a SHHH chapter in your area seek help if you are in doubt about how to handle your purchase of a hearing aid.

Nursing Home Study

The Health and Human Services Department is planning more study on nursing homes and community services for elderly people. About one elderly person in four needs nursing home care or special help at home. A report from the Population Reference Bureau found that there are 1.4 million elderly people in nursing homes and 5.2 million others who, while remaining at home, need help. That help comes mostly from friends and relatives (about four-fifths of it). But the Population Reference Bureau projects that by the year 2020, the number of people needing nursing home care and home-health assistance will nearly double, as the population gets older, and the number of people over 85 increases dramatically.

To make the problem worse, more women will be working and unavailable to take care of their parents at home, and there will be a lower ratio of younger people to older people. Alice Day, author of the study thinks that large numbers of elderly people could be kept at home at less cost if family members were given some relief from the problems of caring for them—such as government aid for home help, respite care, overnight care and temporary care. She adds that policy makers should tighten screening procedures to assure that the bulk of aid goes to those who most need it.

More emphasis should also be placed on preventive health care such as diet and exercise to avoid disabling conditions, setting up a system of "co-payments" to make the elderly share the costs of their care, and developing the new concept of "intermediate housing" which would provide affordable health services to elderly residents, including hearing health services.

Adapted from the article in
The Washington Post, Oct. 29, 1985

Senior Voice
OPAG
P.O. Box 102240 • Anchorage, Alaska 99510 • (907) 277-0787

Rebecca J. Goodman
Associate editor, Senior Voice
P.O. Box 211604
Auke Bay, Alaska 99821

Pat Malone
Legislative aide
House of Representatives
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mr. Malone:

I wish Older Persons Action Group could tell you exactly how many older consumers have been victimized by unscrupulous hearing aid dealers in Alaska. Unfortunately, no one knows for certain the extent of the problem. Not many "victims" find it easy to admit that they've been "taken" and not many are willing to admit that they have a hearirg problem.

However, what we do know about the problem is this: Nearly a dozen older consumers have contacted Older Persons Action Group offices in Anchorage over the past two years to complain that they lost money (in amounts ranging from $800 to $2,000) to hearing aid salespeople (both "established" businesses and door-to-door salesmen) for worthless aids or non-delivery of aids.

One older woman told us she'd lost more than $1,800 to hearing aid dealer Louis DeLegge of Anchorage, who skipped town with her money and failed to deliver the purchased aid. DeLegge was responsible for a majority of complaints OPAG received last year regarding hearing aid fraud, but DeLegge is by no means the only culprit involved in these scams. It's important to note that without consumer protections in place in Alaska, these abuses could easily happen again and again to consumers. For this reason, Older Persons Action Group supports Rep. Mike Navarre's efforts to bring about strong legislative measures to regulate hearing aid sales practices in the state.

Sincerely,

Rebecca J. Goodman
SENIOR VOICE/OPAG
ph. 364-3874

* DELIVER TO: JPOM
*
*
* ORIGINAL
* SENT: 02/13/86 TIME: 10:45
* FROM: JEAN MILLER
* SUBJECT: POM
* PRINT DATE: 02/13/86 TIME: 10:47
*

2

TO: REPRESENTATIVE NAVARRE

FROM: TERI REGAN
2211 B ARCA DRIVE
ANCHORAGE, AK 99508 PHONE: 279-9675

SUBJECT: HB 430 - LICENSING AUDIOLOGISTS AND HEARING AID DEALERS

HB 430 HAS BEEN TOO LONG IN COMING. PLEASE SUPPORT THIS BILL AS IT WILL HELP ASSURE THE HEARING IMPAIRED POPULATION OF THE AVAILABILITY OF QUALITY SERVICE. ALASKA'S HEARING IMPAIRED HAVE HISTORICALLY BEEN TAKEN ADVANTAGE OF. YOUR SUPPORT OF HB 430 WILL HELP RECTIFY THIS.

TO: REP. NAVARRE

FROM: NATHAN MORRIS, 5531 E. 40TH, ANCHORAGE, AK 99504, 333-5008

SUBJECT: HB 430, AUDIOLOGISTS AND HEARING AID DEALERS

I STRONGLY URGE YOU TO SUPPORT HB 430 A CONSUMER PROTECTION ACT REGARDING THE LICENSING OF AUDIOLOGISTS AND HEARING AID DEALER IN ALASKA. PARENTS OF HEARING IMPAIRED CHILDREN AND PARTICULARLY ALASKANS WHO SUFFER HEARING LOSSES DUE TO AGE HAVE TO LONG BEEN AT THE MERCY OF AN UNLICENSED INDUSTRY. THE CONCERN NEEDS TO BE PROFESSIONAL SERVICE NOT PROFIT MARGIN. THANK YOU FOR YOU SUPPORT.

TO: REP. NAVARRE

FROM: SANDY WELK, 234 E. 15TH, APT 606, ANCHORAGE, AK 99501, 272-7927

SUBJECT: HB 430, AUDIOLOGISTS AND HEARING AID DEALERS

PLEASE SUPPORT HB 430. ALASKA MUST JOIN THE REST OF THE LOWER 48 IN LICENSING AUDIOLOGIST AND HEARING AID DEALER. HISTORICALLY THE HEARING IMPAIRED HAVE BEEN TAKEN ADVANTAGE OF IN THE MARKET PLACE AND THIS IS AN OPPORTUNITY TO RECTIFY AN UNJUST SITUATION.

TO: HOUSE LABOR AND COMMERCE COMMITTEE

REPS. NAVARRE, DAVIS, BOUCHER, KOPONEN, PEARCE, COLLINS, HANLEY

FROM: GINGER DRAIS (H)279-0200
1134 "G" STREET APT.#B (W)279-9675
ANCHORAGE, ALASKA 99501

SUBJECT: HB 430 - AUDIOLOGISTS AND HEARING AID DEALERS

I URGE YOUR SUPPORT OF HB 430. PLEASE CONSIDER THE POSITIVE IMPACT IT WELL MAKE ON THE HEARING IMPAIRED PERSONS THROUGHOUT THE STATE.

TO: HOUSE LABOR AND COMMERCE COMMITTEE

REPS. NAVARRE, DAVIS, BOUCHER, KOPONEN, PEARCE, COLLINS, HANLEY

FROM: MARTHA L. STILES (H)345-5229
611 HIGH VIEW DRIVE (W)276-2255
ANCHORAGE, ALASKA 99515

SUBJECT: HB 511 - CERT. PROF. SECRETARIES AS STATE EMPLOYEES
HCR 40 - CERTIFIED PROFESSIONAL SECRETARIES

PLEASE SUPPORT HB 511 AND HCR 40 WHICH RECOGNIZES CPSS AND PLSS.

TO: HOUSE LABOR AND COMMERCE COMMITTEE

REPS. NAVARRE, DAVIS, BOUCHER, KOPONEN, PEARCE, COLLINS, HANLEY

FROM: EDWINA KLEMM, PLS, 310 K STREET, SUITE 603, ANCHORAGE, AK, 276-4026

SUBJECT: HB 511 AND HCR 40, CERT PROF SECRETARIES

I REQUEST YOUR SUPPORT OF HB 511 AND HCR 40 RECOGNIZING CPS'S AND PLS'S IN ALASKA.

TO: HOUSE LABOR AND COMMERCE COMMITTEE

REPS. NAVARRE, DAVIS, BOUCHER, KOPONEN, PEARCE, COLLINS, HANLEY

FROM: DONNA BOHNER, 2640 FOREST PARK DR., ANC 99517
PHONE. 272-1257 HM. 786-1141 WK.

SUBJECT: HB 511, HCR 40- CERTIFIED PROFESSIONAL SECRETARY

PLEASE SUPPORT HB 511 AND HCR 40 WHICH RECOGNIZES CPS'S AND PLS'S IN ALASKA. THEY CERTAINLY DESERVE IT, THEY ARE TOP LEVEL SECRETARIES

DELIVER TO: JPOM

ORIGINAL
SENT: 02/13/86 TIME. 11:01
FROM: HARRY MANDREGAN
SUBJECT: POM
PRINT DATE: 02/13/86 TIME: 11:01

8

TO: HOUSE LABOR AND COMMERCE COMMITTEE

REPS. NAVARRE, DAVIS, BOUCHER, KOPONEN, PEARCE, COLLINS, HANLEY

FROM: JANE BRODIE (H)345-5020
12601 TOILSOME HILL DRIVE (W)279-9675
ANCHORAGE, ALASKA 99516

SUBJECT: HB 430 - AUDIOLOGISTS AND HEARING AID DEALERS

I STRONGLY URGE YOU TO BACK HB 430 WHICH WOULD SUPPORT LICENSED AUDIOLOGISTS AND HELP REGULATE LEGITIMATE HEARING AID DEALERS. ALASKA'S INCIDENT OF HEARING LAWS IS HIGHER THAN THE NATIONAL AVERAGE. IT IS IMPERATIVE OUR ALASKAN CITIZENS ARE ASSURED OF QUALITY SERVICE.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF ADMINISTRATION

POUCH C, M.S. 0209
JUNEAU, ALASKA 99811
PHONE: (907) 465-3250

OLDER ALASKANS COMMISSION

February 12, 1986

Representative Navarre
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Navarre:

The Older Alaskans Commission appreciates your sponsorship of House Bill No. 430 to regulate audiologists, hearing aid dealers and the dispensing of hearing aids. The Commission endorsed protective legislation for consumers of these products and professions last fall. This action was taken due to our personal knowledge of significant problems in this area.

We will inform older Alaskans of the importance of supporting the effort now represented by this bill. Do not hesitate to contact our executive director, Jon Wolfe for any assistance we may provide.

Sincerely,

Peggy Burgin

Peggy Burgin Chair
Older Alaskans Commission

cc: Older Alaskans Commission
Jon Wolfe

02-825LH

Box 7135
Ketchikan, Alaska 99901
Feb. 14, 1986

Representative Mike Navarre
House of Representatives
Juneau, Alaska

Dear Sir:

I would like to go on record in support of House Bill 430.

I have had several hearing aids which have cost in the hundreds of dollars purchased from various agents. After using them for a period of time, they have given me problems and in a lot of cases the agent or company has gone out of business, leaving me holding the sack.

I heard of the state program and called the Health Clinic here for an appointment with Susan Bunting, State Audiologist. On 11/6/84, I received two aids from her, after going thru tests, and have them since. They have given me no problems and if they do, I know where to go to have them corrected.

I think Bill 430 would protect individuals like myself both physically and financially. I was born in Ketchikan 74 years ago.

Thank you,

Arthur J. Thompson

Pat Malone

I have enclosed the info I have on consumer complaint. It would probably be wise to call the Senior Voice (Becky Goodman 364-3874) to get an update on complaints. They were getting calls and letters in response to an article they ran a few months ago. The attorney Generals office may also provide current information. Hope this helps.

Dave
Canterbury

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

XX REPLY TO
1031 W 4th SUITE 200
ANCHORAGE ALASKA 99501
PHONE (907) 279-0428

1st NATIONAL CENTER
100 CUSHMAN SUITE 400
FAIRBANKS ALASKA 99701
PHONE (907) 456-3528

S S FULLER BLDG
4th & HARRIS, SUITE 2H
POUCH K
JUNEAU ALASKA 99811
PHONE (907) 465-3692

STATE COURTHOUSE ROOM 22
P O BOX 671
VALDEZ ALASKA 99686
PHONE (907) 835-2462

September 23, 1985

Department of Health
and Social Services
Communicative Disorders Program
1231 Gambell Street
Anchorage, AK 99501-4627

Attention: Dr. David Canterbury

RE: Hearing and Consumer Complaints

Dear Sir:

Enclosed please find copies of consumer complaints received by our office during fiscal year '85 that involve hearing aids. All of these complaints (except the Wrangell Publishing, Inc. complaint) have been either resolved, or closed/unresolved due to our inability to locate the respondent or elicit his cooperation.

We noticed your article in the August edition of the "Senior Voice" and believe these complaints may support you and your efforts with respect to HB-430. For your information, a major problem is that the businesses are often closed and the owner somewhere out-of-state by the time the complaint reaches our office. Needless to say, this situation interferes with, and sometimes precludes any efforts on our part to resolve these matters. If the complaint involves defective merchandise, we are sometimes able to obtain restitution through the manufacturer. However, if the problem is with a distributer who has accepted partial or full payment for merchandise not delivered, there is little this office can do.

We hope this information is helpful to you. If you have any questions, please feel free to call.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Duane L. Sipary
Duane L. Sipary
Paralegal Assistant

DLS/np

03-C30LH

RECEIVED
Department of Law
AUG 23 1984
Office of the Attorney General
Consumer Protection Section
Anchorage, Alaska

CONSUMER COMPLAINT

ATTORNEY GENERAL

2CW329-F85-A-I 460

ANCHORAGE	FAIRBANKS	JUNEAU	VALDEZ
1031 W. 4th Avenue Suite 110 Anchorage, AK 99501 279-0428	National Center Cushman, Ste.400 Fairbanks, AK 99701 456-8588	S.S. Fuller Bldg. 4th & Harris, Ste.214 Pouch K Juneau, AK 99811 465-3692	P. O. Box 671 Valdez, AK 99686 835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME Last: MAHLE First: PRISCILLA M.I.: J	2. TODAY'S DATE August 23, 1984
3. MAILING ADDRESS 8081 WISTERIA	CITY ANCHORAGE STATE AK ZIP CODE 99504
4. HOME ADDRESS (if different) SAME	CITY STATE ZIP CODE
5. HOME TELEPHONE NO. (907) 243-0467	6. BUSINESS TELEPHONE NO.
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT. Custom Hosting Center	NAME OF SALESPERSON: Thomas Garcia
8. COMPANY'S ADDRESS 3136 New Seward Hiway	CITY Anchorage STATE AK ZIP CODE 99502
9. COMPANY'S TELEPHONE NO. (907) 274-7330	10. DATE OF TRANSACTION

11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? ☒ YES ☐ NO

12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?

LOCAL NEWSPAPERS

13. WAS A WRITTEN CONTRACT SIGNED? ☒ YES ☐ NO

14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY? ☒ YES ☐ NO	15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED. Thomas Garcia
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? ☐ YES ☒ NO	17. IF YES, NAME OF ATTORNEY.
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? ☐ YES ☒ NO	19. IF YES, NAME COURT OR AGENCY.

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE?	☐ YES ☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID YOU REQUEST A WRITTEN PRICE ESTIMATE?	☐ YES ☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID COSTS EXCEED WRITTEN ESTIMATE?	☐ YES ☐ NO			
WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE?	☐ YES ☐ NO			
DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU?	☐ YES ☐ NO	RECEIVED/OR ALLOWED TO INSPECT PARTS?	☐ YES	☐ NO
		DID YOU RECEIVE IT?	☐ YES	☐ NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year	Make	Model	V.I.N.

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

Priscilla Mahle
Signature

On the reverse side of this form
Summarize your complaint. Be brief,
But complete.

HOW TO WRITE YOUR COMPLAINT:

Start at the beginning. Describe all the events in the order they happened.

Put down the names of any witnesses.

Please attach copies of any documents which explain or support your complaint, including the cancelled checks, copies of advertisements, letters, etc.

I PURCHASED HEARING AID FROM TOM JARCIA AT "CUSTOM HEARING AIDS" FOR $650.00 AFTER A FEW MONTHS IT BEGAN TO FAIL AND FINALLY IT QUIT ALTOGETHER. I TRIED CALLING COMPANY BUT WAS TOLD THIS WAS A NON WORKING NUMBER I ALSO WENT BY THERE. SHOP IT WAS VACATED. THIS HEARING AID IS OF NO USE TO ME AS IT DOES NOT WORK AND I CAN NOT GET IT REPAIRED I WILL BE FORCED TO PURCHASE ANOTHER HEARING AID, [redacted]. SO I WOULD LIKE TO BE REIMBURSED FOR MY $650.00 FOR I PAID DEFECTIVE HEARING AID

WHAT TYPE OF SETTLEMENT DO YOU WISH THIS OFFICE TO ATTEMPT TO OBTAIN?

I WOULD LIKE MY MONEY REFUNDED, I NEED A NEW HEARING AID, AS I CANNOT HEAR WITHOUT IT, AND I HAVE NO MONEY TO PURCHASE ONE.

(Please use additional sheets if necessary)

RECEIVED

Department of L

2/11/85
LP

FEB - 3 1985

CONSUMER COMPLAINT

ATTORNEY GENERAL

cc0864-85-AI 46.0

Office of the Attorney General
Consumer Protection Section

ANCHORAGE ~~Anchorage~~ FAIRBANKS	JUNEAU	VALDEZ
1031 W. 4th Suite 110 Anchorage, AK 99501 279-0428	1st National Center 100 Cushman, Ste.400 Fairbanks, AK 99701 456-8588	S.S. Fuller Bldg. 4th & Harris, Ste.214 Pouch K Juneau, AK 99811 465-3692	P. O. Box 671 Valdez, AK 99686 835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME Yakasoff (Last) Albert (First) J. (M.I.)	2. TODAY'S DATE Feb. 7th 1985
3. MAILING ADDRESS 4320 East 3rd Ave.	CITY Anchorage STATE AK. ZIP CODE 99504
4. HOME ADDRESS (If different)	CITY STATE ZIP CODE
5. HOME TELEPHONE NO. (907) 333-6369	6. BUSINESS TELEPHONE NO. None — Retire
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT. Miracle FAR	NAME OF SALESPERSON: Jack E. Hurd
8. COMPANY'S ADDRESS. 2909 Artic Blvd.	CITY Anchorage STATE AK ZIP CODE 99503
9. COMPANY'S TELEPHONE NO. 907) 562-4463	10. DATE OF TRANSACTION Jan. 8th 1985

11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? ☒ YES ☐ NO

12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?
Anchorage Times
News Paper

13. WAS A WRITTEN CONTRACT SIGNED? ☒ YES ☐ NO

14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY? ☒ YES ☐ NO	15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED. Jack Hurd — Salesman
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? ☐ YES ☒ NO	17. IF YES, NAME OF ATTORNEY.
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? ☐ YES ☒ NO	19. IF YES, NAME COURT OR AGENCY.

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE?	☐ YES	☒ NO	DID YOU RECEIVE IT?	☐ YES	☒ NO
DID YOU REQUEST A WRITTEN PRICE ESTIMATE?	☒ YES	☐ NO	DID YOU RECEIVE IT?	☒ Y	☐ NO
DID COSTS EXCEED WRITTEN ESTIMATE?	☐ YES	☒ NO			
WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE?	☐ YES	☒ NO			
DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU?	☐ YES	☐ NO	RECEIVED/OR ALLOWED TO INSPECT PARTS?	☐ YES	☐ NO
			DID YOU RECEIVE IT?	☐ YES	☐ NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year	Make	Model	V.I.N.

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

Albert J. Yakasoff
Signature

(over)

On the reverse side of this form
Summarize your complaint. Be brief,
But complete.

HOW TO WRITE YOUR COMPLAINT:

Start at the beginning. Describe all the events in the order they happened.

Put down the names of any witnesses.

Please attach copies of any documents which explain or support your complaint, including the cancelled checks, copies of advertisements, letters, etc.

Order ② pair of hearing aid, Thru salesman Jack E. Hurd
two weeks after I order them. - Mr Hurd had to come back & take second impress of the canal of my ears.
Then I had to wait another couple weeks for hearing aid. Then I went to Alaska Native Hospital, and I was told that the price I was paying was to much for them
So I called Mr Hurd. Asked him to return my down payment. And he said he would But I would have to wait for my money. this what I do not under. - stand Because! - I notice they had deposit my check here in Anchorage Bank I don't see why they can't make out Anchorage Bank check to me.
I gave them #1,000.00 & I expect to get back. #800.00. as agreed upon
Copy are enclose with this statement.
I was told by Mr. Hurd - I got a check from Company in Minneapolis, Minn?

WHAT TYPE OF SETTLEMENT DO YOU WISH THIS OFFICE TO ATTEMPT TO OBTAIN?
Return of #800.00 as I agreed to in their contract.

(Please use additional sheets if necessary)

RECEIVED

RECEIVED
Department of Law
JUN 17 1985
ATTORNEY GENERAL

CONSUMER COMPLAINT

2 46.0

FF145-F85-A-I46.0

ANCHORAGE
Office of the Attorney General
Consumer Protection Section
1031 W. 4th Avenue, Suite 110
Anchorage, AK 99501
279-0428

FAIRBANKS
Anchorage, Alaska
Fairbanks Professional Center
675 Cushman, Ste. 400
Fairbanks, AK 99701
456-8588

JUNEAU
S.S. Fuller Bldg.
4th & Harris, Ste. 214
Pouch K
Juneau, AK 99811
465-3692

VALDEZ
P. O. Box 671
Valdez, AK 99686
835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME [redacted] (Last, First, M.I.)	2. TODAY'S DATE 6-17-85
3. MAILING ADDRESS Powell Margaret R. 617 N. Lake ST.	CITY / STATE / ZIP CODE
4. HOME ADDRESS (If different) Anchorage AK. 99502	CITY / STATE / ZIP CODE
5. HOME TELEPHONE NO. 277-0774	6. BUSINESS TELEPHONE NO.
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT. Alaska Healing Center	NAME OF SALESPERSON: Lou Nelegge
8. COMPANY'S ADDRESS. 12c 5 Tudor Rd. Anch. AK	CITY Anchorage / STATE Alaska / ZIP CODE
9. COMPANY'S TELEPHONE NO. 561-5639	10. DATE OF TRANSACTION 5-16-85

11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? ☐ YES ☑ NO

12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?

13. WAS A WRITTEN CONTRACT SIGNED? ☑ YES — ☐ NO

14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY? ☐ YES ☑ NO	15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED.
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? ☐ YES ☑ NO	17. IF YES, NAME OF ATTORNEY.
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? ☐ YES ☑ NO	19. IF YES, NAME COURT OR AGENCY.

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE?	☐ YES	☐ NO	DID YOU RECEIVE IT?	☐ YES ☐ NO
DID YOU REQUEST A WRITTEN PRICE ESTIMATE?	☐ YES	☐ NO	DID YOU RECEIVE IT?	☐ YES ☐ NO
DID COSTS EXCEED WRITTEN ESTIMATE?	☐ YES	☐ NO		
WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE?	☐ YES	☐ NO		
DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU?	☐ YES	☐ NO	RECEIVED/OR ALLOWED TO INSPECT PARTS?	☐ YES ☐ NO
			DID YOU RECEIVE IT?	☐ YES ☐ NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year ____ Make ____ Model ____ V.I.N. ____

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

Margaret R. Powell
Signature

On the reverse side of this form
Summarize your complaint. Be brief,
But complete.

HOW TO WRITE YOUR COMPLAINT:

Start at the beginning. Describe all the events in the order they happened.

Put down the names of any witnesses.

Please attach copies of any documents which explain or support your complaint, including the cancelled checks, copies of advertisements, letters, etc.

~~I~~ I paid the Alaska Hearing center $450.00 down to make me Two hearing aids with a Balance of $750.00 left to Pay after he fit me another of my hearing aids to fit which should be worth about $350.00 when fitted. I called the Alaska hearing center 6-14-25 to see if my aids where ready & Sharon Clark answered she said she was Taking Him Messages. I ask her when my aids where it had been a whole month since orders they were to be delivered in 2 weeks. Sharon said she would call me back. She did & Told me that Lee Delagge had closed his office & was selling everything I better start doing some thing. He is getting ready to leave Town.

WHAT TYPE OF SETTLEMENT DO YOU WISH THIS OFFICE TO ATTEMPT TO OBTAIN? I would like my $450.00 back & my hearing aid which I figure is worth about $350.00

(Please use additional sheets if necessary)

RECEIVED
Department of Law
MAR - 9 1984

CONSUMER COMPLAINT

ATTORNEY GENERAL

163

FF110-FPV-A— 46.0

Office of the Attorney General
Consumer Protection Section

ANCHORAGE	FAIRBANKS	JUNEAU	VALDEZ
1031 W. 4th Ave, Suite 110	First National Center 100 Cushman, Ste.400	S.S. Fuller Bldg. 4th & Harris, Ste.214	P. O. Box 671
Anchorage, AK 99501	Fairbanks, AK 99701	Pouch K Juneau, AK 99811	Valdez, AK 99686
279-0428	456-8588	465-3692	835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME: Illery (Last) Ruby (First) (M.I.)	2. TODAY'S DATE: 1-5-84
3. MAILING ADDRESS: 3500 Glen Don Dr.	CITY: Anchorage STATE: ALASKA ZIP CODE: 99504
4. HOME ADDRESS (If different): Same	CITY: Same STATE: ZIP CODE:
5. HOME TELEPHONE NO.: 338-5830	6. BUSINESS TELEPHONE NO.
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT: Custom Hearing Aid Center	NAME OF SALESPERSON: Bill Lyons
8. COMPANY'S ADDRESS: 3136 New Seward Highway	CITY: Anchorage STATE: ALASKA ZIP CODE: 99503
9. COMPANY'S TELEPHONE NO.: 2747330	10. DATE OF TRANSACTION: 3-24-83

11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? ☒ YES ☐ NO

12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?
March-83 in Daily Papper

13. WAS A WRITTEN CONTRACT SIGNED? ☒ YES ☐ NO

14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY? ☒ YES ☐ NO	15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED. Thomas S. Garcia
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? ☐ YES ☒ NO	17. IF YES, NAME OF ATTORNEY.
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? ☐ YES ☒ NO	19. IF YES, NAME COURT OR AGENCY.

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE?	☐ YES	☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID YOU REQUEST A WRITTEN PRICE ESTIMATE?	☐ YES	☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID COSTS EXCEED WRITTEN ESTIMATE?	☐ YES	☐ NO			
WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE?	☐ YES	☐ NO			
DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU?	☐ YES	☐ NO	RECEIVED/OR ALLOWED TO INSPECT PARTS?	☐ YES	☐ NO
			DID YOU RECEIVE IT?	☐ YES	☐ NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year	Make	Model	V.I.N.

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

Ruby M Illery
Signature

On the reverse side of this form
Summarize your complaint. Be brief,
But complete.

HOW TO WRITE YOUR COMPLAINT:

Start at the beginning. Describe all the events in the order they happened.

Put down the names of any witnesses.

Please attach copies of any documents which explain or support your complaint, including the [illegible] checks, copies of advertisements, letters, etc.

SUBJECT: Custom Hearing Aid — Purchased - 24 MARCH 1983

SALESMAN - BILL LYONS

SECRETARY - THOMAS S. GARCIA

I purchased TWO (2) hearing aids from Custom Hearing Aid Center
3136 New Seward Hiway
Anchorage, Alaska 99503

The salesman was Bill Lyons, about 3 weeks after they delivered them, they had to send one (left ear) to Florida, as it did not fit.

About 4 weeks later delivered it to me & it did not work due to the inside parts. They took it in again & about 3 weeks returned it again. (Same aid - left ear) Seems to work except it has been using batteries at the rate of one battery every 8 days for the last 2 mo.

I have been trying to reach Bill or Thomas for 2 months. My sons went by his office & left word and my daughter & son-in law have called - No one there has returned my calls.

The girl who answers the phone there claims she doesn't know where they can be reached or when they will return.

I would like the hearing aid replaced or a full refund of my purchase price.

I am a senior citizen on a fixed income

My witness - Mr. & Mrs. M. Hartsock 338-5730

Don C. Illery

Florence Illery 562-7114

WHAT TYPE OF SETTLEMENT DO YOU WISH THIS OFFICE TO ATTEMPT TO OBTAIN?

Replacement or Refund!

(Please use additional sheets if necessary)

RECEIVED
Department of Law
JUL 17 1984

7/18/84 26A 16 3B

CONSUMER COMPLAINT

ATTORNEY GENERAL

CC0052-F85-A-I460

ANCHORAGE	FAIRBANKS	JUNEAU	VALDEZ
Office of the Attorney General Consumer Prot. Unit Anchorage National Center 1031 W. 4th Suite 110 Anchorage, AK 99501 279-0428	Alaska 100 Cushman, Ste.400 Fairbanks, AK 99701 456-8588	S.S. Fuller Bldg. 4th & Harris, Ste.214 Pouch K Juneau, AK 99811 465-3692	P. O. Box 671 Valdez, AK 99686 835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME: Last DEANI A First JAMES M.I.	2. TODAY'S DATE: 5-27-84
3. MAILING ADDRESS: 6153 E 22ND AVE	CITY: ANCHORAGE STATE: AK ZIP CODE: 99504
4. HOME ADDRESS (If different): SAME	CITY STATE ZIP CODE
5. HOME TELEPHONE NO.: 333-2676	6. BUSINESS TELEPHONE NO.
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT: CUSTOM HEARING AID SERVICES	NAME OF SALESPERSON: GLEN MILLER
8. COMPANY'S ADDRESS: MOSS BAY BLDG. SUITE 20, 135 LAKE ST.	CITY: KIRKLAND STATE: WASHINGTON ZIP CODE: 98033
9. COMPANY'S TELEPHONE NO.: 206-822-1230	10. DATE OF TRANSACTION: 4-1-83

11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? ☒ YES ☐ NO

12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?
NEWSPAPER AD

13. WAS A WRITTEN CONTRACT SIGNED? ☒ YES ☐ NO

14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY? ☒ YES ☐ NO	15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED. SANDY (NO LAST NAME GIVEN)
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? ☐ YES ☒ NO	17. IF YES, NAME OF ATTORNEY.
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? ☐ YES ☐ NO	19. IF YES, NAME COURT OR AGENCY.

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE?	☐ YES ☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID YOU REQUEST A WRITTEN PRICE ESTIMATE?	☐ YES ☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID COSTS EXCEED WRITTEN ESTIMATE?	☐ YES ☐ NO			
WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE?	☐ YES ☐ NO			
DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU?	☐ YES ☐ NO	RECEIVED/OR ALLOWED TO INSPECT PARTS?	☐ YES	☐ NO
		DID YOU RECEIVE IT?	☐ YES	☐ NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year	Make	Model	V.I.N.

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

James Douglas
Signature

On the reverse side of this form
Summarize your complaint. Be brief,
But complete.

HOW TO WRITE YOUR COMPLAINT:

Start at the beginning. Describe all the events in the order they happened.

Put down the names of any witnesses.

Please attach copies of any documents which explain or support your complaint, including the cancelled checks, copies of advertisements, letters, etc.

Received hearing aids on 5/27/93. Had recurring problems with them and they were returned to Washington for repairs three separate times). In November '93 the right hearing aid was returned for repairs and I have not yet received it back. I have placed four call to the company trying to locate the hearing aid. The Company called me twice & on the last occasion told me they had located the hearing aid & it was being mailed to Anchorage. As of this date 5/27/94 I have not yet received the hearing aid. (Also, the other hearing aid for the left ear is not working and I was instructed by the company not to return it to them until I received the right one.

In my conversations with the Company I was told that a Mr. Tom Garcia had taken over their Anchorage office. I have tried to locate Mr. Garcia but have been unable to do so.

I also received a call from a gentleman who works for Senior Citizens Bill O'Connor 279-2332, who told me a lot of other people were having trouble with the same hearing aid people.

WHAT TYPE OF SETTLEMENT DO YOU WISH THIS OFFICE TO ATTEMPT TO OBTAIN? I would like to have my money refunded and will return the hearing aids to the company.

(Please use additional sheets if necessary)

RECEIVED
Department of Law
AUG - 3 1984

CONSUMER COMPLAINT

ATTORNEY GENERAL

CC 0140-785-AL 46.0

Office of the Attorney General
Consumer Protection

ANCHORAGE	FAIRBANKS	JUNEAU	VALDEZ
1031 W. 4th Suite 110 Anchorage, AK 99501 279-0428	Archcrage, Alaska 1st National Center 100 Cushman, Ste.400 Fairbanks, AK 99701 456-8588	S.S. Fuller Bldg. 4th & Harris, Ste.214 Pouch K Juneau, AK 99811 465-3692	P. O. Box 671 Valdez, AK 99686 835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME JERDE, (Last) RUTH (First) E. (M.I.)	2. TODAY'S DATE July 31, 1984
3. MAILING ADDRESS P. O. Box 2042 Palmer, Alaska	CITY Palmer STATE Alaska ZIP CODE 99645
4. HOME ADDRESS (If different) NHN Sarasota Drive, Shorewood Sub.	CITY Palmer STATE Alaska ZIP CODE 99645
5. HOME TELEPHONE NO. 745-4797	6. BUSINESS TELEPHONE NO. None
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT. Fifth Avenue Hearing Center - Miracle Ear	NAME OF SALESPERSON: Mr. Steve Kaufman and Lou
8. COMPANY'S ADDRESS. 1405	CITY Anchorage STATE Alaska ZIP CODE 99501
9. COMPANY'S TELEPHONE NO. 907-562-4463 (Seattle 206-623-0555)	10. DATE OF TRANSACTION October 19, 1984

11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? ☒ YES ☐ NO

12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?
Fall of 1983, in Anchorage Daily News and the Anchorage Times - it was an insert - such as the one sent last week in both papers.

13. WAS A WRITTEN CONTRACT SIGNED? ☒ YES ☐ NO

14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY? ☒ YES ☐ NO	15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED. Miracle Ear, P.O. Box 549, Minneapolis, Minn. and by phone - Mr. Steve Kaufman inAnchorage
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? ☐ YES ☒ NO	17. IF YES, NAME OF ATTORNEY.
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? ☐ YES ☒ NO	19. IF YES, NAME COURT OR AGENCY.

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE?	☐ YES	☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID YOU REQUEST A WRITTEN PRICE ESTIMATE?	☐ YES	☐ NO	DID YOU RECEIVE IT?	☐ YES	☐ NO
DID COSTS EXCEED WRITTEN ESTIMATE?	☐ YES	☐ NO			
WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE?	☐ YES	☐ NO			
DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU?	☐ YES	☐ NO	RECEIVED/OR ALLOWED TO INSPECT PARTS?	☐ YES	☐ NO
			DID YOU RECEIVE IT?	☐ YES	☐ NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year	Make	Model	V.I.N.

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

Ruth E. Jerde
Signature

On the reverse side of this form
Summarize your complaint. Be brief,
But complete.

HOW TO WRITE YOUR COMPLAINT:

Start at the beginning. Describe all the events in the order they happened.

Put down the names of any witnesses.

Please attach copies of any documents which explain or support your complaint, including the cancelled checks, copies of advertisements, letters, etc.

In the fall of 1983 I answered an ad in the Anchorage papers. it was an insert for Miracle Hearing Aid.

On October 19 a Mr. Steve Kaufman and Lou ? reps of the Fifth Avenue Hearing Aid Centers in Seattle came to our home and sold me two Dahlberg hearing aid units to the cost of $1100 for bo

Mr. Steve Kaufman being advised we were leaving for 4-1/2 mos. and would return March 23 stated if I didn't like the hearing aid in my right ear, he would refund the money upon our return or by April 1, 1984. He also stated he would be in touch w[illegible] us before April 1 to follo up on the aids. However, he did no follow up at all.

While in Seattle on March 12, 1984 one hearing aid was defective. I called the Seattle office ~~of the Fifth Avenue Hearing Aid that Mr. Kaufman represented. I asked for a warranty booklet,~~ and also a cap for the volume control knob and also other items pertaining to the aids working. ~~These were never received.~~

~~April 2, 1984 I contacted the Seattle office again as I was unable to obtain Mr. Steve Kaufman~~ here in the Anchorage area. I called for his telephone number, and again they stated they would ~~send me the volume control cap and warranty booklet. I was having other problems with the unit~~ as it wouldn't hold the battery in place... I contacted the Anchorage office this same day, but received no answer.

April 19, 1984 I again, called the Anchorage office and the fellow Lou ~~[illegible]~~ told me he would come out and make the service call and follow up call before April 26, which was the date I was leaving to care for my invalid Mother from an emergency doctors call to me. No call or attempt to contact me.

While in Minneapolis, someone called my husband here and he (my husband) told them they were too late I had already left.

May 4, I contacted the St. Cloud Hearing Aid Service Center in Minnesota to please fix my hearing aid. This the man came out and temporarily fixed it, and again they called the Dahlberg rep in Mineapolis. The Minneapolis rep told me in no way did the Dahlberg reps act this way, and to contact the home office. I didn't know where it was, and accidently left the reps name from the Minneapolis area out or at my mothers place.

After my return to Anchorage, on July 16, I called Mr. Steve' Kaufman's office. I was advised ~~by the receptionist that Mr. Kaufman was in town and also started up another office of Miracle~~ Ear and Fifth Avenue Hearing Center. I asked the girl to please have Mr. Kaufman or someone ~~contact me before the end of that week — July 20, or I would have no other recourse but to~~ file with the Anchorage Consumer Protection office here in Alaska. To date there has been ~~no contact or answer to my July 16 call.~~

~~While talking to this Lou on April 19, I advised him I knew of 4 more hearing aids they could~~ sell here to one person in the valley.. He wanted to know to whom and I told him when he came to repair and fix my aid I would advise him of such.

Of course, since this shoddy way of treating someone who put out $1100. I wouldn't recommend them to anyone. I feel senior citizens of Alaska deserve better treatment than this one and they should be made aware of the fly-by-night service and selling procedures.

WHAT TYPE OF SETTLEMENT DO YOU WISH THIS OFFICE TO ATTEMPT TO OBTAIN?

Either refund of both aides or repair of same. Preferably Refund

(Please use additional sheets if necessary)

MY ONLY WITNESS IS MY HUSBAND:
WALTER E. LEEDE

C.C 16 17-F85-A-I 46.3

RECEIVED
Department of Law

MAR 1 1 1985

Office of the Attorney General
Consumer Protection Section
Anchorage, Alaska

P. O. Box 62
Valparaiso, Florida 32580

March 5, 1985

The Consumer Protection Agency
1031 W. 4th Avenue, Suite 110
Anchorage, Alaska 99501

Gentlemen:

I have been having a problem for some time now with Miracle Ear Hearing Center, located at 2909 Arctic Boulevard, Suite 101. Anchorage, 99503, telephone number 562-4425.

The facts in this case are the following, substantiated by the attached documentation. I am seeking the return of $2,000.00 (what I paid in cash for this (these) hearing aids), plus the $190.00 discount I was due for paying cash for the items at the time of purchase, September 5, 1984. I purchased this (these) hearing aid(s), in a hurry before leaving Anchorage for Florida, where we generally stay through February of each year. After having received no answer to my last two letters to them requesting a refund (see Atchmnts 6 and 8), I decided to wait until our return to Anchorage in early March but now find we will have to remain here longer than expected. That is why I am now writing you to see if you can help me.

At the time I purchased these items I was assured by Jerry Callahan, the salesman, that I had thirty days in which to try them and if I was not totally satisfied I could return them and get full reimbursement. Because of the rush we were in to leave Anchorage at the time of purchase, I neglected to deduct the $190.00 discount which was stated on the contract (Atch 1 below) at the time of purchase. I, therefore, paid them $2000.00 which I should only have paid them $1810.00. Jerry Callahan should have known this at the time I signed the contract but said nary a word. Of course, he had come to the house about 10 in the morning to put me through a series of tests and then had given me the usual salesman's spiel and by that time I was weary, and hungry, and simply forgot the pitch about the $190.00 discount for cash. I should add that I am 74 years of age and, while my hearing is impaired, I am doing very nicely without any kind of a hearing aid at this time.

Listed in chronological order by attachments are the following:

Atch #1 -- Contract for Purchase, dated September 5, 1984. This shows the $190.00 discount I was due for paying cash. Please note I had 30 days in which to try the merchandise and "if for any reason a refund will be made if not satisfied."

Atch #2 -- copy of my check for $2,000.00 with endorsement on reverse.

Atch #3 -- letter dated October 17, 1984, wherein I asked for a 30-day extension trial period because I was having trouble with bleeding and "squealing" in my left ear.

Atch #4 -- statement from Eglin Air Force Regional Hospital personnel that I not wear the hearing aids for two weeks to allow recovery.

Atch #5 -- letter dated October 29, 1984, from Miracle Ear granting me a 30-day extension, through November 30, 1984, telling me where to go for assistance and my notes talking with the Miracle Ear people in Tallahassee, Florida, the closest place they advised I could have the ear molds made and/or pared down or modified to fit my ear.

Atch #6 -- letter dated November 17, 1984, from me to Miracle Ear, explaining the problem I was having getting a new mold made and the requirement they were placing on me to travel back and forth to Tallahassee for assistance. Please note that in the next to the last paragraph I stated I was returning the hearing aids and asked for a refund of my money. This was within the 30 day extension granted in Atch #5.

Atch #7 -- registered receipt number R125714C dated November 20, 1984, for return of the hearing aids, insured for $2000.00 and receipt from them dated November 26, 1984.

Atch #8 -- letter dated January 18, 1985, from me to them asking what had happened to my request for reimbursement and again asking for reimbursement.

I have received no replies to either of the letters mentioned in Atchs. 6 and 8 above.

I thought I was dealing with reputable people but I am now convinced these people are frauds. I want the return of my money in the amount of $12,000.00 plus the $190.00 discount I was supposed to have gotten for a cash payment of $2,000.00.

If I have come to the wrong people in this matter then please direct this request to the proper persons who will ensure that a consumer is not bilked by a supposedly reputable company.

Thanking you in advance, I am,

Sincerely yours

Gladys M. Thomas

(Mrs.) Jay N. Thomas

Atch #9 -- receipt from Miracle Ear dated January 24, 1985, showing they received my letter of January 18, 1985 (Atch #8 above)

RECEIVED
Department of Law

JUL 24 1984

Office of the Attorney General
Consumer Protection Section
Anchorage, Alaska

CONSUMER COMPLAINT

ATTORNEY GENERAL

c.c0393-F85-AEI.46-0

ANCHORAGE		JUNEAU	VALDEZ
1031 W. 4th Suite 110 Anchorage, AK 99501 279-0428	1st National Center 100 Cushman, Ste.400 Fairbanks, AK 99701 456-8588	S.S. Fuller Bldg. 4th & Harris, Ste.214 Pouch K Juneau, AK 99811 465-3692	P. O. Box 671 Valdez, AK 99686 835-2462

I WISH TO FILE A CONSUMER COMPLAINT AGAINST THE PERSON OR COMPANY NAMED IN 7 BELOW. I REALIZE THAT A COPY OF THIS COMPLAINT WILL BE SENT TO THE PERSON OR BUSINESS I HAVE COMPLAINED OF. (PLEASE TYPE OR PRINT)

1. NAME: HINES (Last) LLOYD (First) W. (M.I.)	2. TODAY'S DATE: JULY 20, 1984
3. MAILING ADDRESS: 4800 BRYN MAWR CT.	CITY: ANCHORAGE STATE: ALASKA ZIP CODE: 99504
4. HOME ADDRESS (If different)	CITY STATE ZIP CODE
5. HOME TELEPHONE NO.: 333-7682	6. BUSINESS TELEPHONE NO.: 333-9411
7. NAME OF THE PERSON OR COMPANY COMPLAINED ABOUT: COSTOM HEARING AID CENTER	NAME OF SALESPERSON: THOMAS S. GARCIA
8. COMPANY'S ADDRESS: 3136 NEW SEWARD HIGHWAY	CITY: ANCHORAGE STATE: ALASKA ZIP CODE: 99503
9. COMPANY'S TELEPHONE NO.: 274-7330	10. DATE OF TRANSACTION: September 6, 1983

11. WERE YOU ATTRACTED TO THE SERVICE OR PRODUCT BY AN ADVERTISEMENT? ☐ YES ☒ NO

12. IF YES, WHEN AND WHERE DID YOU SEE THE ADVERTISEMENT?

13. WAS A WRITTEN CONTRACT SIGNED? ☒ YES ☐ NO

14. HAVE YOU COMPLAINED TO THE INDIVIDUAL OR COMPANY? ☐ YES ☒ NO	15. IF YES, NAME OF PERSON TO WHOM YOU COMPLAINED.
16. HAVE YOU CONTACTED A PRIVATE ATTORNEY? ☐ YES ☒ NO	17. IF YES, NAME OF ATTORNEY.
18. IS THERE A COURT OR ADMINISTRATIVE PROCEEDING PENDING? ☐ YES ☒ NO	19. IF YES, NAME COURT OR AGENCY.

AUTOMOBILE REPAIR ONLY

20. DID YOU REQUEST A SIGNED COPY OF REPAIRS TO BE MADE? ☐ YES ☐ NO DID YOU RECEIVE IT? ☐ YES ☐ NO

DID YOU REQUEST A WRITTEN PRICE ESTIMATE? ☐ YES ☐ NO DID YOU RECEIVE IT? ☐ YES ☐ NO

DID COSTS EXCEED WRITTEN ESTIMATE? ☐ YES ☐ NO

WERE YOU NOTIFIED OF ADDITIONAL COSTS BEFORE WORK WAS DONE? ☐ YES ☐ NO

DID YOU REQUEST THAT REPLACED PARTS BE RETURNED TO YOU? ☐ YES ☐ NO RECEIVED/OR ALLOWED TO INSPECT PARTS? ☐ YES ☐ NO

DID YOU RECEIVE IT? ☐ YES ☐ NO

Please state the year, make, model name and V.I.N. (Vehicle Identification No.) of your auto. (Check your registration papers.)

Year Make Model V.I.N.

I hereby certify that I have read the information contained in this complaint and that all of the information I have given is true and complete to the best of my knowledge, information and belief. I further authorize the Attorney General to use this information as he deems necessary and proper.

Lloyd W. Hines
Signature

On the reverse side of this form
Summarize your complaint. Be brief,
But complete.

HOW TO WRITE YOUR COMPLAINT:

Start at the beginning. Describe all the events in the order they happened.

Put down the names of any witnesses.

Please attach copies of any documents which explain or support your complaint, including the cancelled checks, copies of advertisements, letters, etc.

I HAVE A HEARING LOSS AND I'M WEARING HEARING AIDS, BUT ALWAYS SEARCHING FOR SOMETHING BETTER. THOMAS S. GARCIA, WHO CALLS HIMSELF "CUSTOM HEARING AID CENTER" STATED HIS HEARING AIDS WERE COMPUTERS. AFTER TRYING THEM OUT, I FOUND THEM TO BE VERY INFERIOR TO WHAT I HAD BEEN USING, DUE TO THE FACT THEY DID NOT FILTER OUT BACKGROUND NOISE. I FINALLY RETURNED THESE HEARING AIDS TO HIM.

AFTER SEVERAL CALLS BACK TO HIM, HE COULD NOT TALK ME INTO CONTINUING WITH THEM, SO HE FINALLY AGREED TO PREPARE ANOTHER PAIR. I INFORMED HIM I WAS GOING SOUTH FOR A FEW MONTHS, AND HE AGREED TO SEND THE NEW ONES TO ME. I NEVER RECEIVED THE HEARING AIDS AND UPON RETURN TO ANCHORAGE, APPROXIMATELY MAY 1, 198. MR. GARCIA, OFFICE & ALL WERE GONE AND HE LEFT NO FORWARDING ADDRESS.

I AGREED TO PAY HIM HIS PRICE OF $1300.00, 50% DOWN, CHECK No. 662 DATED SEPTEMBER 6, 1983 FOR $650.00.

I AM NOW DESIROUS OF RECOVERING THE ABOVE PAYMENT, SINCE I HAVE TOTALLY LOST CONFIDENCE IN HIS PROFESSIONAL ABILITY AS WELL AS HIS HONESTY.

WHAT TYPE OF SETTLEMENT DO YOU WISH THIS OFFICE TO ATTEMPT TO OBTAIN?

(Please use additional sheets if necessary)

ALASKA TREATMENT CENTER
3710 E. 20th Avenue • Anchorage, AK 99504 • (907) 272-0586

Dear Dave

here is another letter of dissatisfaction
from dealers to add to the collection.

Geri

ALASKA TREATMENT CENTER

3710 E. 20th Avenue • Anchorage, AK 99504 • (907) 272-0586

Dear Sir
I don't mind spending my money but
I don't like to be Jupjped out of it
I have spent approximately $1,200 for
Hearing aids. That have never worked Right
I think That are just a pile of Junk.
at an unreasonable Price.

A. E Kimbrel
PO. Box 61
Saldatna AK
99669

Phone 262-4994

(Alaska opticians)

RENDEZVOUS
P.O. Box 9382
Ketchikan, Alaska 99901
(907) 225-6837

June 13, 1985

David Canterbury, ED, CCCA
Chief of Communicative Disorders Program
State of Alaska
Depart. of Health and Social Service
3401 E. 42nd St.
Anchorage, Alaska 99504

Dear Mr. Canterbury;

At the present time I am director of an adult day care center here in Kethcikan and had the opportunity to meet Susan Bunting, regional Audiologist, during her recent visit to Ketchikan.

I had accompanied one of our participants for her hearing evaluation. This woman, Caroline Thompson, had purchased two heari g aids from Miracle Ear Hearing Center, Dahlbery hearing systems, 2909 Arctic Blvd. Suite 101, Anchorage, Alaska 99503. Their representative Jack Hurd sold these two hearing aids to Caroline 8-9-84 and finalized the contract 10-9-84 to the total sum of $1400.00. $700 paid initiallly and the other $700 C.O.D. Needless to say Caroline expected miracles from these hearing aids but the miracle did not occur. All through the winter the hearing aides have buzzed and cuase general discomfort.

After meeting Ms. Bunting severalitems were clarified:

1. The hearing aid is a Dahlberg not a Miracle Ear
2. The fit is not correct for Caroline. New molds were made.
3. The price was excessive.
4. The dealer is from out of town thereby eliminating any follow up contact for problems or questions

The consumer must be protected, especially our senior citizens, from this type of fraud through proper legislation. Better educating of our population in the above matters is imperative, and we need more audiologist to serve the Alaskan population.

Caroline already suffers from low self-esteem and chronic depression and lives on a marginal income and to be taken advantage of hurts deeply.

If action can be taken and the problems remedied then our seniors will be better served.

Sincerely,

Patricia Fordney

Patricia Fordney, R.N.
Program Director

Oct 2-85

Dear Dr. Canterbury,

I had a fraud dealing with hearing aids. the alaska Hearing center received $450.00 check from me for a hearing aid & also took my old one to be repaired which I had only bought two years before for $600.00. So I do strongly support the legislation to regulate the dispensing of hearing aids & have made my complaint to the consumer protection section. I am out my money & no hearing aids. which I need for both ears. I would like to find this guy whose name is Lou Delegge. I even wrote to Dear Bud but he didn't put my letter in the paper. this Happened 5-16-83

Sincerely

Margaret K. Powell
617 N. Lane ST.
Anchorage, ak.
99508

MARGARET POWELL
617 N. LANE ST.
ANCHORAGE, AK 99508

MARGARET POWELL
617 N. LANE ST.
ANCHORAGE, AK 99508

State of Alaska
Dept. of Health & Social Services
ATTN: Dr. canterbury
1231 Gambell St.
Anchorage, Ak. 99501

ALASKA TREATMENT CENTER

3710 E. 20th Avenue • Anchorage, AK 99508 • (907) 272-0586

May 7, 1985

David Canterbury
Chief of Communicative Disorders Program
Department of Health and Social Services
3401 E. 42nd Avenue
Anchorage, Alaska 99504

Dear Mr. Canterbury:

Enclosed is a receipt for a used hearing aid sold to an elderly woman on Medicaid. She did understand the aid was used when she purchased it. There is no indication as to the make or age of the aid or if it had been reconditioned prior to the sale.

A visual check revealed this to be a modular unit that snapped into an "all purpose" ear mold. The model of this aid could not be determined.

This aid fit very poorly resulting in discomfort and feedback. The consumer had used a kitchen knife to try and modify the mold so that it fit comfortably. She and her family were extremely dissatisfied with this aid as well as the method of sale.

Through this Center, she was fit with a postauricular aid with good subjective and objective results.

I will send further documentation of abuse as received.

Sincerely,

Jeri Powers

Jeri Powers, MS
Audiologist

JP/vm

Anchorage Hearing Aids

3605 S. Arctic Blvd.
Box 281
Anchorage, Alaska 99503
(907) 333-0978

office 338-7877

Model	SERIAL NO.	POWER CODE	TONE	RESPONSE	COLOR INSTRU.	TEMPLE COLOR	LENGTH OF TEMPLE	BATTERY NO.	DELIVERY DATE	☐ NEW ☒ USED
Right		Rt.								
Left	X	Lf.								

TESTING . . . . . $ N.C.
CUSTOM EAR MOLD . . . . . $ N.C
LAB FEE . . . . . $ N.C
TOTAL . . . . . $

CREDITS:

Amount of Trade-In . . . . . $
Make of Trade-In . . . . . $
Balance . . . . . $
Sales Tax . . . . . $
Cash Price . . . Paid . . . $ 350.00
Down Payment . . . . . $
Unpaid Cash Price . . . . . $
FINANCE CHARGE . . . . . $
BALANCE DUE . . . . . $

Aid to be Used by _____
Mr. Mrs. Miss

_____
Address Street City

SPECIAL COMMENTS

ONE USED Aid

Client's Signature (in ink) MARGARET Schenck
(Print Client's Full Name)

Street 13 BARTLETT
Street
City HOOVER State AK Zip 99693
Telephone 345-7625

Consultant Byron Schuyler

Date 12-15-93

Check No. _____ For Amount _____

or

Amount Cash Received _____ By _____

BUYER'S RIGHT TO CANCEL – If this Agreement was solicited at a residence other than that of the Seller and you do not want the goods or services, you may cancel this Agreement by mailing a notice to the Seller. The notice must say that you do not want the goods or services and must be mailed before 12 midnight of the fifth business day after you sign this Agreement.

NORTON SOUND
HEALTH CORPORATION

P.O. BOX 966
NOME, ALASKA 99762
(907) 443 5411

June 25, 1985

David Canterbury, Ed.D.
Communicative Disorders Program
3401 E. 42nd Ave.
Anchorage, Alaska 99504

RE: House Bill 430

Dear Dave:

Thank you for providing me with a copy of the above House Bill. I am encouraged by this Bill in that better regulation of hearing aid dispensing will be enforced. It's frustrating when someone from your region ends up with hearing aids that are inappropriate or monstrously expensive or unreturnable! I assume most States have this kind of regulation (at least they do where I've been), and it's about time Alaska quit hiding behind that "wilderness-anything-goes" excuse.

After reading this comprehensive bill, I find only one area of possible conflict. Under Section 08.11.110 Exemptions is listed "a physician..." Usually, physicians are their own employers, so I don't see who is going to supervise their audiological procedures. I would think that a physician would either make an appropriate referral to an audiologist, or only practice limited hearing screening procedures (unless he/she is also a certified audiologist).

I think it is important to set up a supervision structure for those held exempt from licensure - perhaps with the State?

Let me know if any further comments are needed. I know you'll keep me informed.

Sincerely,

NORTON SOUND REGIONAL HOSPITAL

Beverly

Beverly Short
Audiologist

BS/kn

cc: File

Illinois Hearing Aid Consumer Protection

A consumer protection service provided through the Illinois Department of Public Health - IDPH.

CALL TOLL-FREE 1-800-572-3270

VOLUME 85-1

The Illinois Hearing Aid Consumer Protection Program

"A Hearing Aid Can Be A Good Sound Investment." This is the promotional theme for the new Illinois law designed to promote the benefits of hearing aids and protect the public from fraudulent dispensing practices which threaten the health, safety and welfare of Illinois citizens.

The Illinois Hearing Aid Consumer Protection Act (HACPA-Supplement to Ill. Rev. Stat. 1983, chap. 111, par. 7403 et seq.) supports sound hearing aid dispensing practices through the certification of dispensers and the follow-up of complaints and/or inquiries. The Illinois Department of Public Health is responsible for administering the provisions of the Hearing Aid Consumer Protection Act (HACPA) by initiating a four component action plan which focuses on:

1. health promotion/ consumer education;
2. continuing education services for hearing aid dispensers;
3. certification of dispensers; and
4. follow-up of inquiries and complaints.

The Illinois Department of Public Health has developed and implemented a system to follow-up consumer inquiries and problems. Inquiries can be received by the toll-free action line or by mail. Program staff are available to respond to all inquiries and initiate follow-up activities, whether received by the toll-free action line or by mail. Should a reconciliation be unattainable, the individual case and all documentation will be forwarded to the Department and after review, if warranted, to the Board. The Board has the authority, by mandate, to conduct hearings and make recommendations to the Director, should disciplinary action be indicated. The Board is comprised of:

Jack D. Clemis, M.D.
Board Chairman, Otolaryngologist, Chicago, Illinois

Thomas Regnier, Hearing Aid Dispenser, Illinois Society of Hearing Aid Specialists, Peoria, Illinois

Gail Gudmundsen, Hearing Aid Dispenser, Illinois Speech, Hearing and Language Association, Hoffman Estates, Illinois

Bee White, Senior Advocate, Springfield, Illinois*

To facilitate the promotion of the HACPA, its provisions, and the service it provides to consumers, program staff are currently developing a statewide networking effort to involve all state and community programs which provide a link to the senior citizens. By successfully educating these interested allied agencies to the services and provision of the HACPA, a larger population of hearing aid consumers can be served.

* One Board position is currently vacant due to the recent resignation of Richard Gelula, Chicago Hearing Society, Chicago, Illinois.

THE ILLINOIS HEARING AID DISPENSERS EXAMINATION

To carry out the requirements for the hearing aid dispensers examinations as stated in the Illinois Hearing Aid Consumer Protection Act, the Department of Public Health convened a statewide committee of hearing aid dispensers to review available tests and decide upon a test for Illinois hearing aid dispensers. This committee chose to work with the Educational Testing Service (ETS) to develop the Illinois Hearing Aid Dispensers' Examination. Guided by the committee, ETS designed a job analysis survey that was completed by over half of the practicing dispensers in Illinois. Based on the survey results and the committee's recommendations, ETS developed multiple forms of a 75-question exam, using questions drafted by the committee.

This first examination is intended for temporary certificate holders. Those temporary certificate holders who registered with IDPH on or before May 31, 1985 will be notified by ETS regarding the examination scheduled for August 24, 1985. On this date, two examinations will be conducted simultaneously in Springfield and Chicago. The times and locations will be announced in registration packages. Registration packages must be completed and returned to ETS so that an entrance ticket to the examination can be mailed to each registrant.

The examination will consist of multiple-choice questions. Each question will have four options and only one correct answer. Test-takers are encouraged to choose the option they think is more than likely correct when they do not know the correct answer. There is no penalty for guessing on this examination.

Test-takers will have ample time to complete this exam. The three and one-half hours scheduled for the test should allow sufficient time for all test-takers. You need only bring one or two #2 pencils. No notes, dictionaries, etc., will be allowed in the test room. You may bring a silent, hand-held calculator. Calculators, however, are not really needed for this exam.

The examination questions will cover the following subjects:

1. ACOUSTICS
2. NATURE OF THE EAR (normal ear, hearing process, disorders of the ear)
3. HEARING MEASUREMENT (data collection and measurement)
4. HEARING AID TECHNOLOGY
5. SELECTION OF HEARING AIDS
6. DISPENSING AND SERVICING HEARING AIDS
7. CONSUMER PROTECTION REGULATIONS —(Federal and State)

In developing this examination, the committee has made every effort to limit the examination to basic information that all hearing aid dispensers should know so that the public may be adequately protected.

The passing score on the examination will be set in a meeting of the committee on July 11. The committee, in reviewing the test, will define what it expects a person to know in order to be minimally qualified as a hearing aid dispenser.

Test-takers will be informed of the passing score as they begin the examination on August 24. Again, the purpose of the passing score will be to assure that the public is adequately protected. This is not a competitive examination in which the top group passes and the rest fail. If all test-takers are minimally qualified, as defined above, all will pass this examination.

The practicum component of the examination is only available to those who successfully complete the written examination. (The written exam will be offered October 19, 1985 only, at the ETS Headquarters in Evanston for those who fail the written component and wish to retake the examination.) The practicums will be comprised of eight stations each, manned by two examiners (certified hearing aid dispensers). All examiners will be trained by ETS to objectively and uniformly evaluate the practicum performance. This examination component is scheduled to take approximately one hour per person. Admission tickets with the assigned date and location will be mailed with notifications of passing the written examination. The practicums will be conducted:

October 22, 23, 24, 25 and December 4
(Chicago Metropolitan Area)

November 12, 13, (Springfield)

AT YOUR FINGER TIPS:

A toll-free action line was established earlier this year to acilitate the consumer service component of the Hearing Aid Consumer Protection Act (HACPA). Since its development, over 400 calls have been received by the Illinois Department of Public Health. A majority of the calls received focused on consumer education and awareness about the newly enacted program.

The toll-free telephone line (1-800-572-3270) is provided to respond to problems, questions, or about hearing aid goods and services. In addition, a telecommunication device for the deaf (TDD) can be accessed through this same number. Program staff are available 8:00 a.m. - 5:00 p.m. Monday - Friday to accept calls. A telephone answering device will accept telephone calls received after work hours. The toll-free action line is being promoted on posters and pamphlets developed and disseminated by the Hearing Aid Consumer Protection Program. Copies are available upon request by contacting the toll-free action line. All telephone calls are forwarded to IDPH Vision and Hearing Regional Consultants for follow-up.

"CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT"

The Consumer Fraud and Deceptive Business Practices Act protects consumers, borrowers, and businessmen against fraud, unfair methods of competition and deceptive acts or practices in the conduct of any trade or commerce. It also clarifies the powers of the Attorney General. For these reasons, it is crucial that hearing aid dispensers and consumers understand the Consumer Fraud and Deceptive Business Practices Act. Several major points of this Act are identified below.

1. If a sale of merchandise involving $25 or more is made or contracted to be made to a consumer as a result of or in connection with a person's contact

with or call on the consumer, that consumer may void the contract or transaction by notifying the seller within three full business days following that day on which the contract was signed or the sale was made. In addition, the consumer must return in its original condition, any merchandise delivered to the consumer under the contract or sale.

2. At the time of a transaction, the dispenser should furnish the consumer with a completed receipt or contract containing a "Notice of Cancellation" informing the consumer that the transaction may be cancelled within three days.

3. The following statement shall be, located near the consumer's signature on the contract or on the front page of the receipt (if a contract is not used) in at least 10-point type.

   "YOU, THE CONSUMER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

4. Attached to the receipt or contract shall be a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be easily detachable and shall contain in 10-point bold face type the information identified in the Consumer Fraud and Deceptive Business Practices Act.

These points are provided only to highlight a few of the major issues contained in this Act. If you would like to obtain a copy of this Act, contact the Illinois Department of Public Health.

ROSTER OF PREFERRED MAILING ADDRESSES FOR HEARING AID DISPENSER APPLICANTS

If the place of business of a certificant is changed from that address provided on the certificate and maintained on file by the Illinois Department of Public Health (IDPH), the certificant should notify IDPH in writing within 10 working days of the change. After a change in the business location, the dispenser should leave a forwarding address with the post office for one year and a forwarding telephone number for six months where the consumer can contact the dispenser.

A roster of preferred mailing addresses for Certified and Temporary Hearing Aid Dispenser applicants is now available to the general public. This list identifies each applicants preferred mailing address and the dispenser's certification status.

The cost of the roster is 25c/page which covers duplication, postage and handling expenses.

To obtain this list, contact the HACP Action Line by calling 1-800-572-3270.

IDPH WORKSHOP
Hearing Aid Dispensing Practices: An Overview

The Illinois Department of Public Health is offering a workshop entitled "Hearing Aid Dispensing Practices: An Overview," to orient hearing aid dispensers to the use of acceptable and appropriate dispensing practices. Especially designed for Temporary Certified Dispensers, the workshop was created to augment the skill and knowledge of dispensers. Experts from the field of medicine and the hearing aid industry will provide information regarding hearing aid selection and

fitting. The workshop will be offered at two locations:

August 1, 1985	August 2, 1985
Holiday Inn East 3100 S. Dirksen Parkway I-55 Junction By Pass 66 Stevenson Drive Audiovisual Room Springfield, Illinois	Holiday Inn 4400 Frontage Road Churchill Room Hillside, Illinois

AGENDA

8:00 a.m.	Registration	
8:30 a.m.	Consumer Protection: The Responsibilities of the Dispenser.	James. R. Nelson, Chief, Division of Health Promotion and Screening, IDPH
9:00 a.m.	Shall I Sign the Medical Waiver?	Leonard Rybak, M.D., Ph.D. Otolaryngologist, Springfield Memorial Medical Center (Springfield) Richard Wiet, M.D., Otolaryngologist, Hinsdale, IL (Hillside)
10:00 a.m.	BREAK	
10:15 a.m.	Hearing Aid Selection: Options and Alternatives	Ronald Regan, President, Argosy Electronics, Edina, Minnesota
11:45 a.m.	LUNCH	
1:00 p.m.	Earmolds: Making a Good Impression	Marie Jablin, Vice President Marketing & Audiological Research, Audiovox, Bensonville, IL
2:45 p.m.	BREAK	
3:00 p.m.	The Educational Testing Service (ETS):Test Preparation and Administration	Terri Strand, Ph.D., Professional Associate, ETS, Evanston, IL (Springfield)

3:00 p.m. (Continued)		George Elford, Director, Midwestern Region, Educational Testing Service, Evanston, Illinois (Hillside)
4:00 p.m.	Laboratory Session: Introduction to the Qualitone Acoustic Appraiser and the Bioacoustic Audiometric Simulator*	IDPH Staff
5:00 p.m.	CLOSURE	

* This equipment will be used in the practicum component of the Illinois Hearing Aid Dispenser Examination.

Those interested in attending this workshop should complete the following registration form.

REGISTRATION
Hearing Aid Dispensing Practices: An Overview

Please check the date and location you plan to attend. Advance registration fee is $40.00 (includes lunch, coffee and materials). At site registration will be $50.00.

____ August 1, 1985 (Springfield) ____ August 2, 1985 (Hillside)

Please type or print

NAME: _____

CERTIFICATION I.D. NUMBER: _____

BUSINESS ADDRESS: _____

HOME TELEPHONE: (___)_____ WORK TELEPHONE: (___)_____

Please make checks payable to: IDPH/Hearing Aid Program
(Your cancelled check is your receipt)

Mail registration to: Hearing Aid Program
Division of Health Promotion and Screening
Illinois Department of Public Health
535 West Jefferson Street
Springfield, Illinois 62761

NO REFUNDS WILL BE AVAILABLE AFTER JULY 19, 1985

such receipt in Court shall be grounds for dismissal of the action.

For repeal of Act, see note preceding ¶ 7001 of this chapter.

7025.16. Penalties

§ 25.16. Any person who is found to have violated any provision of this Act is guilty of a Class A misdemeanor. On conviction of a second or subsequent offense, the violator shall be guilty of a Class 4 felony.

For repeal of Act, see note preceding ¶ 7001 of this chapter.

7026. State powers and functions

§ 26. It is declared to be the public policy of this State, pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970, that any power or function set forth in this Act to be exercised by the State is an exclusive State power or function. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act.

For repeal of Act, see note preceding ¶ 7001 of this chapter.

7027. Administrative Procedure Act

§ 27. "The Illinois Administrative Procedure Act", approved September 22, 1975, as amended,[1] is hereby expressly adopted and incorporated herein as if all of the provisions of such Act were included in this Act, except that the provision of paragraph (c) of Section 16 of "The Illinois Administrative Procedure Act", as amended,[2] which provides that at hearings the licensee has the right to show compliance with all lawful requirements for retention, or continuation or renewal of the license, is specifically excluded, and for the purpose of this Act the notice required under Section 10 of "The Illinois Administrative Procedure Act", as amended,[3] is considered sufficient when mailed to the last known address of a party.

[1] Chapter 127, ¶ 1001 et seq.

[2] Chapter 127, ¶ 1016.

[3] Chapter 127, ¶ 1010.

For repeal of Act, see note preceding ¶ 7001 of this chapter.

7028. Rights under prior laws

§ 28. Rights and obligations incurred and any actions commenced under the "Veterinary Medicine and Surgery Practice Act", approved August 14, 1961, as amended,[1] as it existed prior to the effective date of this Act shall not be impaired by the enactment of this Act. Rules adopted under the former Act, unless clearly inconsistent with the provisions of this Act, shall remain in effect until amended or rescinded.

All licenses heretofore legally issued in this State permitting the holder thereof to practice veterinary medicine and surgery and valid and in effect on the taking effect of this Act shall have the same force, and be subject to the same authority of the Department to revoke or suspend them as licenses issued under this Act.

[1] Paragraph 4901 et seq. (repealed) of this chapter.

For repeal of Act, see note preceding ¶ 7001 of this chapter.

HEARING AID CONSUMER PROTECTION ACT

AN ACT to regulate the selling, practice of fitting, dispensing or servicing of hearing aids in the State of Illinois. P.A. 83-928, am. veto overridden Nov. 1, 1983, eff. July 1, 1984.

Repeal of Act

P.A. 81-959, the Regulatory Agency Sunset Act, eff. Sept. 22, 1979, which provides for the legislative review of programs and agencies which regulate professions, occupations, business, industry and trade in Illinois, as amended by P.A. 83-928, § 37, eff. July 1, 1984, provided in section 4.8 of the Act for repeal of "The 'Hearing Aid Consumer Protection Act', enacted by the 73rd General Assembly, as now or hereafter amended", effective Dec. 31, 1995. For complete text of the Regulatory Agency Sunset Act, see ¶ 1901 et seq. of chapter 127.

7401. Purpose

Paragraph effective July 1, 1984.

§ 1. The purpose of this Act is to protect the hearing-impaired public from incompetent and dishonest dispensers of hearing aids who could endanger the health, safety and welfare of the People of this State. The Federal Food and Drug Administration has recommended that State legislation is necessary in order to establish standards of competency and to impose stringent penalties for those who violate the public trust in this field of health care.

For repeal of Act, see note preceding this paragraph.

7402. Short title

Paragraph effective July 1, 1984.

§ 2. This Act shall be known as the Hearing Aid Consumer Protection Act.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7403. Definitions

Paragraph effective July 1, 1984.

§ 3. As used in this Act, except as the context requires otherwise:

(a) "Department" means the Department of Public Health.

(b) "Director" means the Director of the Department of Public Health.

(c) "Certification" means a certificate issued by the State under this Act to a hearing aid dispenser.

(d) "Temporary certificate" means a certificate issued while the applicant is in training or is qualifying to become a certified hearing aid dispenser.

(e) "Clinical Audiologist" means a person with a Masters Degree in Audiology who holds a certificate of clinical competence in Audiology from the American Speech and Hearing Association or its equivalent.

(f) "Hearing Aid Audiologist" means a person who has been so certified after qualification by examination and experience by the National Board of Certification of the National Hearing Aid Society.

(g) "Licensed Physician" means a physician licensed to practice medicine in all of its branches.

(h) "Board" means the Hearing Aid Consumer Protection Board.

(i) "Hearing aid" means any instrument or device designed, intended or offered for the purpose of effectively compensating for impaired human hearing and any parts, attachments or accessories, including earmold. However, batteries, cords and individual or group auditory training devices and any instrument or device used by a public utility in providing telephone or other communication services are excluded.

(j) "Practice of fitting, dispensing and servicing of hearing aids" means the selection, adaptation, sale and service of hearing aids and include the testing of hearing by means of an audiometer properly calibrated to American National Standard Institute standards.

(k) "Sell" or "sale" means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7404. Consumer information—Medical evaluation—Waiver—Complaint procedure—Liability insurance

Paragraph effective July 1, 1984.

§ 4. Every person fitted and sold a hearing aid shall be given, at no charge, the "User Instructional Brochure", supplied by all hearing aid manufacturers, containing advice to the user regarding requirements for evaluation by licensed physicians, specific waivers to the medical evaluation requirements, hearing aid manufacturer evaluations, purchase privileges and technical data.

Any person who fits, dispenses, services or sells hearing aids shall deliver to each person supplied with a hearing aid a receipt which shall contain the seller's signature, number, the manufacturer's specifications, the name, model and serial number of the hearing aid furnished and the full sales terms clearly stated. If a used hearing aid is sold, the receipt and the container thereof shall be clearly marked as "used" or "reconditioned", whichever is applicable, with terms of guarantee, if any.

A hearing aid dispenser shall not sell a hearing aid unless the prospective user has presented to the hearing aid dispenser a written statement signed by a licensed physician which states that the patient's hearing loss has been medically evaluated and the patient may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the 6 months immediately preceding the time the written statement is presented by the prospective hearing aid user to the hearing aid dispenser. If the prospective hearing aid user is 18 years of age or older, the hearing aid dispenser may afford the prospective user an opportunity to waive the medical evaluation requirement of this Section, provided that the hearing aid dispenser:

(i) Informs the prospective user that the exercise of the waiver is not in the user's best health interest;

(ii) Does not in any way actively encourage the prospective user to waive such a medical evaluation; and

(iii) Affords the prospective user the opportunity to sign the following statement:

I have been advised by _____ (Hearing aid dispenser's name) that the Food and Drug Administration has determined that my best interest would be served if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid. I do not wish a medical evaluation before purchasing a hearing aid.

The hearing aid dispenser shall retain such proof of medical examination or waiver for at least 4 years.

If the parent or guardian of any individual under the age of 18 years is a member of any church or religious denomination, whose tenets and practices include reliance upon spiritual means through prayer alone and objects to medical treatment and so states in writing to the hearing aid dispenser, such individual shall undergo a hearing examination as provided by this Section, but no proof, ruling out any medically treatable problem causing hearing loss, shall be required.

All persons certified under this Act shall have conspicuously displayed in their business establishment a sign indicating that formal complaints regarding hearing aid goods or services may be made to the Department. Such sign shall give the address of the Department. All persons purchasing hearing aids shall be provided with a written statement indicating that formal complaints regarding hearing aid goods or services may be made to the Department and shall give the address of the Department.

Any person wishing to make a complaint, against a hearing aid dispenser under this Act, shall file it with the Department within 3 years from the date of the action upon which the complaint is based. The Department shall investigate all such complaints.

All persons certified under this Act shall maintain liability insurance as set forth by rule and shall be responsible for the annual calibration of all audiometers in use by such persons. Such annual calibrations shall be in conformance with the standards set by American National Standard Institute.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7405. Certified hearing aid dispensers

Paragraph effective July 1, 1984.

§ 5. No person shall engage in the selling, practice of fitting, dispensing or servicing hearing aids or display a sign, advertise or represent oneself as a person who practices the fitting and selling of hearing aids after January 1, 1985, unless such person holds a current certificate issued by the Department as provided in this Act. For purposes of this Act, such person shall be known as a certified hearing aid dispenser. The certificate shall be conspicuously displayed in the place of business. Duplicate certificates shall be issued by the Department to valid certificate holders operating more than one office, with such additional payment as may be required.

Nothing in this Act shall prohibit a corporation, partnership, trust, association or other organization maintaining an established business address, from engaging in the business of fitting and selling or offering for sale hearing aids at retail without a certificate, provided it employs only certified individuals in the direct fitting and dispensing of such products. Each such corporations, partnerships, trusts, associations or other organizations shall file annually, with the Department, a list of all certified hearing aid dispensers employed by it. Such organizations shall also file with the Department a statement that they comply with this Act, the rules issued pursuant to it and the regulations of the Federal Food and Drug Administration

and the Federal Trade Commission insofar as they are applicable.

For repeal of Act, see note preceding ¶ 7101 of this chapter.

7406. Sale of hearing aids by business organizations—Registration—Disclosure statement—Consent to service of process—Right of cancellation by consumer of mail order—Other requirements

Paragraph effective July 1, 1984.

§ 6. Nothing in this Act shall prohibit a corporation, partnership, trust, association or other organization maintaining an established business address, from engaging in the business of selling or offering for sale hearing aids at retail by mail to persons 18 years of age or older who have not been examined by a licensed physician or tested by a certified hearing aid dispenser provided that:

(a) Each such organization is registered by the Department prior to engaging in business in this State.

(b) Each such organization files with the Department, prior to registration and annually thereafter, a Disclosure Statement containing the following:

(1) the name under which the organization is doing or intends to do business and the name of any affiliated company which the organization recommends or will recommend to persons as a supplier of goods or services or in connection with other business transactions of the organization;

(2) the organization's principal business address and the name and address of its agent in this State authorized to receive process;

(3) the business form of the organization, whether corporate, partnership, or otherwise and the state of other sovereign power under which the organization is organized;

(4) the names of the directors or persons performing similar functions and names and addresses of the chief executive officer, and the financial, accounting, sales, and other principal executive officers, if the organization is a corporation, association, or other similar entity; of all general partners, if the organization is a partnership; and of the owner, if the organization is a sole proprietorship, together with a statement of the business background during the past 5 years for each such person;

(5) a statement as to whether the organization or any person identified in the disclosure statement:

(i) has during the 5 year period immediately preceding the date of the disclosure statement been convicted of a felony, pleaded nolo contendere to a felony charge, or been held liable in a civil action by final judgment, if such felony or civil action involved fraud, embezzlement, or misappropriation of property, and a description thereof; or

(ii) is subject to any currently effective injunctive or restrictive order as a result of a proceeding or pending action brought by any public agency or department, and a description thereof; or

(iii) is a defendant in any pending criminal or material civil action relating to fraud, embezzlement, misappropriation of property or violations of the antitrust or trade regulation laws of the United States or any state, and a description thereof; or

(iv) has during the 5 year period immediately preceding the date of the disclosure statement had entered against such person or organization a final judgment in any material civil proceeding, and a description thereof; or

(v) has during the 5 year period immediately preceding the date of the disclosure statement been adjudicated a bankrupt or reorganized due to insolvency or was a principal executive officer or general partner of any company that has been adjudicated a bankrupt or reorganized due to insolvency during such 5 year period, and a description thereof;

(6) the length of time the organization and any predecessor of the organization has conducted a business dealing with hearing aid goods or services;

(7) a financial statement of the organization audited by an independent certified public accountant, as of the close of the most recent fiscal year of the organization. If the financial statement is filed later than 120 days following the close of the fiscal year of the organization it must be accompanied by a statement of the organization of any material changes in the financial condition of the organization. The Department may in its discretion waive the requirement for audited statements for organizations who have not previously had such certified audits, if the unaudited financial statement is prepared by an independent certified public accountant. If the unaudited financial statement is filed later than 120 days following the close of the fiscal year of the organization, it must be accompanied by a statement of the organization of any material changes in the financial condition of the organization;

(8) a general description of the business, including without limitation a description of the goods, training programs, supervision, advertising, promotion and other services provided by the organization;

(9) a statement of any compensation or other benefit given or promised to a public figure arising, in whole or in part, from (i) the use of the public figure in the name or symbol of the organization or (ii) the endorsement or recommendation of the organization by the public figure in advertisements;

(10) a statement setting forth such additional information and such comments and explanations relative to the information contained in the disclosure statement as the organization may desire to present.

(c) Each such organization files with the Department prior to registration and annually thereafter a statement that they comply with the Act, the rules issued pursuant to it and the regulations of the Federal Food and Drug Administration and the Federal Trade Commission insofar as they are applicable.

(d) Each such organization files with the Department at the time of registration an irrevocable consent to service of process authorizing the Department and any of its successors to be served any notice, process or pleading in any action or proceeding against such organization arising out of or in connection with any violation of this Act. Such service shall have the effect of conferring personal jurisdiction over such organization in any court of competent jurisdiction.

(e) Each such organization affords the prospective user an opportunity to waive the medical evaluation requirement of Section 4 of this Act [1] and the testing requirement of subsection (j) of Section 3 [2] and subsection (z) of Section 13 [3] provided that the organization:

(1) informs the prospective user that the exercise of the waiver is not in the user's best health interest;

2) does not in any way actively encourage the prospective user to waive such a medical evaluation or test; and

3) affords the prospective user the opportunity to sign a following statement:

"I have been advised by ____ (Hearing Aid dispenser's name) that the Food and Drug Administration and the State of Illinois have determined that my best interests would be served if I had a medical evaluation by a licensed physician, preferably a physician who specialized in diseases of the ear, before purchasing a hearing aid; or a test by a certified hearing aid dispenser utilizing established procedures and instrumentation in the fitting of hearing aids. I do not wish either a medical evaluation or test before purchasing a hearing aid".

(c) Where a sale, lease, or rental of hearing aids is sold or contracted to be sold to a consumer by mail order, that consumer may avoid the contract or sale by notifying the seller within 45 full business days following that day on which the hearing aids were mailed by the seller to the consumer and by returning to the seller in its original condition, any hearing aid delivered to the consumer under the contract or sale. At the time the hearing aid is mailed the seller shall furnish the consumer with a fully completed receipt or copy of any contract pertaining to such sale containing a "Notice of Cancellation" informing the consumer that he may cancel the sale at any time within such 45 days and which shows the date of the mailing and contains the name, address and telephone number of the seller, and in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the 45th business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right".

Attached to the receipt or contract shall be a completed form in duplicate, captioned "NOTICE OF CANCELLATION" which shall be easily detachable and which shall contain in 10 point bold face type the following information and statements in the same language as that used in the contract:

NOTICE OF CANCELLATION

enter date of transaction

(DATE)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN 45 BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE, OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (name of seller), AT (address of seller's place of business) AND (seller's telephone number) NO LATER THAN MIDNIGHT OF ____ (date).

I HEREBY CANCEL THIS TRANSACTION.

(Date) _____

_____

(Buyers Signature)

Such written "Notice of Cancellation" may be sent by the consumer to the seller to cancel the contract. The 45 day period provided for in this Section does not commence until the consumer is furnished the Notice of Cancellation, the address and phone number at which such notice to the seller can be given is furnished.

If the conditions of this Section are met, the seller must return to the consumer the full amount of any payment made or consideration given under the contract or for the merchandise.

It is an unlawful practice within the meaning of this Act for a seller to: (1) mail hearing aids to a consumer other than by certified mail; (2) fail, before furnishing copies of the "Notice of Cancellation" to the consumer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the seller's telephone number, the date of the mailing, and the date, not earlier than the 45th business day following the date of the mailing, by which the consumer may give notice of cancellation; (3) include in any contract or receipt any confession of judgment or any waiver of any of the rights to which the consumer is entitled under this Section including specifically his right to cancel the sale in accordance with the provisions of this Section; (4) misrepresent in any manner the consumer's right to cancel; (5) use any undue influence, coercion, or any other wilful act or representation to interfere with the consumer's exercise of his rights under this Section; (6) fail or refuse to honor any valid notice of cancellation by a consumer and within 10 business days after the receipt of such notice, to (i) Refund all payments made under the contract or sale, (ii) return any goods or property traded in, in substantially as good condition as when received by the person, (iii) cancel and return any negotiable instrument executed by the consumer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction; (7) negotiate, transfer, sell or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the 50th business day following the day of the mailing; or (8) fail, within 10 business days of receipt of the consumer's notice of cancellation, to notify him whether

er the seller intends to repossess or to abandon any shipped or delivered goods.

(g) Each such organization employs only certified individuals in the dispensing of hearing aids and files annually, with the Department, a list of all certified hearing aid dispensers employed by it.

[1] Paragraph 7404 of this chapter.

[2] Paragraph 7403 of this chapter.

[3] Paragraph 7418 of this chapter.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7407. Exemptions

Paragraph effective July 1, 1984.

§ 7. The following are exempt from this Act:

(a) Persons who measure human hearing and who fit hearing aids for the sole purpose of audiological evaluations. Such persons shall not sell or dispense hearing aids or accessories thereto unless certified under this Act.

(b) Licensed physicians.

(c) Persons who only repair or manufacture hearing aids and their accessories.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7408. Examination of hearing aid dispensers—Requirements of applicants

Paragraph effective July 1, 1984.

§ 8. In order to protect the hearing-impaired individual, the Department shall authorize or shall conduct an appropriate examination for persons who dispense, fit or service hearing aids. The Department may use the test prepared by the National Institute for Hearing Instruments Studies. Those who successfully pass such an examination shall be issued a certificate as a hearing aid dispenser which shall be effective for a 3-year period. Applicants shall be:

(1) At least 18 years of age;

(2) Of good moral character;

(3) A high school graduate or the equivalent;

(4) Free of contagious or infectious disease; and

(5) A citizen or person who has the status as a legal alien.

An applicant for certification by examination shall, by means of written and practical tests, demonstrate that such person is qualified to practice the fitting, selling and servicing of hearing aids.

The renewal of a certificate shall be contingent upon compliance with the continuing education requirement as determined by the Board.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7409. Matters included in examination

Paragraph effective July 1, 1984.

§ 9. The examination required by Section 8 [1] shall demonstrate the applicant's technical qualifications by:

(a) Tests of knowledge in the following areas as they pertain to the fitting and selling of hearing aids:

(1) Characteristics of sound;

(2) The nature of the ear; and

(3) The function and maintenance of hearing aids.

(b) Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:

(1) Pure tone audiometry including air conduction testing and bone conduction testing;

(2) Live voice or recorded voice speech audiometry, including speech reception, threshold testing and speech discrimination testing;

(3) Masking;

(4) Proper selection and adaptation of a hearing aid in relation to the above procedure;

(5) Taking earmold impressions;

(6) Proper maintenance procedures; and

(7) A general knowledge of the medical and physical contra-indications to the use and fitting of a hearing aid.

(c) Knowledge of the general medical and hearing rehabilitation facilities in the area being served.

[1] Paragraph 7408 of this chapter.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7410. Provisional certificates

Paragraph effective July 1, 1984.

§ 10. For the period of 6 months immediately following the effective date of this Act, an applicant for certification shall be issued a certificate, provided the applicant:

(a) Has been engaged, at a place of business in Illinois, as a hearing aid dispenser for a total of at least 2 years within the 5-year period immediately prior to July 1, 1984;

(b) Is a person of good moral character;

(c) Is 18 years of age or older;

(d) Is free of contagious or infectious disease;

(e) Agrees, in writing, to comply with the provisions of this Act, the rules issued hereunder and the applicable regulations of the Federal Food and Drug Administration and the Federal Trade Commission;

(f) Pays the appropriate fee; and

(g) Is a citizen or has the status of a legal alien.

However, within 3 years of the effective date of this Act, all persons granted a certificate under this Section shall be required to pass the examination required by Section 8.[1] Those who do not pass the examination within this period shall immediately surrender their certificate to the Department and cease operating as a hearing aid dispenser. Upon failure to do so, the Department shall seize the certificate.

[1] Paragraph 7408 of this chapter.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7411. Temporary certificates

Paragraph effective July 1, 1984.

§ 11. An applicant who fulfills the requirements regarding age, character, education and health, as set forth in Section 8,[1] may obtain a temporary certificate upon application to the Department. Previous experience or a waiting period shall not be a requirement to obtain a temporary or qualifying certificate. Upon receiving such application, when accompanied by the appropriate fee, the Department shall issue a temporary certificate which entitles the applicant to engage in the fitting, dispensing and

...ising of hearing aids for a period not to exceed one ...r. A temporary certificate shall not be renewable and ...e applicant must take the examination within a year ...ter receiving the temporary certificate. All applicants ...r a temporary certificate shall be employed by a person ...o has a certificate as a hearing aid dispenser. Such ...erson shall be responsible for the supervision and train... of the applicant and shall maintain personal contact ...nd records.

The Department may issue a temporary certificate to an ...pplicant starting a hearing aid dealership as sole owner, ...rincipal of a firm, or employee-manager for a corporation ...f the applicant's training is provided by a manufacturer ...r by a person who holds a valid certificate issued under this Act, and if the new dealer, not later than 5 days prior to the commencement of operation under a temporary certificate, obtains and files with the Department a surety bond in the sum of at least $5,000, which shall be conditioned on the satisfactory performance, pursuant to and in accordance with this Act and the rules hereunder, during the period covered by the temporary certificate.

[1] Paragraph 7408 of this chapter.

For repeal of Act, see note preceding § 7401 of this chapter.

7412. Registration of person licensed or certified in another state

Paragraph effective July 1, 1984.

§ 12. The Department may register as a hearing aid dispenser without examination, but upon payment of the required fee, an applicant who has a certificate or license in good standing to practice in another state, if the requirements in such state are substantially equal to the requirements imposed by this Act. Applicants who meet such endorsement requirements may practice in this State pending action on their application. If the application is denied, their right to practice ceases on the date of denial.

For repeal of Act, see note preceding § 7401 of this chapter.

7413. Expiration and renewal of certificates

Paragraph effective July 1, 1984.

§ 13. The expiration date and renewal period for each certificate issued under this Act shall be set by rule. A hearing aid dispenser whose certificate has expired may have it reinstated within 3 years after the expiration thereof, by making a renewal application therefor and by paying the required fee. However, any hearing aid dispenser whose certificate expired while: (1) on active duty with the Armed Forces of the United States, or the State Militia called into service or training, or (2) in training or education under the supervision of the United States preliminary to induction into the military service, may have the certificate renewed, reinstated or restored without paying any lapsed renewal fees if, within 2 years after honorable termination of such service, training or education, except under conditions other than honorable, such person must furnish the Department with satisfactory evidence of being so engaged and that the service, training or education has been terminated.

If the hearing aid dispenser has not practiced for 5 years or more, the Board shall determine, by an evaluation program established by rule, such person's fitness to resume active status and may require the hearing aid dispenser to complete a period of evaluated experience and may require successful completion of the examination.

Any hearing aid dispenser whose certificate has expired for more than 5 years prior to July 1, 1984 may have it restored by making application, and filing acceptable proof, to the Department of his fitness to have such certificate restored, including sworn evidence certifying to active practice in another jurisdiction and by paying the required restoration fee.

For repeal of Act, see note preceding § 7401 of this chapter.

7414. Powers and duties of department

Paragraph effective July 1, 1984.

§ 14. The powers and duties of the Department are:

(a) To supervise issuance of certificates and to administer examinations to applicants. However, the Department may authorize a testing service to provide this function or it may use the test prepared by the National Institute for Hearing Instruments Studies.

(b) To certify persons who are qualified to engage in the fitting, selling and dispensing of hearing aids;

(c) To provide the equipment and facilities necessary for the examination;

(d) To issue and to renew certificates;

(e) To suspend or revoke certificates or to take such other disciplinary action as provided in this Act;

(f) To consider all recommendations of the Board and to inform it of all actions of the Department insofar as hearing aid dispensers are concerned, including any instances where the actions of the Department are contrary to the recommendations of the Board; and

(g) To promulgate rules necessary to implement this Act.

For repeal of Act, see note preceding § 7401 of this chapter.

7415. Fees—Disposition of fees

Paragraph effective July 1, 1984.

§ 15. (a) The following are fees to be charged and are not refundable:

(1) The fee for application for a certificate is $25.

(2) In addition to the application fee, applicants for any examination shall be required to pay, either to the Department or to the designated testing service, a fee covering the actual cost of the examination. Failure to appear for the examination on the scheduled date, at the time and place specified, after the applicant's application and fee for the examination has been received and acknowledged by the Department or the designated testing service, shall result in the forfeiture of the fee.

(3) The fee for the renewal of a certificate shall be $30 per year.

(4) The fee for the reinstatement of a certificate which has expired for not more than 5 years is $10, plus payment of all lapsed renewal fees.

(5) The fee for the restoration of a certificate which has expired for more than 5 years is $100.

(6) The fee for the issuance of a duplicate certificate, for the issuance of a replacement certificate which has been lost or destroyed or for the issuance of a certificate with a change of name or address, other than during the renewal

period, is $10. No fee is required for name and address changes on Department records when no duplicate certificate is issued.

(7) The fee for a certification of a registrant's record for any purpose is $10.

(8) The fee to have the scoring of an examination administered by the Department reviewed and verified is $10, plus any fee charged by the testing service.

(9) The fee for a wall certificate shall be the actual cost of such certificate.

(10) The fee for a roster of persons registered as hearing aid dispensers shall be the actual cost of such roster.

(b) The moneys received as license fees by the Department of Public Health under this Act shall be deposited in the Hearing Aid Dispenser Examining and Certification Fund, which is hereby created as a special fund in the State Treasury, and shall be used only for the administration of this Act, including: (1) costs directly related to certification of persons under this Act; and (2) by the Hearing Aid Consumer Protection Board in the exercise of its powers and performance of its duties, and such use shall be made by the Department of Public Health with full consideration of all recommendations of the Hearing Aid Consumer Protection Board.

For the fiscal year beginning July 1, 1984, the moneys deposited in the Hearing Aid Dispenser Examining and Certification Fund shall be appropriated to the Department for expenses of the Department and the Hearing Aid Consumer Protection Board in the administration of this Act.

Moneys in the Hearing Aid Dispenser Examining and Certification Fund may be invested and reinvested, with all earnings received from such investment to be deposited in the Hearing Aid Dispenser Examining and Certification Fund and used for the same purposes as fees deposited in such fund.

Upon the completion of any audit of the Department as prescribed by the Illinois State Auditing Act,[1] which audit includes an audit of the Hearing Aid Dispenser Examining and Certification Fund, the Department shall make a copy of the audit open to inspection by any interested person, which copy shall be submitted to the Department by the Auditor General, in addition to the copies of audit reports required to be submitted to other State officers and agencies by Section 3–14 of the Illinois State Auditing Act.[2]

[1] Chapter 15, ¶ 301–1 et seq.

[2] Chapter 15, ¶ 303–14.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7416. Hearing aid consumer protection board—Establishment—Members

Paragraph effective July 1, 1984.

§ 16. There shall be established a Hearing Aid Consumer Protection Board which shall assist, advise and make recommendations to the Department pursuant to this Act.

The Board shall consist of 5 members who shall be residents of Illinois. One shall be a licensed physician who specializes in otology or otolaryngology; one shall be a member of a consumer-oriented organization concerned with the hearing impaired; one shall be from the general public, preferably a senior citizen; and 2 shall be certified hearing aid dispensers. Each such certified hearing aid dispenser shall have at least 5 years of experience, excepting those appointed to the first Board. One of the certified hearing aid dispensers shall be a Certified Clinical Audiologist, the other shall be a Certified Hearing Aid Audiologist.

Members of the Board shall be appointed by the Director. The term of office of each shall be 4 years, except for those of the first Board, 2 shall be appointed for 2 year terms. Before a member's term expires, the Director shall appoint a successor to assume member's duties at the expiration of his predecessor's term. A vacancy shall be filled by appointment for the unexpired term. The members shall annually designate one member as chairman. No member of the Board who has served 2 or more successive and full terms may be reappointed. The Director may remove members for good cause.

Members of the Board shall receive reimbursement for actual and necessary travel and for other expenses, not to exceed the limit established by the Department.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7417. Duties of board

Paragraph effective July 1, 1984.

§ 17. The Board shall advise the Department in all matters relating to this Act and shall assist as requested by the Director.

The Board shall respond to issues and problems relating to the improvement of services to the hearing-impaired and shall make such recommendations as it considers advisable. It shall file an annual report with the Director and shall meet at least twice a year.

The Board shall recommend specialized education programs for persons wishing to become certified as hearing aid dispensers and shall, by rule, establish minimum standards of continuing education required for certificate renewal.

The Board shall hear charges brought against hearing aid dispensers and shall recommend disciplinary action to the Director.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7418. Disciplinary actions by department—Grounds

Paragraph effective July 1, 1984.

§ 18. The Department may refuse to issue or renew a certificate or it may revoke, suspend, place on probation, censure or reprimand a certificate holder for any of the following:

(a) Material misstatement in furnishing information to the Department;

(b) Violations of this Act, or the rules promulgated hereunder;

(c) Conviction of any crime under the laws of the United States or any state or territory thereof which is a felony or misdemeanor, an essential element of which is dishonesty, or of any crime which is directly related to the practice of the profession;

(d) Making any misrepresentation for the purpose of obtaining a certificate or renewing a certificate, including falsification of the continuing education requirement;

(e) Professional incompetence;

(f) Malpractice;

(g) Aiding or assisting another person in violating any provision of this Act or the rules promulgated hereunder;

(h) Failing, within 60 days, to provide information in response to a written request made by the Department;

(i) Engaging in dishonorable, unethical or unprofessional conduct which is likely to deceive, defraud or harm the public;

(j) Knowingly employing, directly or indirectly, any suspended or unregistered person to perform any services covered by this Act;

(k) Habitual intoxication or addiction to the use of drugs;

(l) Discipline by another state, the District of Columbia, territory, or a foreign nation, if at least one of the grounds for the discipline is the same or substantially equivalent to those set forth herein;

(m) Directly or indirectly giving to or receiving from any person, firm, corporation, partnership or association any fee, commission, rebate or other form of compensation for any professional services not actually rendered;

(n) A finding by the Board that the registrant, after having his certificate placed on probationary status has violated the terms of probation;

(o) Willfully making or filing false records or reports;

(p) Willfully failing to report an instance of suspected child abuse or neglect as required by the "Abused and Neglected Child Reporting Act", approved June 26, 1975, as amended; [1]

(q) Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill which results in the inability to practice the profession with reasonable judgment, skill or safety;

(r) Solicitation of professional services other than by permitted advertising;

(s) Participating in subterfuge or misrepresentation in the fitting and servicing of a hearing aid;

(t) Advertising a particular model or type of hearing aid for sale, when prospective purchasers cannot purchase the advertised model or type, where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised;

(u) Representing that the services of a licensed physician will be used or made available in the fitting, adjustment, maintenance or repair of hearing aids when that is not true, or using the words "doctor", "audiologist", "clinic", "Clinical Audiologist", "Certified Hearing Aid Audiologist", "State Certified", "Certified Hearing Aid Dispenser" or any other term, abbreviation or symbol when it would give the impression that service is being provided by persons awarded that degree or title, or that the person's service who is holding the certificate has been recommended by a governmental agency, when such is not the case;

(v) Advertising a manufacturer's product or using a manufacturer's name or trademark implying a relationship which does not exist;

(w) Directly or indirectly giving or offering anything of value to any person who advises another in a professional capacity, as an inducement to influence the purchase of a product sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;

(x) Conducting business while suffering from a contagious disease;

(y) Engaging in the [illegible] and sale of hearing aids under a name with fraudulent intent;

(z) Dispensing a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in the fitting of hearing aids, except where there is the replacement of a hearing aid, of the same make and model;

(aa) Unavailability or unwillingness to adequately provide for service and repair of hearing aids fitted and sold by the dispenser;

(bb) Violating the regulations of the Federal Food and Drug Administration or the Federal Trade Commission as they affect hearing aids;

(cc) Violating any provision of the "Consumer Fraud and Deceptive Business Practices Act", approved July 24, 1961, as amended.[2]

[1] Chapter 23, ¶ 2051 et seq.

[2] Chapter 121½, ¶ 261 et seq.

For repeal of Act, see note preceding ¶ 7101 of this chapter.

7419. Dispensing of hearing aids without certificate—Injunction—Costs

Paragraph effective July 1, 1984.

§ 19. The practice of fitting, dispensing and servicing hearing aids by any person not at that time holding a valid and current certificate under this Act is hereby declared to be inimical to the public welfare and constitutes a public nuisance. The Director of the Department, through the Attorney General or the State's Attorney of any county, may maintain an action in the name of the people of the State of Illinois and may apply for an injunction in the circuit court to enjoin any such person from engaging in such practice. Upon the filing of a verified petition in such court, the court, if satisfied by affidavit, or otherwise, that such person has been engaged in such practice without a current certificate to do so, may issue a temporary injunction without notice or bond, enjoining the defendant from any such further practice. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as other civil cases. If it is established that the defendant has been, or is engaged in any unlawful practice, the court may enter an order or judgment perpetually enjoining the defendant from further such practice. In all proceedings hereunder, the court, in its discretion, may apportion the costs among the parties interested in the suit, including cost of filing complaint, service of process, witness fees and expenses, court reporter charges and reasonable attorneys fees. In case of violation of any injunction issued pursuant to this Section, the court may try and punish the offender for contempt of court. Such injunction proceedings shall be in addition to all penalties and other remedies in this Act.

For repeal of Act, see note preceding ¶ 7101 of this chapter.

7420. Inactive status

Paragraph effective July 1, 1984.

§ 20. Any hearing aid dispenser who notifies the Department, on the prescribed forms, may place such certificate on inactive status and shall be exempt from payment of renewal fees until such person notifies the Department

cate to the Department and if such person fails to do so, the Department shall seize such certificate.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7427. Restoration of certificate

Paragraph effective July 1, 1984.

§ 27. At any time after the suspension or revocation of any certificate, the Department may restore it to the accused person, upon the written recommendation of the Board.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7428. Payment of costs—Filing or receipt

Paragraph effective July 1, 1984.

§ 28. The Department shall not be required to certify any record to the Court or to file any answer in court or otherwise appear in any court in a judicial review proceeding, unless there is filed in the court, with the complaint, a receipt from the Department acknowledging payment of the costs of furnishing and certifying the record, which costs shall be computed at the rate of 20 cents per page of such record. Failure on the part of the plaintiff to file such receipt in court shall be grounds for dismissal of the action.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7429. Certain orders as prima facie proof

Paragraph effective July 1, 1984.

§ 29. An order or a certified copy thereof, over the seal of the Department and purporting to be signed by the Director, shall be prima facie proof:

(a) That such signature is the signature of the Director;

(b) That the Director is duly appointed and qualified; and

(c) That the Board, and the members thereof, are qualified to act.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7430. Determination of mental illness—Automatic suspension of certificate

Paragraph effective July 1, 1984.

§ 30. The determination by a circuit court that a certificate holder is subject to involuntary admission or judicial admission, as provided in the "Mental Health and Developmental Disabilities Code", approved September 5, 1978, as amended,[1] operates as an automatic suspension of the holder's certificate. Such suspension will end upon a finding by a court that the patient is no longer subject to involuntary admission or judicial admission and the court issues an order so finding and discharging the patient and upon the recommendation of the Board to the Director that the registrant be allowed to resume his practice.

[1] Chapter 91½, ¶ 1-100 et seq.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7431. Applicability of Administrative Procedure Act—Review under Administrative Review Law

Paragraph effective July 1, 1984.

§ 31. The provisions of "The Illinois Administrative Procedure Act", approved September 22, 1975, as amended,[1] shall apply to this Act. All final administrative decisions of the Department are subject to judicial review pursuant to the provisions of Article 3 of the "Code of Civil Procedure", approved August 19, 1981, as amended.[2] Any circuit court, upon the application of the certificate holder or the Department, may order the attendance of witnesses and the production of relevant records in any Departmental hearing relative to the application for or refusal, recall, suspension or revocation of a certificate.

[1] Chapter 127, ¶ 1001 et seq.

[2] Chapter 110, ¶ 3-101 et seq.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7432. Public policy

Paragraph effective July 1, 1984.

§ 32. It is declared to be the public policy of this State, pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970, that any power or function set forth in this Act to be exercised by the State is an exclusive State power or function. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7433. Violations of act—Unlawful practice under Consumer Fraud and Deceptive Business Practices Act

Paragraph effective July 1, 1984.

§ 33. The advertising, offering for sale, sale or distribution of hearing aid goods and services to consumers by any person in violation of any of the provisions of this Act is an unlawful practice pursuant to Section 2S of the "Consumer Fraud and Deceptive Business Practices Act", approved July 24, 1961, as amended.[1]

[1] Chapter 121½, ¶ 262a.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7434. Powers of attorney general—Award of actual damages

Paragraph effective July 1, 1984.

§ 34. All remedies, penalties and authority granted to the Attorney General by the "Consumer Fraud and Deceptive Practices Act", approved July 24, 1961, as now or hereafter amended,[1] shall be available to him for the enforcement of this Act, and Sections 3, 4, 5, 6, 6.1, 7 and 10 of that Act[2] are hereby incorporated by reference into this Act. In addition, in any action brought by the Attorney General to enforce this Act, the court may order that persons who incurred actual damages be awarded the amount at which actual damages are assessed.

[1] Chapter 121½, ¶ 261 et seq.

[2] Chapter 121½, ¶¶ 263 to 267 and 270.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

in writing, of his intention to resume the practice of fitting, dispensing and servicing hearing aids and pays the current renewal fee. However, if such period of inactive status is more than 5 years, the hearing aid dispenser shall also provide the Department with sworn evidence certifying to active practice in another jurisdiction that is satisfactory to the Department. If such person has not practiced in any jurisdiction for 5 years or more, he shall be required to restore his certificate as provided in this Act. Any hearing aid dispenser whose certificate has an inactive status shall not practice in Illinois.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7421. Investigation by department—Notice of charges—Hearing

Paragraph effective July 1, 1984.

§ 21. The Department may investigate the actions of any applicant or any person holding or claiming to hold a certificate. The Department shall, before refusing to issue a certificate or disciplining a registrant, notify, in writing, at least 10 days prior to the date set for the hearing, the applicant for, or holder of, a certificate. The notification shall set forth the charges and the date of the hearing. The hearing shall determine whether the applicant or holder is entitled to hold such certificate, and shall afford such person an opportunity to be heard in person or by counsel. Such written notice may be served by certified or registered mail to the respondent at his last known address. At the time and place fixed in the notice, the Board shall hear the charges and the parties shall be accorded opportunity to present such statements, testimony and evidence as may be pertinent to the charges or defenses. The Board may continue such hearing from time to time. Pursuant to rule, the Director may conduct informal hearings, and shall so inform the Board.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7422. Findings and recommendation of board

Paragraph effective July 1, 1984.

§ 22. At the conclusion of the hearing, the Board shall present to the Director a written report of its finding and recommendation as to whether or not the accused person violated this Act or failed to comply with the conditions required in this Act or any rule promulgated pursuant hereto. The Board shall specify the nature of the violation or failure to comply and shall make its recommendations to the Director.

The report of findings and recommendation of the Board shall be the basis for the Department's action with respect to certificates or the imposition of any disciplinary action. The findings are not admissible in evidence against the person in a criminal prosecution brought for the violation of this Act, but the hearing and findings are not a bar to a criminal prosecution brought for violating this Act.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7423. Record of proceedings—Service upon respondent of copy of board's report—Motion for rehearing—Order

Paragraph effective July 1, 1984.

§ 23. The Department, at its expense, shall preserve a record of all proceedings at the formal hearing of any case involving the refusal to issue a certificate or to discipline a registrant. The notice of hearing, the complaint and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, the report of the Board and the orders of the Department shall be the record of such proceeding.

In any case involving the refusal to issue a certificate or to discipline a registrant, a copy of the Board's report shall be served upon the respondent by the Department, as provided in this Act for the service of the notice of hearing. Within 20 days after such service, the respondent may present to the Department a motion in writing for a rehearing, which motion shall specify the particular grounds therefor. If no motion for rehearing is filed, then upon the expiration of the time specified for filing such a motion, or if a motion for rehearing is denied, then upon such denial, the Director may enter an order in accordance with recommendations of the Board. If the respondent orders and pays for a transcript of the record within the time for filing a motion for rehearing, the 20-day period within which such a motion may be filed shall commence upon the delivery of the transcript to the respondent.

Whenever the Director is satisfied that substantial justice has not been done either in an examination or in the revocation, suspension or refusal to issue a certificate, the Director may order a re-examination or rehearing.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7424. Violations of act—Injunctions

Paragraph effective July 1, 1984.

§ 24. If any registrant violates any provision of this Act, the Director may, through the Attorney General, petition, for an order enjoining such violation or for an order enforcing compliance with this Act or any rule issued pursuant hereto. Upon the filing of a verified petition in such court, the court may issue a temporary injunction, without notice or bond, enjoining such continued violation, and if it is established that such person has violated or is violating the injunction, the Court may punish the offender for contempt of court. Proceedings under this Section shall be in addition to all other remedies and penalties.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7425. Powers of circuit court

Paragraph effective July 1, 1984.

§ 25. Any circuit court may, upon application of the prosecutor or of the applicant or registrant against whom disciplinary proceedings are pending, enter an order requiring the attendance of witnesses and their testimony, and the production of documents, papers, files, books and records in connection with any hearing or investigation. The court may compel obedience to its order by proceedings for contempt.

For repeal of Act, see note preceding ¶ 7401 of this chapter.

7426. Surrender of certificate

Paragraph effective July 1, 1984.

§ 26. Upon the revocation or suspension of any certificate, the registrant shall forthwith surrender the certifi-

VICTOR ATIYEH
GOVERNOR

Department of Human Resources
HEALTH DIVISION
1400 S.W. 5th AVENUE, PORTLAND, OREGON 97201 PHONE 228-6479

Board of Examiners for Speech Pathology and Audiology

November 15, 1982

TO: Oregon Licensed Audiologists

FROM: Duane Anderson, Executive Secretary, Board of Examiners for Speech Pathology and Audiology

SUBJECT: Law concerning use of the term "Audiologist"

On July 1, 1983 the Board mailed the attached memos to all Oregon registered hearing aid dealers. During their October 15, 1983 meeting the Board requested that we mail copies of this material to all licensed audiologists in Oregon. The Board plans to pursue legal action against any person in Oregon who uses the term "Audiologist" in any context and is not licensed as an audiologist under ORS 681.

attachment

228-6479

July 1, 1983

TO: Oregon Registered Hearing Aid Dealers

FROM: Board of Examiners for Speech Pathology and Audiology

SUBJECT: Use of the Term "Audiologist" and Related Words

During the last few years the Board of Examiners for Speech Pathology and Audiology has made numerous attempts to discourage hearing aid dealers from using the term "audiologist" and related terms in their telephone directory and newspaper advertising. In addition, several hearing aid dealers are displaying their NHAS certificate which identifies them as a "Certified Hearing Aid Audiologist".

Recently we requested an advisory statement on this matter from the Consumer Protection Section of the Department of Justice. The attached memo from their office should resolve any misunderstandings which may currently exist. If you have any questions, please feel free to contact our office or the Consumer Protection Section of the Department of Justice.

attachment

STATE OF OREGON INTEROFFICE MEMO

TO: Board of Examiners for Speech Pathology and Audiology DATE: June 15, 1983

FROM: Daryl Dodson Wilson
Assistant Attorney General

SUBJECT: Hearing Aid Dealer's Use of the Term "Audiology" and Related Words

A review of ORS Chapter 681 and ORS Chapter 694 shows that a hearing aid dealer who falsely represents that the services of an audiologist are available, or who claims to be giving "audiological testing" when no licensed audiologist is performing the test, may be in violation of several statutes. The penalties may be cumulative.

1. Hearing aid dealers are generally governed by ORS Chapter 694.

ORS 694.015(5) anticipates that hearing aid dealers will be conducting some hearing tests in conjunction with the provision of hearing aids. These tests include evaluation or measurement of the powers or range of human hearing. In offering these tests, a dealer may not advertise that the services of either an "audiologist" or "clinical audiologist" is available for selection, fitting, adjustment, maintenance or repair of hearing aids, when no properly licensed audiologist is performing the serivce. A dealer may have his or her license suspended or revoked or may be put on probation for these false representations. ORS 694.136(8).

A problem may arise when a dealer offers "audiological" testing without having a licensed audiologist performing the test. Even though "audiological" and related terms may have trade or common meaning, these words should only be used in advertisements in Oregon in accordance with the definition in ORS 681.205 (see 2. below). It would seem that the Oregon statutory scheme anticipates that only licensed audiologists may conduct "audiological" tests.

ORS Chapter 694 also provides criminal sanctions for some misrepresentations. A false claim that an audiologist's services will be used, are used, or made available may be punishable by up to a $500 fine and up to 90 days of imprisonment. ORS 694.911(1).

A hearing aid dealer should also be concerned that no false, misleading or deceptive name is used in his or her business. ORS 694.136(11). A dealer would also violate the

statutes by making a false, misleading or deceptive representation regarding any guarantee or services provided. ORS 694.136(2).

2. ORS Chapter 681 dealing with audiologists and speech pathologists may also be of concern to hearing aid dealers.

Both hearing aid dealers and audiologists measure the powers or range of human hearing. See ORS 694.015(5) and ORS 681.205(4). However, the focus and extent of the testing and evaluation are quite different. ORS Chapter 681 provides that only a licensed audiologist may represent that he or she is engaged in the practice of audiology.

Although many of the terms used in these statutes may have meanings in the hearing aid trade, the statutory definition takes precedence in Oregon. Thus, the terms "audiology" and "practice of audiology" carry a particular meaning, whether used by audiologists or by hearing aid dealers. See ORS 681.205(1) and (4). Any person holding him or herself out as a "hearing clinician", "hearing therapist" or "audiologist" or a similar title or description of service must be a licensed audiologist. ORS 681.250(2). Similar titles or descriptions of service might include "audiological testing" and "audiological service". Remember, the common meaning of these words must give way when the statute provides a definition.

It is a misdemeanor to falsely use any of these titles or descriptions of service. ORS 681.991. The District Attorney's office would prosecute the case. Class A misdemeanor carries a penalty of a maximum $2,500 fine and a maximum one year in prison. See ORS 161.555(3) and ORS 161.615 and 161.635.

3. The Oregon Unlawful Trade Practices Act (UTPA) ORS 646.605 to 646.638 governs some activities of hearing aid dealers.

A variety of unconscionable tactics and unlawful trade practices are prescribed by the UTPA. A hearing aid dealer might be in conflict with the Unlawful Trade Practices Act if he or she said that "audiological testing services" were available when no licensed audiologist actually performed the services. The unlawful business practice in that case might include causing a likelihood of confusion or misunderstanding as to the affiliation, connection or association with another; or representing that services have quantities or qualities that they do not have or that a person has a status or qualification or connection that he does not have. See ORS 646.608(1)(c) and (e).

A hearing aid dealer who said that audiological testing was performed, when no licensed audiologist performed those tests, might be found in violation of the Unlawful Trade Practices Act for that false advertising, as well as being in violation of ORS Chapter 681 and ORS Chapter 694. The penalties for violation of the Unlawful Trade Practices Act include injunction, restitution for actual damages, possible punitive damages, attorneys fees and other relief granted by the court. The statute provides for suit by the Attorney General, the District Attorney or by a private citizen. This is the area of concern to the Consumer Protection Division (Financial Fraud Unit) of the Department of Justice.

4. Other regulations are also pertinent to hearing aid dealers.

Oregon common law and statutes provide other remedies for a person who has been defrauded. Separate statutes cover home solicitations. See ORS 646.611 and 83.720. A dealer might want to take extra steps to check compliance with these laws before sales are made.

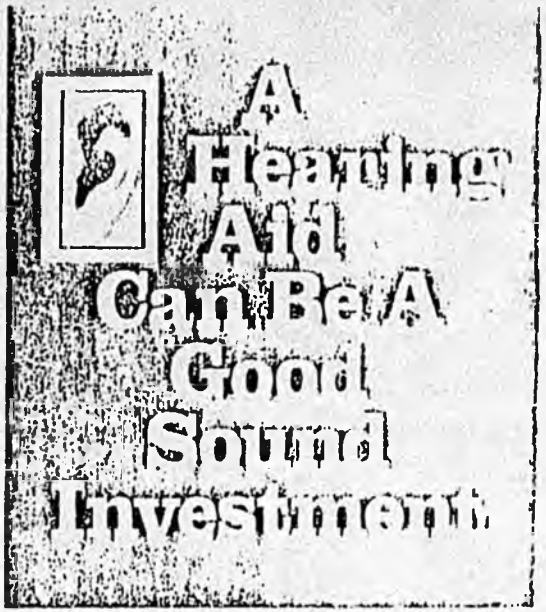
kp

You can call the Illinois Department of Public Health toll-free

1-800-572-3270
(TDD OR VOICE AVAILABLE)

Division of Health Promotion and Screening
Illinois Department of Public Health
535 West Jefferson
Springfield, Illinois 62761

Printed by Authority of the State of Illinois
6/85



IF...

YOU PURCHASE WISELY

A consumer protection service provided through the Hearing Aid Consumer Protection Program

Illinois Department of Public Health

Remember these important facts:

1. **MEDICAL CLEARANCE** from a licensed physician should be obtained before buying a hearing aid. This identifies medically treatable conditions which affect your hearing.
2. Obtain a **HEARING EVALUATION** from a certified dispenser or clinical audiologist before purchasing a hearing aid.
3. Be sure the hearing aid dispenser is **CERTIFIED** by the Illinois Department of Public Health.
4. Ask if a **TRIAL PERIOD OR RETURN PRIVILEGE** is offered. If so, make sure that this and the cost of this trial period are stated in the contract.
5. Ask if the hearing aid has a **MANUFACTURER'S WARRANTY** and/or **SERVICE CONTRACT.** Find out what services each provide, what costs are involved and the time period they cover.
6. Illinois Law requires a dispenser who sells hearing aids door-to-door or in a customer's home to give a **NOTICE OF CANCELLATION** to the buyer. The Notice explains the legal right of the buyer to cancel the purchase within three days of the sale.
7. Make sure that the **DELIVERY DATE** of the hearing aid is written in the contract.
8. If possible, do not pay the full price of the hearing aid in advance. Make a **DEPOSIT** and pay the balance when the hearing aid is delivered.
9. If the hearing aid is uncomfortable, causing problems or not working properly, **CONTACT YOUR DISPENSER** immediately.
10. Ask about the dispenser's **REPAIR POLICY.** Can repairs be done at the office or must hearing aids be mailed to the manufacturer? How long will these repairs take and are "loaner" aids available?
11. Keep all information received as **RECORD OF PURCHASE,** such as receipts, warranties, etc., for future reference.
12. You may want to **BRING A FRIEND** along to assist you when you purchase a hearing aid.
13. A hearing aid is an important investment. Don't be afraid to **ASK QUESTIONS** or seek a second opinion.

There is a law to protect Illinois consumers from dishonest and incompetent hearing aid dispensing practices. The **ILLINOIS HEARING AID CONSUMER PROTECTION ACT,** administered by the Illinois Department of Public Health, requires that:

1. All dispensers must be **CERTIFIED** to dispense hearing aids, and
2. Should a consumer have an **INQUIRY** or **COMPLAINT** regarding a hearing aid and/or dispenser, the **ILLINOIS DEPARTMENT OF PUBLIC HEALTH** will investigate and offer assistance.

"The Logo "A Hearing Aid Can Be a Good Sound Investment" by service mark is the property of the Illinois Department of Public Health

Illinois Hearing Aid Consumer Protection

A consumer protection service provided through the Illinois Department of Public Health (IDPH)

CALL TOLL FREE 1-800-572-3270

IF YOU HAVE ANY QUESTIONS ABOUT THE HEARING AID CONSUMER PROTECTION ACT, OR WOULD LIKE A COPY OF THIS ACT, PLEASE CONTACT THE VISION/HEARING CONSULTANT AT ONE OF THE OFFICES LISTED BELOW.

Region 1
Illinois Department of Public Health
4302 N. Main Street
Rockford, Illinois 61105
815/987-7511

Region 2
Illinois Department of Public Health
5415 University
Peoria, Illinois 61614
309/691-2200, ext. 312

Region 3
Illinois Department of Public Health
4500 South Sixth Street Road
Springfield, Illinois 62706
217/786-6345

Region 4
Illinois Department of Public Health
Cottonwood Road
Edwardsville, Illinois 62025
618/288-5756

Region 5
Illinois Department of Public Health
2209 Main Street
Marion, Illinois 62959
618/997-4371

Region 6
Illinois Department of Public Health
2125 South First Street
Champaign, Illinois 61820
217/333-6914

Region 7
Illinois Department of Public Health
245 West Roosevelt Road
Bldg. 5
West Chicago, Illinois 60185
312/293-6842

Region 8
Illinois Department of Public Health
160 N. LaSalle, Room 1112
Chicago, Illinois 60601
312/793-3880

ILLINOIS DEPARTMENT OF PUBLIC HEALTH
DIVISION OF HEALTH PROMOTION AND SCREENING
535 WEST JEFFERSON STREET
SPRINGFIELD, ILLINOIS 62761

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State of Illinois
5/84

A SYNOPSIS OF THE HEARING AID CONSUMER PROTECTION ACT

PUBLIC ACT 83-0928

EFFECTIVE JULY 1, 1984

For more information call
1-800-572-3270
(Voice or TDD)

Illinois Department of Public Health
Division of Health Promotion and Screening
Hearing Aid Consumer Program

HEARING AID CONSUMER PROTECTION ACT

The Illinois "Hearing Aid Consumer Protection Act" was enacted into law by the 83rd General Assembly. The purpose of the Act is to protect the hearing impaired public from incompetent and dishonest dispensers of hearing aids who could endanger the health, safety and welfare of the people of this State.

ILLINOIS DEPARTMENT OF PUBLIC HEALTH

The Illinois Department of Public Health is mandated to supervise the issuance of certificates to hearing aid dispensers, administer examinations to applicants for the hearing aid dispenser certificate, suspend or revoke certificates or take such other disciplinary action, if the provisions of the Act are violated, and to promulgate rules necessary to implement this Act, which becomes effective July 1, 1984.

Under the direction of the Division of Health Promotion and Screening, Vision and Hearing Section, the Department will initiate a four point action plan to implement Public Act 83-0928:

1. Health Promotion - Consumer Education
2. Continuing Education for Dispenser of Hearing Aids
3. Certification of Dispensers of Hearing Aids
4. Follow-up and Investigation of Complaints

WHAT THE CONSUMER SHOULD KNOW ABOUT THE HEARING AID CONSUMER PROTECTION ACT

1. No person shall engage in the selling, practice of fitting, dispensing or servicing hearing aids, or display signs, advertise, or represent oneself as a person who practices the fitting and selling of hearing aids after January 1, 1985, unless such holds a current certificate issued by the Department as provided in this Act.

2. The certificate shall be conspicuously displayed in the place of business. A sign must be conspicuously displayed in the dispenser's business and a written statement must be given to each hearing aid purchaser indicating that complaints regarding hearing aids may be made to the Illinois Department of Public Health.

3. Every person fitted and sold a hearing aid shall be given, at no charge, the "User Instructional Brochure" supplied by the manufacturer.

4. The dispenser shall provide a receipt to each hearing aid purchaser with the seller's signature, phone number, the manufacturer's specifications, the make, model and serial number of the hearing aid furnished, the dispenser's certification number, and the full sales term clearly stated. The receipt and container for a used hearing aid shall be clearly marked as such.

5. A hearing aid dispenser shall not sell a hearing aid unless the prospective user presents to the dispenser a written statement signed by a licensed physician which states that the patient's hearing loss has been medically evaluated.

   The medical waiver requirement may only be waived by the patient when the patient is 18 years or older. The dispenser must inform the user that the exercise of the waiver is not in the user's best health interest; and the dispenser cannot in any way encourage the buyer to waive medical evaluation.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

479

RECEIVED
JAN 6 1986

January 3, 1986

Senator Bill Ray
Representative Duncan
Representative Miller
P.O. Box V
State Capitol
Juneau, Alaska 99811

Re: State of Alaska
Alternative energy Loans

Dear Senator and Representatives:

We are soon providing an alternative to wood burning stoves in the Juneau area and I understand that this is presently available in Anchorage.

Our product is a pelletized wood and other fuel which burns in specially constructed stoves and burns smoke free.

I am enclosing a couple of articles for your further information.

To meet new ordinances in Juneau, many people will have to replace their wood burning stoves.

I understand that under present law, Alternative Energy Loans are available for catalytic equipped wood stoves, or catalytic converters.

Therefore it would be appreciated if the present law could be amended to authorize loans for biomass pellet fuel burning stoves or furnaces.

Steve Gilbertson, Juneau's Air Quality Control Officer, advised me that he and D.E.C. officials are in favor of this amendment.

I believe the law in question is included in A.S.45.88.010:500.

If you would like further information regarding this, I will be happy to discuss what I have with you.

Thanking you in advance for your consideration.

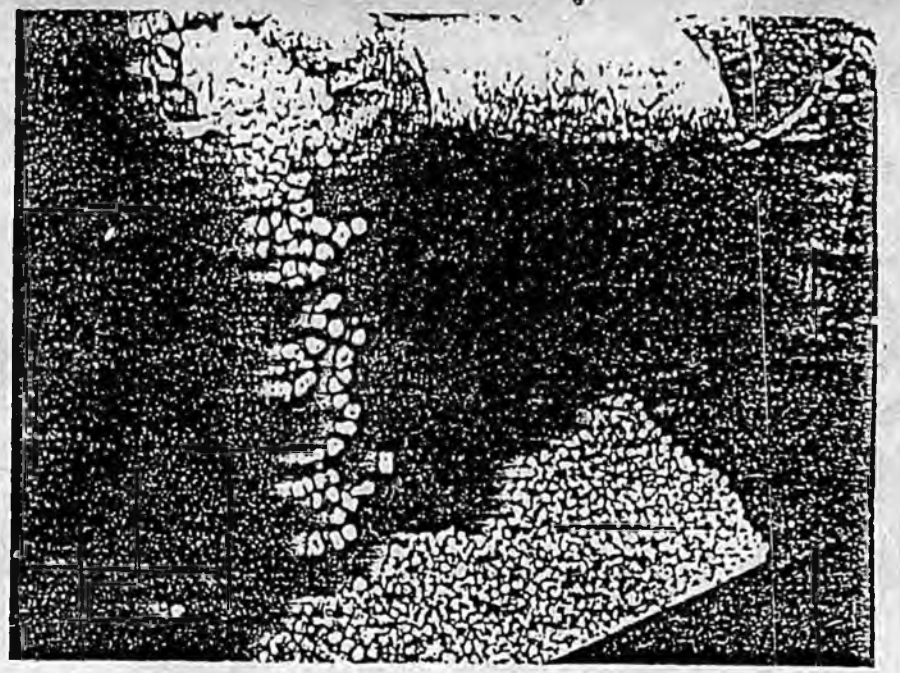
Very truly yours,

Larry Traeger

Larry Traeger
546 Hemlock
Juneau, Alaska 99801

Phone: 586 3250

BACK UP INFORMATION



Heating homes with pellets

Mount Angel manufacturer designs and sells innovative, affordable furnaces

By DALE STOWELL
Of the Independent

MOUNT ANGEL — Randy Traeger shrugs as he considers the complexity of his pelletized wood burning furnace designs.

"To me, it don't look like nothing super," he says. "Once you've horsed around with it for 15 years, it doesn't seem like that much."

But he seems to know he's on to something as he cites statistics that indicate his wood furnaces burn cleaner than do natural gas or oil furnaces for as little as half the cost for fuel.

Traeger, owner and president of Traeger Industries, has been designing woodstoves and furnaces for more than 20 years and is optimistic that his latest design will catch on.

The fuel source is the most novel aspect of the new furnaces, which have been on the market since fall. Biomass pellets, produced from waste products such as pine shavings or rye stubble, are what the newly designed heating devices consume.

One ton of pellets, which costs about $100, produces as much heat as two cords of wood but leaves substantially less waste. About .6 of one percent of the pellets remain as ash — approximately two gallons of ash per ton of fuel.

During cold weather, the average home requires about one 50 pound bag per day, Traeger estimated. Average yearly consumption would be in the neighborhood of four tons, he added.

Traeger's thermostatically-controlled stove and furnace designs also attempt to transfer all of the heat produced in the units to the space in the home to be heated.

And Traeger points out another advantage to the pellet-burning systems. "They burn clean. There isn't any smoke. You can stick your nose right in the (smoke)stack."

The major drawback is availability of fuel. Traeger has several hundred tons of it stockpiled to meet the needs of customers who have purchased pellet-burning equipment. It isn't readily available anywhere else in the area.

The fuel, which resembles rabbit food pellets, has existed for several decades, Traeger said. But companies producing it have come and gone due to a lack of demand.

Randy Traeger (above) has designed and is marketing heating systems which burn pine pellets (top photo). Traeger says the new heating units burn cleaner than gas or oil at nearly half the cost for fuel. (Photos by Dale Stowell)

"There's been several plants that have been around and gone broke," he said. "There's the concept of making pelletized fuel. That's fine. But you've got to have something to burn it in. Most of them are looking at commercial applications, but a commerical application can dry up on you very quickly — just a little change in price and they'll switch from one (fuel) to the other."

Before Traeger's design, availability of fuel wasn't the only problem in home-heating pellet applications. In earlier designs, the pellets didn't burn completely, and the furnace fire would sometimes burn back into the fuel hopper.

Traeger cured the problems without knowing what caused them in other furnaces. "I really didn't look at anybody's design," he said. "I never paid any attention to them. There's no use in reinventing the wheel over again. It was a matter of taking it apart and putting it together again, taking it apart and putting it together again."

After Traeger put it together again and it worked to his satisfaction, he began developing different home heating uses. His designs range from an indoor furnace that produces nothing but home heat, to an outdoor "pellet pump" that will provide heat for home, hot water and even clothes drying. All of the Traeger Industries products are built at the company's shop in Mount Angel.

The furnaces are also outside of Department of Environmental Quality regulations that apply to woodstoves. Traeger predicts that many wood stove manufacturers will be forced out of business by continued tightening of regulations for testing and emissions. However, he added, pellet-burning furnaces would pass even the most stringent DEQ requirements.

Traeger knows of only five other pelletized fuel furnace manufacturers in the country, but believes that the heat-producing devices will increase in popularity in time.

He points to the state of Minnesota as an example of forward thinking about the new heating concept. Traeger as well as other pelletized-fuel furnace manufacturers recently donated equipment to the state as part of a Minnesota low-income heating assistance program. The state will pay for installation of the furnaces.

"The concept is, if they give people pelletized fuel, they can heat twice as many homes for the same cost as supplying them money to buy natural gas or oil," Traeger said.

According to Traeger, Minnesota also has state funds available for research and development of pelletized-fuel manufacturing and use. "They're just out after it," he said. "They're way ahead of everyone else."

Back home, Traeger said sales of the new furnaces have been good — almost better than he's wanted them to be. "I really want to go through the winter just testing it, getting a few out," he said. "It's kind of run away from us. It's been super good."

RECEIVED
JAN 1 9 1986

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM January 13, 1986

SUBJECT: Alternative energy loans for biomass fuel stoves (Work Order 14-1546)

TO: Representative Jim Duncan

FROM: George Utermohle
Legislative Counsel

I.

The draft bill that you requested is attached. The bill amends the definition of "alternative energy system" to expressly include stoves and furnaces that use biomass fuels. The effect of this amendment is to allow the Alternative Energy Revolving Loan Fund to make loans for the purchase of biomass fuel stoves and furnaces.

II.

You also asked whether the Alaska Industrial Development Authority (A.I.D.A.) can aid processors of biomass fuels.

In brief, A.I.D.A. does have the power to make loans, to insure loans, and to assist private lenders to make loans to processors of biomass fuels.

A.I.D.A. was created to provide means of financing and means of facilitating financing for

> the establishment, operation, and development of industrial, manufacturing, and business enterprises, including, without limitation, facilities for transportation, facilities for pollution control and waste disposal, facilities for the local furnishing of gas, facilities for water, facilities for industrial parks, mass commuting vehicles, facilities for local district heating or cooling, parking facilities, or a storage or training facility relating to a plant or facility. (AS 44.88.010(a)(5))

[redacted]
Drafter's Memorandum

The list of facilities eligible for assistance is only illustrative and in no way restricts the kinds of projects that A.I.D.A. can support.

Provided that a project is located in Alaska and will generate additional employment, A.I.D.A. has the authority to insure loans, to make loans, or to assist private lenders in making loans for the project (AS 44.88.080(12),(13), and (15)). A.I.D.A. defines "project" to include

> (A) a plant or facility used or intended for use
>
> (i) in connection with making, processing, preparing, or producing in any manner, goods, products or substances of any kind or nature or in connection with developing or utilizing a natural resource, or extracting, smelting, transporting, converting, assembling or producing in any manner, minerals, raw materials, chemicals, compounds, alloys, fibers, commodities and materials, products or substances of any kind or nature;
>
> (ii) as an industrial park; in connection with transportation; for the prevention, limitation or control of pollution; for the disposal of sewage or solid waste; for the local furnishing of gas; for the furnishing of water; as or in connection with mass commuting vehicles; for local district heating or cooling; as a parking facility; or as a storage or training facility directly related to a plant or facility described in this paragraph;
>
> (B) a plant or facility used or intended for use in connection with a business enterprise;
>
> (C) commercial activity by a small enterprise;
> (AS 44.88.220(8))

This definition is broad enough to cover the facilities and equipment necessary to manufacture or produce any form of biomass fuel.

Therefore, processors of biomass fuels are eligible to apply for loans from A.I.D.A. No amendment of the Alaska Industrial Development Authority statutes is necessary.

GU:mkr
M2:020
Enclosure

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 479: SUMMARY

This measure expands statutes on alternative energy systems to include catalytic fireplace inserts, stoves or furnaces that use biomass fuel, and does not include stoves that use only firewood, coal, or oil fuel unless the system has a catalytic converter or catalytic fireplace insert.

BILL SUMMARY

CHAIRMAN'S INFORMATION: CSHB 479(L&C)

1) BILL TITLE: "An act relating to biomass fuel systems"

a) Introduced: Rep Duncan

b) Co-sponsors:

2) INTENT: This measure expands the Alternative Energy Loan Fund to include loans for catalytic fireplace inserts, and stoves and furnaces which burn biomass fuels. Also defines what materials are burned in a biomass fuel stove.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Finance and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

Larry Traeger

Offered: 1/31/86
Referred: House Special Committee on
State Loans and Finance

Original sponsor: Duncan

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 479 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to biomass fuel systems."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45.88.500(a) is amended to read:

(a) In this chapter, "alternative energy system"

(1) means a source of thermal, mechanical, or electrical energy which is not dependent on oil or gas or a nuclear fuel for the supply of energy for space heating and cooling, refrigeration and cold storage, electrical power, mechanical power, or the heating of water;

(2) includes

(A) an alternative energy property as defined by 26 U.S.C. 48 (1)(3)(A), (Sec. 301, P.L. 95-618, Internal Revenue Code);

(B) a method of architectural design and construction which provides for the collection, storage, and use of direct radiation from the sun;

(C) a woodstove with a catalytic converter, [OR] a catalytic converter for a wood stove, or a catalytic fireplace insert; [AND]

(D) a steam, hot water, or ducted hot air central heating system that uses wood or coal for fuel; and

(E) a stove or furnace that uses biomass fuel produced from any organic matter that is available on a renewable basis, including agricultural crops and agricultural waste and residue, wood waste residue, animal waste, municipal waste, and aquatic

plants;

(3) does not include, unless described in (2)(C) of this subsection,

(A) a stove that uses only firewood [WOOD], coal, or oil for fuel; or

(B) a fireplace or fireplace insert.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 01/28/86

REQUEST

Bill Resolution No. : HB 479
Title : An Act Relating to Biomass Fuel Systems

Sponsor : Representative Duncan
Requestor : House Labor & Commerce
Date of Request :

FISCAL DETAIL

Agency Affected : Commerce & Economic Dev.
BRU : Investments

Components : Economic Development

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

It is anticipated that any new loan demand created as a result of HB 479 will be absorbed within the existing funding available under the Alternative Energy Loan Program. New loan application processing will also be absorbed by existing staff within the division.

Prepared by : Paul B. Arnoldt, Director — Phone : 465-2510
Division : Investments — Date : 1/28/86

Approved by Commissioner : for Loren H. Lounsbury — Date : 1/28/86
Agency : Commerce & Economic Development

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget

10 25 85

FISCAL NOTE

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d with blasting caps," he

caps are small metalic
few inches in length, usu-
d to a length of electrical
ed is suggesting Juneau
p an eye open for such
heir homes. If a blasting
d, Windred recommends
olice to remove it.

led police to several
sting caps and containers
dynamite stored in the
l Windred. Other explo-
sive material was found following a search of a suspect's bedroom, he said.

According to Windred, the stolen blasting caps may be linked to a series of unexplained explosions in recent months. On Dec. 29, a door at Floyd Dryden Middle School was blown open with blasting caps. Several area mail boxes may also have been blown up with the stolen material, he said.

Police are investigating possible violations of laws regulating storage of explosives at the suspect contractor's work site. Police will not release the name of the contractor under investigation until charges are filed, Windred said.

Meanwhile, two Juneau teenagers are expected to be charged with misconduct involving a weapon in the first degree following the investigation into last Friday's bomb threat at the high school.

According to police, a 14-year-old student allegedly brought the explosive materials to the school to sell or give to a 17-year-old male student. Police have not identified the person who made the threat.

"Quite a few kids knew this transaction was going to take place," said Windred.

The threat resulted in the closure of the high school and adjoining Marie Drake Middle School. Students were sent home after a search located a bag containing four blasting caps and a two-and-a-half pound container of gelatine dynamite in an unassigned high school locker.

The material was removed from the school without incident.

ASSOCIATED PRESS

ion may be cut short.

launch window of only a
nents of the current mis-
mbitious schedule of 15

Please turn to Page 14

New law allows use of some wood stoves during air alert

Ordinance changes how burning bans are called

By BETSY LONGENBAUGH
THE JUNEAU EMPIRE

There's new hope on the horizon for local residents who want to keep their wood stoves burning all winter.

Beginning Wednesday, local residents who own stoves that meet Juneau City-Borough emission standards may keep their fires burning during wood smoke alerts.

In the belief that the approved stoves won't let smoke get in your eyes, the Juneau City-Borough Assembly recently approved an ordinance that allows the stoves to burn and sets up new criteria for declaring wood smoke bans.

That new criteria calls for two types of wood smoke bans – a wood smoke alert and a wood smoke emergency. Under an alert, owners of approved wood stoves who have municipal permits may continue to burn. Under an emergency, no wood stoves are allowed to burn.

Steve Gilbertson, the municipal lands and resources manager, is in charge of monitoring the air quality of Mendenhall Valley and enforcing the new ordinance. He said Friday he hopes that only air alerts will occur in the future, with air emergencies necessary in the event of extreme pollution in the valley.

"I think people have to realize this is at an experimental stage," he added.

Gilbertson also said his office now has applications for people who own approved wood stoves. In order to use those stoves during alerts, they must have permits

Please turn to Page 14

Lemon Creek vicinity to be monitored for wood smoke

THE JUNEAU EMPIRE

Lemon Creek residents may want to buy warm slippers for next winter, as their neighborhood will probably end up being subject to its own wood stove bans.

The Lemon Creek area is one place that will feel the impact of a comprehensive ordinance regulating wood stove use that was approved by the Juneau City-Borough Assembly several weeks ago.

At the urging of some assembly members, municipal staff agreed to begin monitoring the Lemon Creek area with an eye to regulating wood stove use. This winter, however, there isn't the necessary equipment in the area to effectively measure wood smoke pollution.

In next year's municipal budget, staff will be seeking $25,000 to buy a wood smoke monitor for the area. Once installed, the device will allow municipal officials to call for wood smoke bans in Lemon Creek, as well as the Mendenhall Valley.

Steve Gilbertson, lands and resources manager, said he expects the municipality may call separate wood smoke bans in each area, depending on weather conditions. He said it is now impossible to predict how often bans may be necessary in Lemon Creek.

"We do not have a lot of data for the area," said Gilbertson.

He added, however, that his office has received a lot of calls from Lemon Creek area residents who complained of wood smoke pollution.

The new proposed smoke alert area in Lemon Creek extends from the Juneau Christian School, including

Please turn to Page 14

.....Page 4
.....Pages 6-7
ocks.....Page 13

WEATHER

Rain showers continuing through Tuesday. Page 14

Juneau Empire 1-13-86

NCIL
ird of trustees of Juneau Arts
ities Council will meet at 7:30
Northern Light United Church.
nbers and interested persons
to attend.

STAR
leau Lodge No. 147, F. and
neet at 7:30 tonight. All Masons
are urged to attend.

ns of practically any skill level
e enthusiastic about forming a
of Alaska-Juneau pep band are
ntact the UAJ office of student
789-4528.

ESSURE
od pressure testing will be con-
e Mountain View Senior Cen-
:30 a.m. to 1:30 p.m. Tuesday.
nent is necessary. Call 586-3736
ormation.

S

set off in the Cedar Park area.
re set on fire.

ip

efighters are reminding resi-
very home should have at least
inguisher and everyone in the
ld know how to use it. The Gla-
eer Fire Department offers
s on use of fire extinguishers.
tion, call 789-7554.

nce calls

Volunteer Fire Department
services teams responded to
r the weekend:
l call: At 9:49 a.m. Friday,
ent, stable, transported to
orial Hospital.
ehicle accident: At 10:06 p.m.
an Drive and the Mendenhall
injuries minor, both patients
sport.
calls: At 2:29 a.m. Saturday,
no transport; at 11:51 a.m.
d choking, mother dislodged
e child was stable and taken
l by the family; at 2:01 a.m.
cuts, patient taken to the hos-

Volunteer Fire Department
services teams responded to
the weekend:
calls: At 9:34 a.m. Friday, a
nt, stable, transported to the
11:48 a.m. Sunday, no details
patient stable, transported to
at 2:50 p.m. Sunday, patient
inal pain, stable condition,
o hospital.

Woodsmoke...

Continued from Page 1

from the city. The free permits are good for two years.

Gilbertson said the approved wood stoves have two things in common – very low emission standards and certification from Oregon.

Because the municipality is basing its new ordinance on a similar law in Oregon, it is accepting that state's testing procedures for wood stoves.

Many of the approved stoves – there are now 10 on the list – have catalytic converters. Others use pellet fuel to reach the low emission standards.

Gilbertson said at least four other stoves, some of which are for sale locally, have gone through the tests, but are not yet certified. He said he expects a new list from Oregon by the end of this month.

Until then, he said he can only recommend the 10 stoves on the approved list. They are:

- Blaze King "King," a catalytic converter stove.
- Earth Stove 1000-C, a catalytic converter stove.
- Turbo 10, a catalytic converter stove.
- Fisher Tech IV, a catalytic fireplace insert.
- Timber Eze 477, a catalytic wood stove.
- Vista 640, a non-catalytic wood stove.
- Pellefier FS-1, a non-catalytic stove that burns pellet fuel.
- Whitfield, a non-catalytic stove that burns pellet fuel.
- Collins Hopper, an add-on devise that burns pellet fuel.

Those wood stoves that are on this list and sell locally cost about $1,000, not including installation.

The assembly hopes to eventually have all stoves in the city-borough meet the emission standards. To meet this goal, the new ordinance calls for all wood stoves installed and sold in Juneau to meet the Oregon emission standards beginning Aug. 1.

Gilbertson expects the most successful enforcement of this new regulation to come from the building department, which issues permits for wood stove installations.

Steve Shows, who assigns building inspections, said a building permit is required for any new installation, including replacement of an existing stove. The permits and their accompanying inspections are free and are designed to make sure wood stoves are safely installed, he said.

"Home owners are sometimes not getting a building permit and installing a stove, sometimes properly, sometimes not," he said.

During the past year, the municipality has been aided in its inspection effort by some insurance companies who now require proof of wood stove inspections before offering insurance, said Shows.

"This is the greatest plus we have seen," he said.

Shows said that "nine times out of 10," wood stoves that are inspected were installed incorrectly.

He said that currently he is able to schedule inspections with a day's notice. Those who want inspections should call a 24-hour recording phone 586-1703, before 7:30 a.m. on the day they want an inspection.

To receive a permit, they should come into the municipal building department and fill out a form. They will also receive a brochure on proper stove installation.

Lemon Creek...

Continued from Page 1

Sunny Point, back to Lemon Creek basin and to Vanderbilt Hill.

Gilbertson also said many Juneau residents remain unclear about where the boundaries are for the Mendenhall Valley wood smoke alert area.

They could be described as having a southern boundary of the airport area, an north boundary of the glacier recreational area, an east boundary running along the base of Thunder Mountain and a west boundary that bisects the Mendenhall Peninsula.

Not included in the ban are the Auke Lake area and Fritz Cove Road.

Shuttle...

Continued from Page 1

The flight plan today was devoted mainly to astronomy, and Steve Hawley spent the morning pointing two ultraviolet telescopes at star targets in a search for luminous clouds of ultraviolet radiation.

Mission Control awakened the astronauts today with the theme song from the movie "Animal House." The control center said several of the astronauts were fans of the movie, and commander Robert Gibson responded, "It sounds like our secret is out."

Columbia shed its postponement jinx with a spectacular predawn liftoff Sunday, and 9½ hours later the crew launched the world's most powerful commercial communications satellite, RCA's $50 million Satcom KU-1.

"It's on its way," Mission Control radioed after a rocket engine ignited to propel the satellite toward stationary orbit 22,300 miles above the Earth.

RCA, which paid the National Aeronautics and Space Administration $14.2 million for the delivery, said Satcom will be capable of providing video and audio communications for all of the United States except Alaska, transmitting a signal powerful enough to be received by dish antennas as small as three feet.

Nelson and Hawley will have an exclusive view of the comet as it nears the sun on its once-every-76-years swing through this part of the solar system.

"You can't observe Halley's from the ground as it makes its closest approach to the sun in January because of the sun's brightness," explained S. Alan Stern of the University of Colorado, who is principal investigator for an experiment named CHAMP, or Comet Halley

Nelson, who will operate the CHAMP cameras, said in an interview before the flight, "We'll be taking some photographs and spectral measurements for the purpose of documenting the comet, and we'll be doing it from above the atmosphere where we can get a real clear look at it. We're going to use the apparatus over the course of three flights, so we should be able to get a good consistent set of data on Halley's."

Stern said the instruments "primarily will be looking at water. The comet is basically an ice ball, and when the sun melts the ice, it breaks the water down into constituents. We'll study these to learn about the comet's atmosphere."

Hawley will use two telescopes to search the universe for sources of luminous clouds of ultraviolet radiation.

"Only in the last 10 years have we begun to look at the universe in the ultraviolet wavelength," he said before the mission. "The reason for that is that the observatories on Earth being beneath the atmosphere are not able to observe these wavelengths because the atmosphere is opaque to UV radiation. So we'll be getting some very fundamental data and will be dealing with questions as to where the UV emission comes from."

He said the knowledge would help astronomers mask out the UV background and thus improve the data from the $1.2 billion Hubble Space Telescope, which will be launched from a shuttle next October.

One of the telescopes also will be trained on the comet.

Rep. Bill Nelson, a Florida Democrat riding as a congressional observer, planned several medical experi-

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

4086

HB 486: "An act relating to financing expansion of the power plant on the Fairbanks campus of UAF; and providing for an effective date."

Measure has additional referrals to HESS, Finance, and Rules

Authorizes the UA Board of Regents to proceed thru the U of A Heating Corporation to issue revenue bonds or certificates of participation in an amount not to exceed $6.5 million to finance the expansion of the UAF power plant.

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
4217 SLAB HB 494 1697

RECORDS CERTIFICATION

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James A. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

494

HB 494
An Act relating to liens for labor or material furnished

COMPARISON TO EXISTING LAW

Existing Law	HB 494
AS 34.35.062	
Stop-payment notice expires 30 days after being received.	Changes reference to stop-payment notice to stop-lending notice. Notice does the same thing.
Claimant must wait 20-30 days after payment is overdue to file a stop-payment notice.	Stop-lending notice expires 90 days after being received.
Claimant must put up a bond equal to the amount on the stop-payment notice when taking a case to court.	A stop-lending notice may be filed anytime after a payment is overdue.
A certification of job progress is required from the owner to the lender prior to the disbursal of funds. The lender may prescribe the form of the certificate.	Deletes the bond requirement.
	Job progress certification is still required and certain items are specified that must be included in the certificate.
	New section. Details the lenders liability when they disburse funds that are the subject of a stop-lending notice.
	New section. Requires draw to be applied to it's stated purpose.
	New section. Makes it at least a class A misdemeanor when an owner misdirects a construction financing draw.
	New section. A lender may not disburse funds to pay for any debts that were not incurred to finance the cost of the project.

Existing Law	HB 494
AS 34.35.064(a) Details the requirements for giving a notice of right to lien.	Adds language stating that if one properly files a notice of right to lien the burden of proof is on the owner to show he did not know of nor consent to labor or material furnished.
AS 34.35.067 A person may record a notice of right to lien after entering a contract to furnish labor or material.	A [illegible]on may record a notice o[illegible]ght to lien after entering a contract <u>or</u> furnishing labor or material.
AS 34.35.071(a)	Technical change.
AS 34.35.074 New section.	New section. Provides for civil actions being brought by persons injured in their business or property by a violation of any provision of the lien act.
AS 34.35.080(a)	Technical change.
AS 34.35.080(c) New subsection.	New subsection. Requires a claimant to record that he has brought suit to keep the lien active. Unless it is recorded the claimant could lose the claim to a subsequent good faith purchaser who doesn't know of the claimants action.
AS 34.35.112 Ranks priority of lien claims in a court judgement and foreclosure.	Ranks priority of lien claims in a court judgement and foreclosure and gives subcontractors equal status with materialmen.

Existing Law	HB 494
AS 34.35.112(c)	
New subsection.	When there are sufficient funds provided by a foreclosure sale to pay off all lien claims the balance will be paid to the person who owned the property.
AS 34.35.114(c)	
When a lender receives a stop-payment notice on a project for which they are not a lender they must notify the sender within five days.	When a lender receives a stop-lending notice or notice of right to lien on a project for which they are not a lender they must notify the claimant within 10 days.
AS 34.35.114(d)	
A lender who receives a notice of right to lien on a project for which they are not a lender must notify the sender within five days.	A claimant shall provide a written statement of the amount due and unpaid within 10 days of being requested to by an owner or lender to whom the claimant has given a stop-lending notice.
AS 34.35.117(a)	Technical change.
AS 35.35.069	
Requires a claimant to have an acknowledgement of right to lien from an owner in order for their claim of lien to be valid.	Repealed.
AS 34.35.080(b)	
A lien may not be continued in force for more than one year from the date of the filing of the original lien notice.	Repealed. (Conflicts with other parts of the statute).
AS 34.35.114(e)	
Provides for penalties to an owner for failing to provide information.	Repealed. (Covered by new civil suit section).
AS 34.35.118	
Provides for penalties to a claimant for filing an unjust excessive or premature stop-payment notice.	Repealed. (Incorporated into civil suit section).

CHAIRMAN'S INFORMATION: CSHB 494(Jud)

1) BILL TITLE: "An act relating to liens for labor or materials furnished."

   a) Introduced: Rep Cotten

   b) Co-sponsors:

2) INTENT: This measure seeks to strengthen and clarify the existing lien law, and addresses problems being experienced by suppliers and subcontractors with receiving payment for labor or materials furnished.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

   a) Sponsor:

   b) Public Witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from committee?
   d) Close public hearings?

6) COMMITTEE ACTION?

   a) amendments?
   b) CS adoption? Need to adopt the L&C SCS.

CS HB 494 (JUD)
SECTIONAL ANALYSIS

SECTION 1

page 1, ln 10
(a) Revises 34.35.062 to more clearly and accurately state the present "stop-payment" rule. "Stop-payment" is changed to "stop-lending."

Eliminates the current requirement that a claimant wait 20-30 days after an account becomes delinquent before giving a stop payment notice to the lender.

page 1, ln 29
(b) Changes to 90 days (from 30) the time within which a claimant may bring suit after filing a stop-payment notice. Eliminates the present requirement that the claimant must provide a bond.

page 2, ln 10
(c) Addresses the lender's liabilities when they disburse funds that are the subject of a binding stop-lending notice.

page 2, ln 29
(d) Requires a lender to send a verified statement to the claimant showing all construction financing provided to the owner or owner's agent within ten days of receiving a certified copy of a judgment establishing the amount owed a claimant.

page 3, ln 9
(e) Allows a lender to bring an action requiring claimants to interplead their claims when there are two or more claimants and the lender is uncertain of the amount of its liability.

page 3, ln 14
(f) A lender may not provide a draw to the owner or an agent of the owner until the owner has provided a certification of job progress which must include the portion of the draw that the owner will pay to each listed prime contractor.

page 3, ln 27
(g) Requires draw to be applied pursuant to the required certificate. The lender is not required to verify the information and is not liable for any error in the certificate.

page 4, ln 2
(h) It is a class A misdemeanor for an owner to [illegible]tionally fail to apply construction financing draws in accor[illegible]e with the required certificate.

page 4, ln 7
(i) When requested a lender is required to provide a person who has given a notice of right to lien a copy of certificates submitted under subsection (f) and a verified certificate stating the undisbursed funds available for the project.

page 4, line 14
(j) A lender may not disburse funds to pay for any debts that were not incurred to finance the cost of the project.

Section 2

page 4, ln 17
(a) Notices of right to lien given to the owner shift the burden to the owner to prove that he was not aware of and did not consent to the improvements to his property. The notice may be given before furnishing labor or material.

Revises the required warning in the notice of Right to Lien to more correctly alert the owner of the significance of the notice.

Section 3

page 5, ln 24
Clarifies recording of notice of right to lien.

Section 4

page 6, ln 3
Technical change relating to section 3.

Section 5

page 6, ln 9
Technical change.

Section 6

page 6, ln 25
(a) Civil actions may be brought for actual damages and actual attorney fees by a person who is injured in its business or property by a violation of any provision of the lien act.

page 7, ln 5
(b) Penalizes a claimant who does not remove a lien or stop-lending notice once payment has been made in full or for not removing an erroneous, unjust, premature or excessive stop-lending notice or claim of lien.

Section 7

page 7, ln 13
Technical change.

Section 8

page 7, ln 24
Requires a claimant to record notice that he has brought suit to keep the lien alive. Unless it is recorded the claimant could lose his lien to a subsequent good faith purchaser who doesn't know of the claimant's action.

Section 9

page 8, ln 5
Subcontractors are given equal status with suppliers in sharing foreclosure sale proceeds.

Section 10

page 9, ln 9
When there are sufficient funds provided by a foreclosure sale to pay off all lien claims the balance will be payed to the person who owned the property.

Section 11

page 10, ln 15
Clarifies responsibility of a lender wrongly named in a stop-lending notice.

Section 12

page 9, ln 20
Clarifies claimants responsibility in providing information to an owner or lender who has been served a stop-lending notice.

Section 13

page 9, ln 25
Technical change.

Sections 14 - 17

page 10, ln 3
Definitions.

Section 18

page 11, ln 11
Repeals acknowledgement of right to lien.

Repeals penalty to owner for failing to provide information. (Is covered by Civil Suits, Section 6)

Repeals claimant liability for filing unjust or premature stop-payment notice. (Is incorporated into Civil Suits, Section 6(b))

ALASKANS

FOR

LIEN LAW REFORM

LIEN LAW HISTORY

In 1979 certain amendments were made to the Alaska Lien Laws which have caused large monetary losses to material suppliers and sub-contractors. The intent of these amendments was to expedite loan closings on the sale of real property and also to assure that no liens could be attached after the property was sold. In a joint meeting held between suppliers, sub-contractors, title companies, and lending institutions it was agreed that this new bill would allow the lending institutions to be secured by a first deed of trust on their interim construction financing which gave them priority over all liens or encumbrances which may be recorded by a material supplier or sub-contractor.

In exchange for giving up a historical priority position, suppliers and sub-contractors were to be provided a vehicle by which they could put the lending institution on notice that they were a supplier of record, and in so doing, protect the suppliers interest. The methods provided to material suppliers and sub-contractors under the new law were:

1. Notice of Right to Lien and
2. Stop Payment Notice

The intent of the "Notice of Right to Lien" was to inform the lending institution, and the property owner, that a supplier or sub-contractor had provided materials or services to a specific project and they may have a claim on the interim construction financing. The further intent of this notice was to guarantee that the lending institution would monitor the disbursing of interim construction funds to assure that persons who had given them a "Notice of Right to Lien" would be paid from each draw.

The "Stop Payment Notice" amendment was added as an additional method for securing a payment, when past due from interim construction financing. The intent of this ammendment was to cause the lending institution to withhold the amount claimed by the material supplier or sub-contractor from the next draw and to disburse the funds directly to the claimant.

Since there is no liability on the part of the lending institution for failing to disregard the intent of these amendments, they have been circumvented to a large degree. Interium construction draws are being disbursed directly to the contractor with no assurance that the material supplier or sub-contractor will be paid. In many instances the contractor will use these funds for purposes other than paying his suppliers or sub-contractors.

A "Stop Payment Notice" rarely accomplishes the purpose for which it was intended. The lending institutions in many instances interpret this notice as indication that the contractor is in financial trouble and they will call the loan; thereby stopping all draw requests until the liens are removed or the loan is satisfied. Or they may just hold the notice for a period of 30 days at which time the current law mandates that a law suit be instigated to collect the debt. In addition, the current law mandates that a claimant must provide a bond equal to the amount of the claim. With the current cost of bonding, legal fees and the length of time it takes to get a court date a claimant will rarely recover the amount owed to him. Interestingly enough the lending institutions continue making draws to satisfy their interest charges.

A "Claim of Lien" in many instances has no value. The lending institution has priority over all other encumbrances through their First Deed of Trust position. In the event of foreclosure the lending institutions First Deed of Trust must be paid in its entirety before any other claims can be satisfied, in spite of the fact that the lending institution may have disbursed construction funds directly to the contractor with no regard to a supplier, or sub-contractors "Notice of Right to Lien".

POSITION

The suppliers and sub-contractors position is really quite simple:

> We should have the right to reasonably expect to be compensated for the materials supplied and work performed that adds value to someone elses property, and in the event this does not occur we have equal opportunity for recovery under the law.

The trade off or "trust me legislation" of 1979 is simply not working.

Lending institutions are in the best position to review and determine a contractors financial capability. They have or can have complete access to a contractors financial information because they control the purse strings. However, loan officers have little or no incentive under existing law to control disbursements so as to assure that suppliers and sub-contractors are paid. At a minimum all they need do is assure that the materials are incorporated into the real estate before they disburse to the contractor. Whether the contractor pays the suppliers or the sub-contractors is really of little concern, because they (the lending institution) are always in first position. This enables them to foreclose and extinguish the liens of suppliers and sub-contractors in the event the contractor ultimately fails to perform. When an institution fails to exercise good control of funds, it is difficult to understand why their investment should be given priority at the expense of suppliers and sub-contractors.

There is no viable vehicle for a supplier or sub-contractor to compel a lending institution to disburse loan draws for materials purchased or work performed.

When the supplier or sub-contractor attempts to utilize a stop payment, or otherwise involve the loan officers, typically the lending institutions first reaction is to draw down available proceeds to cover interest and other charges or even to call the loan.

Conclusion. The make up of the lending institutions as well as the environment underwhich the legislation was drafted in 1979, differs from that of today and perhaps is one of the prime reasons requiring a change in this legislation.

It is evident that the current law is not working. The unusal large numbers of business failures, bankruptcy's, and foreclosures bear this out. If some form of protection for sub-contractors and material suppliers is not legislated, there will continue to be many bankruptcy's and foreclosures. In addition, the cost of construction will increase dramatically due to the increase in cost of materials and services to cover the loses sustained through the inequities in the existing law.

CASE HISTORY
EXAMPLE

PROJECT	Residential Units - Fairbanks
LENDER	Bank
ACCOUNT PROFILE	Customer for several years Slow payment record

HISTORY. Because of previous problems with this customer and before supplier would enter into an agreement to sell the project, the lending institution agreed to monitor the loan and disburse funds direct to the supplier. After the project was in process the account went 30 days past due and was closed. The supplier contacted the bank was told they (the bank) were working on the draws and payment would be sent in about 10 days. Additionally, the bank requested that the account be left open.

When the account was (45) days past due and no payment received, the supplier again called the bank and was told the loan officer was on vacation. Again the bank requested that the account remain open and that if the materials were allowed to go they would cover the purchases. The supplier was also told there were more than enough funds to cover the balance due. A check would be cut as soon as the loan officer returned.

When the account was (60) days past due the supplier closed the account. The bank was contacted. The loan officer met with supplier, who was again advised that they were working on draws that would bring the account current. The loan officer requested that the account still be left open. Supplier recorded claim of liens.

When the account was (70) days past due the bank filed foreclosure with no advance notice to supplier.

ACTION TAKEN. Timely recorded Notice of Right to Lien and notified lender. Filed Claim of Liens totaling $214,000.

RESULTS. Without notice bank filed foreclosure notices. Bank offered supplier $85,000 in settlement. Customer filed bankruptcy. Loan officer resigned from his position at the bank.

SUMMARY. Under the existing law supplier filed all proper documents, and additionally had the assurance of the lending institution that they would disburse directly to them. The supplier had no other recourse except to sue the lending institution or settle because of the first position given the bank under the present lien law.

1986 - PROPOSED AMENDMENTS TO THE LAW

- Abolishment of Acknowledgement of Right to Lien

- Adoption of a Direct-Payment Notice which requires the owner's construction lender to make a direct payment to the claimant from the next construction draw, unless the owner timely objects to the Notice, in which case the lender is required to make a joint payment to the claimant and owner and leave it up to them to work out their disputes.

- Claimants other than individual laborers are given equal priority with a prior-recorded deed of trust for constuction financing in cases of original construction. Individual laborers (excluding individual sub-contractors) and trustees of employment benefit trusts for such laborers continue to have priority over prior-recorded deeds of trust.

- The deadline is extended for recording a Notice of Right to Lien or Claim of Lien after a Notice of Completion is recorded to give the latter job trades more time to prepare their statements and determine if they have a payment problem.

ALASKANS FOR LIEN LAW REFORM

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ANCHORAGE, ALASKA 99518

ALASKA BRICK COMPANY
7800 LAKE OTIS PARKWAY
ANCHORAGE, ALASKA 99507

Alaska Builders Cache
901 Orca
Anchorage, Alaska 99501

Alaska Insulation Supply, Inc.
Alaska Insulation Specialities
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Alaska Plumbing & Heating
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Anchorage, Alaska 99510

Alaska Quality Insulators
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ANCHORAGE SAND AND GRAVEL
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Anchorage Tank
2700 Porcupine Dr.
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CENTRAL PAVING PRODUCTS
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DON ABEL BUILDING SUPPLIES
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Gensco, Inc.
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Homsteaders Cache, Inc.
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Kingsfield Roofing
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Klondike Painting
412 West Potter
Anchorage, Alaska 99518

Livermore Acoustics, Inc.
3302 Dorbrandt
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Preservative Paint Co.
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A-1 Specialities
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BUILDING TRADES UNION
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Alaska Fence Company
400 W. International Airport

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Allen Excavating, Inc.
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Alpine Drywall
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Valley Masonry
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Anchorage, Alaska 99502

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Denali Roofing Co.
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Anchorage, Alaska 99508

Price's Plumbing & Htg.
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R & R Plumbing & Heating
6303 Rosewood
Anchorage, Alaska 99518

M & H Plumbing & Heating
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South Central Plumbing
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Stephens Mechanical Inc.
7339 Arctic Blvd.
Anchorage, Alaska 99515

Sunburst Plumbing Inc.
503 West 58th Avenue
Anchorage, Alaska 99518

Totem Plumbing
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Tri-State Plumbing Inc.
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Roberts Electric
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Commercial Electric
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G. White & Son Co.
BOx 7143
Kenai, Alaska 99635

Buddy's Garage
P.O. Box 751
Soldotna, Alaska 99669

ARCO Oil & Gas
Box 1400
Kenai, Alaska 99611

The Welding Shop
P.O. Box 2028
Fairbanks, Alaska 99707

Seward Steel Works
P.O. Box 1954
Seward, Alaska 99664

H & H Contractors
P.O. Box 60610
Fairbanks, Alaska 99706

Brown Construction Co
P.O. Box 1313
Kenai, Alaska 99611

Fairbanks Machine
2250 Van Horne
Fairbanks, Alaska 99701

Shower Construction
218 S. Hoyt Street
Anchorage, Alaska 99504

Mid Valley Material
Attn: Rick Wike
P.O. Box 873809
Wasilla, Alaska 99687

Joe Hayes
P.O. Box 101821
Anchorage, Alaska 99510

Interpace Brick
1520 Elcadore Circle
Anchorage, Alaska 99507

Pacific Plumbing
Attn: Rick Bain
6260 Old Seward Highway
Anchorage, Alaska 99518

Yellow Electric Ltd.
Attn: Kent Lee Woodman
1658 East 59th Avenue
Anchorage, Alaska 99507

TESTIMONY OF

ALASKA CHAPTER

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

TO

SENATE LABOR AND COMMERCE COMMITTEE

ON

LIEN LAW REFORM

CS HB494

MAY 6, 1986

AGC-Alaska on behalf of our over 700 member firms appreciates the opportunity to comment on CS HB494.

AGC-Alaska members represent probably the widest cross section of the commercial construction industry besides individual members who are exclusively engaged as suppliers, subcontractors, engineers or architects. Many of our general contractor members are engaged as subcontractors or material suppliers on some projects.

Today AGC-Alaska is in the position of testifying on a bill, which many individuals in the construction industry favor. With reservation, AGC-Alaska supports CS HB494 in its present form; however we are of the belief that the solutions proposed in CS HB494 are merely "band-aids on major wounds" and that the problems created in some instances may equal the problems solved. AGC-Alaska believes that the entire lien law system should be rewritten after a study by an interim committee.

Our comments, including a summary of provisions in existing law and HB 494 follow.

THE FIRST VERSION OF THIS LEGISLATION (SUPPORTED BY A COALITION OF SUPPLIERS AND SUBCONTRACTORS) ADDRESSED THREE AREAS OF THE EXISTING LIEN LAW --

1) WHO CAN CLAIM A LIEN
2) THE ABILITY TO IMPACT CONSTRUCTION DRAWS
3) PRIORITY OF LIENS.

WHO CAN CLAIM A LIEN

EXISTING LAW. A PERSON WITHOUT A DIRECT CONTRACT WITH AN OWNER (MOST SUBCONCTRACTORS AND SUPPLIERS) MAY NOT CLAIM A LIEN UNLESS AN "ACKNOWLEDGMENT OF RIGHT TO LIEN" SIGNED BY THE OWNER IS OBTAINED BY THE OWNER (AN EXCEPTION TO THIS REQUIREMENT IS AN INDIVIDUAL CLAIMING A LABOR LIEN FOR WORK HE PERSONALLY PERFORMED). WITHOUT THE EXISTENCE OF A LIEN LAW THERE IS NO RIGHT TO SUE AN OWNER BECAUSE NO CONTRACT EXISTS BETWEEN THE OWNER AND A SUBCONTRACTOR OR SUPPLIER.

ORIGINAL PROPOSAL (HB494). THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" REQUIREMENT WAS ELIMINATED. THUS, ANYONE SUPPLYING LABOR, MATERIALS, SERVICES OR EQUIPMENT COULD FILE A LIEN. THERE WAS NO REQUIREMENT THAT THE OWNER EVEN KNOW THE CLAIMANT WAS ONE OF THE PERSONS SUPPLYING THE LABOR, MATERIALS, SERVICES OR EQUIPMENT. ALSO, THE ORIGINAL BILL ADDED AN OPTIONAL "NOTICE OF INTENT TO FURNISH LABOR, MATERIALS, SOURCES OR EQUIPMENT." THE PURPORTED

EFFECT IS TO SHIFT THE BURDEN OF PROOF IN ANY ACTION BASED ON A LIEN. HOWEVER, IT DID NOT LIMIT THE ABILITY OF ANYONE TO FILE A LIEN. FURTHER, THIS PROVISION DID NOT REQUIRE A LIEN CLAIMANT TO PROVE THAT THE OWNER KNEW OR CONSENTED TO THE CLAIMANT SUPPLYING THE MATERIALS, SERVICES OR EQUIPMENT.

CURRENT PROPOSAL (CSHB494). STILL ELIMINATES THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" REQUIREMENT. THUS, ANYONE WHO SUPPLIED LABOR, MATERIALS, SERVICES OR EQUIPMENT MAY FILE A LIEN. THERE IS NO REQUIREMENT THAT THE OWNER EVEN KNOW THE CLAIMANT WAS ONE OF THE PERSONS SUPPLYING THE LABOR, MATERIALS, SERVICES OR EQUIPMENT. THE ORIGINALLY PROPOSED "NOTICE OF INTENT TO FURNISH LABOR, MATERIALS, SOURCES OR EQUIPMENT" IS DROPPED. INSTEAD THE PROPOSAL AMENDS THE "NOTICE OF RIGHT TO LIEN" SECTION TO ACCOMPLISH MUCH THE SAME PURPOSE. THE SAME PROBLEMS REMAIN -- THE CURRENT VERSION DOES NOT LIMIT THE ABILITY OF ANYONE TO FILE A LIEN. FURTHER, THIS PROVISION DOES NOT REQUIRE A LIEN CLAIMANT TO PROVE THAT THE OWNER KNOW OR CONSENTED TO THE CLAIMANT SUPPLYING THE MATERIALS, SERVICES OR EQUIPMENT.

EFFECT OF CURRENT PROPOSAL. THE CURRENT PROPOSAL ELIMINATES ONE OF THE MORE UNFAIR ASPECTS OF EXISTING LAW -- THE "ACKNOWLEDGMENT OF RIGHT TO LIEN." UNFORTUNATELY, IT DOES NOT PROPOSE A SUBSTITUTE TO ADDRESS THE CONCERNS WHICH SPAWNED THE "ACKNOWLEDGMENT" IN 1979.

UNDER THE FORMER LAW PROPOSAL LIENS WERE VERY PREVALENT, LITIGATION FLOURISHED AND UNCERTAINTY REIGNED.

A MAJOR CAUSE WAS THE FORMER LAW'S FAILURE TO IDENTIFY POTENTIAL LIEN CLAIMANTS. LIEN CLAIMANTS WOULD LITERALLY COME OUT OF THE "WOOD WORK" 90 DAYS AFTER A JOB WAS FINISHED AND ALL KNOWN SUBCONTRACTORS AND SUPPLIERS WERE PAID. THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" WAS AN ATTEMPT TO SOLVE THIS PROBLEM. UNFORTUNATELY, IT WAS OVERREACTIVE LEGISLATION. UNDER THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" LIENS ARE NOT PREVALENT FOR THE MAIN REASON THAT NOBODY CAN FILE ONE. BY THE TIME MOST SUBCONTRACTORS OR SUPPLIERS ARE INVOLVED IN A PROJECT THERE IS LITTLE REASON WHY AN OWNER WOULD SIGN AN "ACKNOWLEDGMENT OF RIGHT TO LIEN."

ALTERNATIVE PROPOSAL

ELIMINATING THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" MERELY SWINGS THE PENDULUM BACK TO THE OTHER SIDE. AGC-ALASKA PROPOSES A SYSTEM WHICH MAY KEEP THE PENDULUM MORE CENTERED. AS A CONDITION OF FILING A LIEN, ANY SUBCONTRACTOR OR SUPPLIER MUST HAVE PROVIDED WRITTEN NOTICE TO THE OWNER WITHIN 10 DAYS OF FIRST STARTING WORK OR SUPPLYING MATERIALS. THIS NOTICE, SIMILAR TO THAT REQUIRED IN THE STATE OF WASHINGTON, WOULD BE BY CERTIFIED MAIL (SEE ATTACHED SAMPLE LETTER) AND RECORDING WOULD NOT BE REQUIRED. THE NOTICE WOULD FORM A CHECK LIST TO ENSURE THAT ALL POTENTIAL CLAIMANTS ARE PAID BEFORE FUNDS ARE DISBURSED. THE

SYSTEM IDENTIFIES ALL SUBCONTRACTORS AND SUPPLIERS AND ENCOURAGES PAYMENT TO AVOID THE LATTER FILING OF LIENS. THIS SYSTEM ADDRESSES SOME OF THE CONCERNS WHICH BROUGHT ABOUT THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" BUT IT DOES NOT REQUIRE THE OWNER'S OR ANYONE ELSE'S CONSENT.

WHY SUCH A SYSTEM IS NOT CONTAINED IN THE CURRENT PROPOSAL IS UNCLEAR. THE FEBRUARY 26, 1986 TESTIMONY TO THE HOUSE LABOR AND COMMERCE COMMITTEE BY THE COALITION OF SUBCONTRACTORS AND SUPPLIERS SUGGESTD AMENDING THE BILL TO REQUIRE A MANDATORY RECORDING OF A NOTICE OF RIGHT TO LIEN; AND LATER AMENDMENTS CONSIDERED BY HOUSE JUDICIARY CONSIDERED SUCH AMENDMENTS.

FOR WHATEVER REASON THE FACT REMAINS THAT THE PROPOSED LEGISLATION MERELY RETURNS US TO THE DAYS OF YESTERDAYS PROBLEMS AND PROVIDES YET ANOTHER "LAWYERS RELIEF ACT."

THE ABILITY TO IMPACT CONSTRUCTION DRAWS

<u>EXISTING LAWS.</u> UNDER EXISTING LAW A "STOP PAYMENT NOTICE" CAN BE GIVEN BY A LIEN CLAIMANT TO THE LENDING INSTITUTION, IF PAYMENT IS MORE THAN 20 DAYS OVERDUE. HOWEVER, TO STOP PAYMENT FOR MORE THAN 30 DAYS THE CLAIMANT MUST FILE SUIT WITHIN THAT 30 DAY PERIOD.

Original Proposal (HB 494). The original HB 494 substituted a "Direct Payment Notice" for the existing "Stop Payment Notice." Under the proposed "Direct Payment Notice" the lending institution must pay the claimant directly unless an objection is received by the owner within 10 days. If an objection is received the lender must distribute the money directly to the claimant and the owner.

Current Proposal (CS HB494). The current proposal substitutes a "Stop Lending Notice" for the existing "Stop Payment Notice" and the formerly proposed "Direct Payment Notice." The "Stop Lending Notice" while similar to the existing "Stop Payment Notice" provides a more workable format for the unpaid subcontractor and supplier. The 30 days to file suit is extended to 90 days and a procedure is established for the owner to certify construction draws.

PRIORITY OF LIENS

Existing Law. Under existing law a prior encumbrance is preferred to a lien (except a lien by an individual actually performing labor).

Original Proposal (HB 494). Amendments were proposed to give equal priority to all liens for "original" construction with a prior recorded encumbrance.

Current Proposal (CS HB494). No change in the existing law is proposed.

Effect of Current Law. A lender may make disbursements to owners who are in trouble because of the security provided by their deeds of trust. A failed construction project usually results in no equity for liens filed by subcontractors, suppliers or general contractors.

SUMMARY

Devising a system to address the concerns of the owners, bankers, general contractors, subcontractors, suppliers, and individual laborers involved in construction projects is not simple. There is little argument that the present system suffers in many areas. AGC-Alaska suggests a look at the entire system with the objective of devising a system that encourages prompt payment to all factors of the construction industry.

NOTICE BY MATERIALMEN TO OWNER AND GENERAL CONTRACTOR

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Date

ADDRESS (Owner)

RE: Materialmen's Notices to Owner on _____

Dear Mr. _____:

We are pleased to communicate that on DATE our firm commenced to furnish equipment for use upon your construction project known as PROJECT NAME which is located at the premises commonly described as STREET ADDRESS _____. Delivery was commenced at the request, and upon the order of, NAME OF SUBCONTRACTOR, a subcontractor on the project, whose address if ADDRESS OF SUBCONTRACTOR. Even though we do not have the opportunity of dealing with you directly, be assured that we are gratified to make a contribution to your project.

In order to preserve our lien rights, the laws of this state require that we advise you that we are furnishing materials for use upon your property, and that we may claim a lien for the value of those materials. We certainly have no reason to anticipate the necessity of making such a claim of lien, and trust that you will not construe this notification as any reflection upon either you or NAME OF SUBCONTRACTOR.

Our experience has been that everyone in the construction industry recognizes that it is simply good business practice to protect one's lien rights. We sincerely hope that you will be pleased with the materials we are furnishing, and trust that we may be of further services to you in the future.

Very truly yours,

REPRESENTATIVE
SAM COTTEN
DISTRICT 15

P.O. BOX 296, EAGLE RIVER, AK 99577
POUCH V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

MEMO

TO: Senator Fred Zharoff, Chairman
Senate Labor & Commerce Committee

FROM: Rep. Sam Cotten SC

DATE: April 28, 1986

RE: HB 494, An Act relating to liens for labor or materials furnished.

I would greatly appreciate it if you could schedule HB 494 for a hearing in your committee as soon as possible.

The purpose of the bill is to clarify and strengthen the existing lien law. It was introduced at the request of a coalition of suppliers and subcontractors because of increasing problems they are having with being paid for labor or material they provide.

The Judiciary substitute represents a compromise between the suppliers and subcontractors, lending institutions and the builders.

Main points of the bill are:

1. Clarifies the existing procedure available to suppliers and subcontractors. Changes the "stop-payment" notice to a "stop-lending" notice.

2. Eliminates the current requirement that a claimant wait 20-30 days after an account becomes delinquent before he can give a stop-lending notice to the lender.

3. Allows a claimant to bring suit within 90 days of filing a stop-lending notice rather than 30. Removes the requirement the claimant put up a bond when taking a case to court.

4. Before disbursing funds a lender must have a certificate from the owner involved with the project providing specific information on the project including where a draw is to be applied.

— SPONSOR'S INFORMATION —

5. An owner is guilty of class A misdeameanor for "intentionally" failing to apply financing draws to their stated purpose. This does not replace any other penalty that may be provided for by law for the same conduct.
6. Filing a notice of right to lien is optional.

   A notice may be given to the owner any time before furnishing labor, material, service or equipment for improvement of the property. If given properly the burden of proof is on the owner to show that he/she did not know of or consent to improvements on his/her property.

   A notice may be recorded anytime after the claimant enters into a contract or first furnishes labor, etc.

7. Civil actions may be brought for actual and consequential damages by a person who is injured in its business or property by a violation of any provision of the lien act.

   A claimant is liable for actual and consequential damages if they fail to remove a stop-lending notice or claim of lien when payment is made in full or an error is discovered.

8. Subcontractors are given equal status with suppliers in sharing foreclosure sale proceeds.

9. Clarifies definitions.

10. Repeals the acknowledgement of right to lien provision.

SCS CHANGES
P 3, LINE 28;
P 7, LINES 5 6 7 11
P 8, LINE 15

Cook
5/2/86

Original sponsors: Cotten, Szymanski, Phillips, et al

IN THE HOUSE

SENATE CS FOR CS FOR HOUSE BILL NO. 494 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liens for labor or material furnished."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 34.35.062 is repealed and reenacted to read:

Sec. 34.35.062. CONSTRUCTION FINANCING. (a) A claimant to whom payment for the labor, material, service, or equipment furnished for a project is past due may give the lender a stop-lending notice. The claimant shall at the same time give a copy of the notice to the owner and to each prime contractor with whom or through whom the claimant or the claimant's debtor has contracted. A stop-lending notice shall

(1) instruct the lender to stop disbursing, advancing, or otherwise providing construction financing for the project;

(2) be verified by the claimant;

(3) state the claimant's name, address, and telephone number;

(4) describe the labor, material, service, or equipment furnished by the claimant and state the name of the person to whom furnished;

(5) describe the real property improved by the labor, material, service, or equipment and state the name of the person the claimant believes to be the owner of the real property;

(6) state the amount due and unpaid to the claimant for the labor, material, service, or equipment.

(b) A stop-lending notice is binding upon a lender from the time

the lender has received it and had a reasonable opportunity to act upon it until it expires or is revoked. A notice expires on the 91st day after it is received by the lender unless the claimant has commenced an action on the claim that is the subject of the notice before that day and the lender has received written notification of the action. A stop-lending notice may be revoked at any time in writing signed by the claimant. Expiration or revocation of a notice extinguishes the liability of the lender to the claimant under (c) of this subsection.

(c) A lender who disburses, advances, or otherwise provides construction financing for a project after it is the subject of a stop-lending notice is liable to the claimant in an amount equal to the lowest of the following amounts:

(1) the amount of construction financing disbursed, advanced, or otherwise provided by the lender after receipt of the claimant's stop-lending notice; if there are two or more stop-lending notices when the disbursement occurs, the lender's liability to each claimant is based on the claimant's ranking under AS 34.35.112;

(2) the amount owed to the claimant, including interest, costs, and attorney's fees, for labor, material, service, or equipment furnished for the project by the claimant as established by a written agreement signed on or after the date of the stop-lending notice by the claimant, the owner and the prime contractor with whom or through whom the claimant or the claimant's debtor has contracted or by a final judgment in an action in which the owner, the claimant and the claimant's debtor are named and, if necessary, served parties;

(3) 150 percent of the amount stated in the stop-lending notice.

(d) Within 10 days after receiving the written agreement or a

certified copy of the judgment under (c)(2) of this section establishing the amount owed to a claimant from whom it has a binding stop-lending notice, a lender shall send to the claimant a verified statement showing, by date and amount, all construction financing provided by the lender for the project. Except as provided in (e) of this section, the lender shall include with the statement payment in the amount of the lender's liability to the claimant under (c) of this section.

(e) If there are two or more claimants to whom a lender is or may be liable under (c) of this section and the lender is uncertain as to the amount of its liability or possible liability to each, the lender may bring an action to require the claimants to interplead their claims.

(f) A draw against construction financing may be made only after certification of job progress is delivered to the lender by the owner. The form of the certification may be prescribed by the lender and shall include

(1) a statement of the progress of the project, including the percentage of completion of the project;

(2) the name, address, and telephone number of each prime contractor who has furnished labor, material, service, or equipment for the project;

(3) the amount owed by the owner to each listed prime contractor; and

(4) the portion of the draw that the owner will pay to each listed prime contractor.

(g) The owner shall use each draw as indicated in the certificates given by the owner to the lender under (f) of this section. The lender may not be required to verify the information in a certificate

and is not liable for an error in a certificate.

(h) An owner who intentionally fails to apply construction financing proceeds as indicated by the certificate required under (f) of this section is guilty of a class A misdemeanor. The penalty provided under this subsection does not replace any other penalty that may be provided for by law for the same conduct.

(i) Within 10 days after being requested, a lender shall provide a person who has given the lender a stop-lending notice with a copy of

(1) each certificate received by the lender under (f) of this section; and

(2) a verified certificate stating the amount of construction financing proceeds committed by the lender for the project that have not been disbursed by the lender.

(j) The lender may not provide construction financing proceeds for payment of indebtedness of the owner that is not incurred for the project.

* Sec. 2. AS 34.35.064(a) is amended to read:

(a) Before furnishing labor, material, service, or equipment for a project, a person [AFTER ENTERING INTO A CONTRACT, A CLAIMANT] may give a notice of right to lien to the owner or owner's agent [AND THE LENDER]. If the notice is given in accordance with this section, the owner has the burden of proof to show that the owner did not know of or consent to the furnishing of the labor, material, service, or equipment by the claimant in an action to foreclose the claimant's lien on the property under AS 34.35.050 - 34.35.120. Otherwise the claimant has the burden of proof to show that the owner knew of and consented to the furnishing of the labor, material, service, or equipment. The notice of right to lien shall be in writing, state that it is a notice of a right to assert a lien against real property [A

OTHER IMPROVEMENT]. The notice shall be recorded in the same manner as specified for the recording of a claim of lien under AS 34.35.070.

* Sec. 4. AS 34.35.070(a) is amended to read:

(a) A [SUBJECT TO THE PROVISIONS OF AS 34.35.069(a), A] claimant may record a claim of lien after entering into a contract for a project [THE CONSTRUCTION, ALTERATION, OR REPAIR OF A BUILDING OR IMPROVEMENT]. A claim of lien may not be recorded later than the time specified under AS 34.35.068.

* Sec. 5. AS 34.35.071(a) is amended to read:

(a) The owner of real property that may be subject to a lien under AS 34.35.050 - 34.35.120 may announce the date of completion of the project [A BUILDING OR OTHER IMPROVEMENT ON THE PROPERTY] by

(1) recording a notice of completion after completion of the project [CONSTRUCTION, ALTERATION OR REPAIR OF THE BUILDING OR OTHER IMPROVEMENT] in the office of the recorder of the district in which the real property [BUILDING OR OTHER IMPROVEMENT] is situated; and

(2) giving notice at least five days before the recording of the notice of completion to all claimants who have given a notice of right to lien or a stop-lending [STOP-PAYMENT] notice to the owner and the lender prior to 10 days before recording a notice of completion; the notice must include a copy of the notice of completion and a statement advising claimants that a notice of completion will be recorded not earlier than five days after the date of the notice.

* Sec. 6. AS 34.35 is amended by adding a new section to read:

Sec. 34.35.074. CIVIL SUITS. (a) A person injured by a violation of AS 34.35.050 - 34.35.120 may bring a civil action

(1) except as provided in AS 34.35.062(c), for actual and consequential damages that are proximately caused by the violation

plus costs, including reasonable attorney's fees;

(2) to enjoin the violation, and if the person prevails, the person shall be awarded costs, including reasonable attorney's fees.

(b) A claimant who gives a stop-lending notice or has a claim of lien recorded under AS 34.35.075 and who fails to promptly revoke the stop-lending notice or remove the claim of lien from the record upon receiving payment in full on the claim or discovering that the stop-lending notice or claim of lien is in error, unjust, premature or excessive is liable for actual and consequential damages caused by giving the stop-lending notice or improperly recorded claim of lien plus costs, including reasonable attorney's fees.

* Sec. 7. AS 34.35.080(a) is amended to read:

(a) A lien provided for in AS 34.35.050 - 34.35.120 does not bind <u>real property</u> [A BUILDING, STRUCTURE, OR OTHER IMPROVEMENT] for more than six months after the <u>claim of</u> lien is <u>recorded</u> [FILED], unless <u>an action is commenced in</u> [SUIT IS BROUGHT BEFORE] the proper court to enforce the lien <u>within</u>

(1) [WITHIN] that time<u>;</u> [,] or

(2) [WITHIN] six months after recording of an extension notice in the same recording office within the original six-month period showing the recording date and the book and page or instrument number of the initial claim <u>of lien</u>, and the balance owing.

* Sec. 8. AS 34.35.080 is amended by adding a new subsection to read:

(c) A lien whose duration is extended by commencement of an action under (a) of this section is void as against a person who, after the commencement of the action and without knowledge or actual notice of its pendency, acquires an interest in the subject property in good faith for valuable consideration, unless a notice of the

pendency of the action has been duly filed for record before the time the person's conveyance is duly filed for record. Notice of the pendency of the action shall conform to the requirements of AS 09.45.-790.

* Sec. 9. AS 34.35.112 is amended to read:

Sec. 34.35.112. PAYMENT OF CLAIMANT'S LIENS. (a) If more than one lien created under AS 34.35.050 - 34.35.120 is claimed against property, the court in its judgment shall declare the rank of each lien or class of liens in the following order:

(1) all persons other than prime contractors or subcontractors with lien rights under AS 34.35.050(1);

(2) the trustees of employment benefit trusts for persons described in (1) of this subsection;

(3) all materialmen and subcontractors;

(4) persons described in AS 34.35.050(5) and [SUBCONTRACTORS, INCLUDING] prime contractors, other than the general contractor [AND PERSONS DESCRIBED IN AS 34.35.050(5)];

(5) the general contractor.

(b) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of the foreclosure sale of the property are insufficient to pay the lien claims of all persons who have recorded claims [A CLAIM] of lien, the

(1) [THE] liens of all individuals with lien rights under AS 34.35.050(1) shall first be paid in full, or pro rata if the proceeds are insufficient to pay them in full;

(2) [THE] liens of trustees of employment benefit trusts for persons described in (1) of this subsection shall be paid in full or pro rata if the proceeds are insufficient to pay them in full;

(3) [THE] liens of materialmen and subcontractors shall be paid in full or pro rata if the proceeds are insufficient to pay them

in full;

(4) liens of persons described in AS 34.35.050(5) and [OUT OF THE REMAINDER THE SUBCONTRACTORS, INCLUDING] prime contractors, other than the general contractor, shall be paid in full [,] or pro rata if the remainder is insufficient to pay them in full; and

(5) lien of the general contractor [THE BALANCE] shall be paid out of [TO THE GENERAL CONTRACTOR; A GENERAL CONTRACTOR IS ENTITLED TO EXECUTION FOR] the balance [DUE AFTER DISTRIBUTION].

* Sec. 10. AS 34.35.112 is amended by adding a new subsection to read:

(c) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of the foreclosure sale of the property are sufficient to pay the lien claims of all persons who have recorded claims of lien, the balance shall be paid to the person who owned the property before the foreclosure sale.

* Sec. 11. AS 34.35.114(c) is repealed and reenacted to read:

(c) A person who receives a stop-lending notice or notice of right to lien identifying a project for which the person is not the lender shall notify the claimant in writing within 10 days after receipt of the notice that the person is not the lender.

* Sec. 12. AS 34.35.114(d) is repealed and reenacted to read:

(d) A claimant shall, within 10 days after receipt of a request, provide an owner or lender to whom the claimant has given a stop-lending notice or notice of right to lien a written statement of the amount due to the claimant and unpaid.

* Sec. 13. AS 34.35.117(a) is amended to read:

(a) Except as provided under (b) of this section, a written waiver of lien or stop-lending [STOP-PAYMENT] notice of rights created under AS 34.35.050 - 34.35.120 signed by a claimant requires no consideration and is valid and binding. A waiver permitted under this

section may not relate to labor, materials, services, or equipment furnished after the date the waiver is signed by the claimant.

* Sec. 14. AS 34.35.120(4) is amended to read:

(4) "construction financing" means [THAT PORTION OF] money loaned or other credit extended to an owner secured by an encumbrance on real property to finance a project on that [ORIGINAL CONSTRUCTION OF A BUILDING OR OTHER IMPROVEMENT ON, OR DEVELOPMENT OF,] real property [, BUT DOES NOT INCLUDE

(A) FUNDS TO ACQUIRE REAL PROPERTY;

(B) FUNDS TO PAY PRINCIPAL AMORTIZATION OF ENCUMBRANCES WITH PRIORITY OVER THE ENCUMBRANCE SECURING THE CONSTRUCTION FINANCING;

(C) FUNDS TO PAY LOAN, COMMITMENT, TITLE, LEGAL, CLOSING, RECORDING OR APPRAISAL FEES ON THE CONSTRUCTION LOAN];

* Sec. 15. AS 34.35.120(9) is amended to read:

(9) "give notice" means to mail a notice required under AS 34.35.050 - 34.35.120 by first-class mail and by using a form of mail requiring a signed receipt, or to deliver the notice and obtain a receipt signed by the person to whom it is directed or an agent of that person; a notice is effective when given or delivered to

(A) [TO] a lender at the address designated in the encumbrance securing that lender;

(B) [TO] an owner at the last known address of the owner;

(C) [TO] a prime contractor at the last known address of the prime contractor;

(D) [TO] a potential lien claimant at the address specified in a stop-lending [STOP-PAYMENT] notice or notice of right to lien or claim of lien;

* Sec. 16. AS 34.35.120(13) is amended to read:

(13) "owner" means a person who owns <u>real property or a possessory interest in real property</u> [THE BUILDING OR OTHER IMPROVEMENT] and who enters into a contract, express or implied, for <u>a project on that property</u> [THE CONSTRUCTION, ALTERATION OR REPAIR OF A BUILDING OR IMPROVEMENT];

* Sec. 17. AS 34.35.120 is amended by adding a new paragraph to read:

(17) "project" means construction, alteration, or repair of an improvement on real property or work done to enhance the real property itself.

* Sec. 18. AS 34.35.069, 34.35.080(b), 34.35.114(e), and 34.35.118 are repealed.

Offered: 4/21/86
Referred: Rules

Original sponsors: Cotten, Szymanski, Phillips, et al

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 494 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liens for labor or material furnished."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 34.35.062 is repealed and reenacted to read:

Sec. 34.35.062. CONSTRUCTION FINANCING. (a) A claimant to whom payment for the labor, material, service, or equipment furnished for a project is past due may give the lender a stop-lending notice. The claimant shall at the same time give a copy of the notice to the owner and to each prime contractor with whom or through whom the claimant or the claimant's debtor has contracted. A stop-lending notice shall

(1) instruct the lender to stop disbursing, advancing, or otherwise providing construction financing for the project;

(2) be verified by the claimant;

(3) state the claimant's name, address, and telephone number;

(4) describe the labor, material, service, or equipment furnished by the claimant and state the name of the person to whom furnished;

(5) describe the real property improved by the labor, material, service, or equipment and state the name of the person the claimant believes to be the owner of the real property;

(6) state the amount due and unpaid to the claimant for the labor, material, service, or equipment.

(b) A stop-lending notice is binding upon a lender from the time

the lender has received it and had a reasonable opportunity to act upon it until it expires or is revoked. A notice expires on the 91st day after it is received by the lender unless the claimant has commenced an action on the claim that is the subject of the notice before that day and the lender has received written notification of the action. A stop-lending notice may be revoked at any time in writing signed by the claimant. Expiration or revocation of a notice extinguishes the liability of the lender to the claimant under (c) of this subsection.

(c) A lender who disburses, advances, or otherwise provides construction financing for a project after it is the subject of a stop-lending notice is liable to the claimant in an amount equal to the lowest of the following amounts:

(1) the amount of construction financing disbursed, advanced, or otherwise provided by the lender after receipt of the claimant's stop-lending notice; if there are two or more stop-lending notices when the disbursement occurs, the lender's liability to each claimant is based on the claimant's ranking under AS 34.35.112;

(2) the amount owed to the claimant, including interest, costs, and attorney's fees, for labor, material, service, or equipment furnished for the project by the claimant as established by a written agreement signed on or after the date of the stop-lending notice by the claimant, the owner and the prime contractor with whom or through whom the claimant or the claimant's debtor has contracted or by a final judgment in an action in which the owner, the claimant and the claimant's debtor are named and, if necessary, served parties;

(3) 150 percent of the amount stated in the stop-lending notice.

(d) Within 10 days after receiving the written agreement or a

certified copy of the judgment under (c)(2) of this section establishing the amount owed to a claimant from whom it has a binding stop-lending notice, a lender shall send to the claimant a verified statement showing, by date and amount, all construction financing provided by the lender for the project. Except as provided in (e) of this section, the lender shall include with the statement payment in the amount of the lender's liability to the claimant under (c) of this section.

(e) If there are two or more claimants to whom a lender is or may be liable under (c) of this section and the lender is uncertain as to the amount of its liability or possible liability to each, the lender may bring an action to require the claimants to interplead their claims.

(f) A draw against construction financing may be made only after certification of job progress is delivered to the lender by the owner. The form of the certification may be prescribed by the lender and shall include

(1) a statement of the progress of the project, including the percentage of completion of the project;

(2) the name, address, and telephone number of each prime contractor who has furnished labor, material, service, or equipment for the project;

(3) the amount owed by the owner to each listed prime contractor; and

(4) the portion of the draw that the owner will pay to each listed prime contractor.

(g) The owner shall use each draw as indicated in the certificates given by them to the lender under (f) of this section. The lender may not be required to verify the information in a certificate

and is not liable for an error in a certificate.

(h) An owner who intentionally fails to apply construction financing proceeds as indicated by the certificate required under (f) of this section is guilty of a class A misdemeanor. The penalty provided under this subsection does not replace any other penalty that may be provided for by law for the same conduct.

(i) Within 10 days after being requested, a lender shall provide a person who has given the lender a stop-lending notice with a copy of

(1) each certificate received by the lender under (f) of this section; and

(2) a verified certificate stating the amount of construction financing proceeds committed by the lender for the project that have not been disbursed by the lender.

(j) The lender may not provide construction financing proceeds for payment of indebtedness of the owner that is not incurred for the project.

* Sec. 2. AS 34.35.064(a) is amended to read:

(a) Before furnishing labor, material, service, or equipment for a project, a person [AFTER ENTERING INTO A CONTRACT, A CLAIMANT] may give a notice of right to lien to the owner or owner's agent [AND THE LENDER]. If the notice is given in accordance with this section, the owner has the burden of proof to show that the owner did not know of or consent to the furnishing of the labor, material, service, or equipment by the claimant in an action to foreclose the claimant's lien on the property under AS 34.35.050 - 34.35.120. Otherwise the claimant has the burden of proof to show that the owner knew of and consented to the furnishing of the labor, material, service, or equipment. The notice of right to lien shall be in writing, state that it is a notice of a right to assert a lien against real property [A

BUILDING OR OTHER IMPROVEMENT] for labor, materials, services, or equipment furnished in connection with a project [CONSTRUCTION, ALTERATION, OR REPAIR OF THE BUILDING OR OTHER IMPROVEMENT], and contain

(1) a legal description sufficient for identification of the real property [UPON WHICH THE BUILDING OR OTHER IMPROVEMENT IS LOCATED];

(2) the name of the owner;

(3) the name and address of the claimant;

(4) the name and address of the person with whom the claimant contracted;

(5) a general description of the labor, materials, services, or equipment provided or to be provided;

(6) a statement that the claimant may be entitled to record a claim of lien; and

(7) the following statement in type no smaller than that used in providing the information required by (1) - (6) of this subsection: WARNING: Unless provision is [HAS BEEN] made for payment of sums that may be due to the undersigned, your above property may be subject to foreclosure to satisfy those sums even though you may pay [THIS CLAIM, YOU MAY BE LIABLE FOR PAYMENT DIRECTLY TO THIS CLAIMANT, NOTWITHSTANDING THE FACT THAT PAYMENT HAS BEEN MADE TO] a prime contractor or other person for the labor, material, service, or equipment furnished by the undersigned [PARTY].

* Sec. 3. AS 34.35.067 is amended to read:

Sec. 34.35.067. RECORDING NOTICE OF RIGHT TO LIEN. A notice of right to lien may be recorded by a claimant at any time after the claimant enters [ENTERING] into a contract for or first furnishes labor, material, service, or equipment [FURNISHED] in connection with a project [THE CONSTRUCTION, ALTERATION OR REPAIR OF A BUILDING OR

OTHER IMPROVEMENT]. The notice shall be recorded in the same manner as specified for the recording of a claim of lien under AS 34.35.070.

* Sec. 4. AS 34.35.070(a) is amended to read:

(a) A [SUBJECT TO THE PROVISIONS OF AS 34.35.069(a), A] claimant may record a claim of lien after entering into a contract for a project [THE CONSTRUCTION, ALTERATION, OR REPAIR OF A BUILDING OR IMPROVEMENT]. A claim of lien may not be recorded later than the time specified under AS 34.35.068.

* Sec. 5. AS 34.35.071(a) is amended to read:

(a) The owner of real property that may be subject to a lien under AS 34.35.050 - 34.35.120 may announce the date of completion of the project [A BUILDING OR OTHER IMPROVEMENT ON THE PROPERTY] by

(1) recording a notice of completion after completion of the project [CONSTRUCTION, ALTERATION OR REPAIR OF THE BUILDING OR OTHER IMPROVEMENT] in the office of the recorder of the district in which the real property [BUILDING OR OTHER IMPROVEMENT] is situated; and

(2) giving notice at least five days before the recording of the notice of completion to all claimants who have given a notice of right to lien or a stop-lending [STOP-PAYMENT] notice to the owner and the lender prior to 10 days before recording a notice of completion; the notice must include a copy of the notice of completion and a statement advising claimants that a notice of completion will be recorded not earlier than five days after the date of the notice.

* Sec. 6. AS 34.35 is amended by adding a new section to read:

Sec. 34.35.074. CIVIL SUITS. (a) A person injured by a violation of AS 34.35.050 - 34.35.120 may bring a civil action

(1) except as provided in AS 34.35.062(c), for actual and consequential damages that are proximately caused by the violation

plus costs, including reasonable attorney's fees;

(2) to enjoin the violation, and if the person prevails, the person shall be awarded costs, including reasonable attorney's fees.

(b) A claimant who files a stop-lending notice or has a claim of lien recorded under AS 34.35.075 and who fails to promptly remove the stop-lending notice or claim of lien from the record upon receiving payment in full on the claim or discovering that the stop-lending notice or claim of lien is in error, unjust, premature or excessive is liable for actual and consequential damages caused by the filing of the stop-lending notice or improperly recorded claim of lien plus costs, including reasonable attorney's fees.

* Sec. 7. AS 34.35.080(a) is amended to read:

(a) A lien provided for in AS 34.35.050 - 34.35.120 does not bind real property [A BUILDING, STRUCTURE, OR OTHER IMPROVEMENT] for more than six months after the claim of lien is recorded [FILED], unless an action is commenced in [SUIT IS BROUGHT BEFORE] the proper court to enforce the lien within

(1) [WITHIN] that time; [,] or

(2) [WITHIN] six months after recording of an extension notice in the same recording office within the original six-month period showing the recording date and the book and page or instrument number of the initial claim of lien, and the balance owing.

* Sec. 8. AS 34.35.080 is amended by adding a new subsection to read:

(c) A lien whose duration is extended by commencement of an action under (a) of this section is void as against a person who, after the commencement of the action and without knowledge or actual notice of its pendency, acquires an interest in the subject property in good faith for valuable consideration, unless a notice of the

pendency of the action has been duly filed for record before the time the person's conveyance is duly filed for record. Notice of the pendency of the action shall conform to the requirements of AS 09.45.-790.

* Sec. 9. AS 34.35.112 is amended to read:

Sec. 34.35.112. PAYMENT OF CLAIMANT'S LIENS. (a) If more than one lien created under AS 34.35.050 - 34.35.120 is claimed against property, the court in its judgment shall declare the rank of each lien or class of liens in the following order:

(1) all persons other than prime contractors or subcontractors with lien rights under AS 34.35.050(1);

(2) the trustees of employment benefit trusts for persons described in (1) of this subsection;

(3) all materialmen and subcontractors;

(4) [SUBCONTRACTORS, INCLUDING] prime contractors other than the general contractor [AND PERSONS DESCRIBED IN AS 34.35.050-(5)];

(5) the general contractor.

(b) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of the foreclosure sale of the property are insufficient to pay the lien claims of all persons who have recorded claims [A CLAIM] of lien, the

(1) [THE] liens of all individuals with lien rights under AS 34.35.050(1) shall first be paid in full, or pro rata if the proceeds are insufficient to pay them in full;

(2) [THE] liens of trustees of employment benefit trusts for persons described in (1) of this subsection shall be paid in full or pro rata if the proceeds are insufficient to pay them in full;

(3) [THE] liens of materialmen and subcontractors shall be paid in full or pro rata if the proceeds are insufficient to pay them

in full;

(4) liens of persons described in AS 34.35.050(5) and [OUT OF THE REMAINDER THE SUBCONTRACTORS, INCLUDING] prime contractors, other than the general contractor, shall be paid in full [,] or pro rata if the remainder is insufficient to pay them in full; and

(5) lien of the general contractor [THE BALANCE] shall be paid out of [TO THE GENERAL CONTRACTOR; A GENERAL CONTRACTOR IS ENTITLED TO EXECUTION FOR] the balance [DUE AFTER DISTRIBUTION].

* Sec. 10. AS 34.35.112 is amended by adding a new subsection to read:

(c) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of the foreclosure sale of the property are sufficient to pay the lien claims of all persons who have recorded claims of lien, the balance shall be paid to the person who owned the property before the foreclosure sale.

* Sec. 11. AS 34.35.114(c) is repealed and reenacted to read:

(c) A person who receives a stop-lending notice or notice of right to lien identifying a project for which the person is not the lender shall notify the claimant in writing within 10 days after receipt of the notice that the person is not the lender.

* Sec. 12. AS 34.35.114(d) is repealed and reenacted to read:

(d) A claimant shall, within 10 days after receipt of a request, provide an owner or lender to whom the claimant has given a stop-lending notice or notice of right to lien a written statement of the amount due to the claimant and unpaid.

* Sec. 13. AS 34.35.117(a) is amended to read:

(a) Except as provided under (b) of this section, a written waiver of lien or stop-lending [STOP-PAYMENT] notice of rights created under AS 34.35.050 - 34.35.120 signed by a claimant requires no consideration and is valid and binding. A waiver permitted under this

section may not relate to labor, materials, services, or equipment furnished after the date the waiver is signed by the claimant.

* Sec. 14. AS 34.35.120(4) is amended to read:

(4) "construction financing" means [THAT PORTION OF] money loaned or other credit extended to an owner secured by an encumbrance on real property to finance a project on that [ORIGINAL CONSTRUCTION OF A BUILDING OR OTHER IMPROVEMENT ON, OR DEVELOPMENT OF,] real property [, BUT DOES NOT INCLUDE

(A) FUNDS TO ACQUIRE REAL PROPERTY;

(B) FUNDS TO PAY PRINCIPAL AMORTIZATION OF ENCUMBRANCES WITH PRIORITY OVER THE ENCUMBRANCE SECURING THE CONSTRUCTION FINANCING;

(C) FUNDS TO PAY LOAN, COMMITMENT, TITLE, LEGAL, CLOSING, RECORDING OR APPRAISAL FEES ON THE CONSTRUCTION LOAN];

* Sec. 15. AS 34.35.120(9) is amended to read:

(9) "give notice" means to mail a notice required under AS 34.35.050 - 34.35.120 by first-class mail and by using a form of mail requiring a signed receipt, or to deliver the notice and obtain a receipt signed by the person to whom it is directed or an agent of that person; a notice is effective when given or delivered to

(A) [TO] a lender at the address designated in the encumbrance securing that lender;

(B) [TO] an owner at the last known address of the owner;

(C) [TO] a prime contractor at the last known address of the prime contractor;

(D) [TO] a potential lien claimant at the address specified in a stop-lending [STOP-PAYMENT] notice or notice of right to lien or claim of lien;

* Sec. 16. AS 34.35.120(13) is amended to read:

(13) "owner" means a person who owns real property or a possessory interest in real property [THE BUILDING OR OTHER IMPROVEMENT] and who enters into a contract, express or implied, for a project on that property [THE CONSTRUCTION, ALTERATION OR REPAIR OF A BUILDING OR IMPROVEMENT];

* Sec. 17. AS 34.35.120 is amended by adding a new paragraph to read:

(17) "project" means construction, alteration, or repair of an improvement on real property or work done to enhance the real property itself.

* Sec. 18. AS 34.35.069, 34.35.080(b), 34.35.114(e), and 34.35.118 are repealed.

025. **Parties to foreclosure.** In an action to foreclose a by AS 34.35.005 — 34.35.425, all persons personally lien holders whose claims have been filed, and all other sted in the matter in controversy or the property sought with the lien may be made parties. Persons who are not bound by the proceedings. (§ 26-9-6 ACLA 1949)

rences. — 53 Am. Jur.
ns, §§ 359-373.

030. **Lien claim against different properties.** If a lien or the same labor against two separate kinds of property ned by different persons, the court shall determine the ch kind of property and designate which shall be sold ge the amount of the lien claim. (§ 26-9-7 ACLA 1949)

035. **Several judgment for each claimant.** In an ce a lien judgment shall be given in favor of each person or the amount due the person, and the court shall order ct to the lien to be sold by the peace officer in the same roperty is sold on execution, or in any manner that the proper. The proceeds of the sale shall be apportioned to each judgment pro rata, if the amount is insufficient to l. (§ 26-9-8 ACLA 1949)

040. Order of priority and payment. [Repealed, § 19 ch For current law see AS 34.35.112.]

045. **Lienor's action on contract.** Except as otherwise ded, nothing in AS 34.35.005 — 34.35.425 may be event a lienor under a contract from maintaining an lienor has no lien for the security of the debt and the action does not prejudice rights under AS 34.35.005 — 6-9-11 ACLA 1949)

NOTES TO DECISIONS

by statute create a y, and a lienor has the way of his lien or by an hell v. Beaver Dredg- 6 (1935).

Where the lien fails, the claimant may nevertheless have a personal judgment against the defendant personally liable in the cause. Mitchell v. Beaver Dredging Co., 8 Alaska 566 (1935).

Article 2. Mechanics and Materialmen.

Section
50. Lien for labor or materials furnished
55. Land subject to lien
60. Priorities
62. Construction financing
64. Notice of right to lien
65. Notice of nonresponsibility
67. Recording notice of right to lien
68. Time periods for claiming liens
69. Acknowledgment of right to lien
70. Claim of lien
71. Notice of completion
72. Bond
75. Record and index of claim
80. Duration of lien
85. Lien for improving lot or street
90. Payment to contractor
95. Amount of lien
100. Action against contractor on lien
105. Materials not subject to process
110. Actions to enforce liens
112. Payment of claimant's liens
114. Obligation of claimant and lender to provide information
115. Persons considered agent of owner
117. Waiver of lien rights
118. Claimant liability
119. Waiver of liens on unsold common interest community units
120. Definitions

Sec. 34.35.050. Lien for labor or materials furnished. A person has a lien, only to the extent provided under this chapter, to secure the payment of the contract price if the person

(1) performs labor upon real property at the request of the owner or the agent of the owner for the construction, alteration, or repair of a building or improvement;

(2) is a trustee of an employee benefit trust for the benefit of individuals performing labor on the building or improvement and has a direct contract with the owner or the agent of the owner for direct payments into the trust;

(3) furnishes materials that are delivered to real property under a contract with the owner or the agent of the owner that are incorporated in the construction, alteration or repair of a building or improvement;

(4) furnishes equipment that is delivered to and used upon real property under a contract with the owner or the agent of the owner for the construction, alteration or repair of a building or improvement;

(5) performs services under a contract with the owner or the agent of the owner in connection with the preparation of plans, surveys, or architectural or engineering plans or drawings for the construction, alteration or repair of a building or improvement, whether or not actually implemented on that property; or

(6) is a general contractor. (§ 26-1-1 ACLA 1949; am § 1 ch 20 SLA 1949; am § 1 ch 14 SLA 1953; am § 1 ch 57 SLA 1959; am § 1 ch 106 SLA 1967; am § 1 ch 175 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — Many of the cases annotated below were decided under this section as it existed before the 1978 amendment.

Constitutionality of lien laws. — See Nordstrom v. Sivertsen-Johnsen Mining & Dredging Co., 5 Alaska 210 (1915).

The mechanic's lien law of Alaska was adopted originally from the lien law of Oregon. Arctic Lumber Co. v. Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914).

Alaska mechanic's lien laws were derived from those of Oregon. Vaara v. Ketchikan Spruce Mills, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

The purpose of legislatures in enacting mechanic's and materialman's lien laws is for the protection of the mechanic, insuring to him the fruits of his labor and providing the materialman with a speedy and efficacious mode of collecting his pay for materials furnished. Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

And to secure lien priority of payment. — It is the purpose of the lien law to secure priority of payment of the price and value of work performed and materials furnished in erecting and repairing a building or other structure. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

This article relating to mechanics' liens should be liberally construed. Russell v. Hayner, 130 F. 90 (9th Cir. 1904); Arctic Lumber Co. v. Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914). But see Goldstein v. Noble, 6 Alaska 282 (1920).

The evident spirit and purpose of this article is to do substantial justice to all parties who may be affected by its provisions, and the courts should avoid unfriendly strictness and mere technicality. Russell v. Hayner, 130 F. 90 (9th Cir. 1904).

Mechanic's lien statutes are to be liberally construed, with a view to effect substantial justice, and the fact that the lien claimant includes in his claim an item of his services for which the law gives him no lien will not defeat the lien if due to an honest mistake, and his lien in such a case may be enforced pro tanto if the true amount for which he is entitled to a lien may be segregated from the remainder. Pioneer Mining Co. v. Delamotte, 185 F. 752 (9th Cir. 1911).

Except to protect against undue severity. — Where the particular enactment deals fairly and equitably with both the owner and the honor, the liberal interpretation seems to be the rule adopted; but where the statute seems to be unnecessarily severe upon one, and in favor of the other, resulting in manifest injustice, the courts have endeavored to relieve the severity, holding the party favored to a strict compliance with the statute. Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

And parts upon which existence of lien depends should be strictly construed. — The safe and proper rule of construction of mechanic's lien statutes is that, while the remedial portions of these statutes should be liberally construed, with a view to avoid defeating the purpose of the statute, yet those parts upon which the right to the existence of a lien depend, being in derogation of the common law, should be strictly construed. Morris v. Marsh, 3 Alaska 140 (1906).

They must be substantially complied with. — A mechanic's lien is purely of statutory creation, and can only be maintained by a substantial observance and compliance with the provisions of the statute. Whatever is made necessary to the existence of the lien must be performed, or the attempt to create it will be futile. A substantial adherence to the terms of the statute in the notice of the lien is indispensable. Russell v. Hayner, 130 F. 90 (9th Cir. 1904).

Thus, this section should be strictly construed. Rivers v. Pastro, 11 Alaska 491 (1948).

A strained construction to bring a person within this section is not permissible. Rivers v. Pastro, 11 Alaska 491 (1948).

Prior law construed. — This section as it existed prior to 1978 prohibited the creation of a valid mechanic's lien prior to the commencement of work on the site and the effectuation of visible improvements to the property. Torkko/Korman/Engineers v. Penland Ventures, Sup. Ct. Op. No. 2757 (File No. 6489), 673 P.2d 769 (1983). See now paragraph (5), which allows liens for work done in the preparation of plans "whether or not [they were] actually implemented."

This article is not, of its own terms, made applicable to public property. University of Alaska v. Simpson Bldg. Supply Co., Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 1317 (1975).

As to immunity of real property of University of Alaska from lien attachment or foreclosure, see University of Alaska v. Simpson Bldg. Supply Co., Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 1317 (1975).

The landowner must have actual knowledge of the construction before his interest can be subjected to a materialman's lien. Vaara v. Ketchikan Spruce Mills, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

If the materialman relies on both the credit of the purchaser and the security of the building, the materialman can assert a lien. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

Materialperson must demonstrate that materials furnished were generally incorporated into the building or project. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

No requirement that materialman see that every piece used in structure. — In the foreclosure of a materialman's lien, the materialman should not be required to watch the progress of a structure to see that every piece of material supplied by him was used therein, and if some of the material has been used elsewhere, it rests with the defendant to show that fact. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

A materialperson has a burden to show by a preponderance that its materials were generally used in a project, but it need not show that each and every item was incorporated. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

A mechanic's lien will attach to property for an improvement not placed thereon if it has a physical or beneficial connection therewith and is essential to the convenient and comfortable use of the premises. Mitford v. Prior, 353 F.2d 550 (9th Cir. 1965).

Lots in a subdivision are liennable for an engineer's labor on the subdivision's water and sewerage system. Mitford v. Prior, 353 F.2d 550 (9th Cir. 1965).

Effect of agreement establishing partnership. — For the purposes of this section, an agreement establishing a partnership or joint venturership does not affect one party's standing to file a lien against the other party's land. Urban Dev. Co. v. Dekreon, Sup. Ct. Op. No. 1083 (File No. 2028), 526 P.2d 325 (1974).

The meaning properly attaching to the word "contractor" as used in this section is one who has charge of the construction of the building, alteration, or repair by direction of or contract with the owner or his agent duly authorized to contract for him. Morris v. Marsh, 3 Alaska 140 (1906).

A lien of a contractor may include an item for supervision and overhead. Clay v. Sandal, Sup. Ct. Op. No. 74 (File Nos. 60 (a), thru 369 P.2d 890 (1962).

Labor for which lien is claim must come within statute. — While mechanic's lien statutes are to be liberally construed, so that their purpose may not be frustrated, and with a view to effecting substantial justice, yet, unless the labor performed for which the lien is claimed is such as comes within the contemplation of the statute, there can be no valid lien. Noble v. Gustafson, 204 F. 69 (9th Cir. 1913).

This section and AS 34.35.070 must be read and construed together, and as applied to an original contractor, in computing the time from which he must file his claim of lien, they provide that he must file it within 90 days from the date of the completion of his contract or within 90 days from the date of the construction of the building, or any part of such construction, under the contract. Bloom v. McCluskey, 7 Alaska 349 (1925).

There must be employment by the owner of the building or his agent. — To authorize a lien under the provisions of this section, there must be an employment by the owner of the building, or his authorized agent, and the employment of contractors by one who was occupying the land under a contract of purchase, does not constitute the employment contemplated by this section. Russell v. Hayner, 130 F. 90 (9th Cir. 1904).

Or owner must know of and fail to disclaim improvement. — If the person in charge is not in fact the agent of the owner, the interest of the owner shall, nevertheless, be liable for the improvement if it is constructed with his knowledge and he fails to post the required notice disclaiming responsibility. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

Person in charge is prima facie owner's agent. — This section, AS 34.35.055 and 34.35.065, construed together, mean that the person in charge of the work shall prima facie be deemed to be the agent of the owner, and the prop-

erty of the latter shall be charged with the lien under the express provisions of this section. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908). See AS 34.35.115.

Lessee is not owner's agent. — A lessee, contracting for improvements upon the demised premises, does not, merely by virtue of his relation as lessee, contract as the agent of the lessor, so as to subject the property to mechanics' liens therefor. Morris v. Marsh, 3 Alaska 140 (1906).

And lien is limited to leasehold unless owner fails to give notice of nonresponsibility. — If the work is done for a lessee of the property, liability is confined to the leasehold es' 'e, if the owner had no knowledge of the construction of the improvement, or if, having such knowledge, he gave notice that he would not be responsible. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

Or unless lease authorizes lessee to improve or improvements revert. — It is the general rule that where a lease contains a provision authorizing the lessee to make improvements by deducting the cost thereof from the rent, or where part of the consideration of the lease is the making by the lessee of improvements which become a part of the realty, or that the improvements made by the lessee shall revert to the lessor, a mechanic's lien may attach to the property for work done or materials furnished, pursuant to a contract with the lessee. Arctic Lumber Co. v. Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914).

It will attach to building erected by lessee that is to revert to lessor. — Where a lease provided that construction of a business building on the property by the lessee was a part of the consideration, but also provided that the building was to "attach to the said realty as a part thereof and become the property of lessor" upon the expiration or termination of the lease, as to a materialman's lien, the building had become an integral part of the leasehold estate, and was not an item of personal property to be considered separately from the realty upon which it was constructed and the lessee's interest in that realty. Clay v. Sandal, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b)), 369 P.2d 890 (1962).

Breach of contract bars enforcement of lien for work performed. — Where a contractor fails to perform a considerable part of the work required by his contract, his failure, regardless of his intentions, constitutes a bar to his enforcement of a lien for the work performed. Gillis v. Gillette, 13 Alaska 55, 181 F.2d 872 (9th Cir. 1950).

As where contract is wilfully abandoned before completion. — See Gillis v. Gillette, 13 Alaska 55, 181 F.2d 872 (9th Cir. 1950).

Burden of proof on lien claimant to show compliance with statute. — Where the allegations of the complaint in regard to the work done upon a claim and the character thereof were put in issue by the answer, the burden of the proof is on the lien claimant to show by legally sufficient evidence the accrual of the lien under the terms of the statute which creates it, as well as under the terms of the contract under which the work was done. Pioneer Mining Co. v. Delamotte, 185 F. 752 (9th Cir. 1911).

Bare statement that other projects were being completed by a construction company at the same time that a particular project's modular units were being manufactured is insufficient, under the supreme court's precedents, to raise a triable issue of fact as to whether the material furnished to the construction company was actually incorporated into the particular project. University of Alaska v. Simpson Bldg. Supply Co., Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 1317 (1975).

A house builder's employee cannot recover back wages directly against the home buyers under a theory that the employee was a third-party beneficiary to a contract between the builder and the buyer. State v. Osborne, Sup. Ct. Op. No. 2034 (File No. 4385), 607 P.2d 369 (1980).

Applied in Kel Weatherstrip Co. v. Rankin, 15 Alaska 204, 124 F. Supp. 575 (D. Alaska 1954).

Quoted in Irvine v. McDougal, 5 Alaska 220 (1915); Mitchell v. Beaver Dredging Co., 8 Alaska 566 (1935); Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 11541), 478 P.2d 829 (1970).

Cited in First Nat'l Bank v. Stout, 9 Alaska 400 (1939); Spalding v. Martin, 241 F. 372 (9th Cir. 1917).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, § 1 et seq.

"Owner" within meaning of mechanic's lien statutes. 2 ALR 791; 95 ALR 1095.

Lien for labor or material entering into rejected work. 16 ALR 981.

Right to mechanic's lien. 83 ALR 11.

Inception of lien. 83 ALR 925.

Mechanics' liens: mortgagee-lender's duty, in disbursing funds, to protect mortgagor against outstanding or potential mechanics' liens against the mortgaged property. 30 ALR4th 134.

Sec. 34.35.055. Land subject to lien. (a) The land upon which a building or other improvement described in AS 34.35.050 is constructed, together with a convenient space about the building or other improvement or so much as is required for the convenient use and occupation of it (to be determined by the judgment of the court at the time of the foreclosure of the lien), and the mine on which the work is performed or for which the material is furnished is also subject to the lien created by AS 34.35.050 — 34.35.120 if, at the time the work is started or the materials for the building or other improvements are first furnished, the land belongs to the person who causes the building or other improvement to be constructed, altered, or repaired.

(b) If the person owns less than a fee simple estate in the land, then only the interest of the person in it is subject to the lien.

(c) If the interest is a leasehold interest, and the holder forfeits the rights of the holder to it, the purchaser of the building or improvement and leasehold term, or so much of it as remains unexpired at a sale under AS 34.35.050 — 34.35.120 is considered to be the assignee of the leasehold term, and may pay the lessor all arrears of rent or other money and costs due under the lease.

(d) If the lessor regains possession of the land and property, or obtains judgment for the possession of it before the commencement of the construction, alteration, or repair of the building or other improvement, the purchaser may only remove the building or other improvement within 30 days after the purchase, and the owner of the land shall receive the rent due payable out of the proceeds of the sale, according to the terms of the lease, down to the time of the removal. (§ 26-1-2 ACLA 1949)

NOTES TO DECISIONS

The object of this section is to declare to what land the lien shall extend. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

The legislature intended to confer the right of lien upon every laborer or mechanic whose work tends to improve lands or mines. Morris v. Marsh, 3 Alaska 140 (1906).

The purpose of extending a statutory lien to the land is because the value of the land is increased when a materialperson provides labor or material for a structure which is attached to the land. The lien should extend to the land, which is benefited by the materialperson. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

Complaint is defective unless it alleges labor went to improvement. — The absence of an allegation that the labor went to the improvement of the owner's lands or mines is of itself fatal to the complaint. Morris v. Marsh, 3 Alaska 140 (1906).

And so is lien notice. —A lien notice simply to the effect that materials were

furnished and labor was done "in connection with the work done upon the claims" does not comply with the statute. Goldstein v. Noble, 6 Alaska 282 (1920).

A lien on a building for materials furnished cannot include another structure against which a lien is not filed, and into the construction, alteration, and repairs of which some or all of the materials were employed or used. Burr v. House, 3 Alaska 641 (1909).

The general rule is that a lessee cannot impose any charge upon the reversion or estate of the lessor thereof. Morris v. Marsh, 3 Alaska 140 (1906).

Nor does the fact that the lessor acquiesces in the improvement by the lessee subject his reversion to the mechanics' liens therefor. Morris v. Marsh, 3 Alaska 140 (1906).

Unless lessor fails to give notice of nonresponsibility or his agent causes improvement. — This section, AS 34.35.050 and AS 34.35.065, construed together, mean that the person in charge of the work shall prima facie be deemed to be the agent of the owner, and the property of the latter shall be charged with the lien under the express provisions of AS 34.35.050; that, if the person in charge is not in fact such agent, the interest of the owner shall, nevertheless, be liable for the improvement if it is constructed with his knowledge, and he fails to post the required notice disclaiming responsibility; and that, if the work is done for a lessee of the property, liability is confined to the leasehold estate, if the owner had no knowledge of the construction of the improvement, or if, having such knowledge, he gave notice that he would not be responsible. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908). See AS 34.35.115.

To determine whether or not modular units are sufficiently attached to the land on which they are situated, the supreme court will look to the following elements: (1) physical annexation, (2) adaption to use with real property, (3) intention to annex to realty, (4) relationship of the claiming parties, (5) the relative difficulty of removal, (6) the nature of the article annexed, and (7) whether the fact of the annexation is open and apparent. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 615 (1977).

Applied in Turkko Korman Engineering v. Penland Ventures, Sup. Ct. Op. No. 2757 (File No. 6489), 673 P.2d 769 (1983).

Quoted in Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

Stated in Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, §§ 28-48.

Public property as subject to lien. 26 ALR 326.

Vendor's interest as subject to mechanic's lien. 58 ALR 911; 102 ALR 233.

Quantity or area of land around improvement which may be subject to lien. 84 ALR 123.

Sec. 34.35.060. Priorities. (a) Except as provided in (c) of this section, an encumbrance which is properly recorded shall be preferred to a lien created under AS 34.35.050 — 34.35.120 unless the claim of lien under AS 34.35.070 or notice of right to lien under AS 34.35.064 has been recorded before the encumbrance. The preference granted for a prior mortgage or deed of trust under this section applies without regard to when the sums are disbursed or whether the disbursements are required under the terms of a loan agreement.

(b) *[Repealed, § 19 ch 175 SLA 1978.]*

(c) A lien created by AS 34.35.050 — 34.35.120 in favor of an individual actually performing labor upon a building or other improvement in its original construction or of a trustee of an employee benefit trust for those individuals is preferred to a prior encumbrance upon the land on which the building or other improvement is constructed.

(d) In enforcing the lien, the building or other improvement may be sold separately from the land. When sold separately, the purchaser may remove the building or other improvement within a reasonable time after the sale, not to exceed 30 days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal. If removal is prevented by legal proceedings, the 30 days does not begin to run until the final determination of the proceedings in the court of first resort, or in the appellate court if appeal is taken. (§ 26-1-3 ACLA 1949; am § 1 ch 111 SLA 1953; am § 1 ch 7 SLA 1955; am §§ 2, 3, 19 ch 175 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — The cases annotated below were decided under this section as it existed prior to the 1978 amendment, which, among other things, rewrote subsection (a) and repealed subsection (b), which provided when a lien created by AS 34.35.050 — 34.35.120 was preferred to a lien, mortgage, or other encumbrance which is unrecorded.

Legislative intent. — The legislative intent is to limit the priority granted generally to situations where the construction preceded all other construction in and upon a given area of vacant or cleared land. Lynch v. McCann, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

In the case of "original construction," the legislature intended to subordinate to some extent the principle of first in time, first in right, to a social interest in securing mechanics' lienors. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

For purposes of this section, a deed of trust and a mortgage are not differentiated. Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

This section protects the security of a mortgagee or beneficiary of a deed of trust against mechanics' liens so long as his encumbrance attaches and is recorded before the mechanics' lienor commences his labor or furnishes materials, except where "original construction" is performed. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A beneficiary of a deed of trust whose interest attaches and who records before any alteration or repair begins or materials are furnished has priority over a mechanics' lienor, except in the case of original construction under this section. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Scheme of priorities not overcome by posting notices of nonresponsibility. — Mortgagees and beneficiaries of deeds of trust need not post notice of nonresponsibility, and if they do, the notices do not overcome the scheme of priorities established in this section. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A mechanics' lienor has priority over the beneficiary of a deed of trust in the case of original construction under subsection (c), regardless of whether the beneficiary of the deed of trust posts a notice of nonresponsibility. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The legislature, in subsection (c), provided that mechanics' lienors performing original construction should have priority over earlier security interests. The scheme of priorities ordered by the legislature in the circumstances of original construction would be defeated if beneficiaries of deeds of trust could attain priority over mechanics' lienors by posting notices of nonresponsibility. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Construction lenders can protect themselves from mechanics' liens in

several ways: They may require their contractors or borrowers to put up a cushion of perhaps a tenth of the loan to be disbursed by the construction lender before the loan funds are disbursed; they may make all payments directly to subcontractors and suppliers; they may make disbursements to the contractors only on production of receipts and lien waivers from the subcontractors and suppliers. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1151), 478 P.2d 829 (1970).

Prior encumbrancers who had loaned money on the security of bare land would not be substantially harmed if laborers and materialmen had priority when they made improvements, and construction lenders can protect themselves. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1151), 478 P.2d 829 (1970).

Priority under subsection (c). — Under subsection (c) a subsequent mechanic's lien is prior in right to a preexisting mortgage only if the work was "original construction." Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

A new addition to a building was not original construction within the intendment of subsection (c). Lynch v. McCann, Supp. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

Where the addition was an addition to a preexisting building, and was of relatively small size, and could not be removed without greatly damaging the premises as they were before the addition was added, the mechanics' liens were subordinate to the prior recorded deeds of trusts. Lynch v. McCann, Supp. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

Lynch v. McCann only case discussing "original construction". — Lynch v. McCann, Supp. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970) is the only case discussing "original construction," a term unique to Alaska's laws. Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

But it established no clear test. — Lynch v. McCann, Supp. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970) established no clear test for original construction, but stated such standard "must await decisional delineation." Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

Suggested guideline for "original construction". — The supreme court in Lynch v. McCann, Supp. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970) suggested as a guideline for determining "original construction" where the construction preceded all other construction in and upon a given area of vacant or cleared land. Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

Where a building was apparently a separate structure and not constructed as a part of a smaller existing building and on the building permit issued by the Greater Anchorage Area Borough, the construction was described as "new" as opposed to other boxes entitled "alteration," "addition," "repairs," and "other," although the building was designed architecturally to be connected to the existing peanut farm and to conform and blend with it architecturally, the federal district court concluded that the federal district building constituted "original construction." Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

The lien of a secured party was not treated as an "interest in the land" for purposes of AS 34.35.065, the nature of nonresponsibility section, since, if it were so treated, a secured party could attain priority over a mechanics' lienor on original construction. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1151), 478 P.2d 829 (1970).

Issue arising from a discrepancy in the amount of liens was not critical to determining the priority of such liens. Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

The fluctuation of the market values of mortgage securities cannot alter the priorities between a lienor and mortgagee. Copper River Lumber Co. v. Clark, 3 Alaska 635 (1909).

A mechanic's lien, not perfected at the time a federal tax lien attaches, is inferior to the government lien. Kel Weatherstrip Co. v. Rankin, 15 Alaska 204, 124 F. Supp. 555 (D. Alaska 1954).

As against the United States, a mechanic's lien must be specific, and what is a specific lien is a federal question. Kel Weatherstrip Co. v. Rankin, 15 Alaska 204, 124 F. Supp. 555 (D. Alaska 1954).

And a lien is not specific until the lienor reduces it to possession. Kel Weatherstrip Co. v. Rankin, 15 Alaska 204, 124 F. Supp. 555 (D. Alaska 1954).

"Specificity" requires that the lien be attached to certain property by reducing it to possession, on the theory that the United States has no claim against property no longer in the possession of the debtor. Until such possession, it remains a general lien. Kel Weatherstrip Co. v. Rankin, 15 Alaska 204, 124 F. Supp. 555 (D. Alaska 1954).

Federal law controls when a lien of the United States is involved. Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

Subsection (c) not adopted by federal district court. — In determining the content of federal common law in order to establish priority between a deed of trust assigned to and recorded by the Small Business Administration and a subsequent mechanic's lien by alleged actions of furnishing labor and materials for an improvement to the property in question, the federal district court would not adopt subsection (c) of this section, which is a distinctly minority codification of mechanic's lien laws and would grant nongovernment parties rights beyond the Federal Tax Lien Act. Thorpe Constr. Co. v. Irvin & Co., 367 F. Supp. 87 (D. Alaska 1973).

A mechanic has a lien upon the land paramount to all rights accruing after the commencement of his work. Copper River Lumber Co. v. Clark, 3 Alaska 635 (1909).

Formerly, a lien for alteration or repair, as well as original construction, took precedence even of a prior mortgage. Wagner v. Shaw, 6 Alaska 647 (1922). See First Nat'l Bank v. Vasey, 14 Alaska 414, 114 F. Supp. 913 (D. Alaska 1953).

Section is not intended to confiscate another's security. — Although the purpose of this section is to give a mechanic's lien to the full extent of the claim upon the property improved, the legislature did not intend in accomplishing that result to confiscate security already belonging to another. Wagner v. Shaw, 6 Alaska 647 (1922).

So prior recorded mortgage prevails as to land. — A mechanic's lien cannot attach to the land on which a prior mortgage, duly recorded, exists at the time the lumber was furnished for the building. Copper River Lumber Co. v. Clark, 3 Alaska 635 (1909).

But section dissevers building subject to lien from land subject to prior mortgage. — A lien is given, not on the materials as such, but on the buildings or improvements in the construction of which the materials are used. The operation of the statute, in case there is a prior mortgage of the land, is to dissever the improvements from the land or realty by giving a superior lien on such improvements and conferring on the purchaser the right to remove them. Copper River Lumber Co. v. Clark, 3 Alaska 635 (1909).

Where all parties seek sale, severability of building is immaterial. — Where all mortgagees and holders of materialmen's liens pray that the property be sold to satisfy their liens, the question of severability of the building is not material. First Nat'l Bank v. Vasey, 14 Alaska 414, 114 F. Supp. 913 (D. Alaska 1953).

Applied in Bank of Wrangell v. Alaska Asiatic Lumber Mills, Inc., 12 Alaska 338, 84 F. Supp. 1 (D. Alaska 1949).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, §§ 263-283.

Sec. 34.35.062. Construction financing. (a) A lender providing construction financing where there is not a payment bond of at least 50 per cent of the amount of construction financing shall observe the following procedures:

(1) Draws against construction financing shall be made only after certification of job progress to the lender by the general contractor, if any, and the owner. The form of the certification may be prescribed by the lender.

(2) A claimant described in AS 34.35.050 who has not received payment within 20 days after the date for payment required by the contract or employee benefit trust agreement or, if no date for payment is specified, then 30 days after the labor, materials, services, or equipment are first furnished, may within 20 days thereafter give a stop-payment notice of the sums due for which the claimant may claim a lien under AS 34.35.095.

(3) The stop-payment notice shall be given to the lender and to the owner. The stop-payment notice shall state in substance

(A) the name of the person ordering the labor, materials, services, or equipment;

(B) a sufficient legal description of the real property being improved or developed;

(C) a description of the labor, materials, services or equipment furnished, or obligation owed to an employee benefit trust;

(D) the name, business address and telephone number of the claimant; and

(E) the sum due and not yet paid under the claimant's contract which may include an amount not to exceed 50 per cent of the principal amount of the claim for interest, reasonable costs, and attorney fees.

(4) After receipt of a stop-payment notice under this section, the lender shall withhold from the next and subsequent draws sufficient money to pay the amount claimed in the stop-payment notice.

(5) Sums withheld under a stop-payment notice may not be disbursed by the lender except under the terms of a written agreement signed by the claimant, owner and general contractor or by order of a court of competent jurisdiction.

(b) If a lender fails to comply with the provisions of (a)(4) or (5) of this section, the lender shall be liable to the claimant for an amount equal to the sum disbursed in violation of those subsections or the sum ultimately determined to be due the claimant by a court of competent jurisdiction, whichever is less.

(c) Within 30 days after filing a stop-payment notice the claimant may file an action in a court of competent jurisdiction to obtain the sums claimed in the stop-payment notice. The complaint shall be accompanied by a bond in an amount equal to the amount claimed with sufficient sureties as approved by the court. The claimant shall give notice to the lender that the action has been filed and include a copy of the bond filed with the action. If a claimant fails to file an action under this subsection and to serve notice of the filing and a copy of the bond upon the lender within 30 days after filing the stop notice, or to execute a written agreement under (a)(5) of this section, the lender may disburse the money withheld under the claimant's stop-payment notice without incurring liability to the claimant. (§ 4 ch 175 SLA 1978)

Sec. 34.35.064. Notice of right to lien. (a) After entering into a contract, a claimant may give a notice of right to lien to the owner and the lender. The notice of right to lien shall be in writing, state that it is a notice of a right to assert a lien against a building or other improvement for labor, materials, services, or equipment furnished in connection with construction, alteration, or repair of the building or other improvement, and contain

(1) a legal description sufficient for identification of the real property upon which the building or other improvement is located;

(2) the name of the owner;

(3) the name and address of the claimant;

(4) the name and address of the person with whom the claimant contracted;

(5) a general description of the labor, materials, services, or equipment provided or to be provided;

(6) a statement that the claimant may be entitled to record a claim of lien; and

(7) the following statement in type no smaller than that used in providing the information required by (1) — (6) of this subsection:

WARNING: Unless provision has been made for payment of this claim, you may be liable for payment directly to this claimant, notwithstanding the fact that payment has been made to a prime contractor or other party.

(b) Upon request from an owner, lender, or prime contractor, a claimant who has given a notice of right to lien under this section shall disclose to the requester within five days the most recent accounting of the amount due and unpaid to that claimant under the terms of the contract and a description of labor, materials, services, or equipment which the claimant reasonably anticipates furnishing. (§ 4 ch 175 SLA 1978; am § 1 ch 61 SLA 1979)

Sec. 34.35.065. Notice of nonresponsibility. (a) A building or improvement mentioned in AS 34.35.050 constructed with the knowledge of the owner of the land or the person having or claiming an interest in the land is considered to be constructed at the instance of the owner or person having or claiming the interest.

(b) The interest owned or claimed is subject to a lien filed in accordance with AS 34.35.050 — 34.35.120, unless (1) the owner or person having or claiming an interest in the land gives notice within three days after the owner or other person obtains knowledge of the construction, alteration or repair that the owner or other person will not be responsible for it, by posting a notice to that effect in writing in some conspicuous place upon the land or upon the building or other improvement located on the land; (2) the notice is signed by the owner

or person having or claiming an interest in the land in the presence of two attesting witnesses or acknowledged by the owner or other person before a notary public; (3) the posting of notice is attested to by a witness; and (4) an attested or notarized copy of the notice is recorded with the recorder of the recording district in which the land, building or other improvement is located within three days after the posting of the notice. (§ 26-1-4 ACLA 1949; am § 1 ch 71 SLA 1961)

NOTES TO DECISIONS

Editor's notes. — The cases annotated below were decided before revision of much of this chapter in 1978 and 1979.

Alaska mechanic's lien laws were derived from those of Oregon. Vaara v. Ketchikan Spruce Mills, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

Section enacted for protection of owner. — The notice of nonresponsibility section is designed to protect owners who do not instigate work done on the land, such as lessors whose lessees independently instigate the furnishing of labor or materials. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The landowner must have actual knowledge of the construction before his interest can be subjected to a materialman's lien. Vaara v. Ketchikan Spruce Mills, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

As yet undetermined in this jurisdiction is whether knowledge of intended construction would be sufficient to bring into operation the provisions of subsections (a) and (b). Vaara v. Ketchikan Spruce Mills, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

Owner is protected if work is not done at his instance. — The provisions of this section are for the benefit and protection of the owner in cases where the work is not done and the material is not furnished at his instance, or at the instance of his agent. Arctic Lumber Co. v. Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914).

But he may not post notice if work is so done. — It is not the intention of the law, nor is it the purport thereof, that when in fact the work is done, and the material is furnished at the owner's instance, he may prevent a lien upon his property by posting the notice referred to in this section. Arctic Lumber Co. v. Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914).

The words "at the instance" of the owner signify at the motion of, consent, at least, knowledge of Cribb v. Caskey, 4 Alaska 250 (1910).

Employment by owner of his agent is necessary. — To bind the building under a mechanic's lien for labor and materials furnished, there must be an employment by the owner of the building or his authorized agent. Cribb v. Caskey, 4 Alaska 250 (1910).

Person in charge of work must be employed by owner to be statutory agent. — To constitute the contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration, or repair, in whole or in part, of any building, the statutory agent of the owner, such person must have been employed directly or indirectly at the instance of the owner, or his conventional agent. Cribb v. Caskey, 4 Alaska 250 (1910).

But such person is prima facie owner's agent. — This section, AS 34.35.050 and 34.35.055, construed together, mean that the person in charge of the work shall prima facie be deemed to be the agent of the owner, and the property of the latter shall be charged with the lien under the express provisions of AS 34.35.050. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908). See AS 34.35.115.

And if he is not, knowledge and failure to post notice made owner liable. — If the person in charge is not in fact such agent, the interest of the owner shall, nevertheless, be liable for the improvement if it is constructed with his knowledge and he fails to post notice disclaiming responsibility. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

Complaint must allege such knowledge. — Allegation of a complaint fails to meet the requirement of this section that does not impute knowledge of the construction of any building or improvement. Morris v. Marsh, 3 Alaska 140 (1905).

Knowledge of the contract of employment and consent to its terms is not tantamount to knowledge of the actual construction of the improvement, even though the terms of the agreement may have contemplated its construction. Morris v. Marsh, 3 Alaska 140 (1905).

However, actual or positive knowledge is not required by this section. Lalay v. Northern Mining & Trading Co., 5 Alaska 134 (1914).

Since knowledge may be implied. Knowledge in a legal sense may be positive or implied. The implication of knowledge arises when the party to be charged is shown to have had knowledge of such facts and circumstances as would lead him by the exercise of due diligence to a knowledge of the principal fact. Lalay v. Northern Mining & Trading Co., 5 Alaska 134 (1914).

Lien attaches to building constructed by lessee as part of leasehold. — Where a lease provided that construction of a business building on the property by the lessee was a part of the consideration, but also provided that the building was to "attach to the said realty as a part thereof and become the property of lessor" upon the expiration or termination of the lease, as to a materialman's lien, the building had become an integral part of the leasehold estate, and was not an item of personal property to be considered separately from the realty upon which it was constructed and the lessee's interest in that realty. Clay v. Sandal, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b)), 369 P.2d 890 (1962).

But is confined to leasehold if owner posts notice. — If the work is done for a lessee of the property, liability is confined to the leasehold estate, if the owner had no knowledge of the construction of the improvement, or if, having such knowledge, he gave notice that he would not be responsible. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

Mortgagees and beneficiaries of deeds of trust are not required to post notices of nonresponsibility in order to protect a given statutory priority. Lynch v. McCann, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

A beneficiary of a deed of trust is not a "person having or claiming an interest in the land" within the intend-

ment of this section. Lynch v. McCann, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

The beneficiary of a deed of trust is not a "person having or claiming an interest in the land" for purposes of this section, so is not protected against superior mechanics' liens by posting and recording notices of nonresponsibility. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Scheme of priorities not overcome by posting notices of nonresponsibility. — Mortgagees and beneficiaries of deeds of trust need not post notices of nonresponsibility, and if they do, the notices do not overcome the scheme of priorities established in AS 34.35.060. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. Nos. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A mechanics' lienor has priority over the beneficiary of a deed of trust in the case of original construction under AS 34.35.060 (c) regardless of whether the beneficiary of the deed of trust posts a notice of nonresponsibility. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The legislature, in AS 34.35.060 (c), provided that mechanics' lienors performing original construction should have priority over earlier security interests. The scheme of priorities ordered by the legislature in the circumstances of original construction would be defeated if beneficiaries of deeds of trust could attain priority over mechanics' lienors by posting notices of nonresponsibility. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The lien of a secured party was not treated as an "interest in the land" for purposes of this section, the notice of nonresponsibility section, since if it were so treated a secured party could attain priority over a mechanics' lienor on original construction. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Sufficiency of posting of notice. — See Turner v. Enstrom, 5 Alaska 118 (1914).

Applied in Russell v. Hayner, 130 F. 90 (9th Cir. 1904); Stephenson v. Ketchikan Spruce Mills, Inc., Sup. Ct. Op. No. 332 (File No. 586), 412 P.2d 496 (1966).

Quoted in Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

Stated in Donaldson v. Henning, 4 Alaska 642 (1913).

Cited in Spalding v. Martin, 241 F. 372 (9th Cir. 1917).

Collateral references. — Notice of nonresponsibility, 123 ALR 7.

Sufficiency of notice under statute making notice by owner of nonresponsibility necessary to prevent mechanic's lien, 85 ALR2d 949.

Sec. 34.35.067. Recording notice of right to lien. A notice of right to lien may be recorded by a claimant at any time after entering into a contract for labor, material, service or equipment furnished in connection with the construction, alteration or repair of a building or other improvement. The notice shall be recorded in the same manner as specified for the recording of a claim of lien under AS 34.35.070. (§ 4 ch 175 SLA 1978)

Sec. 34.35.068. Time periods for claiming liens. (a) If a notice of completion is not recorded by the owner as provided in AS 34.35.071, a claim of lien shall be recorded not later than 90 days after the claimant

(1) completes the construction contract; or

(2) ceases to furnish labor, material, services or equipment for the construction, alteration or repair of the owner's property.

(b) If a notice of completion is recorded by the owner as provided in AS 34.35.071,

(1) the following shall record a claim of lien or a notice of right to lien not later than 15 days after the notice of completion is recorded:

(A) a claimant who has received advance notification of the date that the notice of completion is recorded as provided in AS 34.35.071(a)(2);

(B) a claimant who has not given a notice of right to lien as permitted in AS 34.35.064;

(2) the following shall record a claim of lien not later than the time specified in (a) of this section:

(A) a claimant who records a notice of right to lien before or within the period specified in (1) of this subsection;

(B) a claimant who has given a notice of right to lien but who has not received advance notice of the date that the notice of completion is recorded by the owner as provided in AS 34.35.071(a)(2).

(c) A claim of lien is enforceable only if recorded by a claimant within the time specified in (a) or (b) of this section. (§ 2 ch 61 SLA 1979)

NOTES TO DECISIONS

Editor's notes. — The cases annotated below were decided under AS 34.35.070 as it existed prior to the 1978 amendment. Former subsection (b) of that section concerned the time period for claiming liens.

Time for filing is mandatory. — No liberal construction is permitted to be applied to the mandatory requirement that the claim of lien must be filed within the specified time, in order that it may become an actual lien, instead of a claim, and may charge the property with a special statutory liability. Irvine v. McDougall, 5 Alaska 300 (1915), rev'd on other grounds, 4 Alaska Fed. 430, 245 F. 888 (9th Cir. 1916).

A notice of lien must show that it was filed within the time prescribed by statute. Bloom v. McCluskey, 7 Alaska 349 (1925).

A lien is not effective or valid until a written claim of lien has been filed for record with the recorder of the recording district in which the property is situated, within 90 days from completion of the service or delivery of supplies. Brooks v. R & M Consultants, Inc., Sup. Ct. Op. No. 2107 (File No. 4922), 613 P.2d 268 (1980).

Time for filing contractor's lien may run from construction of part of building. — This section and AS 34.35.050 must be read and construed together, and as applied to an original contractor, in computing the time from which he must file his claim of lien, they provide that he must file it within 90 days from the date of the completion of his contract or within 90 days from the date the construction of the building, or any part of such construction, under the contract. Bloom v. McCluskey, 7 Alaska 349 (1925).

And lien for materials may be filed before building is completed. — There is no prejudice to any substantial right of the owner of the building in the filing of a lien at any time after the material is furnished, and before the completion of the building, and a lien filed before the completion of the building is not filed prematurely. Arctic Lumber Co. v. Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 701, 35 S. Ct. 209, 59 L. Ed. 431 (1914).

The fact that the cost of the last items furnished is small in comparison with the overall cost of a building does not defeat a lien, where it appears that the furnishing of the materials was done in good faith and in the normal course of business, and not for the purpose of extending the time to file a claim of lien. Stephenson v. Ketchikan Spruce Mills, Inc., Sup. Ct. Op. No. 332 (File No. 586), 412 P.2d 496 (1966).

Lien for extra labor and materials must be filed 90 days after furnishing.

A lien for extra labor and materials supplied under an agreement separate from the original contract is required to be filed within 90 days after cessation of the labor and the furnishing of the materials described in the claim of lien. Gillis v. Gillette, 13 Alaska 55, 184 F.2d 872 (9th Cir. 1950).

After filing, lien dates back to commencement of work. — Although the exact time the lien arises is not spelled out, the clear import of this section is that after the mechanic's claim is filed a lien arises which dates back to the commencement of the work and is to be given preference over any encumbrance or lien attaching after work commences. Kel Weatherstrip Co. v. Rankin, 15 Alaska 204, 124 F. Supp. 555 (D. Alaska 1954).

Initial recordation of mechanic's lien claim constitutes inquiry notice of the lien to a subsequent purchaser; a mechanic's lien claimant, in order to protect his lien, does not have to record a notice of lis pendens when he later files suit to foreclose the lien. First Nat'l Bank v. Dent, Sup. Ct. Op. No. 2839 (File No. 7728), 683 P.2d 722 (1984).

Lien claim held to have been timely filed. — See Mitford v. Prior, 353 F.2d 550 (9th Cir. 1965).

Sec. 34.35.069. Acknowledgment of right to lien. (a) A person other than an individual as defined in AS 34.35.120 may not claim a lien under AS 34.35.050 — 34.35.120 for furnishing labor, materials, services, or equipment to a person other than the owner of the real property being improved unless at the time the person records a claim of lien as provided in AS 34.35.070 or a notice of right to lien as provided in AS 34.35.067, the person also records an authenticated

copy of an acknowledgment of right to lien received from the owner.

(b) An acknowledgment of right to lien must be signed by the owner, be denominated "acknowledgment of right to lien," and state:

(1) the effective date of the acknowledgment;

(2) the name of the person to whom the acknowledgment is directed;

(3) the name and address of the owner;

(4) the name and address of the lender providing construction financing;

(5) the name and address of the person who is to furnish labor, materials, services, or equipment;

(6) the real property being or intended to be improved or directly benefited, with a legal description sufficient for identification;

(7) a brief description of the labor, materials, services, or equipment to be furnished to the person named in (5) of this subsection;

(8) that the owner acknowledges the right of the person to claim a lien to secure payment for the cost of labor, materials, services, or equipment furnished by the person named in (5) of this subsection for the construction, alteration, or repair of improvements on the owner's real property.

(c) An acknowledgment of right to lien may state its duration. If no duration is stated, the duration of an acknowledgment of right to lien is one year from the effective date stated in the acknowledgment.

(d) Unless an acknowledgment of right to lien states that the owner will acknowledge lien rights only for certain types or quantities of labor, materials, services, or equipment, the acknowledgment applies to all labor, services, materials, or equipment furnished to the person named in the acknowledgment and used in the construction, alteration or repair of the owner's real property. (§ 2 ch 61 SLA 1979)

Sec. 34.35.070. Claim of lien. (a) Subject to the provisions of AS 34.35.069(a), a claimant may record a claim of lien after entering into a contract for the construction, alteration, or repair of a building or improvement. A claim of lien may not be recorded later than the time specified under AS 34.35.068.

(b) *[Repealed, § 9 ch 61 SLA 1979.]*

(c) The lien shall be verified by the oath of the claimant or another person having knowledge of the facts and state

(1) the real property subject to the lien, with a legal description sufficient for identification;

(2) the name of the owner;

(3) the name and address of the claimant;

(4) the name and address of the person with whom the claimant contracted;

(5) a general description of the labor, materials, services, or equipment furnished for the construction, alteration, or repair, and the contract price of the labor, materials, services, or equipment;

(6) the amount due to the claimant for the labor, materials, services, or equipment; and

(7) the date the last labor, materials, services, or equipment were furnished.

(d) *[Repealed, § 19 ch 175 SLA 1978.]*

(e) *[Repealed, § 19 ch 175 SLA 1978.]*

(f) A violation of the provisions of this section places the violator in the position of guarantor regarding another person who suffers damages which are proximately caused by the violation. (§ 26-1-5 ACLA 1949; am § 1 ch 89 SLA 1974; am §§ 1, 2 ch 123 SLA 1977; am §§ 5, 6, 19 ch 175 SLA 1978; am §§ 3, 9 ch 61 SLA 1979)

NOTES TO DECISIONS

Editor's notes. — Many of the cases annotated in the notes below were decided under this section as it existed prior to the 1978 amendment.

No lien exists until the claim of lien is filed as prescribed by this section. Irvine v. McDougall, 5 Alaska 300 (1915), rev'd on other grounds, 4 Alaska Fed. 430, 245 F. 888 (9th Cir. 1916).

Construction of introductory language of subsection (c) mandated. — A construction of subsection (c)(5) as it existed prior to the 1978 amendment [now the introductory language of subsection (c)] which requires that the claim of lien be verified by the oath of the claimant or another person having knowledge of the facts as essential to the existence of the lien, is mandated. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

Policy considerations underlying verification requirement. — The requirement of verification is reflective of the legislature's awareness that a claim of lien adversely affects the title to the property and its alienability; that the claim of lien can have an injurious impact on the credit of the owner of the property which is subjected to the lien; and that the claim of lien can be used as a vehicle to coerce settlement from the owner of the property. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977); Brooks v. R & M Consultants, Inc., Sup. Ct. Op. No. 2107 (File No. 4922), 613 P.2d 268 (1980).

Reasonable basis exists for verification requirement. — In light of the important policy considerations underlying the verification requirement, there exists a reasonable basis for the legislature's determination that the significance of filing a lien claim be made clear to the lien claimant through the requirement of verification and the possibility of perjury prosecution for verifying a false lien claim. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977); Brooks v. R & M Consultants, Inc., Sup. Ct. Op. No. 2107 (File No. 4922), 613 P.2d 268 (1980).

And no latitude is permitted concerning such requirement. — Generally, some latitude is permitted by statutes as to the form in which the oath or affirmation as to the truth of the contents of the lien claim may be administered, and substantial compliance with such form is often sufficient. However, there is a significant distinction between those portions of Alaska mechanics' liens statutes which are remedial in nature, and those portions which articulate mandatory conditions precedent to the very creation and existence of the lien. It is the latter aspect of Alaska's mechanics' and materialmen's lien statutory provisions which is at issue in a case concerning whether an affiant or claimant must swear to the truth of the contents of the

claim. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

The operative, substantive requirement of subsection (e) is that the claim be verified; that the verification be "by oath of the claimant" simply describes the means or procedure to be followed in verifying the claim. Therefore, substantial compliance with the formal requirement of an oath is sufficient. Anchorage Sand & Gravel Co. v. Wooldridge, Sup. Ct. Op. No. 2213 (File No. 4765), 619 P.2d 1014 (1980).

Verification requirement substantially unchanged. — Although Alaska's mechanics' and materialmen's statutes have been substantially revised in recent years, the verification requirement of subsection (e) of this section has remained substantially unchanged. Anchorage Sand & Gravel Co. v. Wooldridge, Sup. Ct. Op. No. 2213 (File No. 4765), 619 P.2d 1014 (1980).

Claims of lien are not valid liens where there is failure to meet the verification requirements — of subsection (e)(5) as it existed prior to the 1978 amendment (now the introductory language of subsection (e)). H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

No particular form of oath or affirmation is required — by Alaska law, other than that when a notary certifies an oath or affirmation, the oath or affirmation must be made in the notary's presence. Anchorage Sand & Gravel Co. v. Wooldridge, Sup. Ct. Op. No. 2213 (File No. 4765), 619 P.2d 1014 (1980).

What is verification. — A verification is a sworn statement of the truth of the facts stated in the instrument which is verified. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

When a lien claimant, in the presence of a notary, affixes his signature to a written statement incorporating the necessary elements of a claim of lien, and the notary certifies this act, claimant has substantially complied with the requirement of an "oath." Anchorage Sand & Gravel Co. v. Wooldridge, Sup. Ct. Op. No. 2213 (File No. 4765), 619 P.2d 1014 (1980).

A verification differs from an acknowledgment —in that the latter is a method of authenticating an instrument by showing that it was the act of the person executing it. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

An acknowledgment is not sufficient to satisfy a mechanics' lien statute which requires verification of the claim of lien by the claimant. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

Corporate acknowledgments affixed to the claims of lien do not constitute substantial compliance with the verification requirement of subsection (e)(5) of this section as it existed prior to the 1978 amendment (now the introductory language of subsection (e)) under AS 34.35.020. H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

Lien claim need not contain a statement that the labor and materials were furnished at the request of the owner. Cutting v. Bullerdick, 13 Alaska 269, 188 F.2d 837 (9th Cir. 1951).

Statement of demand must be true. — It is necessary that the statement of the lienors' demand contained in the notices should be the true amount due, after making deductions for all just credits and offsets, but it is not necessary that such shall be expressly stated in the notices filed. Irvine v. McDougall, 4 Alaska 702 (1913).

Inclusion of improper item voids lien. — Where a lien claimant includes in his lien statement an item not embraced in the statutory lien, for labor, such as for expenses of transportation, he loses his lien. Bloom v. McCluskey, 7 Alaska 349 (1925).

Unless mistake is honest and items may be separated. — The fact that a lien claimant includes in his claim, through an honest mistake, a claim for services for which the statute gives him no lien, will not defeat the lien for other services within the statute also claimed, if the two can be separated. Irvine v. McDougall, 5 Alaska 220 (1915), citing Pioneer Mining Co. v. Delamotte, 185 F. 752 (9th Cir. 1911).

Failure to include names of all owners does not invalidate notice. — While this section requires that the notice of lien recorded shall contain the names of the owners, or reputed owners, of the ground upon which the lien is claimed, it is well established that failure to include all of the owners does not render the notice invalid, but that it may be enforced against the owners named. Turner v. Enstrom, 5 Alaska 118 (1914).

The only effect of the omission of the name of any owner is to exempt his interest from the operation of the lien. Turner v. Enstrom, 5 Alaska 118 (1914).

Nor does failure to include district where property is located void notice. — It must appear somewhere in the complaint that the property sought to be charged with the lien is situated within the jurisdiction of the court, but it does not necessarily follow that the notices of lien are absolutely void, simply because they do not contain the name of the mining district or political division in which the mining claim is situated. Irvine v. McDougall, 4 Alaska 702 (1913).

To hold that notices of lien are absolutely void for the reason that they do not contain the name of the precinct in which a quartz mining claim is located, when the precinct is named in the complaint to which the several notices are attached as exhibits, would be a fail[illegible]'g give to the notices of lien the liberal [illegible]nstruction to which they are entitled in order that the very purpose of the statute may not be defeated. Irvine v. McDougall, 5 Alaska 220 (1915).

If description is otherwise sufficient. — It is not absolutely necessary that the name of the state or territory, or of the legal subdivision thereof, wherein the premises to be charged are situated, be contained in the notice of lien, provided there is sufficient in the notice, taken in connection with all the circumstances and the place where the notice is filed or recorded, to apprise parties dealing with the property that a lien is claimed thereon. Irvine v. McDougall, 4 Alaska 702 (1913).

Description of property sought to be charged with lien held sufficient. — See Peca v. Huddleston, 5 Alaska 241 (1915).

Complaint must show notice complies with this section. — Since this section requires that the notice of lien filed with the recorder set up certain facts, where the plaintiff's allegation as to the notice of the lien fails to show that the notice filed contains these statements, such statements would not even substantially comply with the statute, and hence the lien would not be created. Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

Or notice should be pleaded verbatim. — Not only should plaintiffs state the essential facts, as required by this section, but the better practice would be to plead the notice verbatim or attach a copy thereof and make it a part of the complaint. Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

Substantial compliance with the verification requirement is sufficient. Stephenson v. Ketchikan Spruce Mills, Inc., Sup. Ct. Op. No. 332 (File No. 586), 412 P.2d 496 (1966).

The form of oath followed by the words "subscribed and sworn to before me," and the notary public's signature, amounts in substance to a certificate by the notary that the claim of lien was verified by the oath of the claimant. Stephenson v. Ketchikan Spruce Mills, Inc., Sup. Ct. Op. No. 332 (File No. 586), 412 P.2d 496 (1966).

Lack of claimant's signature on line following form of oath held not to invalidate lien. — See Stephenson v. Ketchikan Spruce Mills, Inc., Sup. Ct. Op. No. 332 (File No. 586), 412 P.2d 496 (1966).

Rule for testing sufficiency of complaint is stricter than for testing notice itself. — While mechanic's lien statutes are to be liberally construed, with a view to effecting substantial justice, a different rule should be followed in determining the effect of the pleading in an action to foreclose a lien, especially where the pleading is questioned at an early stage of the action, from the rule to be followed in determining the sufficiency of a notice of lien, which the lienor cannot correct or amend after the time limited for filing has expired. The complaint in an action of this kind should state all the ultimate facts necessary to be established upon the trial. Irvine v. McDougall, 4 Alaska 702 (1913).

Burden is on lien claimant to prove compliance with section. — The claimant of a mechanic's or laborer's lien has the burden of proof to show by legally sufficient evidence the accrual of the lien under the terms of the statute which creates it as well as under the terms of the contract under which the work was done. Irvine v. McDougall, 5 Alaska 220 (1915), citing Pioneer Mining Co. v. Delamotte, 185 F. 752 (9th Cir. 1911).

Cases to which verification requirement applicable. — The decision in H.A.M.S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258 (1977), requiring verification

that the facts stated in lien claims are true, will be otherwise applicable only to the following cases: 1. Cases in which trial was commenced prior to May 6, 1977, but which have not been submitted to the trier of fact for decision; 2. Cases in which prior to submission to the trier of fact for decision there has been an express objection that the verification attached to a lien claim fails to meet the requirements of subsection (e)(5) as it existed prior to the 1978 amendment [now the introductory language of subsection (e)]. 3. Cases in which the trial commences after the date of our opinion; and 4. Cases pending on direct appeal on the date of our opinion, in which objection was made in the trial court and thereafter asserted as an issue on appeal that the verification attached to a lien claim fails to meet the requirements of subsection (e)(5) as it existed prior to the 1978 amendment. H A M S. Co. v. Electrical Contractors, Sup. Ct. Op. No. 1115 (File No. 2871), 566 P.2d 1012 (1977).

Subsection (f) contains only the language of guarantee, not of [illegible] liability. Industrial Power & Lighting Corp. v. Western Modular Corp., Sup. Ct. Op. No. 2259 (File Nos. 4163, 4176), 623 P.2d 291 (1981).

Intent of subsection (f). — If the legislature had meant subsection (f) to encompass claims in the nature of disparagement of title free from the defense of privilege, that intention would have been more directly expressed and language of guaranty would not have been utilized. Industrial Power & Lighting Corp. v. Western Modular Corp., Sup. Ct. Op. No. 2259 (File Nos. 4163, 4176), 623 P.2d 291 (1981).

The term "guarantor" as used in the statute does not express the liability of a wrongdoer to his victim except in the special case where the victim is prevented from collecting a debt owed by another because of the wrongdoer's act. Industrial Power & Lighting Corp. v. Western Modular Corp., Sup. Ct. Op. No. 2259 (File Nos. 4163, 4176), 623 P.2d 291 (1981).

Applicability of subsection (f). — With the repeal in 1978 of subsections (d) and (e) of this section, the supreme court of Alaska recognizes that it is difficult, though perhaps not impossible, to imagine a situation to which subsection (f) would apply. Industrial Power & Lighting Corp. v. Western Modular Corp., Sup. Ct. Op. No. 2259 (File Nos. 4163, 4176), 623 P.2d 291 (1981).

Construction of former subsections (b) and (d). — See Frontier Rock & Sand, Inc. v. Heritage Ventures, Inc., Sup. Ct. Op. No. 2029 (File No. 1000), 607 P.2d 361 (1980).

Quoted in Johnson v. State, Sup. Ct. Op. No. 1609 (File No. 3235), 577 P.2d 706 (1978).

Cited in Tarkka-Korman Engineers v. Penland Ventures, Sup. Ct. Op. No. 2757 (File No. 6189), 673 P.2d 769 (1983).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, §§ 167-247.

Sec. 34.35.071. Notice of completion. (a) The owner of real property that may be subject to a lien under AS 34.35.050 — 34.35.120 may announce the date of completion of a building or other improvement on the property by

(1) recording a notice of completion after completion of the construction, alteration or repair of the building or other improvement in the office of the recorder of the district in which the building or other improvement is situated; and

(2) giving notice at least five days before the recording of the notice of completion to all claimants who have given a notice of right to lien or a stop-payment notice to the owner and the lender prior to 10 days before recording a notice of completion; the notice must include a copy of the notice of completion and a statement advising claimants that a notice of completion will be recorded not earlier than five days after the date of the notice.

(b) The notice of completion shall be signed and verified by the owner, and must state

(1) the date of completion of the building or other improvement;

(2) the name and address of the owner;

(3) the nature of the interest or estate of the owner;

(4) the legal description of the property sufficient for identification; and

(5) the name of the general contractor.

(c) *[Repealed, § 9 ch 61 SLA 1979.]*

(d) A notice of completion is not effective if recorded before completion.

(e) Labor, materials, services, or equipment furnished after a notice of completion is recorded to satisfy warranty obligations or to remedy defective or unsatisfactory construction, alterations or repairs for which no additional consideration is owed to the person furnishing the additional labor, materials, services, or equipment does not result in lien liability under AS 34.35.050 — 34.35.120.

(f) [Effective January 1, 1986] After recording a common interest community declaration under AS 34.08, an owner may record a notice of completion under this section as to each unit after completion of the original construction of each unit of the common interest community. (§ 7 ch 175 SLA 1978; am § 9 ch 61 SLA 1979; am § 2 ch 95 SLA 1985)

Effect of amendments. — The 1985 amendment, effective January 1, 1986, in subsection (f) substituted "common interest community" for "condominium," "under AS 34.08" for "as provided in AS 34.07.010 — 34.07.460 (Horizontal Property Regimes Act)," "unit" for "apartment," and "unit of the common interest community" for "condominium apartment."

Editor's notes. — Prior to January 1, 1986, subsection (f) reads: "After recording a condominium declaration as provided in AS 34.07 (Horizontal Property Regimes Act), an owner may record a notice of completion under this section as to each apartment after completion of the original construction of each condominium apartment."

Sec. 34.35.072. Bond. If the owner of the property sought to be charged with a claim of lien under AS 34.35.050 — 34.35.120, or a prime contractor or subcontractor disputes the correctness or validity of the claim of lien brought under AS 34.35.050 — 34.35.120, the owner or contractor may record either before or after the commencement of an action to enforce the claim of lien, in the office of the recorder in which district the claim of lien was recorded, a bond executed by a person authorized to issue surety bonds in this state under AS 21, a financial institution licensed under AS 06, or a national bank authorized under the federal banking laws, in the penal sum equal to one and one-half times the amount of the claim of lien, which bond shall guarantee the payment of the sum which the lien claimant has claimed, together with the lien claimant's reasonable cost of suit in the action, if the claimant recovers on the claim of lien.

If the owner records a bond under this section, the property described in the bond is freed from the effect of a claim of lien under AS 34.35.050 — 34.35.120 and an action brought to foreclose the claim of lien. The principal on the bond may be the owner of the property, the prime contractor or a subcontractor who is affected by the claim of lien. (§ 2 ch 89 SLA 1974; am § 8 ch 175 SLA 1978)

Sec. 34.35.075. Record and index of claim. The recorder shall record the claim in a book kept for that purpose. The records shall be indexed as deeds and other conveyances are required by law to be indexed. The recorder is entitled to the same fees allowed by law for recording deeds and other instruments. (§ 26-16 ACLA 1949)

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, § 186.

Sec. 34.35.080. Duration of lien. (a) A lien provided for in AS 34.35.050 — 34.35.120 does not bind a building, structure, or other improvement for more than six months after the lien is filed, unless suit is brought before the proper court to enforce the lien

(1) within that time, or

(2) within six months after recording of an extension notice in the same recording office within the original six-month period showing the recording date and the book and page or instrument number of the initial claim, and the balance owing.

(b) A lien may not be continued in force for more than one year from the date of the filing of the original lien notice. (§ 26-1-7 ACLA 1949; am § 1 ch 50 SLA 1955; am § 3 ch 123 SLA 1977)

NOTES TO DECISIONS

Protection of lien. — A mechanic's lien claimant, in order to protect his lien, does not have to record a notice of lis pendens when he later files suit to foreclose the lien; the initial recordation of the mechanic's lien claim constitutes inquiry notice of the lien to a subsequent purchaser; and the lien claimant may amend his complaint to add, as a defendant in the action, the subsequent purchaser of the burdened real property under Civ. R. 25(c). First Nat'l Bank v. Dent, Sup. Ct. Op. No. 2839 (File No. 7729), 683 P.2d 722 (1984).

Applied in Frontier Rock & Sand, Inc. v. Heritage Ventures, Inc., Sup. Ct. Op. No. 2029 (File No. 4000), 607 P.2d 361 (1980).

Quoted in State v. Osborne, Sup. Ct. Op. No. 2034 (File No. 4385), 607 P.2d 369 (1980).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, § 251.

Sec. 34.35.085. Lien for improving lot or street. A person who, at the request of the owner of a lot in the state, grades, fills in, or improves the lot or the street in front of or adjoining the lot has a lien upon the lot for work done and materials furnished. The provisions of AS 34.35.050 — 34.35.120 for securing and enforcing the mechanic's lien apply to the lien provided by this section. (§ 26-1-8 ACLA 1949)

NOTES TO DECISIONS

A municipal corporation is a person under the provisions of this section. Town of Nome v. Lang, 1 Alaska 593 (1902).

Sec. 34.35.090. Payment to contractor. A payment by the owner of a building or structure to a prime contractor or subcontractor, made before 90 days from the completion of the building, is not valid to defeat or discharge a lien created by AS 34.35.050 — 34.35.120 in favor of other claimants, unless the payment is distributed among the other claimants. If a payment is distributed in part only, then the payment is valid only to the extent it is distributed. (§ 26-1-9 ACLA 1949; am § 9 ch 175 SLA 1978)

NOTES TO DECISIONS

Applied in Frontier Rock & Sand, Inc. v. Heritage Ventures, Inc., Sup. Ct. Op. No. 2029 (File No. 4000), 607 P.2d 361 (1980).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, § 325 et seq.

Sec. 34.35.095. Amount of lien. (a) Except as provided in (c) of this section, a claimant may recover upon a lien recorded by the claimant only the amount due to the claimant according to the terms of the contract, after deducting all claims of other persons claiming through the claimant for work done and materials furnished.

(b) *[Repealed, § 9 ch 61 SLA 1979.]*

(c) An individual described in AS 34.35.120(10) may recover upon a lien recorded by the individual only the amount due according to the terms of the employment. (§ 26-1-10 ACLA 1949; am § 10 ch 175 SLA 1978; am §§ 4, 9 ch 61 SLA 1979)

NOTES TO DECISIONS

Insurance during working period may be lienable item. — Cost of fire insurance to cover the premises during the working period was properly a lienable item where by the terms of the construction contract the contractor was to furnish all labor and materials, including subcontractor's services, with the exception of plumbing and heating. Clay v. Sandal, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b)), 369 P.2d 890 (1962).

As may subcontractor's services if contractor is bound to furnish them. — Provision of this section that a contractor is entitled to recover upon a lien filed by him only such amount as may be due to him according to the terms of his contract limits a contractor's lien recovery to the amount called for by his contract, but would include subcontractor's services if, by the terms of his contract, the contractor was responsible for the furnishing of such services. Clay v. Sandal, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b)), 369 P.2d 890 (1962).

In absence of contract, limit of recovery is reasonable value of labor and material. — By this section the maximum a contractor may establish as a lien cannot exceed the amount due to him under the terms of his contract, but there must be a contract with the person from whom the contractor's recovery is sought or someone privy to him, otherwise the contractor's lien recovery may be limited to the reasonable value of the labor and material furnished. Clay v. Sandal, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b)), 369 P.2d 890 (1962); Meares v. Alaska Metal Bldgs., Inc., Sup. Ct. Op. No. 515 (File No. 962), 448 P.2d 581 (1968).

Collateral references. — Contractor as party to suit to enforce mechanic's lien. 100 ALR 128.

Sec. 34.35.100. Action against contractor on lien. (a) Where a lien is recorded under AS 34.35.050 — 34.35.120 for work done or materials furnished to a prime contractor, the prime contractor shall defend an action at the expense of the prime contractor, and during the pendency of the action the owner may withhold from the prime contractor the amount of money for which the lien is recorded.

(b) If judgment is given against the owner or the property of the owner upon the liens, the owner may deduct from the amount due or to become due by the owner to the prime contractor the amount of the judgment and costs.

(c) If the amount of the judgment and costs exceeds the amount due by the owner to the prime contractor, or the owner settles with that contractor in full, the owner may recover back from the prime contractor an amount paid by the owner in excess of the contract price, and for which the prime contractor was originally liable. (§ 26-1-10 ACLA 1949; am §§ 11 — 13 ch 175 SLA 1978)

Sec. 34.35.105. Materials not subject to process. When a mechanic, artisan, machinist, builder, lumber merchant, contractor, laborer, or other person furnishes or procures materials for use in the construction, alteration, or repair of a building or other improvement, the materials are not subject to attachment, execution, or other legal process to enforce a debt due by the purchaser of the materials except a debt due for the purchase money thereof, so long as the materials have been or are about to be applied in good faith to the construction,

alteration, or repair of the building, or other improvement. (§ 26-1-11 ACLA 1949)

Sec. 34.35.110. Actions to enforce liens. (a) An action to enforce a lien created by AS 34.35.050 — 34.35.120 shall be brought in the superior court. The pleadings, process, practice, and procedure are the same as in other cases. Each claimant is entitled to execution for the balance due after distribution. The clerk of the superior court, upon demand, shall issue the execution after the return of the officer making the execution showing the balance due.

(b) In an action under AS 34.35.050 — 34.35.120 the court shall, upon entering judgment for the plaintiff, allow as a part of the costs all money paid for the filing and recording of the lien and a reasonable amount as attorney fees. An action to enforce a lien created by AS 34.35.050 — 34.35.120 has preference upon the calendar of civil actions of the court and shall be tried without unnecessary delay.

(c) In an action to enforce a lien created by AS 34.35.050 — 34.35.120 all persons personally liable and all lienholders whose claims have been filed for record under AS 34.35.070 shall be made parties; all other persons interested in the matter in controversy or in the property sought to be charged with the lien may be made parties. However, those persons who are not made parties are not bound by the proceedings. The proceedings upon the foreclosure of a lien created by AS 34.35.050 — 34.35.120 shall, as nearly as possible, conform to the proceedings of a foreclosure of a mortgage lien upon real property. (§ 26-1-13 ACLA 1949; am § 14 ch 175 SLA 1978)

NOTES TO DECISIONS

Constitutionality. — The Ninth Circuit has held that provision for the award of costs and attorney's fees only to lien claimants was constitutionally permissible. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

There is no ground for saying that the allowance of reasonable attorney fees in the lien law is unconstitutional. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

Origin. — This section was taken, without significant change, from the laws of Oregon. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

At the time this section was adopted for the Territory of Alaska, and subsequent thereto, the courts of Oregon had consistently held that the lien claimant carried the burden of both alleging and proving the reasonable amount of attorney's fees he was entitled to on foreclosure. Absent these prerequisites, it was held that the claimant was not entitled to an award of attorney's fees. It further appears that the statutes were construed as granting some discretion in the courts in regard to the determination of a reasonable attorney's fee. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The apparent purpose of this section is to facilitate enforcement by mechanics' lienors of their rights by giving them an assurance of costs and attorney's fees if they prevail in their foreclosure actions. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

AS 34.35.005 (b) applies to liens provided for in AS 34.35.050 — 34.35.425. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

While subsection (b) of this section applies only to mechanics' liens provided for in AS 34.35.050 — 34.35.120, Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Constructive notice of lien. — A bank given a deed of trust on property against which a mechanic's lien is claimed does not have constructive notice of the lien unless the claimant has recorded a notice of lis pendens. First Nat'l Bank v. Dent, Sup. Ct. Op. No. 2839 (File No. 7720), 683 P.2d 722 (1984).

Provisions as to parties; state law generally applicable. — The provisions of this section as to parties seem to be only a statement of the law applicable to all actions. Donaldson v. Henning, 4 Alaska 642 (1913).

Grantee of deed recorded after foreclosure suit is commenced is not indispensable party. — Where, when suit to foreclose a mechanic's lien was commenced, the trial court had before it the record owner and the reputed owner, and had jurisdiction to proceed to hear and determine the questions presented as to the rights and obligations of the parties properly before it, the subsequent recording of a deed of the property to a minor, not served with process, could not divest the court of such jurisdiction as had already attached. Cutting v. Bullerdick, 13 Alaska 269, 188 F.2d 837 (9th Cir. 1951).

Proper parties. — All persons personally liable, all lienholders whose claims have been duly filed, and all other persons interested in the matter in controversy or in the property sought to be charged with the lien, may, under this section, be made parties. Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

Set off. — In an action to enforce a mechanic's lien, the plaintiff was not entitled to costs and an attorney's fee because he only prevailed on one count of his complaint, and costs and attorney's fees for his successful count were set off against those costs and attorney's fees to which the defendant was entitled under AS 09.60.010 because of its successful defense against the other counts of the complaint. Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Quoted in Nordstrom v. Sivertsen-Johnsen Mining & Dredging Co., 5 Alaska 210 (1915); Mitchell v. Beaver Dredging Co., 8 Alaska 566 (1935).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, § 3.39 et seq.

Sec. 34.35.112. Payment of claimant's liens. (a) If more than one lien created under AS 34.35.050 — 34.35.120 is claimed against property, the court in its judgment shall declare the rank of each lien or class of liens in the following order:

(1) all persons other than prime contractors or subcontractors with lien rights under AS 34.35.050(1);

(2) the trustees of employment benefit trusts for persons described in (1) of this subsection;

(3) all materialmen;

(4) subcontractors, including prime contractors other than the general contractor and persons described in AS 34.35.050(5);

(5) the general contractor.

(b) For purposes of AS 34.35.050 — 34.35.120, if the proceeds of sale of the property are insufficient to pay the lien claims of all persons who have recorded a claim of lien,

(1) the liens of all individuals with lien rights under AS 34.35.050(1) shall first be paid in full, or pro rata if the proceeds are insufficient to pay them in full;

(2) the liens of trustees of employment benefit trusts for persons described in (1) of this subsection shall be paid in full or pro rata if the proceeds are insufficient to pay them in full;

(3) the liens of materialmen shall be paid in full or pro rata if the proceeds are insufficient to pay them in full;

(4) out of the remainder the subcontractors, including prime contractors other than the general contractor, shall be paid in full, or pro rata if the remainder is insufficient to pay them in full; and

(5) the balance shall be paid to the general contractor; a general contractor is entitled to execution for the balance due after distribution. (§ 15 ch 175 SLA 1978; am § 5 ch 61 SLA 1979)

Sec. 34.35.114. Obligation of claimant and lender to provide information. (a) A prime contractor, on request, shall provide the following information within five days to any person entitled to claim a lien through the prime contractor:

(1) a description of the real property being improved sufficient to identify the property;

(2) the name and address of the owner with whom the prime contractor contracted;

(3) the name and address of the lender providing construction financing; and

(4) whether there is a payment bond and, if so, the name of the surety.

(b) At the request of any person who may claim a lien through a claimant other than a prime contractor, the claimant shall provide, within five days, the name of the person who contracted for the furnishing by the claimant of the labor, materials, services or equipment from which a lien claim may arise.

(c) A lender who receives a notice of right to lien which contains a legal description of the owner's real property different from that on file with the lender shall, within five working days after receiving the notice, advise the sender in writing of the deficiencies in the notice of right to lien.

(d) A lender who receives a notice of right to lien which designates a person as an owner who is not receiving construction financing from the lender shall, within five working days after receiving the notice, advise the sender in writing that the lender is not providing construction financing to the owner named in the notice of right to lien.

(e) An owner or an agent of the owner who fails to provide information as required by this section or who furnishes incorrect information which causes a claimant to fail to realize on a lien is liable to the requesting party for actual damages or $200, whichever is greater. (§ 6 ch 61 SLA 1979)

Sec. 34.35.115. Persons considered agent of owner. Every contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration or repair, in whole or in part, of a building or other improvement as provided in AS 34.35.050 and 34.35.085, is considered to be the agent of the owner for the purposes of AS 34.35.050 — 34.35.120. (§ 26-1-14 ACLA 1949)

NOTES TO DECISIONS

Applied in Mallad v. Prior, 353 F.2d 550 (9th Cir. 1965).

Sec. 34.35.117. Waiver of lien rights. (a) Except as provided under (b) of this section, a written waiver of lien or stop-payment notice rights created under AS 34.35.050 -- 34.35.120 signed by a claimant requires no consideration and is valid and binding. A waiver permitted under this section may not relate to labor, materials, services or equipment furnished after the date the waiver is signed by the claimant.

(b) An individual described in AS 34.35.120(10) may not waive right to claim a lien under AS 34.35.050 — 34.35.120. A waiver which purports to waive the lien rights of that individual or class of individuals is void. (§ 15 ch 175 SLA 1978)

Sec. 34.35.118. Claimant liability. A claimant shall be liable for any loss, cost or expense, including reasonable attorney fees, to any persons injured by an unjust, excessive or premature stop-payment notice or claim of lien. (§ 15 ch 175 SLA 1978)

Sec. 34.35.119. Waiver of liens on unsold common interest community units [Effective January 1, 1986]. (a) A lien created under AS 34.35.050 — 34.35.120 arising out of original construction that becomes subject to AS 34.07 or AS 34.08 before the first sale of a unit within a common interest community after commencement of construction shall be subject to the provisions of this section.

(b) Subject to (c) of this section, a claimant who claims a lien against an entire common interest community shall release that portion of the lien claim that relates to a particular unit within a common interest community selected by the owner of the unsold common interest community units after the claimant receives a partial payment of the lien claim that is equal to 115 percent of the amount determined

(1) if the common interest community has been established under AS 34.07 by

(A) dividing the surface area of the common areas and facilities attendant to the common interest community unit by the surface area of all common areas and facilities of the common interest community building; and

(B) multiplying the result obtained in (A) of this subsection by the total amount of the claimant's lien claim;

(2) by the undivided interest in the common expenses if the common interest community has been established under AS 34.08.

(c) A lien claimant is not required to waive a portion of the lien claim under this section unless the amount of indebtedness secured by a prior encumbrance against the common interest community building held by a construction lender is also reduced by an amount calculated in the same manner as provided in (b) of this section. (§ 15 ch 175 SLA 1978; am § 3 ch 95 SLA 1985)

Effect of amendments. — The 1985 amendment, effective January 1, 1986, rewrote this section.

Editor's notes. — Prior to January 1, 1986, this section reads: "(a) Liens created under AS 34.35.050 — 34.35.120 arising out of original construction which becomes subject to the Horizontal Property Regimes Act (AS 34.07) before the first sale of any portion of the property after commencement of construction shall be subject to the provisions of this section.

(b) Subject to (c) of this section, a claimant who claims a lien against the entire building shall release that portion of his lien claim which relates to a particular condominium apartment selected by the owner of the unsold condominium apartments after the claimant receives a partial payment of his lien claim which is equal to 115 per cent of the amount determined by

(1) dividing the surface area of the common areas and facilities attendant to the condominium apartment by the surface area of all common areas and facilities of the building; and

(2) multiplying the result obtained in (1) of this subsection by the total amount of the claimant's lien claim.

(c) A lien claimant is not required to waive a portion of his lien claim under this section unless the amount of indebtedness secured by a prior encumbrance against the building held by a construction lender is also reduced by an amount calculated in the same manner as provided in (b) of this section."

Sec. 34.35.120. Definitions. In AS 34.35.050 — 34.35.120

(1) "building or other improvement," includes a wharf, bridge, ditch, flume, tunnel, fence, well, land clearing, machinery, aqueduct to create hydraulic power, or for mining or other purposes, and all other structures and superstructures;

(2) "completion" means the cessation of the performance of labor or services or the furnishing of material or equipment on the building or other improvement to be constructed, altered or repaired and includes, but is not limited to, the following:

(A) the occupation or use by the owner or an agent of the owner of the building or other improvement constructed, altered or repaired accompanied by cessation of the furnishing of labor, services, material, or equipment on the building or improvement;

(B) the acceptance by the owner or an agent of the owner of the construction, alteration or repair after labor, service, material, or equipment is furnished; or

(C) the issuance of a certificate of occupancy for a building by a general law or home rule municipality empowered to issue that certificate accompanied by cessation of the furnishing of labor, services, material, or equipment on the building or improvement;

(3) "construction, alteration, or repair", includes partial construction, and all repairs done in and upon a building or other improvement;

(4) "construction financing" means that portion of money secured by an encumbrance to finance original construction of a building or other improvement on, or development of, real property, but does not include

(A) funds to acquire real property;

(B) funds to pay principal amortization of encumbrances with priority over the encumbrance securing the construction financing;

(C) funds to pay loan, commitment, title, legal, closing, recording or appraisal fees on the construction loan;

(5) "contract price" means the amount agreed upon by the contracting parties for furnishing services, labor, materials or equipment covered by the contract, increased or diminished by the price of change orders, extras, or amounts attributable to altered specifications; if no price is agreed upon by the contracting parties, "contract price" means the reasonable value of all services, labor, materials, or equipment covered by the contract;

(6) "Draws" means periodic disbursements of construction financing by a lender;

(7) "encumbrance" means a mortgage, deed of trust, or lien arising other than under AS 34.35.050 — 34.35.120;

(8) "general contractor" means a person who is a prime contractor and who has the responsibility for supervising all other contractors furnishing labor, materials, services or equipment in connection with the construction, alteration or repair of a building or other improvement;

(9) "give notice" means to mail a notice required under AS 34.35.050 — 34.35.120 by first-class mail and by using a form of mail requiring a signed receipt, or to deliver the notice and obtain a receipt signed by the person to whom it is directed or an agent of that person; a notice is effective when given or delivered

(A) to a lender at the address designated in the encumbrance securing that lender;

(B) to an owner at the last known address of the owner;

(C) to a prime contractor at the last known address of the prime contractor;

(D) to a potential lien claimant at the address specified in a stop-payment notice or notice of right to lien or claim of lien;

(10) "individual" means a natural person who actually performs labor upon a building or other improvement as an employee of the owner or any contractor furnishing labor, materials, services, or equipment for the construction, alteration or repair of a building or other improvement;

(11) "lender" means any person providing construction financing;

(12) "materialman" means a person who furnishes materials used in the construction, alteration or repair of the owner's real property;

(13) "owner" means a person who owns the building or other improvement and who enters into a contract, express or implied, for the construction, alteration or repair of a building or improvement;

(14) "potential lien claimant" or "claimant" means any person entitled to assert lien rights under AS 34.35.050 — 34.35.120;

(15) "prime contractor" means a person who enters into a contract directly with an owner to furnish labor, materials, services, or equipment for the construction, alteration or repair of a building or other improvement on the owner's real property;

(16) "subcontractor" means a person who enters into a contract with a prime contractor to furnish labor, services, or equipment for the construction, alteration or repair of a building or other improvement on the owner's real property and does not include a materialman. (§ 26-1-12 ACLA 1949; am § 2 ch 57 SLA 1959; am § 16 ch 175 SLA 1978; am §§ 7, 8 ch 61 SLA 1979)

Revisor's notes. — Reorganized in 1985 to alphabetize the defined terms.

NOTES TO DECISIONS

Quoted in Lynch v. McCann, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

Cited in Vaara v. Ketchikan Spruce Mills, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

Collateral references. — Canals, ditches and wells as within term of Mechanic's Lien Law descriptive of improvement. 92 A.L.R. 753

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 494 (L&C)
Title : "An Act relating to liens for labor or material furnished"

Sponsor : Cotten, Szymanski, et al.
Requestor : Labor & Commerce
Date of Request : 3/19/86

FISCAL DETAIL

Agency Affected : Labor
BRU : Labor Standards & Safety

Components : Wage and Hour

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Robert J. Bacolas, Director — Phone : 465-4870
Division : Labor Standards & Safety — Date : 3/21/86

Approved by Commissioner : for Jim Robison — Date : 3/21/86
Agency : Labor

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4218 SLAB HB 517 - HB 562

1098

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

517

State of Alaska

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
(Co-Chairman)
HOUSE JUDICIARY
HOUSE COMMUNITY AND
REGIONAL AFFAIRS

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914 CLAY COURT
ANCHORAGE, ALASKA 99503
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Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

Memorandum

From: Representative Max F. Gruenberg, Jr.

Re: CSHB 517 (JUD), relating to the private sale and consignment of works of art

Date; April 17, 1986

This bill is modeled after two New York statutes passed in 1966, and is designed to offer protections to Alaskan artists in their business relationships with art dealers and their rights to reproduction.

SECTION 1 Provides that works of art on consignment are not subject to the claims of an art dealer's creditors, and that a sign must be posted in a gallery where art is sold on consignmnet stating that works of art for sale are on consignment.

SECTION 2 Provides that works of art delivered to an art dealer are trust property in the hands of the art dealer for the benefit of the artist.

Provides that subsection (a)(3) of 45.67.020 may be waived if the agreement is clear and agreed to in writing, however, under a waiver the proceeds of a sale are still not subject to a lien against an art dealer.

Provides that unsold artwork must be returned to the artist on demand consistent with any written agreement.

Also provides that the provisions of 45.67.010 - 020 may not be construed to effect an existing contract. Subsection (b) provides that this law will apply to all future dealings between an artist and art dealer

SECTIONAL ANALYSIS

Protection of Ownership Rights of Artists Act

Artists often find themselves in a complicated and disadvantageous business situation when conveying rights to a work of art. An artist will frequently make an agreement for reproduction rights to an artwork, but is unable to reacquire the original artwork after it has been reproduced if the agreement was oral or the contract was complex and signed without benefit of counsel. This 1983 New York law overcomes these problems and protects the interests of the individual artists involved.

Under this bill, even if an artist or owner sells reproduction rights for a work of art, the ownership of the actual work remains with the creator or owner unless the ownership is transferred in writing and signed by the artist or owner. In addition, any contracts selling reproduction rights must be in plain language. If a purchaser does not comply with this requirement the contract could be unenforceable and any right not conveyed would remain with the artist or owner.

(Title, enacting clause, etc.)

Section 1. [*Short Title.*] This act may be cited as the Protection of Ownership Rights of Artists Act.

Section 2. [*Definitions.*] As used in this act:

(1) "Work of Art" means any visual or graphic art of any medium.

(2) "Artist" means the creator or creators of a work of art.

(3) "Reproduction Right" means a right to reproduce, prepare derivative works of, distribute copies of, publicly perform or publicly display a work of art.

Section 3. [*Right to Reproduce Works of Art.*]

(a) Whenever a work of art is sold or otherwise transferred by or on behalf of the artist who created it, or his heirs or personal representatives, the right of reproduction thereof is reserved to the grantor until it passes into the public domain by act or operation of law unless such right is sooner expressly transferred by an instrument, note or memorandum in writing, signed by the owner of the rights conveyed or his duly authorized agent.

(b) Whenever an exclusive or non-exclusive conveyance of any reproduction right is made by the holder of such right, or his duly authorized agent, ownership of the physical art work shall be presumed to remain with and be reserved to the grantor unless expressly transferred in writing by an instrument, note, memorandum or by other written means, signed by the grantor or his duly authorized agent.

(c) Nothing herein contained, however, shall be construed to prohibit the fair use of such work of art.

(d) Nothing in this article shall operate or be construed to conflict with any rights or liabilities under federal copyright law.

Section 4 . [*Severability.*] [Insert severability clause.]

Section 5 . [*Repealer.*] [Insert repealer clause.]

Section 6. [*Effective Date.*] [Insert effective date.]

INFORMATION

of Artists Act

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clause.]

Protection of Artists Whose Work Has Been Altered Act

Several well-known cases of mutilated, altered or defaced artwork have led to a drive to balance the property rights of owners against the creative rights of the artists and the general rights of society. The following legislation was enacted by New York in 1983 to protect the reputation of an artist after an artwork has been sold.

The bill gives a legal cause of action if a work which an artist created was defaced, altered or mutilated (without the artist's consent) and damage to the artist's reputation could result. The artist could also claim or disclaim authorship of work. Exceptions are made when: an artist consents to changes in writing; the nature of the materials used causes a change in the work; a change occurs because of the reproduction process or when work is professionally framed or restored. An aggrieved artist is afforded a cause of action for damages, exemplary damages where appropriate, equitable relief, and reasonable attorney and witness fees.

(Title, enacting clause, etc.)

Section 1. [*Short Title.*] This act may be cited as the Protection of Artists Act.

Section 2. [*Definitions.*] As used in this act:

(1) "Artist" means the creator of a work of fine art.

(2) "Conservation" means acts taken to correct deterioration and alteration and acts taken to prevent, stop or retard deterioration.

(3) "Person" means an individual, partnership, corporation, association or other group, however organized.

(4) "Reproduction" means a copy, in any medium, of a work of fine art that is displayed or published under circumstances that, reasonably construed, evinces an intent that it be taken as a representation of a work of fine art as created by the artist.

(5) "Work of Fine Art" means any original work of visual or graphic art of any medium which includes, but is not limited to, the following: painting; drawing; print; photographic print or sculpture of a limited edition of not more than 300 copies; provided however, that "work of fine art" shall not include sequential imagery such as that in motion pictures.

Section 3. [*Public Display, Publication and Reproduction of Works of Fine Art.*] Except as limited by Section 5 of this act, no person other than the artist or a person acting with the artist's consent shall knowingly publicly display or publish a work of fine art of that artist or a reproduction thereof in an altered, defaced, mutilated or modified form if the work is displayed, published or reproduced as being the work of the artist, or under circumstances under which it would reasonably be regarded as being the work of the artist, and damage to the artist's reputation could result therefrom.

Section 4. [*Artists' Authorship Rights.*]

(a) Except as limited by Section 5 of this act, the artist shall retain at all times the right to claim authorship, or, for just and valid reason, to disclaim

authorship of his or her work of fine art. The right to claim authorship shall include the right of the artist to have his of her name appear on or in connection with the work of fine art as the artist. The right to disclaim authorship shall include the right of the artist to prevent his or her name from appearing on or in connection with the work of fine art as the artist. Just and valid reasons for disclaiming authorship shall include that the work of fine art has been altered, defaced, mutilated or modified other than by the artist, without the artist's consent, and damage to the artist's reputation could result or has resulted therefrom.

(b) The rights created by this section shall exist in addition to any other rights and duties which may now or in the future be applicable.

Section 5. [*Limitations of Applicability.*]

(a) Alteration, defacement, mutilation or modification of a work of fine art resulting from the passage of time or the inherent nature of the materials will not by itself create a violation of Section 3 or a right to disclaim authorship under Section 4(a), provided such alteration, defacement, mutilation or modification was not the result of gross negligence in maintaining or protecting the work of fine art.

(b) In the case of a reproduction, a change that is an ordinary result of the medium of reproduction does not by itself create a violation of Section 3 or a right to disclaim authorship under Section 4(a).

(c) Conservation shall not constitute an alteration, defacement, mutilation or modification within the meaning of this act, unless the conservation work can be shown to be negligent.

(d) In the case of work prepared under contract for advertising or trade use, the rights granted by this article may be waived contractually or otherwise at any time.

(e) The provisions of this article shall apply only to works of fine art knowingly publicly displayed, published or reproduced in this state.

Section 6. [*Relief.*]

(a) An artist aggrieved under Sections 3 or 4 shall have a cause of action for damages, exemplary damages where appropriate, equitable relief and reasonable attorney's and expert witness's fees, provided, the court may, in its discretion, award attorney's and expert witness's fees to the defendant upon dismissal of any action on the grounds such action was frivolous and malicious.

(b) No action may be maintained to enforce any liability under this article unless brought within three years of the act complained of or one year after the constructive discovery of such act, whichever is longer.

Section 7. [*Severability.*] [Insert severability clause.]

Section 8. [*Repealer.*] [Insert repealer clause.]

Section 9. [*Effective Date.*] [Insert effective date.]

Alaska Arts Southeast INC
P.O. BOX 2133, SITKA, ALASKA 99835 · PHONE (907) 747-8177

February 7th, 1986

Representative Peter Goll
Box 581
Haines, AK 99827

Dear Peter:

I would like to express my support of House Bill No. 517, which you co-sponsored in the State Legislature. I believe that this bill would be fair to all parties concerned, and codifies honest and prudent practice between artists and those who maintain galleries.

Thank you for returning my call this week concerning the possibility of a teleconference this spring. As I stated in our conversation I conducted a survey of Arts Organizations in Southeast in an attempt to gauge interest in a consortium of presentors in our region. Such a consortium could save money for all organizations and increase the range of choices for many of the smaller communities. A by product would be the facilitation of planning an entire season of events for Southeast.

I have enclosed copies of Presenter Survey forms from those who responded favorably. Five communities from District two are represented: Skagway, Haines, Metlakatla, Hoonah, and Angoon. A sixth organization has since expressed interest in Gustavus. Keep in mind that the interest has been expressed by organizations which ultimately represent and impact hundreds of individuals. Ten other organizations have also expressed an interest within the following communities: Juneau, Sitka, Ketchikan, Port Alexander, Pelican, and Petersburg. It would appear then, that at least half of the communities expressing an interest in talking further about a consortium are in District 2.

If we are to be effective in our efforts to begin planning and discussing booking for next year we should begin our dialogue soon. I don't know what your schedule will allow but I would suggest sometime between the last week in March and mid May. Early May would be ideal for me since I am on the road in Southeast recruiting for Camp during most of April.

I realize, however, that teleconferences are difficult to schedule. I would appreciate any efforts that you could make in securing one for the arts communities in our region.

Sincerely,

Gordon M. Bolar

Gordon M. Bolar
Executive Director
Alaska Arts Southeast

R. T. Wallen
P. O. Box 1063
Juneau, Alaska, 99802

Rep. Max Gruenberg
Pouch V
State Capitol
Juneau, Alaska, 99811

February 9, 1986

Dear Max,

I very much appreciate the efforts of the sponsors of this arts bill. I think it is going to clarify some rather vague areas concerning the rights and responsibilities of artists, art dealers and art patrons. The section of the bill in which I am most interested is 45. 67. 020, the section dealing with the right to reproduce works of art.

Whenever an artist creates a series of original prints, from a stone or metal plate, for example, or when he reproduces a painting with a series of prints, or makes a series of castings from a mold, the artist may elect to mark these original prints, or reproductions, or castings with the letter "c" enclosed in a circle, followed by his intitials and the year date. This copyright symbol and initials and date proclaim his "intent to copyright" and proclaim his rights under Federal Copyright Law. The system functions well with works of art which appear as multiple images or forms since everyone, artist, dealer and buyer understand, by the fact of the copyright signal appearing on the art that certain rights to the reproduction of that work have been established.

Original works, however, one of a kind works, whether they be paintings, or drawings or sculptures, often do not bear the copyright symbol because the artist has not reproduced them, and does not intend that they be reproduced. In fact, the artist, although he has the option of marking the work with the copyright symbol, often will not do so because the appearance of the copyright symbol on an original work implies that it has been reproduced, or might be reproduced in the future, and the mark might thus affect the value of the work both aesthetically and commercially. As I understand Federal Copyright Law, the artist has sole rights to reproduction of an original work of his own art regardless of whether he has marked it with the copyright symbol. However, the lack of such a symbol on a work of art can create an area of uncertainty in the mind of a buyer or art dealer.

For this and other reasons I think that there is value in a state law which addresses the problem and spells out the legal rights of artists in regards to the reproduction of their works of art. I think the fairness of the theory of this section of of the bill is reflected in Federal Copyright Law, in the legal rights of authors to their printed works, and in the legal rights that pertain to many kinds of design work, such as achitecture, boat design and so on.

As a state law, this is close to home, and every person seriously involved in the art world here in the state will be familiar with it. As an artist who has had to deal with copyright related issues a number of times in my career, and who has business with many different art dealers, and who is often asked by patrons about their rights in regard to a work of art, I see great value in this bill and benefits to artist, dealer and buyer alike. It goes a long way in clearly establishing the ground rules.

Sincerely,

R T Wallen

R. T. Wallen

CHAIRMAN'S INFORMATION: CSHB 517 (Jud)am

1) BILL TITLE: "An act relating to the private sale and consignment of works of art."

a) Introduced: Gruenberg

b) Co-sponsors:

2) INTENT: This measure clarifies the relationship between artists and art dealers concerning art work being sold on consignment.

N.B. Rep Gruenberg may be offering an amendment which would require the drafting of an SCS

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Finance and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to Adopt LFC SCS

L&C SCS deleted subsection (c) pg 3 lines 23-25 of CSHB 517(Jud)

Original sponsors: Gruenberg, Goll, Koponen, et al

IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 517 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the private sale and consignment of works of art."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45.02.326(e) is repealed and reenacted to read:

(e) When an artist delivers a work of art to an art dealer as described in AS 45.67.010, the art dealer shall prominently display a sign stating substantially, "Works of art for sale are on consignment." Works of art on consignment are not subject to the claims of the art dealer's creditors.

* Sec. 2. AS 45 is amended by adding a new chapter to read:

CHAPTER 67. ARTISTS AND WORKS OF ART.

Sec. 45.67.010. ARTISTS AND ART DEALER RELATIONSHIPS. (a) When an artist delivers or causes to be delivered a work of art of the artist's own creation to an art dealer for the purpose of sale, or exhibition and sale, on a commission, fee, or other basis of compensation, the acceptance of the work of art by the art dealer is a consignment, and

(1) the art dealer is, with respect to the work of art, the agent of the artist;

(2) the work of art is trust property in the hands of the art dealer for the benefit of the artist; and

(3) proceeds from the sale of the work of art are trust funds in the hands of the art dealer for the benefit of the artist, and the dealer shall transmit the proceeds to the artist within 30

days of the sale of the work of art.

(b) A work of art initially received as a consignment remains trust property notwithstanding the subsequent purchase of the artwork by the art dealer directly or indirectly for the art dealer's own account until the consignment price due to the artist is paid in full. If the work of art is resold to a bona fide third party before the artist has been paid in full, the proceeds of the resale are trust funds in the hands of the art dealer for the benefit of the artist to the extent necessary to pay any balance still due to the artist. The trusteeship continues until the fiduciary obligation of the art dealer with respect to the transaction is discharged in full.

Sec. 45.67.020. WAIVER. (a) A provision of a contract or agreement whereby the artist waives a provision of AS 45.67.010 is void except as provided in this subsection. An artist may waive the provisions of AS 45.67.010(a)(3) if the waiver is clear, conspicuous, and agreed to in writing by the artist. A waiver under this subsection is not valid with respect to the proceeds of a work of art initially received as a consignment but subsequently purchased by the art dealer directly or indirectly for the art dealer's own account.

(b) A waiver under (a) of this section may not inure to the benefit of the art dealer's creditors in a manner that is inconsistent with the artist's rights under AS 45.67.010.

Sec. 45.67.030. RETURN TO ARTIST. Unless the artist and art dealer have otherwise agreed in writing, the art dealer shall return an unsold work of art on demand of the artist.

Sec. 45.67.040. APPLICABILITY. (a) The provisions of AS 45.67.010, 45.67.020, and 45.67.030 may not be construed to have an effect upon a written or oral contract or arrangement in existence on the effective date of this section, except by the mutual written

consent of the parties.

(b) The provisions of AS 45.67.010 and 45.67.020 apply notwithstanding the absence of, or a conflict with, a written agreement between the artist and the art dealer concerning any matter covered by AS 45.67.010 and 45.67.020. In the event of a conflict between AS 45.67.010, 45.67.020, or 45.67.030 and AS 45.01 - AS 45.09 (Uniform Commercial Code) or other provision of law, the provisions of AS 45.67.010, 45.67.020, and 45.67.030 govern.

Sec. 45.67.050. RIGHT TO REPRODUCE WORKS OF ART. (a) When a work of art is sold or otherwise transferred by or on behalf of the artist who created it, or the heirs or personal representatives of the artist, the right of reproduction is reserved to the grantor until it passes into the public domain by act or operation of law, unless the right is sooner expressly transferred by an instrument, note, or memorandum in writing signed by the owner of the right or an authorized agent of the owner.

(b) When an exclusive or nonexclusive conveyance of a right of reproduction is made by the holder of the right, or the holder's authorized agent, ownership of the physical art work is presumed to remain with and be reserved to the grantor unless expressly transferred in writing signed by the grantor or the grantor's authorized agent.

(c) This section may not be construed to prohibit the fair use of a work of art or to conflict with federal copyright law.

Sec. 45.67.100. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "artist" means the creator of a work of art or, if deceased, the heirs or personal representatives of the creator;

(2) "art dealer" means a person engaged in the business of

selling works of art, other than a person exclusively engaged in the business of selling goods at public auction;

(3) "consignment" means that no title to or estate in the goods or right to possession superior to that of the consignor vests in the consignee, notwithstanding the consignee's power or authority to transfer and convey, to third person, all of the right, title and interest of the consignor, in and to the goods;

(4) "creditor" has the meaning given in AS 45.01.201;

(5) "right of reproduction" means a right to reproduce, prepare derivative works of, distribute copies of, or publicly display a work of art;

(6) "work of art" means a painting, sculpture, drawing, work of graphic art, photograph, or craft work, in any medium.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 517 (L&C)
Title : "An Act relating to the private sale and consignment of works of art."

Sponsor : Repr. Gruenberg
Requestor : House Labor & Commerce
Date of Request : February 11, 1986

FISCAL DETAIL

Agency Affected : Department of Law
BRU : Legal Services

Components : Legal Services Operations

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS :

This bill sets out some of the property rights of artists, providing for the sale and consignment of works of art under Title 45. The bill, which adds a new Chapter to this Title, does not contain penalty provisions. Any disputes arising from the provisions of the bill would be civil matters between private parties and would not involve the Department of Law.

Richard L. Pegues

Prepared by : Richard I. Pegues, Director — Phone : 465-3672
Division : Administrative Services Division — Date : 2/12/86

Richard L. Pegues/for/

Approved by Commissioner : Harold M. Brown, Attorney General — Date : 2/12/86
Agency : Department of Law

FISCAL NTOE

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

522

CHAIRMAN'S INFORMATION: SCS CSHB 522(L&C)

1) BILL TITLE: "An act relating to an insurance broker's receipt of premium payments, the cancellation or nonrenewal of insurance policies, and provision of medical malpractice insurance for nurses and nurse midwives."

a) Introduced: Rep Sund

b) Co-sponsors:

2) INTENT: This measure contains portions of various insurance "reform" proposals which have been heard in committee this year. Among these are payments to brokers, cancellation notifications, and notification for nonrenewal of insurance policies. It also expands MICA provisions to offer insurance to nurses and nurse midwives. The version which passed the House contained language which would provide for a nurse or nurse midwife to hold a seat on the MICA Board, and I have deleted that provision in the SCS.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Judiciary and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Need to adopt the L&C SCS, plus the title change; An SCR was introduced this morning to effect that change.

CS HB 522 (Judiciary)

OVERVIEW

Prepared by Rep. John Sund's office.
April 27, 1986

OBJECTIVE OF THE BILL

The purpose of House Bill 522 is to approach the effects of the insurance crisis through tightening various insurance regulations and expanding the Medical Indemnity Corporation of Alaska.

WHAT THIS BILL DOES

1. Regards premium payments to insurance brokers as payments directly to the insurance company. This will prevent alleged nonpayment of premium cancellations because a broker walked off with the payment.

2. Clarifies accepted reasons for canceling a personal line (auto and homeowner's) insurance policy and increases the time requirement for notification of cancellation from 20 days to 60 days with certain exceptions. It also requires a stated reason for the cancellation.

3. Establishes criteria for canceling a business or commercial insurance policy and requires 60 days notice of cancellation with certain exceptions. It also requires a stated reason for the cancellation.

4. Establishes a 45 day notice of nonrenewal for business and commercial policies.

5. Expands the Medical Indemnity Corporation of Alaska (MICA) to offer insurance to nurses and nurse midwives and adds a nurse or nurse midwife to the MICA board of directors.

WHY THIS BILL IS NEEDED

While we have been attacking the insurance crisis primarily from the tort reform angle and the pooling concept, we can also help the situation through insurance regulation reform.

Not only is it traumatic to have your insurance canceled, it is worse to have it canceled without adequate notice so that other coverage can be sought. We now have no law that requires advance notice of cancellation of business or commercial insurance. This bill would give the insured 60 days to find alternate coverage.

This bill also helps those nurses who are working in high-risk fields, such as childbirth, and cannot find insurance coverage. MICA would now be available to them.

The bill carries a zero fiscal note and is supported by the Division of Insurance.

CS HB 522 (Judiciary)

SECTIONAL ANALYSIS
Prepared by Rep. John Sund's office.

Section 1; Page 1, line 13: amends AS 21.27.200 (a) by stating that a broker is not an agent for the insurer, except as provided in (c) (see Section 2 below). Nothing in this section is intended to change common law on agency.

Section 2; Page 1, line 22: adds the new subsection (c) referred to above. This makes the broker the agent of the insurer for the purpose of collecting premiums.

This is important to the Division of Insurance and gives the insured more latitude in premium payments. When the broker receives a premium payment, it is treated as if the insurance company has received it. This protects the insured and prevents policy cancellation due to nonpayment of premiums because an unscrupulous broker walked off with the cash. According to the division, this section could save many thousands of dollars per year for the consumer.

Section 3; Page 1, line 28: amends present statute on limits on cancellation by clarifying that insurers cannot cancel a personal automobile insurance policy unless premiums aren't paid or the insured's license is revoked or suspended.

Section 4; Page 2, line 11: amends the reasons for which limits on cancellation in this section don't apply:

1) failure to renew a policy unless it was in force for less than 12 months. (This is already in statute.)
2) a policy that is less than 60 days old, unless it is a renewal.
3) an automobile assigned risk or automobile insurance plan.
4) a policy insuring more than four vehicles.
5) a policy covering a business related to automobiles.

Section 5; Page 2, line 28: amends present statute on limits on cancellation by specifying that the following limits apply only to personal insurance other than personal auto insurance:

1) nonpayment of premiums.
2) conviction of a crime that increases insured's risk.
3) discovery of fraud or misrepresentation by insured.
4) discovery of negligent act or omission that increases insured's risk.
5) physical change in insured's property making it

uninsurable.

Section 6; Page 3, line 18: places limits on cancellation of a business or commercial policy. No provisions now exist in law to limit commercial insurance cancellation. The limits are the same as in Section 6 (personal insurance), but additional reasons specific to commercial insurance are added.

This section also provides in (b), Page 4, line 23, for the director of the Division of Insurance to determine on a case by case basis whether a reason for cancellation not listed in this section is justified.

Section 7; Page 4, line 25: increases the notice of cancellation of a personal insurance policy from 20 days to 60 days before the cancellation date. If nonpayment of premium is the reason for cancellation, however, notice must be served within 10 days, which is present law.

This section also requires that the notice include a statement of the reason for cancellation.

Section 8; Page 5, line 9: requires the same time frame for cancellation of business or commercial insurance as that for personal lines as cited above.

Unearned premium must be returned or credited before the cancellation effective date unless the cancellation is for nonpayment. In that case, the unearned premium must be returned or credited within 45 days after the cancellation date.

Policy premiums subject to audit are also exempt from the above refund requirement. The audit must be done within 30 days of the cancellation date and the unearned premium must be returned or credited within 30 days of the audit completion.

Section 9; Page 6, line 2: clarifies that the present law requiring renewal of policies that are in force less than 12 months pertains only to personal lines.

This section also adds business and commercial lines to the requirements for notice of nonrenewal with a 45 day notice period. Personal lines require only 20 days notice of nonrenewal.

This section doesn't apply if the insurer in good faith was willing to renew, if premiums weren't paid on the expiring

policy, or if premiums weren't paid as required for renewal.

Section 10; Page 6, line 19: is housekeeping on the requirement to notify those denied auto liability insurance of the auto assigned risk plan.

Section 11; Page 6, line 29: Definitions.

Section 12; Page 8, line 24: amends the makeup of the Medical Indemnity Corporation of Alaska (MICA) board of directors by reducing the number of physicians from four to three and adding a licensed nurse or nurse midwife to the board. The reason for the change is that under this bill, nurses would be eligible for coverage through MICA (see section 14).

Section 13; Page 9, line 15: amends MICA statute by allowing nurses and nurse midwives to be a separate entity for coverage.

Section 14; Page 12, line 10: Definitions.

Section 15; Page 12, line 16: repeals statutes the intent of which are covered elsewhere in this bill.

Department of Commerce & Economic Development / POSITION PAPER

CSHB 522(L&C): "An Act relating to payment of insurance premiums, cancellation of insurance policies, and the provision of medical malpractice insurance for nurse midwives; and providing for an effective date."

The Department favors passage of this proposed legislation.

Sections 1 & 2 of this bill would provide that, for purposes of receiving payment of an insurance premium, a broker is legally considered an agent of the insurance company. This legislation does not give the broker the ability to bind coverage with an insurance company that has not given him that authority. The insurance agent has a direct contractual relationship with the insurance company in which it places business. The effect of this is that when an agent receives premium from an insured, it is the same as though the insurance company had received the funds, even if the insurance company never receives the money.

The situation with a broker is not as clear. The broker by definition represents the insured, not the insurance company. While it is possible that a legal argument could be made to attempt to treat the broker as an agent of the insurer, this must be done in court on a case by case basis.

During the past two years, it has become clear that a similar law is needed for brokers. Two large broker insolvencies have occurred where insureds have paid the broker who in turn has failed to remit those funds to the insurer resulting in cancellation of coverage for nonpayment of premium. The insured then suffers a loss of coverage and monies. In most cases, the insured person did not know in which capacity the producer was acting, let alone understand and appreciate the distinction.

Sections 3 - 10 and 14 address cancellation of commercial insurance policies. Under existing law, there is a limitation on cancellation of personal lines policies such as automobile insurance policies and homeowners insurance policies. A part of this law also establishes minimum amounts of time when a cancellation is issued and requires a reason for any cancellation or nonrenewal of coverage. These minimums and reasons do not currently apply to business or commercial policies.

This proposal will provide for a 60 day notice time that a company must give when it cancels an insurance policy, other than personal lines of insurance. It also requires that any unearned premium shall be returned prior to the effective date of cancellation unless cancellation is for nonpayment of premium.

The need for this request arises from the tightening insurance markets. As companies are reducing the amount of insurance they are writing, they are eliminating entire classes of insurance from their book of business and they are often cancelling policies of those insureds who have suffered losses. The Alaskan consumer needs adequate notice in order to be able to find an alternate insurer in the event that his policy is cancelled.

To accomplish this, it is necessary to substantially rearrange AS 21.36.210 - AS 21.36.310. The changes do not revise the impact of those sections of law on personal lines. It does make some of those provisions applicable to business or commercial insurance.

We recommend that the notice period for a nonpayment cancellation remain unchanged. This means removing the change made on page 3, line 24. and changing the 20 days on page 4, line 4 to read 10 days. The logic for this is that a person about to receive notice for nonpayment generally knows that payment has not been made. 10 days is adequate.

Sections 11 - 13 provide that nurse midwives can purchase medical malpractice insurance from the Medical Indemnity Corporation of Alaska (MICA). This will provide an additional market that the nurse midwife would have available if required. We would recommend that Section 11 on page 7, lines 9 - 29 be omitted. There are 1200 physicians licensed by the state who are conceivably eligible for coverage from MICA while there are only 21 licensed nurse midwives who might be eligible for coverage from MICA with passage of this bill. That is not a reasonable basis for changing the makeup of the governing board of MICA. This feature should remain unchanged.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 4/14/86

John L. George, Director of Insurance

Date: 4/14/86

AMERICAN COLLEGE OF NURSE-MIDWIVES,
ALASKA CHAPTER

April 30, 1986

Senator Bettye Fahrenkamp
Chairman, Senate HESS Committee
Alaska State Legislature
Pouch U (MS 3100)
Juneau, Alaska 99811

MAY 7 1986

Dear Senator Fahrenkamp:

As a follow-up of my March letter, I am writing to inform you that an amendment for the MICA statute has been incorporated into House Bill 522, Judiciary version and is now on its way to the Senate. This bill would make it possible for certified nurse-midwives (CNM's) to obtain liability insurance from the Medical Indemnity Corporation of Alaska (MICA). Thank you for referring my request to the appropriate House committee.

I am now requesting that you spearhead a campaign to move it through the necessary channels in the Senate prior to the end of this legislative session.

As you know, certified nurse-midwives lost their liability insurance nationwide as of July 1985. (See enclosed congressional testimony entitled "Professional Liability Insurance for Certified Nurse-Midwives - Cost and Availability.") The national organization, the American College of Nurse-Midwives (ACNM) is trying to form its own insurance company but faces many obstacles. It is clearly going to take many months before a new program is in place. The certified nurse-midwives in Alaska do not have 'many months' before current policies expire.

Of the 29 certified nurse-midwives in Alaska, 13 are in clinical practices that include deliveries. Eight percent (1,048) of Alaskan births were attended by CNM's in 1985. Practices vary with one CNM attending 28% of the births at the Alaska Native Medical Center and four CNM's attending 20% of the births at Humana Hospital in Anchorage.

BACK UP INFORMATION

Three of the four CNM's with privileges at Humana face an uncertain future as their temporary liability policies will expire by September 30th. Their collaborative physicians do not carry liability insurance so these nurse-midwives do not have the option of being covered under the physician's 'umbrella' policy.

Two CNM's in Homer and a new CNM in Kenai are 'going bare' because they have no other options.

The Juneau CNM plans to close her practice this July unless an alternative liability policy becomes available.

Certified nurse-midwives did not lose their master policy due to high lawsuit rates among the membership. As I am sure you are aware, there is a general crisis in the entire liability insurance industry and we have simply become one of its victims. In the last 10 years, only six percent of the national membership has been sued. In contrast, 60% of the nations's obstetricians have had suits brought against them.

Insurance companies view us as a risk because we deliver babies and the long statute of limitations (21 years) makes it impossible for a company to predict its losses. In our favor is the fact that we are the experts of 'normal' childbirth. We have stringent criteria upon which we base our selection of clients and we consult and refer to collaborative physicians as needed. We are held to the highest medical standards or face de-certification if we do not meet them.

I find it ironic that certified nurse-midwives are being 'penalized' for their expertise in obstetrics and midwifery while the State passes legislation sanctioning lay midwifery that essentially allows lay midwives to practice with little interference or supervision.

Certified nurse-midwives have been providing Alaskan consumers a valuable, safe service for over 10 years. We want to continue to serve Alaskan women and infants but are facing our greatest professional challenge as the lack of liability insurance threatens our very existance. We find it practical and in the best interest of clients to cover ourselves with liability insurance. Please give your support to HB 522, Judiciary version when it reaches the Senate and prouide for an immediate effective date. Our clients will thank you!

Sincerely,

Marilyn Pierce-Bulger

Marilyn Pierce-Bulger, RN, CNM
Chairman, Alaska Chapter, ACNM
Box 9416 Hiland Road
Eagle River, Alaska 99577
wk 265-9245 hm 694-6076

Enclosures & Petitions

cc: Members, Alaska State Senate

Professional Liability Insurance for Certified Nurse-Midwives: Cost and Availability

United States Senate
Committee on Commerce, Science
and Transportation
March 4, 1986

Good morning. My name is Karen Ehrnman and I represent the American College of Nurse-Midwives (ACNM). I have been invited to share with you the difficulties which certified nurse-midwives have in obtaining professional liability insurance coverage.

This testimony will chronicle the extensive yet unsuccessful steps the College has taken on behalf of its members to obtain professional liability insurance. Additionally, I shall describe the obstacles resulting from the decision made by the College to study our options to assist nurse-midwives in establishing an independent mutual insurance company.

The impact of this situation on America's small business community is twofold: approximately one-third of our members are in private practice; another segment of our membership either owns or provides most of the health care in the nation's 140 birth centers. Until now, accredited birth centers have been a success story in the small business world. During the first three years of their operation, only eight to ten percent of these centers fail. By contrast, twelve centers have closed in 1985 -- largely as a result of an inability to obtain professional liability insurance.

As a result of the unavailability of insurance from the private sector, the establishment of an insurance company providing professional liability coverage is the only option available to nurse-midwives. Without this company, nurse-midwives will be forced to end their services to mothers and children across the United States. Birth centers will close and private practitioners will seek other livelihoods.

Background on ACNM

The American College of Nurse-Midwives (ACNM) is the professional organization for nationally certified nurse-midwives (CNMs) in the United States. There are approximately 2,500 members of the ACNM, representing close to 85% of the profession. A full 95% of the members carry some type of professional liability insurance coverage.

Certified nurse-midwives are highly trained health professionals. Educated in both nursing and midwifery, they are specialists in maternal and child health care. They are licensed in all fifty states and provide care to the healthy woman before, during and after childbirth. They are experts in normal gynecologic and family planning care. Each member of the College has been officially certified through a national written examination.

The nurse-midwives work in a variety of settings -- such as private practices, university teaching hospitals, city hospitals, rural outreach centers, group health maintenance organizations, and health departments. Nurse-midwives deliver about three percent of the births in the United States. Approximately 75% of the births attended by certified nurse-midwives occur in hospitals, and another 15% occur in accredited birth centers.

Certified nurse-midwives work in clinical collaboration with physicians. ACNM standards require members to have an alliance agreement and health care protocols with a physician in order to practice. These agreements and protocols establish mechanisms for consultation and referral when complications arise.

ACNM also has reached a formal agreement outlining acceptable guidelines for working relationships with the American College of Obstetricians and Gynecologists.

Details of the Current Insurance Crisis

Since July, 1984, about 1400 CNMs have had professional liability insurance under a blanket ACNM policy written by the Mutual Fire, Marine and Inland Insurance Company. The remaining 1100 members of the College are

insured by their employers -- hospitals, health maintenance organizations, etc.

Mutual Fire notified ACNM in May, 1985 that the policy would not be renewed on July 1, 1985. ACNM's insurance was not renewed because of general conditions in the insurance industry -- the unavailability of reinsurance -- and not because of its members' professional performance. Suits have been filed against only six percent of all nurse-midwives -- a number not considered high among medical professionals. By comparison, 66.9 percent of obstetricians have been sued at least once according to the American College of Obstetricians and Gynecologists. In addition to the non-renewal of the blanket policy, over 300 individual certificates of insurance were cancelled this past July. These cancellations accounted for all of the individual certificates of insurance written after December 31, 1984; the remaining 1100 policies expired by December, 1985.

History of Insurance Coverage

Since the early 1970's, the American College of Nurse-Midwives has been able to obtain for its members a group policy that would pay up to one million dollars per claim. This one million dollar amount of insurance is the

amount which many hospitals require nurse-midwives to purchase in order to qualify for hospital privileges. It is this amount of insurance we want to make available to our members today.

Mutual Fire Marine and Inland Insurance was the third insurance carrier the ACNM has worked with in the past three years. The change in companies has been the result of three separate situations: 1) the inadequacy of the premium rate charged by one company; 2) the second company's withdrawal from the medical malpractice market; and 3) the nonrenewal of the reinsurance treaties for our most recent policy.

Steps Taken to Obtain New Insurance Policy

Early this year when ACNM received word that obtaining the master insurance policy might be difficult, we selected a "seasoned" broker with an excellent history of obtaining professional medical liability insurance. We believed that our broker understood what nurse-midwives are and that he would "market" us appropriately to the insurance industry. In search of a replacement for Mutual Fire we contacted 17 insurance companies in the United States. We were told that this represented most carriers in the U.S. who write professional liability

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large numbers of claims and skyrocketing awards. What was never actually said -- but implied -- was that the premium levels necessary to cover CNMs would be beyond the reach of professionals making an annual salary of $25,000. Therefore, they offered no coverage at all.

But consumer groups, such as the National Insurance Consumer Organization (NICO), have accused the insurance industry of using misleading statistics in claiming a loss in 1985. Instead, NICO suggests the insurers have earned $6.6 billion. The ACNM is not an insurance analyst; we do know that nurse-midwives are not part of the malpractice insurance problem because of our very low rate of suits. We believe that it would have been possible for an insurance company to write a policy for nurse-midwives at a reasonable rate and based upon sound actuarial data. In fact, as I shall discuss later in this testimony, our plan is to do just that -- to establish an independent mutual insurance company which will underwrite CNMs at a reasonable rate.

State Level Initiatives

Our next course of action was to send nurse-midwives to talk with professional liability insurance companies in their states. The response was still "no". Nurse-

midwives talked to governors, state legislators, and state insurance commissioners. To date only one state out of fifty -- New Jersey -- has been able to offer insurance from a private carrier.

Still focusing at the state level, nurse-midwives investigated joint underwriting authority (JUA) and lobbied state legislators to extend joint underwriting authority to include nurse-midwives. We have been successful in implementing this in a number of states. However, for the most part, either the premiums for this coverage have been excessive or the amount of insurance offered has been less than required.

Other Considerations

As we evaluated the situation, nurse-midwives had little hope of obtaining affordable insurance from either the traditional insurers or the state JUAs. While these two options had been under consideration, the College's Board of Directors also commissioned a feasibility study on various options for self-insuring. Although this study indicated that it would be "feasible" for nurse-midwives to form an insurance company, the Board of Directors decided last summer that the insurance business

was beyond the limited resources of nurse-midwives. The Board directed the staff of ACNM to look into working with other groups to self-insure or to join another group's self-insure program. The response to these inquiries was also "no", although ACNM continues to communicate with the American Nurses' Association (ANA) about forming a company for all nurses.

Another option involved asking Congress to consider establishing a nurse-midwife sponsored insurance program. At that time we had interested a primary insurer in writing the first layer of insurance coverage. That company would have written the first $100,000 of coverage and the federal government would have provided the excess coverage from $100,000 to one million dollars. Even as we discussed this with members of Congress, however, the primary insurer had a change of heart.

The Re-examination of Self-Insure

Consideration of all of the options discussed up to this point utilized an enormous amount of resources. The process also strengthened the resolve of the leaders of the profession that searching for insurance could not become an annual event. Therefore the College's Board of

Directors sought a second opinion on the self-insure options. This second evaluation confirmed the earlier one. In December, 1985, the Board of Directors decided to further study this option.

Forming an Insurance Company

The emotion which accompanied the decision to study helping certified nurse-midwives form an independent mutual insurance company was short-lived. Even after hiring consultants and attorneys, the road blocks before us are enormous.

Disregarding the very difficult financial problems, the following are some of the legal and technical complications which hinder the establishment of a company.

The Claims-Made Policy

One technical problem is the type of policy currently being written -- a claims-made policy. In the past professionals have been able to purchase occurrence policies. There is a very important distinction between these two types of policies -- a distinction which is critical to nurse-midwives as well as physicians.

An occurrence policy insures for all claims arising out of events which occurred during the covered

period regardless of when the claim is filed. A claims-made policy insures only those claims which are filed during the policy year no matter when the event occurred. Does it matter? Yes.

For example, under an occurrence policy issued in February 1986 - February 1987, the nurse-midwife would be covered for any claim related to a delivery during this calendar year, even if the family did not file the claim until the child entered elementary school or even college. A claims-made policy, on the other hand, would only cover those claims filed during the February 86 - February 87 calendar year. To be covered for claims filed after this time period the professional must purchase "tail coverage".
What further complicates all of this is that in this insurance market it is impossible to buy a "tail" for 21 years -- the coverage that nurse-midwives and obstetricians need. In addition, insurance companies will not quote a price on a "tail" until it is needed, but we have been told it is likely to be two to three times the cost of a one year premium -- and can be more. We have been told by the insurance industry that primary insurers are switching to claims-made policies be-

cause reinsurers will not write occurrence policies. Reinsurers argue that it is easier to anticipate costs with a claims-made policy.

Regulatory Roadblocks in Forming an Insurance Company

Simply stated, we have been informed by our legal counsel that under the insurance laws of virtually all of the states, a new insurance company could not write insurance unless it became licensed in each of these states. This is a costly and time-consuming process that takes several years -- time we simply do not have. Also, the capital requirements of a few of the states exceed even our collective resources. Our legal counsel has reviewed the situation to see if exemptions from this licensing process exist, but none is available to us due to the number, size and geographic spread of our membership.

In 1981, Congress realized that this almost identical problem existed for small businessmen affected by the lack of product liability insurance, when it enacted the Risk Retention Act. This Act allowed groups of business to form risk retention groups to collectively insure the product liability risks of the members of the group without first becoming licensed as an insurer in any

jurisdiction other than that of the domicile of the risk retention group itself. In 1985, Congress again realized that a similar problem existed when the House and the Senate passed an almost identical bill (which is part of the Super Fund legislation now before Congress) to provide for risk retention groups for environmental impairment liability insurance.

We ask you to provide us with the same type of legislation to permit formation of a risk retention group for professional liability insurance for nurse-midwives and birthing centers.

Nurse-midwives Current Status: Temporary Insurance Coverage

In considering practicing without insurance, most CNMs, as well as most physicians, feel both a moral and practical obligation to protect their patients and themselves from any unintentional human error. In addition, many CNMs must carry professional liability insurance to retain their employment and/or hospital privileges.

In an attempt to keep practicing, most of our members purchased insurance during this past year from one of two

nursing groups whose policies did not include an exclusion of nurse-midwives. These organizations are the American Nurses' Association (ANA) and the Nurses' Association of the American College of Obstetricians and Gynecologists (NAACOG). The insurers of both of the groups have subsequently written into the policies exclusions of nurse-midwives. An informal survey of our membership indicates that this temporary coverage will begin to run out this spring and by next December no CNMs will have insurance if not provided by their employers or state JUA.

Requested Actions

I am certain you will agree with us that the formation of the insurance company over the next few months is critical. Congress can help. We urge Congress to: amend the 1981 Risk Retention Act; address the problem of the unavailability of reinsurance; and establish the availability of occurrence-type policies.

1) Amend the 1981 Risk Retention Act:

An expansion of this law to allow groups such as ours to establish an insurance company is essential. The idea we seek to implement is after meeting the requirements in a selected state for establishing the company, the company would be able to write insurance in all fifty states. This is the

only way that we will be able to offer insurance to our members in all fifty states.

2) Address the problem of reinsurance unavailability:

Our problem began when Mutual Fire's reinsurance treaties were not renewed. Since then we have heard many insurers state that their capacity to write insurance is limited by the unavailability of reinsurance. A new company also cannot get reinsurance and this substantially increases both short and long term financial risks.

In this regard, the American College of Nurse-Midwives urges you to make reinsurance available. This could be done by legislating the plan for federally-based reinsurance which has been drafted by the National Insurance Consumers Organization, investigating U.S. business practices and legislating changes to encourage the establishment of U.S. owned reinsurance companies.

3) Make occurrence policies available.

Nurse-midwives cannot purchase an occurrence policy. Additionally, in studying the possible formation of a new company, we have been advised that

this company would also have to write a claims-made policy. The reason is that reinsurers will only reinsure the claim-made type policy. This situation must be changed.

Lastly, we need this assistance quickly. Although some private practices and birthing centers have already gone out of business, by spring the vast majority of these small businesses will be vulnerable. Thank you for your support and interest in this problem.

PAGE 8, LINE 8 - PAGE 9 - LINE 14;
SEC. 12 AS 21.58.030
CSHB 522
DELETED

WORK DRAFT WORK DRAFT WORK DRAFT

Bannister ✓
5/7/86

Original sponsors: Sund, Koponen, Gruenberg and Taylor

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 522 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to an insurance broker's receipt of premium payments, the cancellation or nonrenewal of insurance policies, and the provision of medical malpractice insurance for nurses and nurse midwives."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.27.200(a) is amended read:

(a) Except as provided in (c) of this section,

(1) a [A] broker, as such, is not an agent or other representative of an insurer, and does not have power as a broker to bind the insurer upon any risk or with reference to any insurance contract; and

(2) nothing [. NOTHING] in this section is intended to alter the common law of agency as applied to transactions under this title.

* Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

(c) For purposes of determining an insured's entitlement to coverage, a premium paid to the broker is considered to be received by the insurer, if the payment to the broker is designated for specific coverage from a specifically named insurer and is supported by competent evidence.

* Sec. 3. AS 21.36.210(a) is amended to read:

(a) An insurer may not exercise its right to cancel a policy of personal [AN] automobile insurance [POLICY] except for the following reasons:

(1) nonpayment of premium; or

(2) the driver's license or motor vehicle registration of either the named insured or of an operator who resides in the same household as the named insured or who customarily operates a motor vehicle insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

* Sec. 4. AS 21.36.210(d) is amended to read:

(d) This section does not apply to

(1) the failure to renew a policy, except as to coverage in force for less than 12 months;

(2) a policy that has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy;

(3) a policy issued under an automobile assigned risk plan or automobile insurance plan;

(4) a policy insuring more than four motor vehicles;

(5) a policy covering the operation of a garage; automobile sales agency, repair shop, or service station; or public parking place;

(6) a policy providing insurance only on an excess basis;

(7) any other contract providing insurance to the named insured, even though the contract may incidentally provide insurance with respect to motor vehicles.

* Sec. 5. AS 21.36.210(f) is amended to read:

(f) An [NOTWITHSTANDING (e) OF THIS SECTION, AN] insurer may not exercise its right to cancel a policy of personal insurance other than personal automobile insurance, except for the following reasons [THE

TYPE DESCRIBED IN (e) OF THIS SECTION IF ONE OF THE FOLLOWING CONDITIONS OR CIRCUMSTANCES ARISES]:

(1) nonpayment of premiums, including nonpayment of additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a change in its occupancy or use;

(2) conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against;

(3) discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy;

(4) discovery of a grossly negligent act or omission by the insured that substantially increases the hazards insured against; or

(5) physical changes in the insured property that result in the property becoming uninsurable.

* Sec. 6. AS 21.36 is amended by adding a new section to read:

Sec. 21.36.215. LIMITS ON THE CANCELLATION OF BUSINESS OR COMMERCIAL INSURANCE POLICES. (a) Except as allowed by the director under (b) of this section, an insurer may exercise its right to cancel a policy of business or commercial insurance only for the following reasons:

(1) nonpayment of premiums, including nonpayment of additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a change in its occupancy or use;

(2) conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against;

(3) discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the

insurance or by the insured in pursuing a claim under the policy;

(4) discovery of a grossly negligent act or omission by the insured that substantially increases the hazards insured against;

(5) physical changes in the insured property that result in the property becoming uninsurable;

(6) physical changes in the operations of the insured that result in the property becoming uninsurable;

(7) changes in the reinsurance program of the insurer that results in an increase of the insurer's retention of risk on a subject of insurance;

(8) changes in the financial condition of the insurer resulting in a violation of AS 21.12.010;

(9) a material change in the law that affects the coverage provided under the policy; or

(10) an excessive number of claims by the insured.

(b) Before issuing a notice of cancellation, an insurer may request the director to determine in a particular case whether a reason for cancellation not specified in (a) of this section is a valid reason for cancellation. The director may allow the insurer to exercise its right to cancel if the director finds that the cancellation is justified. The insurer may not implement the requested cancellation before receiving the approval of the director.

* Sec. 7. AS 21.36.220 is amended to read:

Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not exercise its right to cancel a <u>personal insurance</u> policy unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, at least <u>60</u> [20] days before the effective date of cancellation. <u>However, if</u> [, EXCEPT THAT WHEN] cancellation is for nonpayment of premium, the notice <u>must</u>

[SHALL] be mailed or delivered to the named insured at the address shown in the policy at least 10 days before the effective date of cancellation, and must [SHALL] include or be accompanied by a statement of the reason for the cancellation. [THIS SECTION DOES NOT APPLY TO THE FAILURE TO RENEW A POLICY, EXCEPT AS TO COVERAGE IN FORCE FOR LESS THAN 12 MONTHS.]

* Sec. 8. AS 21.36.220 is amended by adding new subsections to read:

(b) An insurer may not exercise its right to cancel a policy of business or commercial insurance unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, and to the agent or broker of record, at least ~~(60)~~ 45 days before the effective date of cancellation. However, if cancellation is for nonpayment of premium, the notice must be mailed or delivered to the named insured at the address shown in the policy and to the agent or broker of record at least 10 days before the effective date of cancellation, and must include or be accompanied by a statement of the reason for the cancellation.

(c) If an insurer cancels a policy under (b) of this section, it shall return or credit any unearned premium to the agent or broker of record or directly to the insured or premium finance company, if applicable, before the effective date of cancellation, except that

(1) if cancellation is for nonpayment of premium, any unearned premium must be returned or credited within 45 days after the notice of cancellation is given;

(2) if the policy premium is subject to audit the insurer shall perform an audit within 30 days of the effective date of the cancellation and return or credit any unearned premium within 30 days of the completion of the audit.

* Sec. 9. AS 21.36.240 is amended to read:

Sec. 21.36.240. FAILURE TO RENEW. An insurer may not fail to renew a personal insurance policy in force for less than 12 months. An insurer may not fail to renew a policy [IN FORCE FOR 12 MONTHS OR MORE] unless a written notice of nonrenewal is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days for a personal insurance policy, and at least 45 days for a business or commercial insurance policy, before the expiration date of the policy [,] or of the anniversary date of a policy written for a term longer than one year or with no fixed expiration date. This section does not apply

(1) if the insurer has in good faith manifested in any way its willingness to renew;

(2) in case of nonpayment of premium for the expiring policy; or

(3) if the insured fails to pay the premium as required by the insurer for renewal.

* Sec. 10. AS 21.36.250 is amended to read:

Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automobile liability insurance is cancelled, other than for nonpayment of premium, or is not renewed in accordance with [FOR FAILURE TO RENEW A POLICY OF AUTOMOBILE LIABILITY INSURANCE TO WHICH] AS 21.36.240 [APPLIES], the insurer shall notify the named insured of possible eligibility for automobile insurance through the automobile assigned risk plan, or automobile insurance plan. The notification must [SHALL] accompany or be included in the notice of cancellation or nonrenewal required by AS 21.36.220 [AS 21.36.230] and 21.36.240.

* Sec. 11. AS 21.36.310 is amended to read:

Sec. 21.36.310. DEFINITIONS. In AS 21.36.210 - 21.36.310

(1) "business or commercial insurance" means insurance

other than personal insurance, life insurance, disability insurance, fidelity and surety insurance, title insurance, or an annuity contract;

(2) "nonpayment of premium" means failure of the named insured to discharge when due any obligations of the named insured in connection with the payment of premium on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;

(3) "personal automobile insurance" means insurance not related to business or commercial activities, covering [(2) "POLICY" MEANS AN INSURANCE POLICY COVERING THE RISKS AND EXPOSURES LISTED IN AS 21.36.210(e) OR AN AUTOMOBILE POLICY THAT INCLUDES] automobile liability, uninsured/underinsured motorists [COVERAGE, UNINSURED MOTORIST COVERAGE], automobile medical payments [COVERAGE], or automobile physical damage [COVERAGE], that is delivered or issued for delivery in this state [INSURING AS THE NAMED INSURED, ONE INDIVIDUAL OR HUSBAND AND WIFE RESIDENT OF THE SAME HOUSEHOLD], and under which the insured vehicles are of the following types only:

(A) a motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance, nor rented to others; or

(B) any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less that is not used in the occupation, profession, or business of the insured, nor used as a public or livery conveyance, nor rented to others;

(4) "personal insurance" does not include an annuity contract or a policy of life insurance, disability insurance, or title insurance; the term means personal automobile insurance, or insurance

covering

(A) loss of or damage to real property that is used predominantly for residential purposes and that does not consist of more than four dwelling units;

(B) loss of or damage to personal property, including personal effects, household furniture, fixtures and equipment located in not more than four dwelling units; or

(C) legal liability of natural persons for loss of, damage to or injury to persons or property if the insurance does not cover liability arising from or in connection with business or commercial activities;

(5) [(3)] "renewal" or "renew" means

(A) the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer,

(B) the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term, or

(C) the extension of the term of a policy beyond its policy period or term under a provision for extending the policy by payment of a continuation premium.

* Sec. 12. AS 21.88.050 is amended to read:

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The corporation shall

(1) in the form approved by the director, issue to all physicians, nurses, nurse midwives, and hospitals who are found to be acceptable risks under standards developed under (5) of this subsection, and who pay the premiums for it, a contract or contracts indemnifying physicians, nurses, nurse midwives, and hospitals and their

employees who are health care providers against loss by reason of liability for covered claims for an act or omission in the delivery of professional health care in this state, and agreeing to tender on behalf of the physicians, nurses, nurse midwives, and hospitals and their employees who are health care providers a defense to a covered claim in a proceeding brought under AS 09.55.530 - 09.55.560; the limits of liability for policies issued by the corporation shall be approved by the director; the contract shall cover the defense against but need not indemnify liability for punitive damages arising from a covered claim; at the option of the corporation, if approved by the director, and for an additional premium the contract may cover claims against the physician, nurse, nurse midwife, or hospital that arise out of professional services performed by the physician, nurse, nurse midwife, or hospital for any period before the contract is issued, except that coverage will not be provided for a claim already filed or of which the physician, nurse, nurse midwife, or hospital had or reasonably should have had notice at the time the retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued by the corporation which shall be determined by the board of governors in accordance with AS 21.86.080 and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090, 21.06.120, 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250, 21.09.280, AS 21.12.020(b)-(c), AS 21.18, AS 21.21, AS 21.24 and AS 21.36; and shall be exempt from participation as a member insurer in the Alaska Insurance Guaranty Corporation;

(4) carry out the obligations of the contracts issued by the corporation by defending all covered claims made against insured

health care providers and by paying all liabilities that [WHICH] are finally adjudicated against the insured health care provider or that [WHICH] may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(5) establish standards for the acceptability of risks; in establishing these standards the corporation may exclude an applicant for insurance based on individual risk selection factors, but may not exclude an applicant based only on the classification of the applicant.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for these services; employees of the corporation are not considered state employees;

(2) negotiate for and procure reinsurance from private casualty insurers or reinsurers for any and all liability incurred by contracts issued by it;

(3) provide coverage to insureds for other hazards customarily included in medical malpractice insurance policies when there is a finding by the director that this coverage is not available to insureds of the Medical Indemnity Corporation of Alaska in the private insurance market at a competitive price;

(4) borrow or advance funds necessary to carry out the purposes of the corporation;

(5) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(6) sue or be sued in the name of the corporation;

(7) provide risk management advice and services to

hospitals;

(8) negotiate and become a party to contracts for management services for the corporation;

(9) perform all other acts necessary and proper to carry out the duties of the corporation;

(10) in a form approved by the director and for an additional premium determined under AS 21.88.080, issue endorsements which provide indemnity for claims not yet reported which arise out of professional services rendered during a period of continuous coverage under the originally issued contract, to physicians, nurses, nurse midwives, and hospitals who pay the premium for it and who are terminating their original covered claims contract with the corporation for a period of not less than one year;

(11) subject to approval by the director, extend coverage to a person, entity, or facility that renders health care services in the state under the supervision of a physician.

* Sec. 13. AS 21.88.900 is amended by adding new paragraphs to read:

(17) "nurse" means a nurse licensed under AS 08.68;

(18) "nurse midwife" means a registered professional nurse who is certified as an advanced nurse practitioner under AS 08.68.-410(1) and authorized to practice as a nurse midwife under regulations adopted under AS 08.68.

* Sec. 14. AS 21.36.210(c), 21.36.230, and 21.36.300 are repealed.

Offered: 4/28/86
Referred: Rules

Original sponsors: Sund, Koponen, and Gruenberg

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 522 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to an insurance broker's receipt of premium payments, the cancellation or nonrenewal of insurance policies, the composition of the board of the Medical Indemnity Corporation of Alaska, and the provision of medical malpractice insurance for nurses and nurse midwives."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.27.200(a) is amended read:

(a) Except as provided in (c) of this section,

(1) a [A] broker, as such, is not an agent or other representative of an insurer, and does not have power as a broker to bind the insurer upon any risk or with reference to any insurance contract; and

(2) nothing [. NOTHING] in this section is intended to alter the common law of agency as applied to transactions under this title.

* Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

(c) For purposes of determining an insured's entitlement to coverage, a premium paid to the broker is considered to be received by the insurer, if the payment to the broker is designated for specific coverage from a specifically named insurer and is supported by competent evidence.

* Sec. 3. AS 21.36.210(a) is amended to read:

(a) An insurer may not exercise its right to cancel a policy of

personal [AN] automobile insurance [POLICY] except for the following reasons:

(1) nonpayment of premium; or

(2) the driver's license or motor vehicle registration of either the named insured or of an operator who resides in the same household as the named insured or who customarily operates a motor vehicle insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

* Sec. 4. AS 21.36.210(d) is amended to read:

(d) This section does not apply to

(1) the failure to renew a policy, except as to coverage in force for less than 12 months;

(2) a policy that has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy;

(3) a policy issued under an automobile assigned risk plan or automobile insurance plan;

(4) a policy insuring more than four motor vehicles;

(5) a policy covering the operation of a garage; automobile sales agency, repair shop, or service station; or public parking place;

(6) a policy providing insurance only on an excess basis;

(7) any other contract providing insurance to the named insured, even though the contract may incidentally provide insurance with respect to motor vehicles.

* Sec. 5. AS 21.36.210(f) is amended to read:

(f) An [NOTWITHSTANDING (e) OF THIS SECTION, AN] insurer may not

exercise its right to cancel a policy of personal insurance other than personal automobile insurance, except for the following reasons [THE TYPE DESCRIBED IN (e) OF THIS SECTION IF ONE OF THE FOLLOWING CONDITIONS OR CIRCUMSTANCES ARISES]:

(1) nonpayment of premiums, including nonpayment of additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a change in its occupancy or use;

(2) conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against;

(3) discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy;

(4) discovery of a grossly negligent act or omission by the insured that substantially increases the hazards insured against; or

(5) physical changes in the insured property that result in the property becoming uninsurable.

* Sec. 6. AS 21.36 is amended by adding a new section to read:

Sec. 21.36.215. LIMITS ON THE CANCELLATION OF BUSINESS OR COMMERCIAL INSURANCE POLICES. (a) Except as allowed by the director under (b) of this section, an insurer may exercise its right to cancel a policy of business or commercial insurance only for the following reasons:

(1) nonpayment of premiums, including nonpayment of additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a change in its occupancy or use;

(2) conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against;

(3) discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy;

(4) discovery of a grossly negligent act or omission by the insured that substantially increases the hazards insured against;

(5) physical changes in the insured property that result in the property becoming uninsurable;

(6) physical changes in the operations of the insured that result in the property becoming uninsurable;

(7) changes in the reinsurance program of the insurer that results in an increase of the insurer's retention of risk on a subject of insurance;

(8) changes in the financial condition of the insurer resulting in a violation of AS 21.12.010;

(9) a material change in the law that affects the coverage provided under the policy; or

(10) an excessive number of claims by the insured.

(b) Before issuing a notice of cancellation, an insurer may request the director to determine in a particular case whether a reason for cancellation not specified in (a) of this section is a valid reason for cancellation. The director may allow the insurer to exercise its right to cancel if the director finds that the cancellation is justified. The insurer may not implement the requested cancellation before receiving the approval of the director.

* Sec. 7. AS 21.36.220 is amended to read:

Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not exercise its right to cancel a <u>personal insurance</u> policy unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, at least <u>60</u> [20] days

before the effective date of cancellation. However, if [, EXCEPT THAT WHEN] cancellation is for nonpayment of premium, the notice must [SHALL] be mailed or delivered to the named insured at the address shown in the policy at least 10 days before the effective date of cancellation, and must [SHALL] include or be accompanied by a statement of the reason for the cancellation. [THIS SECTION DOES NOT APPLY TO THE FAILURE TO RENEW A POLICY, EXCEPT AS TO COVERAGE IN FORCE FOR LESS THAN 12 MONTHS.]

* Sec. 8. AS 21.36.220 is amended by adding new subsections to read:

(b) An insurer may not exercise its right to cancel a policy of business or commercial insurance unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, and to the agent or broker of record, at least 60 days before the effective date of cancellation. However, if cancellation is for nonpayment of premium, the notice must be mailed or delivered to the named insured at the address shown in the policy and to the agent or broker of record at least 10 days before the effective date of cancellation, and must include or be accompanied by a statement of the reason for the cancellation.

(c) If an insurer cancels a policy under (b) of this section, it shall return or credit any unearned premium to the agent or broker of record or directly to the insured or premium finance company, if applicable, before the effective date of cancellation, except that

(1) if cancellation is for nonpayment of premium, any unearned premium must be returned or credited within 45 days after the notice of cancellation is given;

(2) if the policy premium is subject to audit the insurer shall perform an audit within 30 days of the effective date of the cancellation and return or credit any unearned premium within 30 days

of the completion of the audit.

* Sec. 9. AS 21.36.240 is amended to read:

Sec. 21.36.240. FAILURE TO RENEW. An insurer may not fail to renew a personal insurance policy in force for less than 12 months. An insurer may not fail to renew a policy [IN FORCE FOR 12 MONTHS OR MORE] unless a written notice of nonrenewal is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days for a personal insurance policy, and at least 45 days for a business or commercial insurance policy, before the expiration date of the policy [,] or of the anniversary date of a policy written for a term longer than one year or with no fixed expiration date. This section does not apply

(1) if the insurer has in good faith manifested in any way its willingness to renew;

(2) in case of nonpayment of premium for the expiring policy; or

(3) if the insured fails to pay the premium as required by the insurer for renewal.

* Sec. 10. AS 21.36.250 is amended to read:

Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automobile liability insurance is cancelled, other than for nonpayment of premium, or is not renewed in accordance with [FOR FAILURE TO RENEW A POLICY OF AUTOMOBILE LIABILITY INSURANCE TO WHICH] AS 21.36.240 [APPLIES], the insurer shall notify the named insured of possible eligibility for automobile insurance through the automobile assigned risk plan, or automobile insurance plan. The notification must [SHALL] accompany or be included in the notice of cancellation or nonrenewal required by AS 21.36.220 [AS 21.36.230] and 21.36.240.

* Sec. 11. AS 21.36.310 is amended to read:

Sec. 21.36.310. DEFINITIONS. In AS 21.36.210 - 21.36.310

(1) "business or commercial insurance" means insurance other than personal insurance, life insurance, disability insurance, fidelity and surety insurance, title insurance, or an annuity contract;

(2) "nonpayment of premium" means failure of the named insured to discharge when due any obligations of the named insured in connection with the payment of premium on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;

(3) "personal automobile insurance" means insurance not related to business or commercial activities, covering [(2) "POLICY" MEANS AN INSURANCE POLICY COVERING THE RISKS AND EXPOSURES LISTED IN AS 21.36.210(e) OR AN AUTOMOBILE POLICY THAT INCLUDES] automobile liability, uninsured/underinsured motorists [COVERAGE, UNINSURED MOTORIST COVERAGE], automobile medical payments [COVERAGE], or automobile physical damage [COVERAGE], that is delivered or issued for delivery in this state [INSURING AS THE NAMED INSURED, ONE INDIVIDUAL OR HUSBAND AND WIFE RESIDENT OF THE SAME HOUSEHOLD], and under which the insured vehicles are of the following types only:

(A) a motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance, nor rented to others; or

(B) any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less that is not used in the occupation, profession, or business of the insured, nor used as a public or livery conveyance, nor rented to others;

(4) "personal insurance" does not include an annuity con-

tract or a policy of life insurance, disability insurance, or title insurance; the term means personal automobile insurance, or insurance covering

(A) loss of or damage to real property that is used predominantly for residential purposes and that does not consist of more than four dwelling units;

(B) loss of or damage to personal property, including personal effects, household furniture, fixtures and equipment located in not more than four dwelling units; or

(C) legal liability of natural persons for loss of, damage to or injury to persons or property if the insurance does not cover liability arising from or in connection with business or commercial activities;

(5) [(3)] "renewal" or "renew" means

(A) the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer,

(B) the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term, or

(C) the extension of the term of a policy beyond its policy period or term under a provision for extending the policy by payment of a continuation premium.

* Sec. 12. AS 21.88.030(a) is amended to read:

(a) The corporation shall exercise its powers through a board of governors that [WHICH] is appointed by the governor of the state and confirmed by the legislature. Members of the board of governors shall be Alaska residents as follows:

(1) three [FOUR] physicians licensed in the state and

engaged in private practice in the state; no more than two of the physicians shall practice or live in a municipality having a population of more than 100,000, and two of the physicians must be indemnified against loss by reason of liability for an act or omission in the delivery of professional health care by the Medical Indemnity Corporation of Alaska;

(2) one nurse or nurse midwife;

(3) an administrator or senior executive officer employed by a hospital licensed in the state;

(4) [(3)] two professionals from the insurance industry who are authorized or licensed to do business in the state;

(5) [(4)] two persons who are not health care providers or financially interested in the field of health care or representatives of the insurance industry.

* Sec. 13. AS 21.88.050 is amended to read:

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The corporation shall

(1) in the form approved by the director, issue to all physicians, nurses, nurse midwives, and hospitals who are found to be acceptable risks under standards developed under (5) of this subsection, and who pay the premiums for it, a contract or contracts indemnifying physicians, nurses, nurse midwives, and hospitals and their employees who are health care providers against loss by reason of liability for covered claims for an act or omission in the delivery of professional health care in this state, and agreeing to tender on behalf of the physicians, nurses, nurse midwives, and hospitals and their employees who are health care providers a defense to a covered claim in a proceeding brought under AS 09.55.530 - 09.55.560; the limits of liability for policies issued by the corporation shall be

approved by the director; the contract shall cover the defense against but need not indemnify liability for punitive damages arising from a covered claim; at the option of the corporation, if approved by the director, and for an additional premium the contract may cover claims against the physician, nurse, nurse midwife, or hospital that arise out of professional services performed by the physician, nurse, nurse midwife, or hospital for any period before the contract is issued, except that coverage will not be provided for a claim already filed or of which the physician, nurse, nurse midwife, or hospital had or reasonably should have had notice at the time the retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued by the corporation which shall be determined by the board of governors in accordance with AS 21.88.080 and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090, 21.06.120, 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250, 21.09.280, AS 21.12.020(b)-(e), AS 21.18, AS 21.21, AS 21.24 and AS 21.36; and shall be exempt from participation as a member insurer in the Alaska Insurance Guaranty Corporation;

(4) carry out the obligations of the contracts issued by the corporation by defending all covered claims made against insured health care providers and by paying all liabilities that [WHICH] are finally adjudicated against the insured health care provider or that [WHICH] may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(5) establish standards for the acceptability of risks; in establishing these standards the corporation may exclude an applicant

for insurance based on individual risk selection factors, but may not exclude an applicant based only on the classification of the applicant.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for these services; employees of the corporation are not considered state employees;

(2) negotiate for and procure reinsurance from private casualty insurers or reinsurers for any and all liability incurred by contracts issued by it;

(3) provide coverage to insureds for other hazards customarily included in medical malpractice insurance policies when there is a finding by the director that this coverage is not available to insureds of the Medical Indemnity Corporation of Alaska in the private insurance market at a competitive price;

(4) borrow or advance funds necessary to carry out the purposes of the corporation;

(5) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(6) sue or be sued in the name of the corporation;

(7) provide risk management advice and services to hospitals;

(8) negotiate and become a party to contracts for management services for the corporation;

(9) perform all other acts necessary and proper to carry out the duties of the corporation;

(10) in a form approved by the director and for an additional premium determined under AS 21.88.080, issue endorsements which

provide indemnity for claims not yet reported which arise out of professional services rendered during a period of continuous coverage under the originally issued contract, to physicians, nurses, nurse midwives, and hospitals who pay the premium for it and who are terminating their original covered claims contract with the corporation for a period of not less than one year;

(11) subject to approval by the director, extend coverage to a person, entity, or facility that renders health care services in the state under the supervision of a physician.

* Sec. 14. AS 21.88.900 is amended by adding new paragraphs to read:

(17) "nurse" means a nurse licensed under AS 08.68;

(18) "nurse midwife" means a registered professional nurse who is certified as an advanced nurse practitioner under AS 08.68.-410(1) and authorized to practice as a nurse midwife under regulations adopted under AS 08.68.

* Sec. 15. AS 21.36.210(c), 21.36.230, and 21.36.300 are repealed.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 522 (L&C)
Title: Relating to payment of premiums, cancellation of policies, and medical malpractice insurance for nurse midwives
Sponsor: Labor & Commerce
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Development
BRU: Insurance
Components: Public Protection

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: Attach a separate page if necessary.

Prepared by: John L. George, Director
Division: Division of Insurance
Phone: 465-2515
Date: April 14, 1986

Approved by Commissioner: Lowell L. Lounsbury
Agency: Commerce and Economic Development
Date: April 14, 1986

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
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- Impacted Agency(ies)

FISCAL NOTE

RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

562

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

Dick

February 4, 1986

Representative Richard Shultz
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Dick:

Pursuant to your request in our telephone conversation today, I would submit the proposed statutory amendment below. This amendment would permit cooperatives like Alaska Village Electric Cooperative or Middle Kuskokwim Electric Cooperative which are scattered over areas not connected by a road system to continue acting on their bylaws through delegates while requiring cooperatives which are connected by roads to act on their bylaws through a vote of their members as you indicated is your desire.

AS 10.25.070 Bylaws. The board of directors shall adopt the first bylaws of a cooperative to be adopted following an incorporation, conversion, merger or consolidation. Thereafter the [MEMBERS OR] district delegates in cooperatives having three or more districts which are not connected by a road system [SHALL] may adopt, amend or repeal the bylaws by the affirmative vote of a majority of those [MEMBERS OR] district delegates voting on the adoption, amendment or repeal at a meeting of the [MEMBERS OR] district delegates. In all other cooperatives, the members shall adopt, amend or repeal the bylaws by the affirmative vote of a majority of those members voting on the adoption, amendment or repeal at a meeting of the members. The bylaws shall set forth the rights and duties of members, district delegates and directors and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistant with this chapter or with its articles of incorporation.

Sincerely,

Dave

David Hutchens
Executive Director

DH/cf

HOGE AND LEKISCH
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
437 'E' STREET, SUITE 500 · ANCHORAGE, ALASKA 99501-2366
(907) 276-1726

ANDREW P. HOGE
PETER A. LEKISCH
ROBERT L. VASQUEZ
DAVID B. JOHNSON
GORDON D. LEE
JOHN W. COLVER

April 2, 1986

Representative Mike Navarre, Chairman
House Labor and Commerce Committee
House of Representatives
Pouch V
Juneau, AK 99811

Re: House Bill 562

Dear Mr. Chairman:

This letter which is written at the request of this firm's client Copper Valley Electric Association, Inc. (CVEA), will explain the background that led in part to the introduction of House Bill No. 562.

CVEA is divided into two (2) districts: the Copper River Basin and the Valdez Districts. The cooperative uses a delegate system for amending its Bylaws. Pursuant to the existing Bylaws, three out of 18 delegates can call a special meeting. Recently, three delegates attempted to call a special meeting. One of the items on the agenda was a possible move of the headquarters of CVEA from Glennallen to Valdez. No member notice was given. A great deal of concern arose from some of the residents of Glennallen that Glennallen would lose a major employer in the area. CVEA's staff was also concerned because of commitments made by them for housing in Glennallen and family considerations. Further, some CVEA Board members were concerned that it would not be economically wise for the move to be made. Finally, there was a general concern that the members were not even notified of the proposed move.

CVEA has 1755 voting members. Because of the way the delegate system works, ten members, as delegates, could vote to move the headquarters without membership notice or approval or input and consideration by the Board.

The purpose of House Bill 562 is to leave that kind of decisionmaking up to a majority of the members. The advantage to membership voting is that ballot propositions would be placed before the membership, an opportunity would be given for the membership to hear the pros and cons of the propositions, and a considered vote could be made by the membership.

The district delegate method of voting does not seem appropriate when only three out of 1755 members could call for such a proposition and, with the concurrence of seven other delegate members, make such a decision for the cooperative.

The proposed law will still allow basic majority control by the membership for changes; in this manner, all members will have the opportunity to vote and not just a select few delegates.

Very truly yours,

HOGE and LEKISCH
Attorneys for Copper Valley
Electric Association, Inc.

Andrew E. Hoge

AEH/ms/AHVIII26
cc: Copper Valley Electric Association, Inc.
Alaska Rural Electric Cooperatives Association, Inc.

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 562(L&C) Summary

This measure requires cooperatives which encompass 3 or more districts, and are not connected by the road system, to retain the delegate system of representation. These cooperatives may change bylaws by an affirmative vote of the delegates attending a meeting of the district delegates.

All other cooperatives may change bylaws by an affirmative vote of the majority of those members voting. This provision extends to voting at a meeting of the members or votes cast by mail ballot without a meeting.

CHAIRMAN'S INFORMATION: CSHB 562(L&C)

1) BILL TITLE: "An act relating to the adoption of bylaws by cooperatives."

a) Introduced: Rep Schultz

b) Co-sponsors:

2) INTENT: This measure concerns the adoption of bylaws by cooperatives.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 562
Title: An act relating to the adoption of cooperative bylaws

Sponsor: Shultz
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce and Economic Dev.
BRU: APUC

Components: _____

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

Prepared by: Carolyn Guess — Phone: 276-6222
Division: Commissioner, APUC — Date: April 7, 1986

Approved by Commissioner: Brian H. Kennedy — Date: April 7, 1986
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
- Legislative Finance
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- Impacted Agency(ies)

10/25/85

0219k04_/86a

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
4219 SLAB HB 589 - HB 641 1099

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

589

DAVID T. WALKER
ATTORNEY AT LAW
MENDENHALL BUILDING
326 FOURTH STREET, SUITE B
JUNEAU, ALASKA 99801
(907) 586-3537

May 7, 1986

Senator Fred F. Zharoff, Chairman
Senate Labor and Commerce Committee
Room 121, Capital Building
Juneau, Alaska 99801

RE: CSHB 589 (Finance) am; An Act relating to disability insurance; and providing for an effective date.

Dear Senator Zharoff:

I am the registered lobbyist for the Alaska Nurses Association. The Association has some concerns about the impact of HB 589 on the practice of nursing. Nurses constitute the largest group of health care providers in the State and are deeply involved in all aspects of health care delivery. Nurses do not practice medicine, they practice nursing. Insurance coverage should be provided for nursing services without regard to whether those services are provided under the continued direction of a physician. Specifically, the Association recommends:

1. Page 4, line 28, delete "at the physician's direction";
2. Page 16, line 29, delete "upon recommendation of a licensed physician";
3. Page 17, lines 4-5, delete "under the continued direction of the person's physician and".

Additionally, we believe that Section 21.55.140 (13) found on page 10, lines 3-5, should be deleted. We believe it is poor policy to exclude services of a registered nurse from coverage simply because she resides in the covered individual's home - this makes no more sense than excluding the services of a physician who treats a member of his family.

Please do not hesitate to contact me if you have a question about the Association's position on this bill,

nurses, the practice of nursing, or any other matter.

Very truly yours,

David T. Walker

DTW/dsm
cc: Members of the Senate Labor
and Commerce Committee

METROPOLITAN LIFE INSURANCE
ONE MADISON AVE 2Y
NEW YORK NY 10010 02AM

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THE HONORABLE ZHAROFF FRED
ALASKA SENATE RM 121
STATE CAPITOL
P O BOX V
JUNEAU AK 99811

MAY 6 1986

METROPOLITAN LIFE RESPECTFULLY URGES THE ALASKA SENATE NOT TO ACT FAVORABLY ON HOUSE BILL 589. THERE IS NO DEMONSTRATED NEED FOR SUCH WIDE RANGING LEGISLATION IN ALASKA. ALTERNATIVE SOLUTIONS MERIT FURTHER STUDY. THE LEVEL OF BENEFITS MANDATED COUPLED WITH LIMITATIONS ON PREMIUMS COULD RESULT IN SOME INSURERS CEASING THE WRITING OF HEALTH INSURANCE IN ALASKA.
ROBERT O. FLECKENSTEIN METROPOLITAN LIFE INSURANCE CO

50085
1619 EST

MGMCOMP MGM

Form L-01342 1601557

TO REPLY BY MAILGRAM, SEE INSTRUCTIONS ON REVERSE SIDE.

CS HB 589 (Finance)

An Act relating to disability insurance;
and providing for an effective date.

OVERVIEW
Prepared by Rep. John Sund's office; May 3, 1986

Objective

The primary purpose of HB 589 is to ensure medical insurance availability to those Alaskan residents who are considered too high of a health risk for standard insurance in the open marketplace.

What This Bill Does

HB 589 would establish a nonprofit, statewide association of all disability insurers in the state. Participation in the association would be mandatory in order to do business in the state.

The association would offer major medical insurance and medicare supplement insurance as described in the bill to any Alaskan who cannot get standard coverage or has excessive restrictions placed on his or her insurance. Certain eligibility requirements would be set.

If the association's claim payments exceed the premiums collected, the association members would be assessed to make up the differences. Any premiums that exceed losses would be held at interest to offset future losses. The association would administer the plan under the monitoring of the director of the Division of Insurance.

For the first year of the plan, premium rates would be capped at 150% of the average rate of the plan if it were offered to standard risk people by the five largest disability insurers in the state. Based on that year's experience, the association will set actuarially sound rates but the rates cannot exceed 250% of standard rates for a comparable plan.

Why This Bill Is Needed

Standard disability insurance is often denied people who are considered high risks, such as older individuals and those who are suffering or have suffered from serious illnesses. Comprehensive insurance should be available to these people. Moreover, providing them insurance should eventually decrease costs to society.

CS HB 589 (Judiciary)

An Act relating to disability insurance; and providing for an effective date.

SECTIONAL ANALYSIS

Prepared by Rep. John Sund's office; May 3, 1986

Section 1
ARTICLE 1
Sec. 21.55.010. Page 1, line 12: creates the Comprehensive Disability Insurance Association, a nonprofit corporation with membership consisting of all licensed disability insurers and licensed hospital or medical service corporations in the state that write on an expense incurred basis. Insurers must be members of the association in order to do business in the state.

Sec. 21.55.020. Page 1, line 22: sets a seven-member board of directors selected by association members and approved by the director of the state Division of Insurance. The director or a designee will be a nonvoting, ex officio member of the board.

Sec. 21.55.030. Page 2, line 12: describes the association's general powers.

Sec. 21.55.040. Page 2, line 21: subjects association articles, bylaws and operating rules to the approval of the director of the Division of Insurance.

Sec. 21.55.050. Page 3, line 26: exempts the association from the Administrative Procedure Act.

Sec. 21.55.060. Page 3, line 28: exempts the association from taxes.

ARTICLE 2
Sec. 21.55.100. Page 4, line 4: offers the state plan, including the medicare supplement plan, on an individual basis to high-risk residents. The association may not deny coverage to any eligible resident.

Sec. 21.55.110. Page 4, line 16: explains the minimum benefits of the state plan, which is a basic major medical plan. Lifetime maximum benefit is $1 million.

Sec. 21.55.120. Page 6, line 26: offers deductibles of $200, $500 or $1,000 per person. The maximum copayment by enrollees would be 20% once the deductible is met for all health care and 50% for mental health care. Maximum annual payments of

deductible and copayments cannot exceed $2,000 per insured. The plan would pay 100% once that limit is reached.

Sec. 21.55.130. Page 7, line 27: excludes coverage for preexisting conditions if the condition began within the three months just preceding the effective date of coverage. Preexisting conditions would not be covered for the first six months of a plan. The limitation can be waived if the insured's previous insurance was terminated and the state plan application is made within 31 days following termination.

Sec. 21.55.140. Page 8, line 22: describes care and services that are not covered by the plan.

Sec. 21.55.150. Page 10, line 9: sets separate scales of premium rates based on age and geographic location of the insured.

Premium rates for the first year of the plan are capped at 150% of the average rate of the plan if it were offered to standard risk people as determined by the five largest disability insurers in the state. Thereafter, the rates will be determined using sound actuarial methods based on plan experience. But the rates may never exceed 250% of standard rates for a comparable plan.

ARTICLE 3

Sec. 21.55.200. Page 10, line 29: sets guidelines for the association's selection of a writing carrier through a bidding process.

Sec. 21.55.210. Page 11, line 7: explains the duties of the writing carrier who will be contracted for three-year terms unless earlier termination is approved by the director.

The carrier will perform the administrative and claims payment functions of the plan and report quarterly to the association. The carrier will be reimbursed for direct and indirect expenses of administering the plan.

Sec. 21.55.220. Page 12, line 17: requires that association members be assessed to share the claim losses and administrative expenses that exceed premium payments. Each member will contribute to the association an amount based on that member's share of all disability insurance premiums paid in the state. Assessments will be made yearly, unless interim assessments are desired.

A member's failure to pay an assessment within 30 days could cease that member's certification to operate in the state.

Net gains will be held at interest to offset future losses.

ARTICLE 4

Sec. 21.55.300. Page 14, line 5: states that all high-risk residents are eligible for the state plan unless covered by another disability insurance policy. A person loses eligibility upon ceasing residency.

Sec. 21.55.310. Page 14, line 16: explains the enrollment procedure.

Sec. 21.55.320. Page 14, line 25: requires the state plan writer to respond to the applicant within 30 days of receiving the application.

Sec. 21.55.330. Page 15, line 1: sets the policy effective date at the day of application once the first premium is paid. It also permits 60 day retroactive coverage for those individuals whose previous insurance terminated, if premiums are paid for the retroactive period.

Sec. 21.55.340. Page 15, line 15: requires that the association advertise the state plan to the public. An insurer who rejects or restricts a policy must tell the applicant about the state plan.

ARTICLE 5

Sec. 21.55.400. Page 16, line 5: explains the duties of the director of the Division of Insurance in regard to the state plan.

Sec. 21.55.410. Page 16, line 16: states the state is not liable for association actions.

Sec. 21.55.500. Page 16, line 20: offers chapter definitions.

Resident is defined as a person who has lived in the state at least six consecutive months prior to application and intends to remain. Absence from the state is permitted for medical and educational reasons.

A high risk resident is defined as someone who has been rejected for disability coverage by at least two association members or has had a restrictive rider placed on a policy.

Section 2. Page 19, line 20: requires that the state plan be available by July 1, 1987.

Section 3. Page 19, line 23: sets an immediate effective date.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

603

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 603(L&C) Sectional Analysis

Section 1) Extends the Board of Dispensing Opticians until 6/30/89.

Section 2) Expands the qualifications required of applicants for examinations as follows:

Adds 4 years of attendance, or the equivalent, at a high school;

Provides that graduation with an associate degree, from a recognized school of opticianry, may be substituted for 4,000 of the 6,000 hours of experience in the profession.

Section 3) Prior to license renewal, licensee shall submit evidence to the board of 30 hours of continued competence in the profession, as prescribed by board regs.

Section 4) Immediate effective date

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 14, 1986

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to extend the Board of Dispensing Opticians until June 30, 1988 and to make minor changes in two sections of AS 08.71, concerning opticians' eligibility for examination for licensure and renewal of licensure.

Although the June 30, 1985 termination date for the Board of Dispensing Opticians has passed, the board continues in existence until June 30, 1986 under the wind-down provisions of AS 08.03.020.

Last spring, I vetoed CSSB 167(L&C) which would have continued the board until 1989 and made the same change as does sec. 3 of this bill regarding optician license renewal, along with several other changes to AS 08.71, concerning licensing of opticians. After that veto, I appointed a working group identical to that which would have been required by the vetoed bill. That working group recommended, by unanimous vote, all of the provisions of the attached bill.

I believe that the best way to solve the inefficiencies, controversies, and sometimes bitter contention, that pervades the sometimes overlapping and deeply interrelated professions of optometry and opticianry is to pursue combining the two separate boards and statutes now regulating each. I agree with the working group that this somewhat radical change from the status quo can be most productively pursued as part of simultaneous sunset review of both

boards. That is why this bill extends the Board of Dispensing Opticians until the June 30, 1988 sunset date for the Board of Examiners in Optometry.

Meanwhile, the working group, also by unanimous vote, recommended other changes to AS 08.71, the dispensing optician statutes, which are also part of the bill. I agree with these changes, including the doubling of the number of continuing education hours in sec. 3 of the bill. In 1980 the license renewal date was changed from every two years to every four years, but a corresponding doubling of the continuing education hour requirement was overlooked. Now that all the 66 dispensing optician licenses were renewed last summer, for four years, the licensees will have ample notice and time to comply with the doubled requirement. The changes made by sec. 2 of the bill affect the qualifications that must be met by an applicant for examination.

I urge your prompt action to pass this bill so that we can continue to work with the opticians and the optometrists to pursue a better, more efficient way to regulate these two interrelated professions in truly the best interests of the consuming public.

Sincerely,

Bill Sheffield
Governor

CHAIRMAN'S INFORMATION: CSHB 603 (L&C)

1) BILL TITLE: "An act relating to dispensing opticians; and providing for an effective date."

a) Introduced: Governor

b) Co-sponsors:

2) INTENT: This measure extends the termination date of the dispensing opticians until 6/30/89, and expands the qualifications an applicant must meet prior to examination and licensure.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: HESS and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

A PERFORMANCE REPORT ON THE BOARD OF DISPENSING OPTICIANS

July 1, 1981 -- June 30, 1984

Audit Control Number

08-1168-84-R

Commissioner, Department of Commerce and Economic Development	Richard A. Lyon
Deputy Commissioners, Department of Commerce and Economic Development	Vincent O'Reilley Terry Elder

Members of the
Board of Dispensing Opticians

Chairman	J. Robin Isbell
Secretary	Leslie E. Brockelsby
Member	Larry E. Harper
Member	George Tresnak
Member	Vacant

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

June 30, 1984

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE BOARD OF
DISPENSING OPTICIANS

July 1, 1981 -- June 30, 1984

Audit Control Number

08-1168-84-R

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REPORT

Purpose

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Dispensing Opticians for the past three fiscal years to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Dispensing Opticians should be reestablished. The law now specifies that the Board will terminate June 30, 1985, and have one year from that date to conclude its affairs.

Scope

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.

2. Tests of files and documents of licensees.

3. Interviews with the license examiners.

4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman's Office.

5. Discussions with Board members.

6. Minutes of Board meetings and Division correspondence files.

7. Attorney General's Opinions applicable to professional boards.

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ORGANIZATION AND FUNCTION

The Board of Dispensing Opticians was established by the 1973 Session Laws of Alaska. This regulatory board consists of five persons; four dispensing opticians and one public member, appointed by the Governor. Board members serve staggered terms of four years.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing (OL). OL provides the Board with licensing and investigative support. The licensing section processes applications, maintains license files, answers inquiries, and provides other administrative help to the Board.

The Board sets the minimum standards to practice in Alaska by:

1. Examining and issuing licenses to qualified applicants.

2. Establishing, amending, or eliminating regulations necessary and desirable to enforce statutes.

3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when a person has violated dispensing optician statutes or regulations.

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REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committee should take into consideration the Findings and Recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

The primary purpose of a regulatory board with a licensing function is to protect the public. The questions that have to be evaluated to determine if licensing is needed are:

1. Does the unlicensed practice pose a serious risk to the consumers' life, health, safety, or economic well-being?

2. Can the potential users be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services?

3. Do the benefits to the public clearly outweigh any potential harmful effects, such as a decrease in the availability of practitioners, higher costs of services, and restriction on optimum utilization of personnel?

During our review to determine if the Board's licensing function is required and meets the previously mentioned criteria, we examined existing statutes, complaints, and various Board functions. As a result of our examination we found:

1. The Board performs only minimal functions. The majority of their duties, as outlined by AS 08.71.070, are handled by the Division of Occupational Licensing. Those duties that are executed by the Board include conducting meetings, reviewing applications for licensure, reviewing results of investigations and hearings and determining proper disciplinary actions, and preparing and grading the State examination. These duties are not substantial enough to continue the Board. Conducting meetings is only necessary to the extent that it is easier to take care of business at a meeting as opposed to by mail.

The bulk of the work on reviewing applications for licensure is done by the license examiner. He/she gathers the proper documentation and makes sure it is complete. The applications are then presented to the Board, who then votes whether to approve or disapprove licensure. This review tends to be cursory as the majority of it has already been done by the license examiner.

Reviewing results of investigations and hearings and determining proper disciplinary actions also tends to be cursory. This is due to the up-front work that is done by the investigations unit in Occupational Licensing and the hearing officers. The Board is kept informed of the status of complaints but are not involved in the investigations. The determination of proper disciplinary actions has usually been done by the hearing officer. It is then a formality for the Board to approve them.

The only duty requiring the expertise of the Board is the preparation and grading of the State examination. A license examiner does not have the background to formulate those exams. However, it is not necessary to give an exam because the potential physical harm caused by unlicensed dispensing opticians is minimal to nonexistent, and the administering of an exam is not essential.

Consequently, there are not enough duties for the Board to justify its existence. The expenses to maintain a Board of 5 members to regulate approximately 60 dispensing opticians is not economical.

2. An optician cannot cause great physical harm to an individual. Spectacles can cause double vision, distorted vision, and trouble with perception. Yet with these types of troubles, most patients will return to their optometrist or ophthalmologist for verification of the prescription. Improper fitting of contact lenses can result in physical harm. However, AS 08.71.200 requires a licensed physician (ophthalmologist) or optometrist to supervise the fitting of contact lenses and requires the patient to return to the prescribing physician or optometrist. In addition, AS 08.72.275 is adequate to protect the public from harm due to improperly hardened lenses because it requires each lens to be impact resistant under specified test conditions.

3. Approximately 12 complaints were received by the Division of Occupational Licensing and 2 complaints were received by Consumer Protection over the last few years.

Most of the complaints were instigated by licensed practitioners, not consumers, and related to unlicensed individuals dispensing. Of these, none resulted in physical harm. In one case, the Attorney General's Office refused to prosecute a violation because there was no evidence of physical harm.

4. In addition, several cases were noted where individuals were licensed without adequate documentation of statutory and regulatory requirements. These individuals were potentially "unqualified," yet no evidence of physical harm has resulted from their practices.

5. Contact lenses cost approximately $500 and spectacles cost much less. Therefore, if for some reason the consumer received poor quality or useless contacts or spectacles, the loss to the consumer would not be severe. Also, if a consumer is dissatisfied, he/she has recourses available whether a business or individual is licensed or not. The Consumer Protection Unit as well as the court system are there to provide remedies for injured parties.

Thus, we found the Board's existence to be superfluous, especially in light of the scope of the dispensing optician's work. The dispensing optician prepares and dispenses original or duplicate lenses, eyeglasses, contact lenses, and appurtenances to them on written prescription from a licensed physician or optometrist. They also interpret, measure, adapt, and fit the above mentioned. This restricts their scope to a small sphere of duties and limits that amount of harm that could result if they were not licensed.

Therefore, we recommend the Board of Dispensing Opticians be allowed to terminate on June 30, 1985.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Dispensing Opticians should be allowed to terminate on June 30, 1985.

The primary purpose of a regulatory board with a licensing function is to protect the public. The questions that have to be evaluated to determine if licensing is needed are:

1. Does the unlicensed practice pose a serious risk to the consumers' life, health, safety, or economic well-being?

2. Can the potential users be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services?

3. Do the benefits to the public clearly outweigh the potential harmful effects, such as a decrease in the availability of practitioners, higher costs of services, and restriction on optimum utilization of personnel?

During our review to determine if the Board's licensing function is required and meets the previously mentioned criteria, we examined existing statutes, complaints, and various Board functions. As a result of our examination we found:

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The only duty requiring the expertise of the Board is the preparation and grading of the State examination. A license examiner does not have the background to formulate those exams. However, it is not necessary to give an exam because the potential physical harm caused by unlicensed dispensing opticians is minimal to nonexistent, and the administering of an exam is not essential.

Consequently, there are not enough duties for the Board to justify its existence. The expenses to maintain a Board of 5 members to regulate approximately 60 dispensing opticians is not economical.

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C. Approximately 12 complaints were received by the Division of Occupational Licensing and 2 complaints were received by Consumer Protection over the last few years. Most of the complaints were instigated by licensed practitioners, not consumers, and related to unlicensed individuals dispensing. Of these, none resulted in physical harm. In one case, the Attorney General's Office refused to prosecute a violation because there was no evidence of physical harm.

D. Several cases were noted where individuals were licensed without adequate documentation of statutory and regulatory requirements (See Recommendation No. 4). These individuals were potentially "unqualified," yet no evidence of physical harm has resulted from their practices.

E. Only 20 out of the 49 other states deem it necessary to license dispensing opticians. The rest recognize that potential users can evaluate a dispensing optician's qualifications. Free enterprise will take care of those unlicensed practitioners who are not able to provide quality services and competitive prices. Consumers will not continue to patronize a business or individual if they are not satisfied.

F. Contact lenses cost approximately $500 and spectacles cost much less. Therefore, if for some reason the consumer received poor quality or useless contacts or spectacles, the loss to the consumer would not be severe. Also, if a consumer is dissatisfied, he/she has recourses available whether a business or individual is licensed or not. The Consumer Protection Unit as well as the court system are there to provide remedies for injured parties.

If the Board is not terminated and some control over the occupation is desired, the dispensing opticians should be combined with the Board of Optometry. The optometrists can and do dispense spectacles and contact lenses like the dispensing opticians as well as refracting eyes and diagnosing eye diseases. Thus, the Board of Optometry has experience in the same areas and is an appropriate Board with which to combine the Board of Dispensing Opticians.

However, in the event that the Board is reestablished, we recommend the following changes be made in their operations.

Recommendation No. 2

The Board of Dispensing Opticians and the Office of the Governor should work together to ensure that vacant Board positions are filled.

The Board is responsible for making recommendations to the Office of the Governor, Special Staff Assistant, Boards and Commissions for vacant Board positions. The Office of the Governor is then responsible for following up on those recommendations as well as those from any other interested parties.

There are conflicting stories from the staff of the Office of the Governor and the Board members regarding the lack of recommendations and follow up. There is some dispute as to whether any recommendations have been made in the past several years as there has been no acknowledgement of receipt by the Office of the Governor, except within the last month. Regardless of who has been at fault, there are still vacant Board positions to be filled.

This is particularly crucial since two of the five positions have members who are serving past the expiration dates of their terms. One member has served two years beyond his original term because no one has been appointed to fill his slot. This extension of terms defeats the purpose in setting a specified term length. In addition, the public member slot has been vacant since June 1982. The public member brings a different perspective. They help keep the purpose in mind which is to protect the public, not the economic interest of an occupational group. Therefore, it is crucial that the Board and the Office of the Governor work together to fill these three slots.

Recommendation No. 3

The Board should review existing statutes and regulations and seek appropriate revision where necessary.

During our examination, we reviewed the Board's statutes and regulations to determine if any were obsolete, vague, or unduly restrictive. Examples of what we found are as follows:

A. AS 08.71.130(d) and 12 AAC 30.050 set out continuing competency requirements. These requirements were based on biennial licensing. Since then, the profession has changed to quadrennial licensing without a compensating change in the continuing competency requirements.

B. AS 08.71.150 allows the State to license by reciprocity. However, none of the 20 other states will grant Alaska these rights. And since licensure by credentials accomplishes the same purpose, this Statute is not necessary.

C. AS 08.71.200 sets out dispensing opticians' constraints for issuing contact lenses. The language used is not specific enough and needs to be further defined as to what is meant by "contact lenses shall be fitted in conjunction with and under the supervision of a licensed physician or an optometrist." The optometrists and dispensing opticians are currently debating changes to this Statute, and a caution should be noted. The Attorney General's Office has found a potential

antitrust issue with regards to where contact lens prescriptions can be filled. Any changes to this Statute should not be to make it more restrictive (i.e., requiring the prescriptions be filled at specified places instead of where the consumer chooses).

D. The Board still has not received statutory authority to issue temporary permits. These temporary permits would allow a greater influx of qualified individuals to practice while awaiting formal Board approval.

AS 08.71.055 provides that the Board shall exercise general control over dispensing opticians. This cannot be done effectively without clear and concise statutes and regulations. And although the Board has had various obsolete or vague statutory and regulatory requirements repealed or amended, the Board should continue to review them for obsolescence, vagueness, and restrictiveness, and propose appropriate changes where necessary.

Recommendation No. 4

The Board should ensure that requirements are being met and adequately documented prior to licensure.

Statutory and regulatory requirements have been set up to ensure that competent individuals are being licensed. Documentation of these requirements is necessary to show that they have indeed been met.

During our examination, we reviewed several licensing files to determine if statutory and regulatory requirements were being met. Examples of what we found are as follows:

A. Out of 12 tested, 4 did not have adequate documentation of training hours. Either the hours listed were not signed by the instructor on the application or there weren't enough hours (AS 08.71.110 and 12 AAC 30.070).

B. For those 2 tested that were licensed by credentials, apprentice hours were not listed at all or those listed were not enough. Also there was no evidence that the applicants had ever taken the national exam either in Alaska or in another state (AS 08.71.145 and 12 AAC 30.100).

C. One licensee's file did not have any indication of the Board's approval (AS 08.71.055).

D. Much of the documentation consisted of photocopies and not originals. Photocopies are acceptable but they should be notarized or certified copies and not copies of notarized or certified originals since copies of notarized or certified originals are easy to falsify.

The Board has some flexibility in assuring the requirements are met. They can waive them in order to let a candidate take the exam. However, there should be no exceptions when licensing. All requirements must be met including those that may have been initially waived for the exam. The follow up on those items lacking is the Board's responsibility, and the Board should ensure requirements are being met and adequately documented prior to licensure.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our examination.

I. The extent to which the board, commission, or program has operated in the public interest.

A. The Board has held meetings and exams at least two times a year.

B. The Board has passed regulations regarding apprentices, continuing competency, and licensure by credentials.

C. The Board has not had a public member since June 1982 (see Recommendation No. 2).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. The Board has had two vacant Board positions for two years (see Recommendation No. 2).

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

A. The Board succeeded in having various obsolete or vague statutory requirements repealed or amended.

B. No statutory changes have been made since 1980.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. The Board has published public notices of all examinations, meetings, and regulation changes. The Board has not actively solicited comments on its effectiveness.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

A. The Board has published notices of its meetings in Anchorage, Fairbanks, and Juneau. However, no public participation appears to have resulted.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

A. According to the Division of Occupational Licensing's files, there have been approximately twelve investigation cases in the past four years. Two complaints have been filed with the Consumer Protection Unit and none with the Office of the Ombudsman.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. In the last six years, the number of currently licensed dispensing opticians has increased from 45 to 63.

B. The Board has not established reciprocal agreements with other states or established statutory authority to issue temporary permits. They have established licensure by credentials which tries to address the same situation.

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

A. Applications for licensure require information and photographs which the Division of Equal Employment Opportunity (EEO) believes may not be necessary to determine the qualifications of the applicant.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIX

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APPENDIX A

BOARD OF DISPENSING OPTICIANS
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Year Ended 1983
(UNAUDITED)
(Note 1)

Average Revenues (Note 2)	$ 3,853
Expenditures (Note 3)	4,258
Excess of Expenditures over Revenues	$ (405)

Schedule 1
Types of Revenues

Revenues	Amount	Collection Time
Examination Fee	$ 50	With application
Reexamination Fee	$ 50	With application
Initial License Fee	$ 50	Before licensure
Renewal Fee	$ 200	Every four years
Late Renewal Fee	$ 10	If over 60 days after renewal date

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and causes revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average for the revenues collected from 1981 to the present in order to obtain a more accurate representation of collected revenues.

Note 3

Expenditures include those made by board members, such as travel, per diem, and direct administrative expenses of the Division of Occupational Licensing. They do not include indirect administrative expenses of the Division or expenditures for efforts of other departments such as the Department of Law, assisting the boards and the Division.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

October 4, 1984

OCT 05 1984

LEGISLATIVE AUDIT

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed your preliminary audit report on the Board of Dispensing Opticians, covering the period July 1, 1981 to June 30, 1984.

The position we expressed in response to your interim letter has not changed. We, at that time, concluded the assessment of allowing the board to terminate was accurate and would not subject the public to harm. We concurred in part to your recommendations.

Having now reviewed your preliminary audit report, we continue to maintain our position. We do not know of any reason to change.

For clarification, we will respond to each of your recommendations.

Recommendation 1

The Board of Dispensing Opticians should be allowed to terminate on June 30, 1985.

We concur with your report and endorse allowing the board to terminate on June 30, 1985. Since establishment (Chapter 45 SLA 1973), the board has licensed 60 practitioners.

We would also suggest the licensing functions by the Division of Occupational Licensing should also terminate. Citizens have other means of redress for harm, and the practitioners would still be required to have a State business license from the Department of Revenue.

08-H2LH

Recommendation 2

The Board of Dispensing Opticians and the Office of the Governor should work together to ensure that vacant board positions are filled. Currently, the Office of the Governor is making efforts to increase communication with the boards. The staff has solicited from boards, professional associations and the general public, candidates for board appointments. Vacancy lists are published in the Administrative Journal.

We would not endorse appointing a person to a board when we are suggesting termination of the function. Although the board has not had its full membership, licenses have been issued.

Recommendation 3

The board should review existing statutes and regulations and seek appropriate revisions where necessary.

We concur with your assessment in part. The board has made efforts to change regulations and, in doing so, has developed a better working relationship with the Board of Optometry in subjects of mutual consideration.

We disagree that the board is responsible for statutes that are unnecessary. Their input is necessary, however, they have no control over forcing repeal.

Our position on temporary permits remains unchanged. We disagree that a temporary permit allows for a greater influx of qualified practitioners. Applying for licensure should be a scheduled pursuit, not when an applicant wants immediate licensure by a different set of standards. To protect the public, verification of all documentation should be made. This does take time.

Recommendation 4

The Board should ensure that requirements are being met and adequately documented prior to licensure.

We concur in this recommendation and, if the board is continued, will work with them to ensure your suggestions and the laws are followed. Our position, expressed in response to your interim letter, is still accurate.

Be assured your recommendations will be endorsed to the board pending the determination of the legislative committee. We appreciate your evaluation and thank you for your cooperation.

Sincerely,

Richard A. Lyon
Commissioner

RAL/lt0668t
100484b

Offered: 3/7/86
Referred: Health, Education & Social Services

Original sponsor: Rules/Governor

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 603 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to dispensing opticians; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.03.010(c)(5) is amended to read:

(5) Board of Dispensing Opticians (AS 08.71.010) -- June 30, 1988 [1985].

* Sec. 2. AS 08.71.110 is amended to read:

Sec. 08.71.110. QUALIFICATIONS OF APPLICANTS FOR EXAMINATION. (a) A person is entitled to take the examination who

(1) has had education equivalent to four years attendance at a high school;

(2) [(1)] has either

(A) completed at least 6,000 hours of training as an apprentice, or

(B) been engaged for at least 6,000 hours as a practicing optician in good standing in a state, territory, district or possession of the United States; and

(3) [(2)] has paid the required examination fee.

(b) Graduation from an associate degree program in a recognized school or college of opticianry may be substituted for 4,000 of the 6,000 hours of experience required by (a)(2) of this section.

* Sec. 3. AS 08.71.130(d) is amended to read:

(d) Before a license may be renewed the licensee shall submit to the board evidence of 30 [15] hours of continuing competence in

optical dispensing as prescribed by regulations of the board.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No. CS HB 603 (L&C)
Title: An Act relating to dispensing opticians; and providing for an effective date
Sponsor: _____
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS. CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE		1.0	1.0	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary. This bill extends the Board of Dispensing Opticians to June 30, 1988, expands the requirements for licensure, and increases the number of continuing education hours required to satisfy the quadrennial renewal period. This bill is not expected to generate new costs or revenues. Funding for the board is already included in the department's FY 87 operating budget. Revenues indicated are based on the assumption that 10 new licenses will be issued each fiscal yea

Prepared by: Jennifer Strickler, Management Analyst Phone: 465-2144
Division: Occupational Licensing Date: 3/5/86

Approved by Commissioner: _____ Date: _____
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget

10/25/85

FISCAL NOTE

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

641

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB641
Title : An act relating to generic drug pharmaceuticals and Board of Pharmacy and providing for an effective date.
Sponsor : Gruenburg
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept. of Health & Social Servi
BRU : Medical Assistance Non-Facility
Components : GRM Non-Facility

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS		-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

The Department has submitted to the Governor an FY87 budget Amendment of $2.5 million for an FY87 Pharmacy Program. One of the assumptions included in the amendment was the substitution of generic drug ~~products~~ for more expensive brand name products.

Prepared by : Rod Betit, Director — Phone : 465-3355
Division : Medical Assistance — Date : 3/4/86

Approved by Commissioner : _____ — Date : 3/6/86
Agency : Department of Health & Social Services

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency (ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST new

Bill/Resolution No.: CSHB 641

Title: An Act relating to generic drugs, pharmaceuticals, and the Board of Pharmacy;

Sponsor: Rep. Gruenberg

Requester: House HESS

Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.

BRU: Occupational Licensing

Components: _____

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

The bill extends the Board of Pharmacy to June 30, 1989, grants pharmacists the authority to fill prescriptions using generic drugs, and repeals the Marijuana Therapeutic Research Program.

This bill is not expected to generate new costs or revenues.

Prepared by: Jennifer Strickler, Management Analyst — Phone: 465-2144

Division: Occupational Licensing — Date: 3-25-86

Approved by Commissioner: Loren H. Lounsbury — Date: 3/25/86

Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCH
JUNEAU, AK 998
465-375

March 25, 1986

Representative Ben Grussendorf
Speaker of the House
P.O Box V
Juneau, Alaska 99811

Dear Mr. Speaker:

The House Committee on Health, Education and Social Services has considered the Sunset Review of the Board of Pharmacy, and recommends that the board be continued. Representative Max Gruenberg, Co-Chair of the committee, has introduced HB 641, to fulfill some of the findings of the Division of Legislative Audit.

As required by AS 44.60.050 (c), the Committee submits the following findings:

(1) the extent to which the board, commission or program has operated in the public interest.

The board has held three public meeetings a year, administers a yearly licensing examination and has passed regulations concerning dangerous drugs, continuing education as proof of continued comptency, false or misleading advertising of drugs and prepackaging of drugs in hospital drug rooms.

(2) the extent to which the operation of the board, commission or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

Prior audit recommendation (1983) was that continuing competency regulations are too stringent and should be changed. The regulations require nonacademic programs to have an examination or another method of assuring satisfactory completion of the program before credit will be given. Continued competency regulations may also be waived for chronic illness, retirement, military service or hardship.

The 1985 audit states that the board believes the regulations to be arbitrary or unreasonable and should be changed since the board has deviated from their written policy in accepting nonregulation credits. Legislative Audit also believes it is more reasonable to require

individuals who have been chronically ill, retired or in the military to demonstrate continued compentency than those who have not interrupted their practice. These recommendations were accomplished by the board in August of 1985.

(3) the extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

The board succeeded in having various obsolete or vague statutory requirements repealed which provided for smoother operation of the board. The board also was instrumental in passage of the controlled substances registration and the Marijuana Therapeutic Research Program which are currently recommended, by Legislative Audit, for repeal.

(4) the extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

Board meetings are announced to the public. Comments on regulation changes are solicited by announcement in public newspapers. The board does not actively solicit comments on its effectiveness.

(5) the extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

The board announces proposed regulation changes or additions in newspapers according to the Administrative Procedures Act.

(6) the efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which the board or commission is administratively assigned, or with the office of the ombudsman have been processed or resolved.

No problems were found by Legislative Audit.

(7) the extent to which the board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

The board has licensed 83 pharmacists in the last three years, all but eight were licensed by credentials. Legislative Audit found no instances where the board licensed unqualified practitioners.

(8) the extent to which state personnel practices, including affirmative action practices, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

Applications for licensure as a pharmacist require information and photographs which the Division of Equal Employment Opportunity believes may not be necessary to determine the qualifications of the applicant.

(9) the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the

interests of the public and to comply with the factors enumerated in this subsection.

Legislative Audit found that state registration under the Controlled Substances Act is duplicative of the Federal Drug Enforcement Agency, unnecessary for litigation and costly for the state and that the board should recommend legislation to eliminate state registration.

The 1983 Audit recommendation that legislation be introduced to clarify the investigatory powers of the board and the Division was never accomplished, but has been incorporated into CSHB 641 (HESS)

The Audit also recommends repeal of the Marijuana Therapeutic Research Program since it was not accomplished in a timely fashion. The repeal is included in CSHB 641.

As required by AS 44.60.050 (d), the Committee submits the following findings:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address.

The board should recommend legislation to regulate pharmacy technicians. Although the Legislative Audit recommended the repeal of controlled substances registration, the committee has not addressed that issue, feeling that it will require further study.

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments.

The purpose of the board is to license qualified applicants, inspect pharmacies and adopt needed regulations.

(3) an identification of any other programs having similar, conflicting or duplicate objectives.

There are no other agencies which license pharmacists. The Department of Public Safety is the lead agency in enforcement of the Controlled Substances Act, and should be given the responsibilities currently assigned to the Board of Pharmacy which are necessary and do not duplicate federal DEA activity.

(4) an assessment of alternative methods of achieving the purposes of the program.

The Committee did not consider any alternatives for licensure. The Committee did consider the recommendations of the Departments of Law, Public Safety and Commerce and Economic Development for rewriting aspects of the Controlled Substances Act, but did not adopt these provisions because of opposition from members of the board, reserving the issue for possible future legislation.

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level.

Eliminating the board would remove licensing mechanisms, which are designed to assure that practitioners are competent to practice. The Committee did not consider funding for the board since legislation was passed last year to require licensing boards to alter fees in order to support board expenses.

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts.

The board should be continued because the regulation and licensing of qualified professional pharmacists is necessary to protect the public's health, safety and welfare. There are no other agencies which regulate pharmacists.

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest.

The Committee has no further recommendations.

Representative Max F. Gruenberg, Jr., Co-Chair
House Health, Education and Social Services Committee

Representative Niilo Koponen, Co-Chair
House Health, Education and Social Services Committee

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4220 SLAB HCR 9 - HJR 20 1100

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HCR

9

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

HCR 9: Summary

This resolution commends DOT/PF for its investigation of ways to improve transportation access to Whittier and urges the department to establish, as a priority, the planning of improved access to Whittier, and improved access between Whittier and Shotgun Cove. Departmental priority for the improved access plan would allow the 14th Legislature to review recommendations of DOT/PF and take action.

Further, the resolution requests that the Alaska Railroad increase its summer shuttle service between Portage and Whittier until the State makes a permanent decision on the access problem.

Chairman's Information:

1) HCR 9: "Relating to the Whittier-Shotgun Cove access"

a) Introduced: Rep Szymanski

b) Co-Sponsors:

2) INTENT: This resolution commends DOT/P[illegible] its investigation of ways to improve transportation access to Whittier and urges DOT/PF to consider the planning process for improved access to Whittier as a priority. Departmental priority for the improved access plan would allow the 14th Legislature to review recommendations of DOT/PF and take action.

Further, the resolution requests the Alaska Railroad to increase its summer shuttle service between Portage and Whittier until the state makes a permanent decision on the access problem.

FISCAL NOTE: none

3) ADDITIONAL REFERRALS: Rules FINANCE E

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from Committee?
d) close public hearings?

6) COMMITTEE ACTION:
a) amendments?
b) CS adoption?

SCS HCR 9 (L&C) RELATING TO THE WHITTIER SHOTGUM COVE ACCESS

THIS RESOLUTION URGES DOT/PF TO CONSIDER THE PLANNING PROCESS FOR IMPROVED ACCESS TO WHITTIER AS A PRIORITY. DEPARTMENTAL PRIORITY FOR THE IMPROVED ACCESS PLAN WOULD ALLOW THE 14th LEGISLATURE TO REVIEW AND TAKE ACTION ON THE RECOMMENDATIONS OF DOT/PF.

THE RESOLUTION WAS AMENDED IN SENATE LABOR AND COMMERCE TO URGE THE GOVERNOR TO DIRECT DOT/PF TO ESTABLISH THE IMPROVED ACCESS PLANNING AS A PRIORITY.

Offered: 4/24/85
Referred: Finance

SCS p.2 line 10

Original sponsors: Szymanski and Uehling

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR HOUSE CONCURRENT RESOLUTION NO. 9 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the Whittier-Shotgun Cove Access.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS Whittier is becoming an important destination for tourists visiting Alaska, as shown by the increase of tour ships stopping at Whittier and of recreational businesses operating out of Whittier; and

WHEREAS Whittier is also growing in recreational importance to many Alaska residents who travel to Whittier each summer for water-related recreation, and who depend for this purpose upon access to Whittier; and

WHEREAS demand for Whittier harbor berths by recreational boaters far exceeds the available harbor space; and

WHEREAS the Thirteenth Alaska State Legislature created the Alaska Marine Park system to protect areas within Prince William Sound for public recreation; and

WHEREAS the planned disposal of municipal land between Whittier and Shotgun Cove for community expansion and recreation will increase the interest in the Whittier area for recreational homes or permanent residences; and

WHEREAS in 1984, over 200,000 persons visited Whittier, including travelers on the Alaska marine highway system; and

WHEREAS the summer shuttle service between Portage and Whittier during the summer of 1984 was too infrequent to meet the needs of Anchorage visitors to Whittier; and

WHEREAS the Alaska Railroad has been acquired by the state, and transportation planning can go forward at the state level on a comprehensive

basis; and

WHEREAS the Department of Transportation and Public Facilities is examining alternatives for improving access to Whittier;

BE IT RESOLVED that the Alaska State Legislature commends the Department of Transportation and Public Facilities for its investigation of ways to improve transportation to Whittier, including the possibility of paving one or both of the railroad tunnels between Portage and Whittier, and of increasing shuttle service by the Alaska Railroad; and be it

FURTHER RESOLVED that the Alaska State Legislature urges the governor to direct the Department of Transportation and Public Facilities to establish as a priority the planning of improved access to Whittier and between Whittier and Shotgun Cove so that the Fourteenth Alaska State Legislature can consider the department's recommendations and take action on this matter; and be it

FURTHER RESOLVED that the Alaska State Legislature requests that the Alaska Railroad Corporation initiate increased summer shuttle service between Portage and Whittier until the state makes a permanent decision on this access problem.

Introduced: 2/20/85
Referred: Transportation

IN THE HOUSE BY SZYMANSKI

HOUSE CONCURRENT RESOLUTION NO. 9

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the Whittier-Shotgun Cove Access.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS Whittier is becoming an important destination for tourists visiting Alaska, as shown by the increase of tour ships stopping at Whittier and of recreational businesses operating out of Whittier; and

WHEREAS Whittier is also growing in recreational importance to many Alaska residents who travel to Whittier each summer for water-related recreation, and who depend for this purpose upon access to Whittier; and

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WHEREAS in 1984, over 200,000 persons visited Whittier, including travelers on the Alaska marine highway system; and

WHEREAS the summer shuttle service between Portage and Whittier during the summer of 1984 was too infrequent to meet the needs of Anchorage visitors to Whittier; and

WHEREAS the Alaska Railroad has been acquired by the state, and transportation planning can go forward at the state level on a comprehensive

basis; and

WHEREAS the Department of Transportation and Public Facilities is examining alternatives for improving access to Whittier;

BE IT RESOLVED that the Alaska State Legislature commends the Department of Transportation and Public Facilities for its investigation of ways to improve transportation to Whittier, including the possibility of paving one or both of the railroad tunnels between Portage and Whittier, and of increasing shuttle service by the Alaska Railroad; and be it

FURTHER RESOLVED that the Alaska State Legislature urges the Department of Transportation and Public Facilities to establish as a priority the planning of improved access to Whittier and between Whittier and Shotgun Cove so that the Fourteenth Alaska State Legislature can consider the department's recommendations and take action on this matter; and be it

FURTHER RESOLVED that the Alaska State Legislature requests that the Alaska Railroad Corporation initiate increased summer shuttle service between Portage and Whittier until the state makes a permanent decision on this access problem.

RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HJR

20

SUBCHAPTER E—VISAS

PART 41—VISAS; DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Sec.

41.1 Definitions.

Documentation of Nationals, Claimant Nationals, and Former Nationals

41.3 Nationals, claimant nationals, and former nationals of the United States.

Passports and Visas Not Required for Certain Nonimmigrants

41.5 Nonimmigrants exempted by law or treaty from the requirement of passports, visas, and border-crossing identification cards.
41.6 Nonimmigrants not required to present passports, visas, or border-crossing identification cards.
41.7 Waiver of visa and/or passport requirements by joint action of consular and immigration officers.

Classification of Nonimmigrants

41.10 Presumption of immigrant status and burden of proof.
41.12 Classification symbols.
41.13 More than one person included in nonimmigrant visa.
41.14 Significance of visa in A, G, or NATO cases.

Foreign Government Officials

41.20 Officials of foreign governments.
41.21 Officials or representatives of foreign governments not recognized by the United States.
41.22 Couriers and acting couriers on official business.

Temporary Visitors

41.25 Temporary visitors for business or pleasure.

Transit Aliens

41.30 Transit aliens.
41.31 Certain aliens in transit to United Nations.
41.32 Accredited officials in transit through the United States.

Crewmen

41.35 Crewmen.
41.36 Foreign government official crewmen.

Treaty Traders and Investors

41.40 Treaty traders.
41.41 Treaty investors.

Students—Academic, Language Training Programs

41.45 Students in colleges, universities, seminaries, conservatories, academic high schools, elementary schools, other academic institutions, and in language training programs.

International Organization Aliens

41.50 Aliens coming to international organizations.

Temporary Workers and Trainees

41.55 Temporary workers and trainees.

Information Media Representatives

41.60 Representatives of foreign press, radio, film, or other information media.

Exchange Visitors

41.65 Exchange visitors.

Fiancée or Fiancé

41.68 Fiancée or fiancé of a United States citizen.

Executives, Managers, and Specialists

41.67 Executives, managers, and specialists (intracompany transferees).

Students—Vocational

41.68 Students in established vocational or other recognized nonacademic institutions, other than in language training programs.

NATO Aliens

41.70 NATO representatives, officials and employees.

Ineligible Classes of Nonimmigrants

41.90 Basis for refusal.
41.91 Aliens ineligible to receive visas.

Temporary Admission of Ineligible Aliens

41.95 Procedure in recommending temporary admission of ineligible aliens.

Types of Nonimmigrant Visas

41.100 Regular, diplomatic and official visas.
41.102 Classes of aliens eligible to receive diplomatic visas.

Sec.
41.104 Classes of aliens eligible to receive official visas.

Application for Nonimmigrant Visas

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Authority: Sec. 104, 66 Stat. 174; 8 U.S.C. 1104, unless otherwise noted.

§ 41.1 Definitions.

In addition to the pertinent definitions contained in the Immigration and Nationality Act, the following definitions shall be applicable to this part:

Accredited. "Accredited", as used in sections 101(a)(15)(A), 101(a)(15)(G) and 212(d)(8) of the Act, refers to an alien who holds an official position, other than an honorary official position, with the government or international organization he represents, and who is in possession of a travel document or other evidence showing that he seeks to enter, or pass in transit through, the United States for the purpose of transacting official business for that government or international organization.

Act. "Act" means the Immigration and Nationality Act, as amended.

Attendants. "Attendants" as used in sections 101(a)(15)(A)(ii), 101(a)(15)(G)(iv), and [illegible] of the Act, shall include [illegible] is paid from the public funds of a foreign government or from the funds of an international organization and who is accompanying or following to join the principal alien to whom he owes a duty or service.

Competent officer. "Competent officer", as used in section 101(a)(26) of the Act, shall refer to a "consular officer" as defined in section 101(a)(9) of the Act and this section.

"Consular officer," as defined in section 101(a)(9) of the Act, shall include commissioned consular officers, the District Administrators of the Trust Territory of the Pacific Islands, the Director of the Visa Office of the Department and such other officers of the Department as he shall designate for the purpose of issuing nonimmigrant visas, but shall not include a consular agent, an attache, or an assistant attache. The assignment by the Department of any Foreign Service Officer or Foreign Service Reserve Officer to a diplomatic or consular office of the United States abroad in a position administratively designated as requiring, solely, principally, or partially, the performance of consular functions, and the initiation of a request for a consular commission, shall constitute designation of such officer as a "consular officer" within the meaning of section 101(a)(9) of the Act.

Department. "Department" means the Department of State of the United States of America.

Diplomatic passport. "Diplomatic passport" means a national passport bearing that title and issued by a competent authority of a foreign government. "Equivalent of a diplomatic passport" means a national passport, other than a specifically described diplomatic passport, which is issued by a

—Federal Law: Dept. of State/ visas

competent authority of a foreign government and which indicates the career diplomatic or consular status of the bearer, the issuing government being one which does not issue diplomatic passports to its career diplomatic and consular officers.

Diplomatic visa. "Diplomatic visa" means a nonimmigrant visa of any classification bearing that title and issued to an alien in accordance with the regulations contained in this part.

Government vessel or aircraft. "Government vessel or aircraft" means a vessel or aircraft operated directly by the Government of the United States with government personnel in connection with public business of a non-commercial and non-profit character, or a foreign-flag vessel or aircraft operated directly by a foreign government recognized de jure by the United States, with foreign government personnel in connection with public business of a non-commercial and non-profit character. The term "government vessel or aircraft" shall not include a vessel or aircraft which is merely controlled or subsized by a government, or one which is engaged in what would ordinarily be regarded as commercial shipping or commercial transportation.

Immediate family. "Immediate family", as used in sections 101(a)(15)(A), 101(a)(15)(G), and 212(d)(8) of the Act and with reference to classification under the symbols NATO-1, NATO-2, NATO-3, NATO-4, and NATO-5, includes the spouse and unmarried sons and daughters, whether by blood or adoption, who are not members of some other household, and who will reside regularly in the household of the principal alien. "Immediate Family" also includes, upon individual authorization by the Department, other close relatives who are members of the immediate family by blood, marriage, or adoption, who are not members of some other household, who will reside regularly in the household of the principal alien, and who are recognized as dependents by the sending Government as demonstrated by their eligibility for all rights and benefits, such as the issuance of a diplomatic or official passport and travel and other allowances, which would be granted to the spouse and children of the principal alien.

International organization. "International organization" means any public international organization which has been designated by the President by Executive Order as being entitled to enjoy the privileges, exemptions, and immunities provided for in the International Organizations Immunities Act.

Official visa. "Official visa" means a nonimmigrant visa of any classification bearing that title and issued to an alien in accordance with the regulations contained in this part.

Passport. "Passport", as defined in section 101(a)(30) of the Act, shall not be considered as limited to a national passport and shall not be considered as limited to a single document but may consist of two or more documents which, when considered together, fulfill the requirements of a passport as defined in section 101(a)(30) of the Act: *Provided*, That permission to enter a foreign country must be issued by a competent authority and must be clearly valid for such purpose in order to meet the requirements of section 101(a)(30). A nonimmigrant unable to obtain a document issued by a competent authority which indicates his origin, identity, and nationality if any, may furnish the missing information to the best of his knowledge and belief, by presenting an affidavit which, when combined with the documentary evidence of admissibility into a foreign country, will suffice to meet the requirements of section 101(a)(30) of the Act.

Port of entry. "Port of entry" means a port or place designated by the Commissioner of Immigration and Naturalization at which an alien may apply for admission into the United States.

Principal alien. "Principal alien" means an alien from whom another alien derives a privilege or status under the law or regulations.

Regular visa. "Regular visa" means a nonimmigrant visa of any classification issued in accordance with the regulations contained in this part, which does not bear the title "Diplomatic" or "Official."

Regulation. "Regulation" means a rule established pursuant to the provisions of section 104(a) of the Act which has been duly published in the FEDERAL REGISTER.

Servants and personal employees. "Servants" and "personal employees," as used in sections 101(a)(15)(A)(iii), 101(a)(15)(G)(v) and 212(d)(8) of the Act, include an alien who is employed in a domestic or personal capacity by a principal alien, who is paid from the private funds of such principal alien, and who seeks to enter the United States solely for the purpose of such employment.

Western Hemisphere. "Western Hemisphere" means North America (including Central America), South America and the islands immediately adjacent thereto including the places named in section 101(b)(5) of the Act.

[Dept. Reg. 108.411, 24 FR 6679, Aug. 18, 1959]

EDITORIAL NOTE: For Federal Register citations affecting § 41.1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

DOCUMENTATION OF NATIONALS, CLAIMANT NATIONALS, AND FORMER NATIONALS

§ 41.3 Nationals, claimant nationals, and former nationals of the United States.

(a) A national of the United States shall not be issued a visa or other documentation as an alien for entry into the United States.

(b) A person whose case fulfills the conditions of section 360(b) of the Act and who continues to claim that he is a national of the United States may apply for a certificate of identity as provided in section 360(h) of the Act.

(c) A former national of the United States who seeks to enter the United States shall be required to comply with the documentary requirements applicable to aliens under the Act.

[Dept. Reg. 108.411, 24 FR 6680, Aug. 18, 1959]

PASSPORTS AND VISAS NOT REQUIRED FOR CERTAIN NONIMMIGRANTS

§ 41.5 Nonimmigrants exempted by law or treaty from the requirement of passports, visas, and border-crossing identification cards.

The provisions of section 212(a)(26) of the Act relating to the requirement of passports, visas, and border-crossing identification cards for nonimmigrants do not apply in the cases of aliens who fall within any of the following described categories:

(a) *Alien members of United States Armed Forces.* An alien member of the armed forces of the United States who (1) is in the uniform of, or who bears documents identifying him as a member of, such armed forces, (2) has not been lawfully admitted for permanent residence, and (3) is making application for admission to the United States under official orders or permit of such armed forces. (Sec. 284, 66 Stat. 232; 8 U.S.C. 1354.)

(b) *American Indians born in Canada.* An American Indian born in Canada, having at least fifty per centum of blood of the American Indian race. (Sec. 289, 66 Stat. 234; 8 U.S.C. 1359.)

(c) *Aliens entering from Guam, Puerto Rico, or Virgin Islands.* An alien who shall leave Guam, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States. (Sec. 212, 66 Stat. 188; 8 U.S.C. 1182.)

(d) *Armed Services personnel entering under NATO Status of Forces Agreement.* Personnel belonging to the land, sea or air armed services of a government which is a Party to the North Atlantic Treaty and which has ratified the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, signed at London on June 19, 1951, and entering the United States under the provisions of Article III of such Agreement pursuant to an individual or collective movement order issued by an appropriate agency of the sending State or of the North Atlantic Treaty Organization. (TIAS 2846; 4 U.S.T. 1792.)

(e) *Armed Services personnel attached to NATO Allied Headquarters in the United States.* Personnel attached to an Allied Headquarters in the United States set up pursuant to the North Atlantic Treaty signed in Washington, D.C., on April 4, 1949, who belong to the land, sea or air armed services of a government which

is a Party to the North Atlantic Treaty, and who are entering the United States in connection with their official duties under the provisions of the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty. (TIAS 2978; 5 U.S.T. 877.)

(f) *Aliens entering pursuant to International Boundary and Water Commission Treaty.* All personnel employed either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission, and entering the United States temporarily in connection with such employment. (59 Stat. 1252; TS 994.)

[Dept. Reg. 108.411, 24 FR 6680, Aug. 18, 1959, as amended by Dept. Reg. 108.433, 25 FR 4577, May 26, 1960]

§ 41.6 Nonimmigrants not required to present passports, visas, or border-crossing identification cards.

The provisions of section 212(a)(26) of the Act relating to the requirements of valid passports and visas for nonimmigrants are waived by the Secretary of State and the Attorney General, acting jointly, in pursuance of the authority contained in section 212(d)(4) of the Act under the conditions specified for the following classes:

(a) *Canadian nationals, and aliens having a common nationality with nationals of Canada or with British subjects in Bermuda, Bahamian nationals or British subjects resident in The Bahamas, Cayman Islands, and Turks and Caicos Islands.* A visa shall not in any case be required of a Canadian national, and a passport shall not be required of such a national except after a visit outside of the Western Hemisphere. A visa shall not be required of an alien having a common nationality with Canadian nationals or with British subjects in Bermuda, who has his residence in Canada or Bermuda, and a passport shall not be required of such an alien except after a visit outside of the Western Hemisphere. A Bahamian national or a British subject who has his residence in The Bahamas shall require a passport and a visa for admission to the United States except that a visa shall not be required of such an alien who, prior to or at the time of embarkation for the United States on a vessel or aircraft, satisfies the examining United States immigration officer at either Freeport or Nassau, The Bahamas that he is clearly and beyond a doubt entitled to admission in all other respects. A British subject who has his residence in the Bahamas shall require a passport and a visa for admission to the United States except that a visa shall not be required of such an alien who, prior to or at the time of embarkation for the United States on a vessel or aircraft, satisfies the examining United States immigration officer at Nassau, Bahamas, that he is clearly and beyond a doubt entitled to admission in all other respects. A visa shall not be required of a British subject who has his residence in, and arrives directly from, the Cayman Islands or the Turks and Caicos Islands and who presents a current certificate from the Clerk of Court of the Cayman Islands or the Turks and Caicos Islands indicating no criminal record.

(b) *British, French, and Netherlands nationals, and nationals of certain adjacent Islands of the Caribbean which are independent countries.* A visa shall not be required of a British, French, or Netherlands national, or of a national of Barbados, Grenada, Jamaica, or Trinidad and Tobago, who has his residence in British, French, or Netherlands territory located in the adjacent islands of the Caribbean area, or in Barbados, Grenada, Jamaica, or Trinidad and Tobago, who:

(1) Is proceeding to the United States as an agricultural worker; or

(2) Is the beneficiary of a valid, unexpired indefinite certification granted by the Department of Labor for employment in the Virgin Islands of the United States and is proceeding to the Virgin Islands of the United States for such purpose, or is the spouse or child of such an alien accompanying or following to join him.

A visa shall not be required of a national of the British Virgin Islands who has his residence in the British Virgin Islands, and who is proceeding to the Virgin Islands of the United States.

(c) *Mexican nationals.* A visa and a passport shall not be required of a Mexican national who is in possession of a border crossing card on Form I-186 and is applying for admission as a temporary visitor for business or pleasure from contiguous territory or is entering solely for the purpose of applying for a Mexican passport or other official Mexican document at a Mexican consular office on the United States side of the border. A visa shall not be required of a Mexican national who is in possession of a border crossing card and is applying for admission to the United States as a temporary visitor for business or pleasure from other than contiguous territory nor of a Mexican national who is a crewman employed on an aircraft belonging to a Mexican company authorized to engage in commercial transportation into the United States. A visa shall not be required of a Mexican national bearing a Mexican diplomatic or official passport who is a military or civilian official of the Federal Government of Mexico entering the United States for a stay of up to six months for any purpose other than on assignment as a permanent employee to an office of the Mexican Federal Government in the United States. A visa shall also not be required of the official's spouse or any of the official's dependent family members under 19 years of age, bearing diplomatic or official passports, who are in the actual company of such official at the time of entry into the United States. This waiver does not apply to the spouse or any of the official's family members classifiable under sections 101(a)(15)(F) or (M) of the Act.

(d) *Natives and residents of the Trust Territory of the Pacific Islands.* A visa and a passport shall not be required of a native and resident of the Trust Territory of the Pacific Islands who has proceeded in direct and continuous transit from the Trust Territory to the United States.

(e) *Aliens in immediate transit.* (1) *Aliens in bonded transit.* A passport and visa are not required of an alien who is being transported in immediate and continuous transit through the United States in accordance with the terms of an agreement entered into between the transportation line and the Immigration and Naturalization Service under the provisions of section 238(d) of the Act on Form I-426 to insure such immediate and continuous transit through and departure from the United States en route to a specifically designated foreign country: *Provided,* That such alien is in possession of a travel document or documents establishing his identity and nationality and ability to enter some country other than the United States. This waiver of visa and passport requirements is not available to an alien who is a citizen of Afghanistan, Cuba, Iran, or Iraq. This waiver of visa and passport requirements is not available to an alien who is a citizen of North Korea ("Democratic Peoples' Republic of Korea") or North Viet-Nam ("Democratic Republic of Viet-Nam"), and is a resident of one of the said countries, and is on a basis of reciprocity, available to a national of Albania, Bulgaria, Czechoslovakia, Estonia, the German Democratic Republic, Hungary, Latvia, Lithuania, Mongolian People's Republic, People's Republic of China, Poland, Rumania, or the Union of Soviet Socialist Republics resident in one of said countries, only if he is transiting the United States by aircraft of a transportation line signatory to an agreement with the Immigration and Naturalization Service on Form I-426 on a direct through flight which will depart directly to a foreign place from the port of arrival.

(2) *Foreign government officials in transit.* If an alien is of the class described in section 212 (d)(8) of the Act only a valid unexpired visa and a travel document which is valid for entry into a foreign country for at least 30 days from the date of his application for admission into the United States shall be required.

(f) *Individual cases of unforeseen emergencies.* A visa and a passport shall not be required of a nonimmigrant who, either prior to his embar-

kation at a foreign port or place or at the time of arrival at a port of entry in the United States, satisfies the district director of the Immigration and Naturalization Service in charge of the port of entry, after consultation with and concurrence by the Director of the Visa Office of the Department, that, because of an unforeseen emergency, he was unable to obtain the required documents. Any waiver of the visa requirement heretofore or hereafter granted pursuant to section 212(d)(4)(A) of the Act in the case of a national or resident of Cuba who embarks for the United States on or after November 10, 1963, shall not be valid unless such national or resident proceeds directly from Cuba to the United States and has been inspected in Cuba by officials of the United States Immigration and Naturalization Service and of the United States Public Health Service immediately prior to his departure for the United States, irrespective of whether such national or resident had prior notice of these conditions.

(g) *Fiance or fiancee of a United States citizen.* Notwithstanding the provisions of paragraphs (a), (b), (c), and (d) of this section, a visa shall be required of an alien described in such paragraphs who is classified, or who seeks classification, under section 101(a)(15)(K) of the Act.

(Sec. 101, 84 Stat. 1, 8 U.S.C. 1101; 109(b), 91 Stat. 847; sec. 104, 66 Stat. 174; 8 U.S.C. 1104; sec. 109(b)(1), 91 Stat. 847)

[Dept. Reg. 108.411, 24 FR 6080, Aug. 18, 1959]

EDITORIAL NOTE: For Federal Register citations affecting § 41.6, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 41.7 Waiver of visa and/or passport requirements by joint action of consular and immigration officers.

The provisions of sections 212(a)(26) of the Act prescribing the documentary requirements for nonimmigrants may be waived by joint action of consular officers abroad and immigration officers pursuant to the authority contained in section 212(d)(4) of the Act in individual cases of aliens who satisfy the consular officer serving the port or place of embarkation, after consultation with and concurrence by the appropriate immigration officer, that their cases come within any of the following categories:

(a) An alien having his residence in foreign contiguous territory who does not qualify for the benefits of any waiver provided in § 41.6, and who is a member of a visiting group or excursion proceeding to the United States under circumstances which make the timely procurement of a passport and visa impracticable.

(b) *Passport waiver; aliens for whom passport extension facilities are unavailable.* An alien whose passport is not valid for the period prescribed in section 212(a)(26) of the Act and who is embarking for the United States at a port or place remote from any foreign diplomatic or consular establishment at which the passport could be revalidated.

(c) *Passport waiver; aliens precluded from obtaining passport extensions by foreign government restrictions.* An alien whose passport is not valid for the period prescribed in section 212(a)(26) of the Act and whose government as a matter of policy does not revalidate passports more than six months in advance of their expiration or until they actually expire.

(d) *Visa waiver; certain aliens proceeding to the United States under emergent circumstances.* An alien who is well and favorably known at the consular office, who has previously been issued a nonimmigrant visa which has since expired, and who is embarking on a direct journey to the United States under emergent circumstances which preclude the timely issuance of a visa.

(e) *Visa and passport waiver; members of armed forces of foreign countries making friendly visits to the United States.* An alien who is on active duty as a member of the armed forces of a foreign country and who is a member of a group of such force which is making a friendly call in the United States, whether courtesy or operational and whether in behalf of his own government or in behalf of the United Nations, under advance arrangements made with the military, naval, or air force authorities of the United States, other than an alien who is a citizen or resident of Albania, Bulgaria, Cuba, Czechoslovakia, Estonia, German Democratic Republic, Hungary, Latvia, Lithuania, Mongolian People's Republic, North Korea (Democratic Peoples' Republic of Korea), North Vietnam (Democratic Republic of Vietnam), People's Republic of China, Poland, Romania, or the Union of Soviet Socialist Republics.

(f) *Passport waiver; landed immigrants in Canada.* An alien applying for a visa at a consular office in Canada (1) who is a landed immigrant in Canada, (2) whose port and date of expected arrival in the United States are known, and (3) who is proceeding to the United States under emergent circumstances which preclude the timely procurement of a passport or Canadian certificate of identity.

(g) *Visa and/or passport waiver; authorization to individual consular offices.* An alien within the district of a consular office which has been individually authorized by the Department, because of unusual circumstances prevailing in that district, to join with immigration officers abroad in waivers of documentary requirements in specifically described categories of cases, and whose case falls within one of those categories.

[Dept. Reg. 108.416, 24 FR 8548, Oct. 22, 1959, as amended by Dept. Reg. 108.422, 24 FR 11030, Dec. 31, 1959; Dept. Reg. 108.433, 25 FR 4578, May 25, 1960; Dept. Reg. 108.441, 25 FR 7018, July 23, 1960; Dept. Reg. 108.494, 28 FR 5258, May 28, 1963; Dept. Reg. 108.684, 38 FR 4576, F. b. 16, 1973]

CLASSIFICATION OF NONIMMIGRANTS

§ 41.10 Presumption of immigrant status and burden of proof.

An applicant for a nonimmigrant visa shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer that he is entitled to a nonimmigrant status described in section 101(a)(15) of the Act or otherwise established by law or treaty. The burden of proof is upon the applicant to establish that he is entitled to the nonimmigrant classification and type of nonimmigrant visa for which he is an applicant.

(Secs. 214, 291, 66 Stat. 189, 234, 8 U.S.C. 1184, 1361)

[Dept. Reg. 108.422, 24 FR 11080, Dec. 31, 1959]

§ 41.12 Classification symbols.

A visa issued to a nonimmigrant alien within one of the classes described in this section shall bear an appropriate symbol to be inserted by the consular officer in the space provided in the visa stamp to show the classification of the alien. The following symbols shall be used:

Class	Citation	Symbol to be inserted in visa
Ambassador, public minister, career diplomatic or consular officer, and members of immediate family	101(a)(15)(A)(i), 66 Stat. 167	A-1
Other foreign government official or employee, and members of immediate family	101(a)(15)(A)(ii), 66 Stat. 167	A-2
Attendant, servant, or personal employee and A-1 and A-2 classes and members of immediate family	101(a)(15)(A)(iii), 66 Stat. 167	A-3
Temporary visitor for business	101(a)(15)(B), 66 Stat. 167	B-1
Temporary visitor for pleasure	101(a)(15)(B), 66 Stat. 167	B-2
Temporary visitor for business and pleasure	101(a)(15)(B), 66 Stat. 167	B-1 and B-2
Alien in transit	101(a)(15)(C), 66 Stat. 167	C-1
Alien in transit to United Nations Headquarters District under § 11(3), (4), or (5) of the Headquarters Agreement	101(a)(15)(C), 66 Stat. 167	C-2
Foreign government official, members of immediate family, attendant, servant, or personal employee, in transit	212(d)(8), 66 Stat. 188	C-3 and D
Crewman (seaman or airman)	101(a)(15)(D), 66 Stat. 167	D
Treaty trader, spouse and children	101(a)(15)(E)(i), 66 Stat. 168	E-1
Treaty investor, spouse and children	101(a)(15)(E)(ii), 66 Stat. 168	E-2
Student—Academic or language training Program	101(a)(15)(F)(i), 66 Stat. 168, 75 Stat. 527	F-1
Spouse or child of student	101(a)(15)(F)(ii), 75 Stat. 527	F-2
Foreign accredited representative or recognized foreign member government to international organization, his staff, and members of immediate family	101(a)(15)(G)(i), 66 Stat. 168	G-1
Other representative of recognized foreign member government to international organization, and members of immediate family	101(a)(15)(G)(ii), 66 Stat. 168	G-2

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Class	Citation	Symbol to be inserted in visa
Representative of nonrecognized or nonmember foreign government to international organization, and members of immediate family	101(a)(15)(G)(ii), 66 Stat 168	G-3
International organization officer or employee, and members of immediate family	101(a)(15)(G)(iii), 66 Stat 168	G-4
Attendant, servant, or personal employee, of G-1, G-2, G-3, and G-4 classes, and members of immediate family	101(a)(15)(G)(iv), 66 Stat 168	G-5
Temporary worker of distinguished merit and ability	101(a)(15)(H)(i), 66 Stat 168	H-1
Trainee	101(a)(15)(H)(ii), 66 Stat 168, 24 Stat 116	H-3
Spouse or child of alien classified H-1, H-2, or H-3	101(a)(15)(H), 64 Stat 116	H-4
Representative of foreign information media, spouse, and children	101(a)(15)(I), 66 Stat 168	I
Exchange visitor	101(a)(15)(J), 66 Stat 167, 75 Stat 527	J-1
Spouse or child of exchange visitor	101(a)(15)(J), 75 Stat 527	J-2
Fiancé or fiancée of U.S. citizen	101(a)(15)(K), 64 Stat 116	K-1
Minor child of fiancé or fiancée of U.S. citizen	101(a)(15)(K), 64 Stat 116	K-2
International company executive (Executive managerial, and specialized personnel continuing employment with international firm or corporation)	101(a)(15)(L), 64 Stat 116	L-1
Spouse or minor child of alien classified L-1	101(a)(15)(L), 64 Stat 116	L-2
Vocational or other recognized nonacademic student	101(a)(15)(M), 95 Stat 1611	M-1
Spouse or minor child of alien classified M-1	95 Stat 1611	M-2
Principal permanent representative of Member State to NATO (including any of its subsidiary bodies) resident in the United States and resident members of the official staff; Secretary General, Deputy Secretary General, Assistant Secretaries General and Executive Secretary of NATO, other permanent NATO officials of senior rank; and members of immediate family	Art. 12, 5 UST 1094; Art. 20, 6 UST 1098	NATO-1
Other representatives of Member State to NATO (including any of its subsidiary bodies) including representatives, alternate and technical experts of delegations, and members of immediate family; dependents of member of a force entering in accordance with the provisions of the NATO Status of Forces Agreement or in accordance with the provisions of the Protocol on the Status of International Military Headquarters; members of such a force if issued visas	Art. 13, 5 UST 1094; Art. 1, 4 UST 1794; Art. 3, 4 UST 1796	NATO-2
Official clerical staff accompanying a representative of Member State to NATO (including any of its subsidiary bodies) and members of immediate family	Art. 14, 5 UST 1096	NATO-3
Officials of NATO (other than those classifiable under NATO-1) and members of immediate family	Art. 18, 5 UST 1098	NATO-4
Experts, other than NATO officials classifiable under the symbol NATO-4, employed on missions on behalf of NATO, and their dependents	Art. 21, 5 UST 1100	NATO-5
Members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status of Forces Agreement, members of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty, and their dependents	Art. 1, 4 UST 1794, Art. 3, 5 UST 877	NATO-6
Attendant, servant, or personal employee of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6 classes, and members of immediate families	Arts. 12-20, 5 UST 1094-1098	NATO-7

(Sec. 212(e), 75 Stat. 535; 8 U.S.C. 1182; sec. 104, 66 Stat. 174 (8 U.S.C. 1104); sec. 109(b)(1), 91 Stat. 847)

[Dept. Reg. 108.471, 20 FR 9518, Oct. 10, 1981, as amended by Dept. Reg. 108.502, 28 FR 13934, Dec. 21, 1963; Dept. Reg. 108.618, 35 FR 6124, Apr. 15, 1970; Dept. Reg. 108.820, 47 FR 21776, May 20, 1982; 47 FR 24203, June 4, 1982]

§ 41.13 More than one person included in nonimmigrant visa.

A single nonimmigrant visa may be issued to include more than one eligible alien if each alien to be included in the visa executes a separate application. When several members of a family are to be included in the same visa, the name of each family member, in addition to the name of the principal applicant, shall be written in the space provided in the visa stamp. The visa fee to be collected shall be equal to the total of the fees prescribed by the Secretary of State in accordance with the provisions of section 281 of the Act for each alien included in the visa, unless upon a basis of reciprocity a lesser fee is chargeable in such a case.

[Dept. Reg. 108.416, 24 FR 8548, Oct. 22, 1959]

§ 41.14 Significance of visa in A, G, or NATO cases.

A visa issued pursuant to the provisions of section 101(a)(15)(A) or 101(a)(15)(G) of the Act or to an alien classifiable under the symbols NATO-1 through NATO-7 shall be prima facie evidence of the proper classification of the alien when presented to the immigration authorities at a port of entry.

[Dept. Reg. 108.422, 24 FR 11080, Dec. 31, 1959]

FOREIGN GOVERNMENT OFFICIALS

§ 41.20 Officials of foreign governments.

(a) *Criteria for classification of foreign government officials.* An alien shall be classifiable under section 101(a)(15)(A) (i) or (ii) of the Act if, in the case of the principal alien, (1) he has been accredited by a foreign government recognized de jure by the United States, (2) he intends to engage solely in official activities for said foreign government while in the United States, and (3) he has been accepted by the President, or by the Secretary of State, or by a consular officer acting on behalf of the Secretary of State. A member of the immediate family of a principal alien shall be classifiable under section 101(a)(15)(A) (i) or (ii) if the principal alien is classifiable under section 101(a)(15)(A) (i) or (ii).

(b) *Classification of status under section 101(a)(15)(A).* If an alien is entitled to classification under section 101(a)(15)(A) of the Act he shall be classified under this section even if he is eligible for another nonimmigrant classification.

(c) *Classification of attendants, servants, and personal employees.* An alien shall be classifiable as a nonimmigrant under the provisions of section 101(a)(15)(A)(iii) of the Act if he establishes to the satisfaction of the consular officer that he qualifies under that section of the Act.

(d) *Referral of certain cases to the Department.* In any case in which there is uncertainty about the applicability of these regulations to a principal alien applicant requesting nonimmigrant status, the matter shall immediately be referred to the Department for consideration as to whether acceptance of accreditation shall or shall not be granted.

(e) *Change of nonimmigrant status to that of a foreign government official.* In the case of an alien in the United States seeking a change of nonimmigrant classification pursuant to section 248 of the Act to a classification under section 101(a)(15)(A) (i) or (ii), the question of acceptance of accreditation shall be determined by the Department.

(f) *Termination of status.* The Department may, in its discretion, cease to recognize as entitled to nonimmigrant status under section 101(a)(15)(A) (i) or (ii) any alien who has such status.

(g) *Classification of foreign government officials for entry other than diplomatic.* A foreign government official or employee who seeks to enter the United States temporarily in a status other than that of a representative or employee of a foreign government shall not be classifiable under the provisions of section 101(a)(15)(A).

[Dept. Reg. 108.807, 46 FR 28637, May 28, 1981]

§ 41.21 Officials or representatives of foreign governments not recognized by the United States.

An official of a foreign government, which is not recognized de jure by the United States, who is proceeding to or through the United States on an official mission for his government or to an international organization shall be classified as a nonimmigrant under the provisions of section 101(a)(15) (i), (G), or (G) (iii) of the Act.

[Dept. Reg. 108.411, 24 FR 6082, Aug. 18, 1959]

§ 41.22 Couriers and acting couriers on official business.

(a) *Couriers of current.* An alien who is regularly and professionally employed as a courier by the government

of the country to which he owes allegiance shall be classified as a nonimmigrant under the provisions of section 101(a)(15)(A)(ii) of the Act if he is proceeding to the United States on official business for his government.

(b) *Officials acting in capacity of courier.* An alien who is not regularly and professionally employed as a courier by the government of the country to which he owes allegiance shall be classified as a nonimmigrant under the provisions of section 101(a)(15)(A)(ii) of the Act if he holds an official position with that government and is proceeding to the United States as a courier on official business for his government.

(c) *Nonofficials serving in capacity of courier.* An alien who is serving in the capacity of courier but who is not regularly and professionally employed as such and who holds no official position with, or is not a national of, the country whose government he is so serving, shall be classified as a nonimmigrant under the provisions of section 101 (a)(15)(B) of the Act.

[Dept. Reg. 108.411, 24 FR 6082, Aug. 18, 1959]

Temporary Visitors

§ 41.25 Temporary visitors for business or pleasure.

(a) An alien shall be classifiable as a nonimmigrant visitor for business or pleasure if he establishes to the satisfaction of the consular officer that he qualifies under the provisions of section 101(a)(15)(B) of the Act and that: (1) He intends to depart from the United States at the expiration of his temporary stay (consular officers are authorized in borderline cases to require the posting of a bond with the Attorney General in a sufficient sum to insure that upon the conclusion of his temporary visit, or upon his failure to maintain temporary visitor status, or any status subsequently acquired under section 248 of the Act, the alien will depart from the United States); (2) he has permission to enter some foreign country upon the termination of his temporary stay; and (3) adequate financial arrangements have been made to enable him to carry out the purpose of his visit and to travel to, sojourn in, and depart from the United States.

(b) The term "business", as used in section 101(a)(15)(B) of the Act, refers to legitimate activities of a commercial or professional character. It does not include purely local employment or labor for hire. An alien seeking to enter as a nonimmigrant for employment or labor pursuant to a contract or other prearrangement shall be required to qualify under the provisions of § 41.55. An alien of distinguished merit and ability seeking to enter the United States temporarily with the idea of performing temporary services of an exceptional nature, requiring such merit and ability, but having no contract or other prearranged employment, may be classified as a nonimmigrant temporary visitor for business.

(c) The term "pleasure", as used in section 101(a) (15) (B) of the Act, refers to legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives and rest; medical treatment, or activities of a fraternal, social, or service nature.

[Sec. 101, 66 Stat. 166, 70 Stat. 919, 8 U.S.C. 1101]

[Dept. Reg. 108.422, 24 FR 11080, Dec. 31, 1959, as amended by Dept. Reg. 108.502, 28 FR 13934, Dec. 21, 1963; Dept. Reg. 108.527, 30 FR 14782, Nov. 30, 1965]

Transit Aliens

§ 41.30 Transit aliens.

An alien shall be classifiable as a nonimmigrant transit alien under the provisions of section 101(a)(15)(C) of the Act if he establishes to the satisfaction of the consular officer that: (a) He is passing in immediate and continuous transit through the United States, (b) he is in possession of a ticket or other assurance of transportation to his destination; (c) he is in possession of sufficient funds to enable him to carry out the purpose of his transit journey, or has sufficient funds otherwise available for that purpose; and (d) he has permission to enter some country other than the United States following his transit journey through the United States unless the alien submits evidence that such advance permission is not required.

[Sec. 101, 66 Stat. 166, 8 U.S.C. 1101]

[Dept. Reg. 108.411, 24 FR 6082, Aug. 18, 1959]

§ 41.31 Certain aliens in transit to United Nations.

An alien within the provisions of paragraph (3), (4), or (5) of section 11 of the Headquarters Agreement with the United Nations, to whom a visa is to be issued for the purpose of applying for admission solely in transit to the United Nations Headquarters District, may at his own request or at the direction of the Secretary of State be issued a nonimmigrant visa bearing the symbol C-2. If such a visa is issued, the recipient will be subject to such restrictions in his travel within the United States as may be provided in regulations prescribed by the Attorney General.

[Dept. Reg. 108.411, 24 FR 6082, Aug. 18, 1959]

§ 41.32 Accredited officials in transit through the United States.

An accredited official of a foreign government who intends to proceed in immediate and continuous transit through the United States on official business for his government shall be entitled to the benefits of section 212(d)(8) of the Act if his government grants similar privileges to officials of the United States, and shall be classified under the provisions of section 101(a)(15)(C) of the Act. Members of the immediate family, attendants, servants, or personal employees of such an official shall be accorded the same classification as the principal alien.

[Sec. 212(d)(8), 66 Stat. 188; 8 U.S.C. 1182]

[Dept. Reg. 108.411, 24 FR 6082, Aug. 18, 1959]

Crewmen

§ 41.35 Crewmen.

(a) An alien shall be classifiable as a nonimmigrant crewman if he establishes to the satisfaction of the consular officer that he qualifies under the provisions of section 101(a)(15)(D) of the Act and that he has permission to enter some foreign country after a temporary landing in the United States.

(b) An alien employed on board a vessel or aircraft in a capacity not required for normal operation and service on the particular vessel or aircraft, or an alien employed or listed as a regular member of the crew in excess of the number normally required shall not be classified as a crewman.

[Sec. 101, 66 Stat. 166, 8 U.S.C. 1101]

[Dept. Reg. 108.411, 24 FR 6082, Aug. 18, 1959]

Cross Reference: For documentary requirements for crewmen see § 41.91(a)(26) and for instructions regarding the procedure to be followed in issuing crew list visas see § 41.127.

§ 41.36 Foreign government official crewmen.

Alien crewmen serving on board a foreign warship or other vessel of war, or military, naval or other aircraft of the armed forces of a foreign country, when making a friendly call at a United States port under advance arrangements made with the military authorities of the United States, or any other government vessel or aircraft shall not be subject to the provisions of § 41.91(a)(26) if the documentary requirements have been waived by the Secretary of State and the Attorney General pursuant to section 212(d)(4) of the Act.

[Dept. Reg. 108.433, 25 FR 4576, May 25, 1960]

Treaty Traders and Investors

§ 41.40 Treaty traders.

(a) An alien shall be classifiable as a nonimmigrant treaty trader if he establishes to the satisfaction of the consular officer that he qualifies under the provisions of section 101(a)(15)(E)(i) of the Act and that: (1) He intends to depart from the United States upon the termination of his status; and (2) if he is employed by a foreign person or organization having the nationality of the treaty country which is engaged in substantial trade as contemplated by section 101(a)(15)(E)(i), he will be engaged in duties of a supervisory or executive

character, or, if he is or will be employed in a minor capacity, he has the specific qualifications that will make his services essential to the efficient operation of the employer's enterprise and will not be employed solely in an unskilled manual capacity. The employment must be by an individual employer having the nationality of the treaty country who is maintaining the status of a nonimmigrant treaty trader, or by an organization which is principally owned by a person or persons having the nationality of the treaty country and, if not residing abroad, maintaining nonimmigrant treaty trader status.

(b) The term "trade," as used in this section, means trade of a substantial nature which is international in scope, carried on by the alien in his own behalf or as an agent of a foreign person or organization engaged in trade, and is principally between the United States and the foreign state of which such alien is a national. Consideration shall be given to any conditions in the country of which the alien is a national which may affect the alien's ability to carry on substantial trade principally between the United States and such country.

(c) The nationality of a spouse or child of a treaty trader shall not be material to the classification of such spouse or child under the provisions of section 101(a)(15)(E)(i) of the Act.

(d) Representatives of foreign information media shall first be considered for possible classification as nonimmigrants under the provisions of section 101(a)(15)(I) of the Act and § 41.60, before consideration is given to their possible classification as nonimmigrants under the provisions of section 101(a)(15)(E) of the Act and of this section.

(Sec. 101, 66 Stat. 166; 8 U.S.C. 1101)

[Dept. Reg. 108.411, 24 FR 6083, Aug. 18, 1959, as amended by Dept. Reg. 108.507, 29 FR 4770, Apr. 3, 1964; Dept. Reg. 108.702, 39 FR 26154, July 17, 1974]

§ 41.41 Treaty investors.

(a) An alien shall be classifiable as a nonimmigrant treaty investor if he establishes to the satisfaction of the consular officer that he qualifies under the provisions of section 101(a)(15)(E)(ii) of the Act and that: (1) He intends to depart from the United States upon the termination of his status; and (2) he is an alien who has invested or is investing capital in a bona fide enterprise and is not seeking to proceed to the United States in connection with the investment of a small amount of capital in a marginal enterprise solely for the purpose of earning a living; or that (3) he is employed by a treaty investor in a responsible capacity and the employer is a foreign person having the nationality of the treaty country who is maintaining the status of a nonimmigrant treaty investor, or an organization which is principally owned by a person or persons having the nationality of the treaty country and, if not residing abroad, maintaining nonimmigrant treaty investor status.

(b) The nationality of a spouse or child of a treaty investor shall not be material to the classification of such spouse or child under the provisions of section 101(a)(15)(E)(ii) of the Act.

(Sec. 101, 66 Stat. 166; 8 U.S.C. 1101)

[Dept. Reg. 108.411, 24 FR 6083, Aug. 18, 1959, as amended by Dept. Reg. 108.702, 39 FR 26154, July 17, 1974]

Students—Academic, Language Training Programs

§ 41.45 Students in colleges, universities, seminaries, conservatories, academic high schools, elementary schools, other academic institutions, and in language training programs.

(a) An alien shall be classifiable as a nonimmigrant student under section 101(a)(15)(F)(i) of the Act upon establishing to the satisfaction of the consular officer that the provisions of that section have been met and that the alien:

(1) Will attend, and has been accepted for attendance by, a college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States which has been approved by the Attorney General for the purposes of section 101(a)(15)(F)(i) of the Act, as evidenced by the presentation of Form I-20A-B (Certificate of Eligibility) properly and completely filled out and signed by the alien and by a designated school official (the Form I-20A, when properly executed and presented by an alien in support of an application for a student visa under this section, shall be accepted by the consular officer as prima facie evidence that the designated college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or institution providing language training has been approved by the Attorney General for the attendance of nonimmigrant students, and that the visa applicant has been accepted for attendance at such institution);

(2) Is in possession of sufficient funds to cover expenses while in the United States or other arrangements have been made to provide those expenses;

(3) Has sufficient scholastic preparation and knowledge of the English language (unless the alien is going to an institution exclusively to participate in an English language training program) to enable the undertaking of a full course of study given in the English language which the accepting institution is equipped to offer, or the institution (i) has accepted the alien expressly for a full course of study in a language with which the alien is sufficiently familiar, or

(ii) Will enroll the alien in a combination of academic courses and English instruction which will constitute a full course of study; and

(4) Intends in good faith and will be able to depart from the United States upon the termination of the student status (consular officers are authorized in borderline cases to require the posting of a bond with the Attorney General in a sufficient sum to insure that upon the alien's conclusion of studies, or upon the alien's failure to maintain student status, or any status subsequently acquired under section 248 of the Act, the alien will depart from the United States). If the alien is otherwise qualified for classification as a nonimmigrant student under this section, but intends to study the English language exclusively while in the United States, such alien may be classified as a nonimmigrant student under the provisions of section 101(a)(15)(F)(i) of the Act even though no credits are given by the institution for such study. The approved school must be equipped to offer a full course of study in the English language and must have accepted the applicant expressly for that course.

(b) An alien shall also be classifiable as a nonimmigrant under section 101(a)(15)(F)(ii) of the Act if it is established to the satisfaction of the consular officer that such alien qualifies under the provisions of that section and that the alien:

(1) Is in possession of sufficient funds to cover expenses while in the United States, or that other arrangements have been made to provide for such expenses; and

(2) Intends in good faith and will be able to depart from the United States upon the termination of the status of the principal alien.

(Sec. 104, 66 Stat. 174; 8 U.S.C. 1104; sec. 109(b)(1), 91 Stat. 847)

[Dept. Reg. 108.820, 47 FR 21777, May 20, 1982, 47 FR 24293, June 4, 1982]

International Organization Aliens

§ 41.50 Aliens coming to international organizations.

(a) An alien shall be classifiable under the provisions of section 101(a)(15)(G) of the Act if he establishes to the satisfaction of the consular officer that he is within one of the classes described in that section and that he seeks to enter, or pass in transit through, the United States in pursuance of his official duties. Such alien who seeks to enter, or pass in transit through, the United States other than in pursuance of his official duties shall not be classified under section 101(a)(15)(G) of the Act.

(b) An alien who applies for a visa as a nonimmigrant under the provisions of section 101(a)(15)(G) of the Act shall not be refused such visa solely on the grounds that he is not a national of the country whose government he represents.

(c) An alien who seeks to enter the United States as a foreign government representative to an international organization and who, at the same time,

is proceeding to the United States on official business as a foreign government official within the meaning of section 101(a)(15)(A) of the Act, shall, if otherwise qualified, be issued a visa as a non-immigrant under the provisions of section 101(a)(15)(A) of the Act.

(d) An alien not classifiable under section 101(a)(15)(A) of the Act who is entitled to classification under section 101(a)(15)(G), the Act shall be classified under this section although he may also be eligible for another nonimmigrant classification.

(Sec. 101, 66 Stat. 166, 8 U.S.C. 1101)

[Dept. Reg. 108.411, 24 FR 6083, Aug. 18, 1959]

Temporary Workers and Trainees

§ 41.55 Temporary workers and trainees.

(a) An alien shall be classifiable under the provisions of section 101(a)(15)(H) of the Act if—

(1) (i) He establishes to the satisfaction of the consular officer that he qualifies under the provision of that section; and (ii) the consular officer shall have received a petition approved by the Immigration and Naturalization Service to accord such classification to the alien, or official notification of the approval thereof; or (iii) the alien shall have presented to the consular officer official confirmation of the approval of the petition to accord him such classification or of the extension of his period of authorized stay in such classification; or

(2) He establishes to the satisfaction of the consular officer that he is the spouse or child of an alien so classified.

The period of validity of a visa issued on the basis of such an approved petition or official notification or confirmation shall not exceed the period of validity or of authorized stay set forth therein. The approval of such a petition shall not, of itself, establish that the alien is eligible to receive a nonimmigrant visa.

(b) If a consular officer knows or has reason to believe that an alien applying for a visa under section 101(a)(15)(H) of the Act is not qualified to perform the services, or to undertake the training, specified in the employer's petition approved by the Attorney General he shall suspend action on the alien's application and submit a report to the approving office of the Immigration and Naturalization Service for whatever action appears to be warranted.

(c) The term "Trainee", as used in section 101(a)(15)(H)(iii) of the Act, means a nonimmigrant alien who seeks to enter the United States at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving instruction in any field of endeavor, including agriculture, commerce, communication, finance, government, transportation, and the professions as well as in a purely industrial establishment. (For provisions relating to the ineligibility of former exchange visitors to receive visas under section 101(a)(15)(H) of the Act see § 41.91(d)).

(Sec. 101, 66 Stat. 166 8 U.S.C. 1101)

[Dept. Reg. 108.411, 24 FR 6083, Aug. 18, 1959; 24 FR 6943, Aug. 27, 1959, as amended by Dept. Reg. 108 618, 35 FR 6124, Apr. 15, 1970. Dept. Reg. 108.644, 36 FR 19301, Oct. 2, 1971; 36 FR 19907, Oct. 13, 1971; Dept. Reg. 108 678, 37 FR 21027, Oct. 14, 1972]

Cross Reference: For provisions relating to the ineligibility of former exchange visitors to receive visas under section 101(a)(15)(H) of the Act, see § 41.91(d).

Information Media Representatives

§ 41.60 Representatives of foreign press, radio, film, or other information media.

(a) An alien shall be classifiable as a nonimmigrant information media representative if he establishes to the satisfaction of the consular officer that he qualifies under the provisions of section 101(a)(15)(I) of the Act and that he is a bona fide representative of a foreign press, radio, film, or other information medium having its home office in a foreign country, the government of which grants upon a basis of reciprocity similar privileges to representatives of such a medium having home offices in the United States.

(b) An alien who will be engaged in the United States in newsgathering activities between the United States and the country of which he is a national

shall, if otherwise qualified, be classified as a nonimmigrant under the provisions of section 101(a)(15)(I) of the Act, notwithstanding the fact that such alien may also be classifiable as a nonimmigrant under the provisions of section 101(a)(15)(E) of the Act.

(Sec. 101, 66 Stat. 166; 8 U.S.C. 1101)

[Dept. Reg. 108 411, 24 FR 6084, Aug. 18, 1959]

Exchange Visitors

§ 41.65 Exchange visitors.

(a) *Classification.* An alien shall be classifiable as an exchange visitor if he qualifies under the provisions of section 101(a)(15)(J) of the Act and establishes to the satisfaction of the consular officer that:

(1) He has been accepted to participate, and intends to participate, in an exchange visitor program designated by the International Communication Agency as evidenced by the presentation of a properly executed Form IAP-66 (Certificate of Eligibility for Exchange Visitor (J-1) status);

(2) He has sufficient funds to cover his expenses or other arrangements have been made to provide for his expenses;

(3) He has sufficient knowledge of the English language to enable him to undertake the program for which he has been selected, or, except for an alien coming to participate in a program under which he will receive graduate medical education or training, the organization sponsoring him is aware of his deficiency in this respect and has indicated its willingness to accept him regardless of that deficiency;

(4) He meets the requirements of section 212(j) of the Immigration and Nationality Act, as amended, if coming to participate in a program under which he will receive graduate medical education or training; or that,

(5) The alien is the spouse or minor child of such an exchange-visitor program participant.

(b) *Applicability of section 212(e) of the Act.* (1) An alien is subject to the 2-year foreign residence requirement of section 212(e) of the Act if—

(i) His participation in one or more exchange programs was wholly or partially financed, directly or indirectly, by the Government of the United States or by the government of his country of nationality or last residence; or

(ii) At the time of the issuance to him of an exchange visitor visa and admission to the United States, or, if not required to obtain a nonimmigrant visa, at the time of his admission to the United States as an exchange visitor, or at the time of his acquisition of such status after admission, he is a national and resident, or if not a national he is a lawful permanent resident (or has status equivalent thereto), of a country which the Director of the International Communication Agency had designated, through publication by public notice in the Federal Register, as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien will engage in his exchange visitor program; or

(iii) He acquires exchange visitor status in order to receive graduate medical education or training in the United States.

(2) For the purposes of this paragraph the terms "financed directly" and "financed indirectly" shall be defined as set forth in § 514.1 of Chapter V.

(3) The country in which 2 years' residence and physical presence will satisfy the requirements of sections 212(e) of the Act in the case of an alien determined to be subject to such requirements shall be the country of which the alien is, at the time of such determination, a national and resident, or, if not a national, a lawful permanent resident (or has status equivalent thereto).

(4) If an alien is subject to the 2 year foreign residence requirement of section 212(e) of the Act, the spouse or child of such alien shall also be subject to such requirement if such spouse or child is admitted to the United States pursuant to section 101(a)(15)(J) of the Act, or acquires status pursuant to such section after admission, for the purpose of accompanying or following to join such alien.

(c) *Notification to alien.* The consular officer to whom an alien applies for

an exchange visitor visa shall, prior to the issuance of such visa, determine whether the alien will be subject to the 2-year foreign residence requirement of section 212(e) of the Act if admitted to the United States under section 101(a)(15)(J) of the Act and, if so, the country in which 2 years' residence and physical presence will satisfy such requirement with respect to the alien, and shall inform the alien of such determinations.

(Sec. 104, 66 Stat. 174; (8 U.S.C. 1104, 1182(e), 1258); Reorganization Plan No. 2 of 1977; E.O. 12048 of March 27, 1978)

[Dept. Reg. 108.057, 37 FR 7156, Apr. 11, 1972, as amended by Dept. Reg. 108.673, 37 FR 17471, Aug. 29, 1972; Dept. Reg. 108.691, 38 FR 20319, July 31, 1973; Dept. Reg. 108.766, 44 FR 17659, Mar. 23, 1979, 45 FR 81560, Dec. 11, 1980]

Fiancée or Fiancé

§ 41.66 Fiancee or fiance of a United States citizen.

(a) An alien shall be classifiable as a nonimmigrant fiancee or fiance if he submits evidence that he qualifies under the provisions of section 101(a)(15)(K) of the Act and if the consular officer shall have received from the Immigration and Naturalization Service a petition filed by the alien's U.S. citizen fiance or fiancee and approved in accordance with the provisions of section 214(d) of the Act.

(b) Upon receipt of such a petition, and upon submission by the alien of a sworn statement of ability and intent to conclude a valid marriage with the petitioner within 90 days of arrival in the United States, the consular officer shall grant the status accorded in the petition and shall determine the eligibility of the alien to receive a visa.

(c) Determination of the eligibility of an alien to receive a visa under section 101 (a)(15)(K) of the Act shall be made, insofar as practicable, as if the alien were an applicant to receive an immigrant visa.

(d) If it is determined that the alien would be eligible in all respects to receive an immigrant visa, the consular officer may issue a nonimmigrant visa under the provisions of this section to the alien.

(Sec. 101, 84 Stat. 116; 8 U.S.C. 1101)

[Dept. Reg. 108.618, 35 FR 6124, Apr. 15, 1970, as amended by Dept. Reg. 108.670, 37 FR 14873, July 26, 1972]

Executives, Managers, and Specialists

§ 41.67 Executives, managers, and specialists (intracompany transferees).

(a) An alien shall be classifiable under the provisions of section 101(a)(15)(L) of the Act if –

(1) (i) He establishes to the satisfaction of the consular officer that he qualifies under the provisions of that section; and (ii) the consular officer shall have received a petition approved by the Immigration and Naturalization Service to accord such classification to the alien, or official notification of the approval thereof; or (iii) the alien shall have presented to the consular officer official confirmation of the approval of the petition to accord him such classification or of the extension of his period of authorized stay in such classification; or

(2) He establishes to the satisfaction of the consular officer that he is the spouse of child of an alien is so classified. The period of validity of a visa issued on the basis of such an approved petition or official notification or confirmation shall not exceed the period of validity or of authorized stay set forth therein. The approval of such a petition shall not, of itself, establish that the alien is eligible to receive a nonimmigrant visa.

(b) If a consular officer knows or has reason to believe that an alien applying for a visa under section 101(a)(15)(L) of the Act has not been continuously employed for 1 year by the same employer or an affiliate or subsidiary thereof, or has not been employed in a managerial or executive capacity, or does not posses specialized knowledge, as specified in the employer's petition approved by the Attorney General, he shall suspend action on the alien's application and submit a report to the approving office of the Immigration and Naturalization Service for whatever action appears to be warranted.

(Sec. 101, 84 Stat. 116; 8 U.S.C. 1101)

[Dept. Reg. 108.618, 35 FR 6125, Apr. 15, 1970, as amended by Dept. Reg. 108.644, 36 FR 19304, Oct. 2, 1971; 36 FR 20907, Oct. 13, 1971; Dept. Reg. 108.678, 37 FR 21637, Oct. 14, 1972]

Students—Vocational

§ 41.68 Students in established vocational or other recognized nonacademic institutions, other than in language training programs.

(a) An alien shall be classifiable as a nonimmigrant student under section 101(a)(15)(M)(i) of the Act upon establishing to the satisfaction of the consular officer that the provisions of that section have been met and that the alien:

(1) Will attend and has been accepted for attendance solely for the purpose of pursuing a full course of study (other than a language training program) by an established vocational or other recognized nonacademic institution in the United States which has been approved by the Attorney General for the purposes of section 101(a)(15)(M)(i) of the Act, as evidenced by the presentation of Form I-20M-N (Certificate of Eligibility) properly and completely filled out and signed by the alien and by a designated school official (the form I-20M, when properly executed and presented by an alien in support of an application for a student visa under this section, shall be accepted by the consular officer as prima facie evidence that the designated vocational or other recognized nonacademic institution which has issued the document has been approved by the Attorney General for the attendance of nonimmigrant students pursuant to section 101(a)(15)(M)(i) of the Act and that the visa applicant has been accepted for attendance at such institution);

(2) Is in possession of sufficient funds to cover expenses while in the United States or other arrangements have been made to provide for those expenses;

(3) Has sufficient knowledge of the English language to enable such an alien to undertake a full course of study in the accepting institution, or, if knowledge of the English language is inadequate to enable such alien to pursue a full course of study given in the English language, the accepting institution is equipped to offer, and (i) has accepted the alien expressly for a full course of study in a language with which the alien is sufficiently familiar, or (ii) will enroll the alien in courses of instruction in English incidental to principal instruction in vocational courses which, when taken together, will constitute a full course of study; and

(4) Intends in good faith and will be able to depart from the United States upon the termination of student status.

(b) An alien shall also be classifiable as a nonimmigrant under section 101(a)(15)(M)(ii) of the Act if it is established to the satisfaction of the consular officer that such alien qualifies under the provisions of that section and that the alien: (1) Is in possession of sufficient funds to cover expenses while in the United States, or that other arrangements have been made to provide for such expenses; and (2) intends in good faith and will be able to depart from the United States upon the termination of the status of the principal alien.

(Sec. 104, 66 Stat. 174 (8 U.S.C. 1104); sec. 1091(b)(1), 91 Stat. 847)

[Dept. Reg. 108.820, 47 FR 21777, May 20, 1982; 47 FR 24293, June 4, 1982]

NATO Aliens

§ 41.70 NATO representatives, officials and employees.

(a) (1) An alien shall be classifiable under the symbol NATO-1, NATO-2, NATO-3, NATO-4, or NATO-5 (see § 41.12 for classes of aliens entitled to classification under each symbol) if he establishes to the satisfaction of the consular officer that he is seeking admission to the United States under the applicable provision of the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff, or that he is a member of the immediate family of an alien classified under the symbol NATO-1, NATO-2, NATO-3, NATO-4, or NATO-5.

(2) Armed services personnel entering the United States in accordance with the provisions of the NATO Status-of-Forces Agreement or in accordance with the provisions of the

Protocol on the Status of International Military Headquarters may enter the United States under the appropriate treaty waiver of documentary requirements contained in § 41.5(d) or (e), but if issued visas shall be classifiable under the symbol NATO 3.

(3) Dependents of armed services personnel referred to in paragraph (a)(2) of this section shall be classifiable under the symbol NATO-2.

(b) An alien member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, and his dependents, or an alien member of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty, and his dependents, shall be classified under the symbol NATO-6.

(c) An alien attendant, servant, or personal employee of an alien classified under the symbol NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6, and the members of the immediate family of such attendant, servant, or personal employee, shall be classifiable under the symbol NATO-7.

(5 U.S.C. 877, 1094)

[Dept. Reg. 108.433, 25 FR 4579, May 25, 1960]

CROSS REFERENCE: 1. For exemption from certain grounds for refusal of visas to NATO aliens, see § 41.91(c).

2. For exemption from passport validity requirement for certain NATO aliens, see § 41.91(f).

INELIGIBLE CLASSES OF NONIMMIGRANTS

§ 41.90 Basis for refusal.

A visa shall be refused only upon a ground specifically set out in the law or regulations issued thereunder. The term "reason to believe", as used in section 221(g) of the Act, shall be considered to require a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive a nonimmigrant visa as provided in the Act and as implemented by the regulations contained in this part. Consideration shall be given to any evidence submitted indicating that the ground for a prior refusal of a nonimmigrant visa may no longer exist. The burden of proof is upon the applicant to establish that he is not ineligible to receive a visa as a nonimmigrant under the provisions of section 212 of the Act, or any other provision of law and § 41.91.

(Sec. 221, 66 Stat. 192, 8 U.S.C. 1201)

[Dept. Reg. 108.422, 24 FR 11081, Dec. 31, 1959]

§ 41.91 Aliens ineligible to receive visas.

(a) *Aliens ineligible under the provisions of section 212(a) of the Act.* Determinations relating to the ineligibility of aliens to receive nonimmigrant visas under section 212(a) of the Act shall be governed by the following provisions:

(1-6) *Medical grounds of ineligibility.* A finding of a medical examiner of the United States Public Health Service, a contract location physician, or of a panel physician designated by the Foreign Service establishment in whose jurisdiction examination is performed, with respect to the applicability of section 212(a) (1) through (6) of the Act shall be binding on the consular officer, except that the consular officer may refer for review to the appropriate office of the United States Public Health Service the finding of a contract location or panel physician in an individual case. In such case he may hold in abeyance his decision on the visa application pending the receipt of the review finding of the Public Health Service.

(7) *Physical defect affecting alien's ability to earn a living.* An alien within the purview of section 212(a)(7) of the Act may be issued a nonimmigrant visa, if otherwise qualified therefor, upon receipt by the consular officer of notice from the Immigration and Naturalization Service of the giving of a bond or undertaking as provided in section 221 (g) of the Act, if the consular officer is satisfied that the giving of such bond or undertaking removes the likelihood that the alien might become a public charge within the meaning of section 212(a)(15) of the Act.

(8) *Paupers, professional beggars, or vagrants.* The provisions of section

212(a) (8) shall be applicable only in the case of an alien who is at the time of visa application a pauper, professional beggar, or vagrant.

(9) *Crime involving moral turpitude.*

(i) A determination that a crime involves moral turpitude shall be based upon the moral standards generally prevailing in the United States. Before a finding of ineligibility under section 212 (a)(9) of the Act may be made because of an admission of the commission of acts which constitute the essential elements of a crime involving moral turpitude, it must first be established that the acts constitute a crime under the criminal law of the jurisdiction where they occurred.

(ii) An alien who has been convicted of a crime involving moral turpitude or who admits the commission of acts which constitute the essential elements of such a crime and who has committed an additional crime involving moral turpitude is ineligible to receive a visa under the provisions of section 212(a)(9) of the Act although the crimes were committed while the alien was under the age of eighteen years.

(iii) An alien shall not be ineligible to receive a visa under section 212(a)(9) of the Act by reason of having been tried and treated as a juvenile by a juvenile court for the commission of an offense involving moral turpitude provided the alien was under the age of eighteen years at the time the offense was committed. An alien convicted as an adult of a crime involving moral turpitude shall be subject to the provisions of section 212(a)(9) of the Act regardless of whether juvenile courts existed within the jurisdiction at the time of the conviction and regardless of whether he was under the age of eighteen years at the time the offense was committed.

(iv) A conviction *in absentia* of a crime involving moral turpitude shall not constitute a conviction within the meaning of section 212(a)(9) of the Act.

(v) An alien shall not be considered ineligible to receive a visa under section 212(a) (9) of the Act by reason of a conviction of a crime involving moral turpitude for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under section 212(a)(9) of the Act.

(vi) The term "purely political offense" as used in section 212(a)(9) of the Act shall include offenses which resulted in convictions obviously based on trumped-up charges or predicated upon repressive measures against racial, religious or political minorities.

(10) *Conviction of two or more offenses.* (i) An alien shall not be ineligible to receive a visa under section 212(a)(10) of the Act by reason of having been tried and treated as a juvenile by a juvenile court for the commission of two or more offenses regardless of the period of confinement imposed by the sentence provided the alien was under the age of eighteen years at the time the offenses were committed. An alien convicted as an adult of two or more offenses for which the aggregate sentences to confinement actually imposed were five years or more shall be subject to the provisions of section 212(a)(10) of the Act regardless of whether juvenile courts existed within the jurisdiction at the time of conviction and regardless of whether he was under the age of eighteen years at the time the offenses were committed.

(ii) A conviction or convictions in absentia of two or more offenses for which the aggregate sentences to confinement imposed were five years or more shall not constitute a conviction within the meaning of section 212(a)(10) of the Act.

(iii) An alien shall not be considered ineligible to receive a visa under section 212 (a)(10) of the Act by reason of having been convicted of two or more offenses for which the aggregate sentences to confinement actually imposed were five years or more if a full and unconditional pardon or pardons

for the offenses have been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under section 212(a)(10) of the Act.

(iv) The term "purely political offense" as used in section 212(a)(10) of the Act shall include offenses which resulted in convictions obviously based on repressive measures against racial, religious or political minorities.

(v) A sentence to confinement which has been suspended by a court of competent jurisdiction is not one which has been "actually imposed" within the meaning of section 212(a)(10) of the Act.

(11) *Polygamy.* (Section 212(a)(11) of the Act inapplicable; Section 212 (d)(1)).

(12) *Prostitution, procuring and related activities.* (i) The term "prostitute" means a woman given to promiscuous sexual intercourse for hire. A finding that an alien has "engaged" in prostitution must be based on elements of continuity and regularity which would indicate a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts.

(ii) The fact that an alien may have ceased to engage in prostitution shall not serve to remove the existing ground of ineligibility to receive a visa under the provisions of section 212(a)(12) of the Act.

(iii) A prostitute or a person who has engaged in prostitution shall be ineligible to receive a visa under section 212 (a)(12) of the Act notwithstanding the fact that prostitution may not be prohibited under the laws of the foreign country where the acts occurred.

(13) *Immoral sexual act.* An alien shall not be ineligible to receive a visa under section 212(a)(13) of the Act unless his primary purpose in coming to the United States is to engage in an immoral sexual act.

(14) *Aliens entering to perform skilled or unskilled labor.* (Section 212(a)(14) of the Act inapplicable).

(15) *Public charge.* (i) Any conclusion that an alien is ineligible to receive a nonimmigrant visa under the provisions of section 212(a)(15) of the Act shall be predicated upon circumstances which indicate that the alien will probably become a charge upon the public after entry into the United States.

(ii) An alien within the purview of section 212(a)(15) of the Act may be issued a nonimmigrant visa upon receipt of notice by the consular officer of the giving of a bond or undertaking, as provided in section 221(g) of the Act, if the consular officer is satisfied that the giving of such bond or undertaking removes the alien's ineligibility to receive a visa under this section of the law.

(16) *Aliens excluded and deported.* An alien who was excluded and deported from the United States within the meaning of section 212(a)(16) of the Act shall not be issued a visa within one year from the date of his deportation unless he has obtained permission from the Immigration and Naturalization Service to reapply for admission.

(17) *Aliens arrested and deported or removed from the United States.* An alien who was arrested and deported from the United States, or who was removed from the United States within the meaning of section 212(a)(17) of the Act shall be required to obtain permission from the Immigration and Naturalization Service to reapply for admission into the United States before a visa may be issued, regardless of the period of time which may have elapsed since his deportation or removal.

(18) *Stowaways.* (Section 212(a)(18) of the Act inapplicable at time of visa application.)

(19) *Fraud and misrepresentation.* (i) An alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation for entry into the United States by fraud or by willfully misrepresenting a material fact, regardless of whether such fraud or misrepresentation occurred before or after December 24, 1952, shall be ineligible to receive a visa under the provisions of section 212(a)(19) of the Act: *Provided,* That the provisions of this subdivision shall not be applicable if the fraud or misrepresentation was committed by an alien at the time he sought entry into a country other than the United States or obtained travel documents as a bona fide refugee and the refugee was in fear of being repatriated to his former homeland if he had disclosed the facts in his case in connection with his application for a visa to enter the United States: *Provided further,* That the fraud or misrepresentation was not committed by such refugee for the purpose of evading the quota or numerical restrictions of the U.S. immigration laws, or investigation of the alien's record at the place of his former residence or elsewhere in connection with an application for a visa.

(ii) Subject to the conditions stated in paragraph (a)(19)(i) of this section, an alien who is found by the consular officer to have made a willful misrepresentation within the meaning of section 10 of the Displaced Persons Act of 1948, as amended, for the purpose of gaining admission into the United States as an eligible displaced person, or to have made a material misrepresentation within the meaning of section 11(e) of the Refugee Relief Act of 1953, as amended, for the purpose of gaining admission into the United States as an alien eligible thereunder, shall be considered ineligible to receive a visa under the provisions of section 212(a)(19) of the Act.

(iii) The commission of fraud or the willful misrepresentation of a material fact in seeking to enter the United States as distinguished from fraud or misrepresentation in connection with the procurement, or attempt to procure, documents for entry, shall not render an alien ineligible to receive a visa under the provisions of section 212(a)(19) of the Act. (6 I. & N. Dec. 140, approved by the Attorney General 9-13-54.)

(20) *Immigrant documentary requirements.* (Section 212(a)(20) of the Act inapplicable.)

(21) *Non-compliance with section 203 of the Act.* (Section 212(a)(21) of the Act inapplicable.)

(22) *Aliens ineligible to citizenship, or who departed to avoid service in the Armed Forces.* An alien shall be refused a nonimmigrant visa under the provisions of section 212(a)(22) of the Act if, having other than nonimmigrant status, he departed from or remained outside of the United States on or after September 8, 1939 to avoid or evade training or service in the United States Armed Forces.

(23) *Narcotics traffickers.* Any alien shall be ineligible to receive a nonimmigrant visa under the provisions of section 212(a)(23) of the Act, as amended, irrespective of whether the conviction for illegal possession of narcotic drugs or marijuana or for conspiracy to violate any law or regulation within the contemplation of the Narcotic Control Act of 1956 occurred before or after July 18, 1956.

(24) *Aliens arriving in foreign contiguous territory or adjacent islands on nonsignatory transportation lines.* The provisions of section 212(a)(24) of the Act shall not render an alien ineligible to receive a nonimmigrant visa inasmuch as the Attorney General upon the recommendation of the Secretary of State has waived this ground of ineligibility for nonimmigrants under the authority contained in section 212(d)(3)(A) of the Act.

(25) *Illiterates.* (Section 212(a)(25) of the Act inapplicable: Section 212(d)(1).)

(26) *Nonimmigrant documentary requirements.* (i) A passport which is valid indefinitely for the return of the bearer to the country whose government issued such passport shall be deemed to have the required minimum period of validity as specified in section 212(a)(26) of the Act.

(ii) A crew-list visa issued in accordance with § 41.127 is considered to constitute a valid nonimmigrant visa within the meaning of section 212(a)(26)(ii) of the Act.

Cross Reference: For waivers of and exemptions from documentary requirements see §§ 41.5, 41.6, and 41.91(d).

(27) *Prejudicial activities.* (Reserved)

(28) *Members or affiliates of proscribed organizations.* (i) The term "affiliate", as used in sections 212(a)(28)(C) and (I) of the Act, shall mean an organization which is related to, or identified with, a proscribed association or party, including any section, subsidiary, branch, or subdivision thereof, in such close association as to evidence an adherence to or a furtherance of the purposes and objectives of such association or party, or as to indicate a working alliance to bring to fruition the purposes and objectives of the proscribed association or party. An organization which gives, loans, or promises support, money, or other things of value for any purpose to any proscribed association or party shall be presumed to be an "affiliate" of such association or party, but nothing contained in this subdivision shall be construed as an exclusive definition of the term "affiliate."

(ii) Service, whether voluntary or not, in the armed forces of any country shall not be regarded, of itself, as constituting or establishing an alien's membership in, or affiliation with, any proscribed party or organization, and shall not, of itself, constitute a ground of ineligibility to receive a visa.

(iii) Voluntary service in a political capacity shall constitute affiliation with the political party or organization in power at the time of such service.

(iv) If an alien continues or continued his membership in or affiliation with a proscribed organization on or after reaching sixteen years of age, only his activities after reaching that age shall be pertinent to a determination whether the continuation of his membership or affiliation is or was voluntary.

(v) The term "operation of law", as used in section 212(a)(28)(I) of the Act, shall include any case wherein the alien without his acquiescence automatically became a member of or affiliated with a proscribed party or organization by official act, proclamation, order, edict, or decree.

(vi) In accordance with the definition of "totalitarian party" contained in section 101(a)(37) of the Act, a former or present voluntary member of, or an alien who was, or is, voluntarily affiliated with a nonCommunist party, organization, or group, or of any section, subsidiary, branch, affiliate or subdivision thereof, which during the time of its existence did not or does not advocate the establishment in the United States of a totalitarian dictatorship, shall not be considered ineligible under the provisions of section 212(a)(28)(C) of the Act to receive a visa, unless the alien is known or believed by the consular officer to advocate, or to have advocated, personally, the establishment in the United States of a totalitarian dictatorship, within the meaning of section 212(a)(28)(D) of the Act.

(vii) The words "actively opposed", as used in section 212(a)(28)(I)(ii) of the Act, shall be considered as embracing speeches, writings, and other overt or covert activities in opposition to the doctrine, program, principles, and ideology of the party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, of which the alien was formerly a voluntary member.

(29) *Espionage, sabotage, or other subversive activities.* (Reserved)

(30) *Alien accompanying excludable alien.* (Section 212(a)(30) of the Act inapplicable.)

(31) *Alien aiding illegal entrant.* (Reserved)

(b) *Aliens unable to establish nonimmigrant status.* (1) A nonimmigrant visa shall not be issued to an alien who has failed to overcome the presumption of immigrant status established by section 214(b) of the Act. An alien shall be considered to have established bona fide nonimmigrant status only if the consular officer is satisfied that his case falls within one of the nonimmigrant categories described in section 101(a)(15) of the Act or otherwise established by law or treaty.

(2) Consular officers are authorized in borderline cases under sections 101(a)(15) (D) and (P) to require the posting of a bond with the Attorney General. (See §§ 41.25 (a)(1) and 41.45(a)(4).)

(c) *Failure of application to comply with Act.* (1) An alien's visa application shall be considered as failing to comply with the provisions of the act or the regulations issued thereunder if: (i) The applicant fails to furnish the information to be included in such application as required by the Act or the regulations contained in this part;

(ii) The application contains a false or incorrect statement other than one which would constitute a ground of ineligibility under section 212(a)(19) or (19) of the Act;

(iii) The application is not supported by the documents required under the provisions of the Act or the regulations contained in this part;

(iv) The applicant refuses to be fingerprinted if required by the Act or the regulations contained in this part;

(v) The necessary fee is not paid for the issuance of a nonimmigrant visa; or

(vi) The application otherwise fails to meet the specific requirements of the Act for reasons for which the applicant is responsible.

(2) The grounds of refusal described in paragraph (c)(1) of this section shall not constitute a bar to the reconsideration of the application upon compliance with statutory or regulatory requirements, or to the consideration of a subsequent application submitted by the same applicant.

(d) *Former exchange visitors.* An alien who was admitted into the United States as an exchange visitor or who acquired such status after admission, who is within the purview of section 212(e) of the Immigration and Nationality Act as amended by the Act of April 7, 1970 (84 Stat. 116), shall not be eligible to apply for and receive a nonimmigrant visa under section 101(a)(15) (H) or (L) of the Act, notwithstanding the approval of a petition as provided in section 214(c) of the Act, unless

(1) It has been established that the alien has resided and has been physically present abroad in the country his nationality or last residence for an aggregate of at least 2 years following the termination of his exchange visitor status as required by section 212(e) of the Act, or

(2) The foreign residence requirement of section 212(e) of the Act has been waived by the Attorney General in his behalf.

(e) *Grounds for refusal of visas applicable to certain nonimmigrant classes.* (1) No visa may be issued in the A 1 or A 2 category to an alien who is considered by the Department to be persona non grata.

(2) Only those provisions of section 212(a) of the Act which are stated specifically with reference to each class apply to the following classes of nonimmigrants: (i) Class A 1: Section 212(a)(27) upon the direction of the President and the issuance of appropriate rules and regulations; (ii) Class A 2: Section 212(a) (27) and (29); (iii) Class C 2: Section 212(a)(26)(A), (27), (28) and (29); (iv) Class C 3: Section 212(a)(26)(A), (27) and (29); (v) Class G 1: Section 212(a)(27); (vi) Classes G 2, G 3, and G 4: Section 212(a) (27) and (29); (vii) Class G TO 1: Section 212(a)(27); (viii) Classes NATO 2, NATO 3, NATO 4 and NATO 6: Section 212(a) (27) and (29).

(3) An alien within class A 3 or G 5 shall be subject to all grounds of refusal specified in section 212 of the Act which are applicable to nonimmigrants in general except paragraph (28) of subsection (a) of that section.

(f) *Exception from passport validity requirement for certain nonimmigrants.* A nonimmigrant alien in whose case the passport requirement of section 212(a)(26) has not been waived and

(1) Who is within one of the classes of nonimmigrants described in section 101(a)(15)(A) (i) and (ii) of the Act, or

(2) Who is within one of the classes of nonimmigrants described in section 101(a)(15) (G)(i), (ii), (iii), and (iv) of the Act, or

(3) Who is within a class of nonimmigrants classifiable under the visa symbol NATO 1, NATO 2, NATO 3, NATO 4, or NATO 6, shall present a passport which is valid for a sufficient period to enable the alien to apply for admission at a port of entry prior to its expiration.

(Sec. 17, 79 Stat. 919; 8 U.S.C. 1201)

[Dept. Reg. 108.411, 24 FR 6670, Aug. 18, 1959]

Editorial Note: For Federal Register citations affecting § 41.91, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Cross Reference: For validity period of passport for alien classifiable under section 212(d)(8) of the Act, see § 41.6(e)(2).

Temporary Admission of Ineligible Aliens

§ 41.95 Procedure in recommending temporary admission of ineligible aliens.

(a) Except as provided in paragraph (b) of this section, a consular officer may, upon his own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien, submit a report to the Department for possible transmission to the Attorney General pursuant to the provisions of section 212(d)(3)(A) of the Act in the case of an alien who is classifiable as a nonimmigrant but who is known or believed by the consular officer to be ineligible to receive a nonimmigrant visa under the provisions of section 212(a) of the Act, other than paragraph (27) or (29).

(b) A consular officer may, in certain categories defined by the Secretary of State, recommend directly to designated immigration officers that an alien's temporary admission be authorized under the provisions of section 212(d)(3)(A) of the Act.

(c) When the Attorney General authorizes the temporary admission of an ineligible alien as a nonimmigrant and the consular officer is so informed, the consular officer may proceed with the issuance of a nonimmigrant visa to the alien, subject to the conditions imposed by the Attorney General.

(Sec. 212, 66 Stat. 182; 8 U.S.C. 1182)

[Dept. Reg. 108.48, 28 FR 274, Jan. 10, 1963]

Types of Nonimmigrant Visas

§ 41.100 Regular, diplomatic and official visas.

A nonimmigrant visa of any classification shall be issued as a regular nonimmigrant visa unless the alien falls within one of the classes entitled to a diplomatic or official visa as described in §§ 41.102 and 41.104.

[Dept. Reg. 108.411, 24 FR 6687, Aug. 18, 1959]

§ 41.102 Classes of aliens eligible to receive diplomatic visas.

(a) A nonimmigrant alien who is in possession of a diplomatic passport or its equivalent shall, if otherwise qualified, be eligible to receive a diplomatic visa irrespective of his classification under § 41.12 if he is within one of the following classes:

(1) Heads of States and their alternates;

(2) Members of a reigning royal family;

(3) Governors-general, governors, high commissioners, and similar high administrative or executive officers of a territorial unit, and their alternates;

(4) Cabinet ministers and their assistants holding executive or administrative positions not inferior to that of the head of a departmental division, and their alternates;

(5) Presiding officers of chambers of national legislative bodies;

(6) Justices of the highest national court of a foreign country;

(7) Ambassadors, public ministers, other officers of the diplomatic service and consular officers of career;

(8) Military officers holding a rank not inferior to that of a brigadier general in the U.S. Army or Air Force and Naval officers holding a rank not inferior to that of a rear admiral in the U.S. Navy;

(9) Military, naval, air and other attaches and assistant attaches assigned to a foreign diplomatic mission;

(10) Officers of foreign-government delegations to international organizations so designated by executive order;

(11) Officers of foreign-government delegations to, and officers of, international bodies of an official nature, other than international organizations so designated by executive order;

(12) Officers of a diplomatic mission of a temporary character proceeding to or through the United States in the performance of their official duties;

(13) Officers of foreign-government delegations proceeding to or from a specific international conference of an official nature;

(14) Members of the immediate family of a principal alien who is within one of the classes described in paragraphs (a) (1) to (11) inclusive, of this section;

(15) Members of the immediate family accompanying or following to join the principal alien who is within one of the classes enumerated in paragraphs (a) (12) and (13) of this section;

(16) Diplomatic couriers proceeding to or through the United States in the performance of their official duties.

(b) A nonimmigrant alien who is classifiable under section 101(a)(15)(G)(iv) shall, if otherwise qualified, be eligible to receive a diplomatic visa if he is—

(1) The Secretary General of the United Nations;

(2) An Under Secretary General of the United Nations;

(3) An Assistant Secretary General of the United Nations;

(4) The Administrator or the Deputy Administrator of the United Nations Development Program;

(5) An Assistant Administrator of the United Nations Development Program;

(6) The Executive Director of the—

(i) United Nations Children's Fund;

(ii) United Nations Institute for Training and Research;

(iii) United Nations Industrial Development Organization.

(7) The Executive Secretary of the—

(i) United Nations Economic Commission for Africa;

(ii) United Nations Economic Commission for Asia and the Far East;

(iii) United Nations Economic Commission for Latin America;

(v) United Nations Economic Commission for Europe.

(8) The Secretary General of the United Nations Conference on Trade and Development;

(9) The Director General of the Latin American Institute for Economic and Social Planning;

(10) The United Nations High Commissioner for Refugees;

(11) The United Nations Commissioner for Technical Co-operation;

(12) The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

(13) The spouse or child of any nonimmigrant alien listed in paragraphs (b) (1) through (12) of this section.

(c) Any other individual alien or class of aliens shall, if otherwise qualified, be eligible to receive a diplomatic visa upon the authorization of the Department, the Chief of a United States Diplomatic Mission, the Deputy Chief of Mission, the Counselor for Consular Affairs or the principal officer of a consular post not under the jurisdiction of a diplomatic mission.

[Dept. Reg. 108.633, 36 FR 4097, Mar. 11, 1971, as amended by Dept. Reg. 108.653, 37 FR 2139, Feb. 1, 1972; 37 FR 3051, Feb. 11, 1972]

§ 41.104 Classes of aliens eligible to receive official visas.

A nonimmigrant within one of the following categories shall, if otherwise qualified, be eligible to receive an official visa irrespective of his classification under § 41.12:

(a) An alien within one of the following classes who is not eligible to receive a diplomatic visa:

(1) Aliens within a class described in § 41.102(a) who are ineligible to receive a diplomatic visa because they are not in possession of a diplomatic passport or its equivalent.

(2) Aliens classifiable under section 101(a)(15)(A) of the Act;

(3) Aliens, other than those described in § 41.102(b), who are classifiable under section 101(a)(15)(G) of the Act, except those classifiable under section 101(a)(15)(G)(iii) of the Act unless the government of which the alien is an accredited representative is recognized de jure by the United States;

(4) Aliens classifiable under section 101(a)(15)(C) of the Act as nonimmigrants described in section 212(d)(8) of the Act;

(5) Members and members-elect of national legislative bodies.

(6) Justices of the lesser national and the highest state courts of a foreign country;

(7) Officers and employees of national legislative bodies proceeding to or through the United States in the performance of their official duties;

(8) Clerical and custodial employees attached to foreign-government delegations to, and employees of, international bodies of an official nature,

other than international organizations so designated by executive order, proceeding to or through the United States in the performance of their official duties;

(9) Clerical and custodial employees attached to a diplomatic mission of a temporary character proceeding to or through the United States in the performance of their official duties;

(10) Clerical and custodial employees attached to foreign government delegations proceeding to or from a specific international conference of an official nature;

(11) Officers and employees of foreign governments recognized de jure by the United States who are stationed in foreign contiguous territories or adjacent islands;

(12) Members of the immediate family, attendants, servants and personal employees of, when accompanying or following to join, a principal alien who is within one of the classes referred to or described in paragraphs (a) (1) to (11) inclusive of this section;

(13) Attendants, servants and personal employees accompanying or following to join a principal alien who is within one of the classes referred to or described in § 41.102(a) (1) to (13) inclusive;

(b) Any other individual alien or class of aliens for whom the acceptance of an application for an official visa has been authorized by the Department or by the Chief of a United States Diplomatic Mission, the Deputy Chief of Mission, the Counselor for Consular Affairs, or the principal officer at a consular post not under the jurisdiction of a diplomatic mission.

(Dept. Reg. 108.411, 24 FR 6687, Aug. 18, 1959, as amended by Dept. Reg. 108.433, 25 FR 4579, May 25, 1960; Dept. Reg. 108.633, 36 FR 4698, Mar. 11, 1971, 36 FR 5040, Mar. 17, 1971]

Application for Nonimmigrant Visas

§ 41.110 Place of application.

(a) *Applications for regular and official visas.* With the exception of certain aliens who are in the United States who may be issued nonimmigrant visas under the provisions of § 41.120, every alien applying for a regular or official visa shall make application to the consular officer in the consular district in which he has as his residence, except that a consular officer shall at the direction of the Department, or may in his discretion, accept an application for a nonimmigrant visa from an alien having no residence in the consular district if the alien is physically present therein.

(b) *Applications for diplomatic visas.* Application for a diplomatic visa shall be made at a diplomatic mission or at a consular office authorized to issue diplomatic visas, regardless of the nationality or residence of the applicant.

(Dept. Reg. 108.411, 24 FR 6687, Aug. 18, 1959, as amended by Dept. Reg. 108.422, 24 FR 11082, Dec. 31, 1959)

Cross Reference: For applications for crew-list visas see § 41.127(b).

§ 41.111 Supporting documents.

(a) *Authority to require documents and consideration accorded.* The consular officer shall have authority to require such documents as he may consider necessary to establish the alien's eligibility to receive a nonimmigrant visa. All such documents submitted and any other evidence adduced by the alien shall be given consideration by the consular officer, including briefs submitted by attorneys or other representatives.

(b) *Unobtainable documents.* In the event an alien establishes to the satisfaction of the consular officer that any document or record required under the authority of this section is unobtainable, the consular officer may accept in lieu of such document or record, other satisfactory evidence of the fact to which the document or record would, if obtainable, pertain. A document or other record shall be considered "unobtainable" if it cannot be procured without causing the applicant or a member of his family actual hardship other than normal delay and inconvenience.

(c) *Photographs.* Except as otherwise provided in this paragraph, every alien shall furnish with his application identical photographs of himself in such number as may be required in the discretion of the consular officer. The photographs shall reflect a reasonable likeness of the alien as of the time they are furnished, and shall be 1½ by 1½ inches in size, unmounted, without head covering, have a light background, and clearly show a full front view of the facial features of the alien. The reverse of each copy of the photograph shall be signed by the person executing the application (see § 41.115(a)) with the full name of the applicant. The photograph requirement may be waived, in the discretion of the consular officer, in the case of any alien who is (1) within a class of nonimmigrants described in sections 101(a)(15)(A), 101(a)(15)(G) or 212(d)(8) of the Act, (2) within a class of nonimmigrants classifiable under the visa symbol NATO-1 through NATO-7, (3) an applicant for a diplomatic visa, (4) an applicant for an official visa, or (5) under sixteen years of age. A notation of any such waiver shall be made in the space provided in the application form for the alien's photograph. A new photograph need not be required, in the discretion of the consular officer, if there is on file at the consular office a photograph which was submitted in connection with a prior nonimmigrant visa application and which still reflects a reasonable likeness of the applicant.

(d) *Police certificates.* (1) An alien shall be required to present a police certificate if the consular officer has reason to believe that he may have a police or criminal record, except that no police certificate shall be required in the case of an alien who is (i) within a class of nonimmigrants described in section 101(a)(15)(A) (i) or (ii), or section 101(a)(15)(G) (i), (ii), (iii), or (iv), or section 212(d)(8), of the Act, or (ii) within a class of nonimmigrants classifiable under the visa symbol NATO-1, NATO-2, NATO-3, NATO-4, or NATO-6.

(2) A police certificate is a certification by the police or other appropriate authorities stating what, if anything, their records show concerning the alie

(Sec. 2.2, 60 Stat. 193; 8 U.S.C. 1202)

(Dept. Reg. 108.411, 24 FR 6687, Aug. 18, 1959, 24 FR 6943, Aug. 27, 1959, as amended by Dept. Reg. 108.433, 25 FR 4579, May 25, 1960; Dept. Reg. 108.495, 28 FR 5375, May 30, 1963]

§ 41.112 Passports.

(a) *Passport requirement.* Except for certain persons in the A, C 3, G and NATO categories and persons for whom the passport requirement has been waived pursuant to the provisions of section 212(d)(4) of the Act, every applicant for a nonimmigrant visa shall present a passport as defined in section 101(a)(30) of the Act and § 41.1 which is valid for the period required by section 212(a)(26) of the Act.

(b) *Aliens included in a single passport.* The passport requirement referred to under paragraph (a) of this section may be met by the presentation of a passport including more than one person if such inclusion is authorized under the laws or regulations of the issuing authority and if a photograph of each person sixteen years of age or over to whom a visa is to be issued shall have been attached to the passport by the issuing authority.

(c) *Applicants for diplomatic visas.* Every applicant for a diplomatic visa shall be required to present a diplomatic passport, or the equivalent thereof, having the period of validity indicated in paragraph (a) of this section, unless such requirement has been waived pursuant to the authority contained in section 212(d)(4) of the Act or unless the case falls within the provisions of § 41.91(f).

(Dept. Reg. 108.422, 24 FR 11082, Dec. 31, 1959 Dept. Reg. 108.433, 25 FR 4579, May 25, 1960; Dept. Reg. 108.441, 25 FR 7019, July 23, 1960]

§ 41.113 Medical examination.

(a) An alien shall be required to be medically examined if (1) he is an applicant for a nonimmigrant visa as a fiancee or fiance of a U.S. citizen, or as the child of such applicant, or (2) the consular officer has reason to believe that a medical examination is advisable or that it would disclose that the alien is medically ineligible to receive a visa.

(b) At consular offices where medical officers of the United States Public Health Service are on duty, the alien's examination shall be conducted by such officers. If a medical officer of the United States Public Health Service is not available, the required exam

lination shall be conducted by a contract location physician or by a physician selected by the alien from a panel of physicians approved by the consular officer.

(c) A consular officer shall not include the name of a physician on the panel of physicians referred to in paragraph (b) of this section unless such physician has facilities to perform required serological and X-ray tests or is in a position to refer applicants to a qualified laboratory for such tests.

(Sec. 221, 66 Stat. 191, 8 U.S.C. 1201)

[Dept. Reg. 108.504, 29 FR 2763, Feb. 26, 1964, as amended by Dept. Reg. 108.670, 37 FR 14873, July 26, 1972; Dept. Reg. 108.684, 38 FR 4577, Feb. 16, 1973]

§ 41.111 Personal appearance.

(a) Except as otherwise provided in this section, every alien seeking a nonimmigrant visa shall be required to apply in person before a consular officer. The requirement of personal appearance may be waived in the discretion of the consular officer in the case of any alien who is:

(1) A child under 14 years of age,

(2) Within a class of nonimmigrants classifiable under the visa symbols A-1, A-2, A-3, C-2, C-3, G-1, G-2, G-3, G-4, G-5, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, or NATO-7,

(3) An applicant for a diplomatic or official visa,

(4) An applicant for a nonimmigrant visa under the provisions of section 101(a)(15)(I) of the Act,

(5) Within a class of nonimmigrants classifiable under the visa symbols C-1, E-1, or I,

(6) Within a class of nonimmigrants classifiable under the visa symbol J-1, who qualifies as a leader in a field of specialized knowledge or skill and who is the recipient of a U.S. Government grant, and the spouse and children of such an alien who qualify for J-2 classification,

(7) An airman applying for a nonimmigrant visa under the provisions of section 101(a)(15)(D) of the Act if the application is supported by a letter from the employing carrier certifying that the applicant is employed as an airman and the consular officer is satisfied in the individual case that the personal appearance of the alien is not necessary to a determination of his eligibility to receive a visa, or,

(8) A nonimmigrant in any category in whose case the responsible consular officer determines that a waiver of personal appearance in the individual case is warranted in the national interest or because of unusual circumstances, including hardship to the visa applicant.

(b) In the categories described in paragraphs (a) (2) and (3) of this section the filing of a visa application by the applicant may be waived in the discretion of the consular officer. In cases in which personal appearance is waived pursuant to paragraph (a)(8) of this section the filing of a visa application by the applicant may be waived in the discretion of the consular officer in hardship, emergency or national interest cases. In any case in which personal appearance is waived pursuant to any other subparagraph of paragraph (a) of this section, application for a visa shall be made on Form OF-156 as determined to be appropriate by the consular officer.

[Dept. Reg. 108.540, 31 FR 13080, Oct. 6, 1966, as amended by Dept. Reg. 108.506, 33 FR 7369, May 24, 1968; Dept. Reg. 108-739, 42 FR 32535, June 27, 1977]

§ 41.115 Application forms.

(a) *Aliens required to execute applications.* Every alien applying for a nonimmigrant visa shall make application therefor on Form OF-156, unless personal appearance is waived and submission of the application form by the applicant is not required pursuant to 22 CFR 41.114(b) or unless there is a Form OF-156 available at the consular office which can be appropriately amended to bring the application up to date. In cases in which the filing of the visa application is waived, the consular officer shall prepare a Form OF-156 on behalf of the applicant from the data available in the passport or other documents submitted. In the case of an alien under 16 years of age, or one physically incapable of making an application, the application may be made by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, the alien.

(b) *Additional information as part of application.* In any case in which the consular officer believes that the information provided in Form OF-156 is inadequate to determine the alien's eligibility to receive a nonimmigrant visa he may require the submission of such additional information as may be necessary or interrogate the alien on any matter which is deemed material. Any additional statements made by the alien shall become a part of the visa application. All documents required under the authority of § 41.111(a) shall be considered papers submitted with the alien's application within the meaning of section 221(g)(1) of the Act.

[Dept. Reg. 108.472, 26 FR 10051, Oct. 26, 1961, as amended by Dept. Reg. 108.540, 31 FR 13080, Oct. 6, 1966; Dept. Reg. 108.739, 42 FR 32535, June 27, 1977]

§ 41.116 Registration and fingerprinting.

(a) *Registration.* Form OF-156, when properly completed, shall constitute the alien's registration record for the purposes of section 221(b) of the Act.

(b) *Fingerprinting.* (1) The provisions of section 221(b) of the Act which require the fingerprinting of aliens in connection with their applications for visas are waived in pursuance of the authority contained therein for the nonimmigrant classes specified in paragraph (b)(1)(i) of this section, and in pursuance of the authority contained in section 8 of the Act of September 11, 1957 (71 Stat. 641; U.S.C. 1201(a) for the nonimmigrant classes specified in paragraph (b)(1)(ii) of this section: (i) an alien who is within a class of nonimmigrants enumerated in section 101(a)(15)(A) and section 101(a)(15)(G) of the Act, or an alien who is granted a diplomatic visa on a diplomatic passport or on the equivalent thereof (see § 41.1); (ii) an alien who is a national of a country whose government does not require fingerprinting in connection with an application for, or the issuance of, a visa to a national of the United States who intends to proceed to such country for a similar purpose, and who is classifiable as a nonimmigrant under the provisions of section 101(a)(15)(B), (C), (D), (E), (F), (H), (I), (J), (K), or (L) of the Act, including a nonimmigrant alien who is classifiable under the visa symbol NATO 1, NATO 2, NATO 3, NATO 4, NATO 5, NATO 6, or NATO 7.

(2) In the case of any nonimmigrant alien who is not exempted from the fingerprinting requirement under the provisions of this section, the fingerprints of such alien shall be taken in connection with his application for a nonimmigrant visa on Form AR 4 (Alien Registration Fingerprint Card) or in such other manner as may be authorized by the Department.

(3) An alien may be required by the consular officer, when he makes preliminary or informal application for a visa, to have a set of his fingerprints taken on Form AR-4 in the event such procedure is considered necessary for the purpose of identification, or investigation. Consular officers may, where necessary, use the fingerprint card in order to ascertain from the appropriate local or any other authorities whether they have any pertinent information concerning the applicant's eligibility to receive a visa.

[Dept. Reg. 108.411, 24 FR 6648, Aug. 18, 1959, 24 FR 6943, Aug. 27, 1959, as amended by Dept. Reg. 108.488, 28 FR 275, Jan. 10, 1963; Dept. Reg. 108.616, 35 FR 6125, Apr. 4, 1970; Dept. Reg. 108.739, 42 FR 32536, June 27, 1977]

§ 41.117 Signature.

When personal appearance is required, Form OF-156 shall be signed and verified by or on behalf of the applicant in the presence of the consular officer. If personal appearance is waived, and the submission of an application form by the alien is required, the form shall be signed by the applicant. If the filing of an application form is also waived, the consular officer shall so indicate on the Form OF-156 prepared on behalf of the applicant. The consular officer shall, in every instance, write his initials over or adjacent to his name and title stamp on the Form OF-156.

[Dept. Reg. 108.571, 32 FR 16098, Nov. 23, 1967, as amended by Dept. Reg. 108.739, 42 FR 32536, June 27, 1977]

Issuance of Nonimmigrant Visas

§ 41.120 Authority to issue visas.

(a) *Issuance outside the United States.* Any consular officer is authorized to issue regular and official visas. Diplomatic visas may be issued only by—

(1) A consular officer attached to a United States Diplomatic Mission, if he is authorized to do so by the Chief of the Mission, or

(2) A consular officer assigned to a consular office, if so authorized by the Department or by the Chief, the Deputy Chief, or the Counselor for Consular Affairs of the United States Diplomatic Mission in the country in which such consular office is located or, at a consular post not under the jurisdiction of a diplomatic mission, by the principal officer.

(b) *Issuance in the United States in certain cases.* The Director of the Visa Office of the Department and such other officers of the Department as he may designate are authorized, in their discretion, to issue nonimmigrant visas to—

(1) Qualified aliens classifiable under the visa symbol C-2 or C-3;

(2) Other qualified aliens who—

(i) Are properly classifiable under sub-paragraph (A) or (G) of section 101(a)(15) of the Act or under the visa symbols NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, or NATO-7;

(ii) Present appropriate evidence that—

(a) They have been lawfully admitted to the United States in such status or have, after admission, had their status changed to such status;

(b) Their period of authorized stay in such status has not expired; and

(c) They are currently maintaining such status; and

(iii) Intend, after a temporary absence, to reenter the United States in such status.

[Dept. Reg. 108.638, 36 FR 12160, June 26, 1971, as amended by Dept. Reg. 108.695, 39 FR 2480, Jan. 22, 1974]

§ 41.121 Visa fees.

(a) Unless on a basis of reciprocity no fee is chargeable, the fees for the issuance of visas, including official visas, to nonimmigrant nationals or stateless residents of each foreign country shall be collected in the amounts prescribed by the Secretary of State. If practicable, fees will correspond to the total of all visa, entry, residence, or other similar fees, taxes or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents.

(b) *Aliens exempted from fees.* Upon a basis of reciprocity, or as provided in section 13(a) of the Headquarters Agreement with the United Nations (61 Stat. 756; 22 U.S.C. 287, Note), no fee shall be collected for the issuance of a nonimmigrant visa to an alien of any of the following classes: (1) Nonimmigrants described in section 101(a)(15)(A) of the Act; (2) nonimmigrants described in section 101(a)(15)(G) of the Act; (3) nonimmigrants described in section 212(d)(8) of the Act; (4) persons entitled to pass in transit to the United Nations Headquarters District under the provisions of paragraph (3), (4) or (5) of section 11 of the Headquarters Agreement and who are issued C-2 visas as nonimmigrants under the provisions of section 101(a)(15)(C) of the Act; (5) nonimmigrants who are classifiable under the visa symbol NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, and NATO-7; and (6) nonimmigrants who are issued diplomatic visas.

(c) *Refund of fees.* A fee collected for the issuance or revalidation of a nonimmigrant visa is refundable only when the principal officer at a post or the officer in charge of a consular section determines that the visa was issued in error or could not be used as a result of action by the United States Government over which the alien had no control and for which he was not responsible.

(Sec. 281, 60 Stat. 230, 8 U.S.C. 1351)

[Dept. Reg. 108.411, 24 FR 6689, Aug. 18, 1959; 24 FR 6943, Aug. 27, 1959, as amended by Dept. Reg. 108.402, 28 FR 3261, Apr. 4, 1963 Reg. 108.507, 33 FR 16445, Nov. 9, 1968]

Cross References: For fee to be collected when more than one alien included in single visa see § 41.123.

For fee for revalidated or transferred visa see §§ 41.125(f) and 41.126(d).

For fee for crew-list visa see § 41.127(e).

§ 41.122 Validity, termination and replacement of visas.

(a) *Validity of visa not related to period of stay in the United States.* The period of validity of a nonimmigrant visa shall have no relation to the period of time the alien may be authorized by the immigration authorities to stay in the United States if, upon his arrival at a port of entry, he is admitted by those authorities.

(b) *Validity of visa pertains to period within which alien may apply for admission.* The period of validity of a nonimmigrant visa shall relate only to the period during which the alien to whom the visa was issued may use it in making application for admission into the United States.

(c) *Validity of visa and number of applications for admission.* Except as provided in paragraph (d) of this section a nonimmigrant visa shall have the validity prescribed in schedules made available to consular officers by the Department, which reflect, as nearly as practicable, the reciprocal treatment accorded U.S. nationals by the government of the country of which the alien is a national or stateless resident. Nonimmigrant visas issued pursuant to section 101(a)(15)(B) of the Immigration and Nationality Act may, in the discretion of the consular officer, be made valid indefinitely and for an unlimited number of applications for admission for aliens who: (1) Are nationals of countries which offer reciprocal treatment to U.S. citizens, as determined by the Department of State; (2) are in possession of a valid passport in which the visa may be stamped; and (3) have satisfied the consular officer that they are bona fide visitors and will continue to maintain that status for an indefinite period of time. An indefinite validity visa shall be valid for application for admission into the United States if the passport in which the visa is stamped has expired, provided the alien is also in possession of a valid passport issued by the appropriate authorities of the country of which the alien is a national as required by section 212(a)(26) of the Act and § 41.112.

(d) *Limitation on validity.* If warranted in an individual case, a consular officer may issue a nonimmigrant visa for (1) a period of validity which is less than that prescribed on a basis of reciprocity, (2) a number of applications for admission within the period of the validity of the visa which is less than that prescribed on a basis of reciprocity, (3) application for admission at a specified port or specified ports of entry in the United States, or (4) for use on and after a given date subsequent to the date of issuance.

(e) *Termination of validity by consular or immigration officer.* Notwithstanding any period of validity specified on the face of a nonimmigrant visa issued to an alien, a consular or immigration officer is authorized to terminate the validity thereof by physically cancelling such visa if –

(1) The alien obtains an immigrant visa or has his status adjusted to that of permanent resident;

(2) The alien is ordered excluded from the United States pursuant to section 235(c) or 236 of the Act;

(3) The alien is notified pursuant to section 235(b) of the Act by an immigration officer at a port of entry that he appears to be inadmissible to the United States and the alien requests and is granted permission to withdraw his application for admission;

(4) A final order of deportation or a final order granting voluntary departure with an alternate order of deportation is entered pursuant to 8 CFR Part 3, or 8 CFR Part 242;

(5) The alien has been permitted by the Immigration and Naturalization Service to depart voluntarily from the United States pursuant to 8 CFR 242.5;

(6) A waiver of ineligibility pursuant to section 212(d)(3)(A) of the Act on the basis of which the visa was issued to the alien is revoked by the Immigration and Naturalization Service;

(7) The visa is presented in connection with an application for admission to the United States by a person other

than the alien to whom it was issued; or

(B) The visa has been physically removed from the passport in which it was originally issued.

(f) *Termination of validity prior to alien's journey to the United States.* (1) Notwithstanding any period of validity specified on the face thereof, the validity of a nonimmigrant visa issued to an alien shall terminate if, prior to the embarkation of the alien upon a continuous voyage to the United States, the visa has been physically removed from the passport in which it was originally issued, or a consular officer finds that the alien has, subsequent to the issuance of such visa, become ineligible under section 212(a) of the Act to receive such visa or has ceased to be entitled to the nonimmigrant classification under section 101(a)(15) of the Act specified in such visa. Before making such a finding in an individual case, the consular officer shall, if practicable notify the alien and give him an opportunity to rebut and overcome the information on the basis of which the consular officer proposes to find that he has become ineligible to receive a nonimmigrant visa.

(2) Upon learning that a visa has been physically removed from the passport in which it was originally issued or upon a finding of ineligibility pursuant to paragraph (f)(1) of this section, the consular officer shall, if possible, physically cancel such visa. If the consular officer is unable to physically cancel the visa he shall give notice of the termination of validity to the master, commanding officer, agent, owner, charterer, or consignee of the carrier or transportation line on which it is believed that the alien intends to travel to the United States and shall promptly submit to the Department a full report of the facts of any case in which a finding of ineligibility to receive a visa has been made pursuant to paragraph (f)(1) of this section.

(g) *Replacement of visa.* A nonimmigrant visa the validity of which has been terminated pursuant to paragraph (e) or (f) of this section may be replaced, without fee, by a consular officer if it is determined that the basis for termination has been overcome and if the validity specified on the face thereof has not at that time expired.

(Sec. 221, 66 Stat. 191; 8 U.S.C. 1201; 8 U.S.C. 1104; sec. 104, 66 Stat. 174; 8 U.S.C. 1104; sec. 1090(b)(1), 01 Stat. 847)

[Dept. Reg. 108.411, 24 FR 6689, Aug 18, 1959]

EDITORIAL NOTE: For Federal Register citations affecting § 41.122, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 41.123 More than one alien included in visa.

If the spouse and unmarried minor children of a principal alien are included in one passport (see § 41.112(b)) a single nonimmigrant visa may be issued to include all eligible family members. Each alien must execute a separate application. The name of each family member shall be written in the space provided in the visa stamp. The visa fee to be collected shall be equal to the total of the fees prescribed by the Secretary of State, in accordance with the provisions of section 281 of the Act, for each alien included in the visa unless upon a basis of reciprocity a lesser fee is chargeable in such a case.

[Dept. Reg. 108.411, 24 FR 6689, Aug. 18, 1959]

§ 41.121 Procedures in issuing visas.

(a) *Visa evidenced by a properly identifiable insert in the passport.* Except as provided in paragraph (b) of this section the issuance of a nonimmigrant visa shall be evidenced by a properly identifiable insert placed in the alien's passport. The appropriate symbol, as prescribed in § 41.12, showing the classification of the alien, shall be included in the visa insert.

(b) *Cases in which visa may not be placed in passport.* In the following cases the visa shall be placed on the prescribed Form OF-232, to which a photograph of the alien shall be attached under seal:

(1) The alien's passport was issued by a government with which the United States does not have formal diplomatic relations, unless the Department has specifically authorized the placing of the visa insert in such passport;

(2) The alien's passport does not provide sufficient space for the visa insert;

(3) The passport requirement has been waived; or

(4) In other cases as authorized by the Department. In issuing a visa in such cases a notation shall be made on the Form OF-232 on which the visa is placed specifying the pertinent subparagraph of this paragraph under which the action is taken.

(c) *Indefinite Validity Visa.* In no instance may a visa issued pursuant to section 101(a)(15)(B) of the Act and having indefinite validity as provided in § 41.122(c) be placed in any document other than a valid passport.

(d) *Visa Insert.* (1) The nonimmigrant visa insert shall be in the format designated by the Department and contain the following data:

(i) The number of the visa;

(ii) The location of the issuing office;

(iii) The classification of the visa;

(iv) The date of issuance;

(v) The expiration date or, if an indefinite validity visa is issued on the basis of reciprocity, the word "indefinitely";

(vi) The number of applications for admission for which it is valid or, the word "multiple";

(vii) The name(s) of the person(s) to whom issued, unless the entry authorized by paragraph (e)(1) of this section is used;

(viii) The signature or facsimile signature of the issuing officer.

(2) The format of a diplomatic visa shall be the same as a regular nonimmigrant visa, except that it shall bear the title "DIPLOMATIC".

(3) The format of an official visa shall be the same as a regular nonimmigrant visa, except that it shall bear the title "OFFICIAL".

(4) All of the data required by paragraph (d)(1) shall be contained in a nonimmigrant visa issued pursuant to the Automated Nonimmigrant Visa Issuance System (ANVIS) except that the signature or facsimile signature of the issuing officer shall not be contained in such a visa. In addition, the ANVIS visa shall contain the date and place of birth of the person the whom the visa is issued with the country of birth being indicated by a three digit numeric code. The location of the issuing office will also be shown by a three digit numeric code.

(e) *Insertion of name; petition and derivative status notation.*

(1) Except as otherwise provided in this paragraph, the name or names of the alien or aliens to whom a nonimmigrant visa is issued shall be shown on the visa insert just after the word "to". Consular officers may, in their discretion, show the word "Bearer(s)" in lieu of the name of the alien and in lieu of the names of accompanying family members, if any, who are included in the alien's passport, in visas issued in passports or other travel documents meeting the requirements of section 101(a)(30) of the Immigration and Nationality Act, which have been designated by the Department as approved for this purpose. This procedure may not be applied in the case of aliens who are the beneficiaries of waivers granted under section 212(d)(3) of the Act.

(2) If the visa is being issued upon the basis of a petition approved by the Attorney General, the number of the petition, if any, the period for which the alien's admission has been authorized and the name of the petitioner shall be noted immediately below the visa insert.

(3) In the case of an alien who derived status from a principal alien, the name and position of the principal alien shall be written below the lower margin of the visa insert.

(f) *Period of validity.* If a nonimmigrant visa is issued for an unlimited number of applications for admission within the period of validity, the word "multiple" shall be appropriately placed in the visa insert. Otherwise the number of permitted applications for admission shall be shown in word form. The date of issuance and the date of expiration of the visa shall be shown in the appropriate places in the visa insert and shall indicate the day, month and year in that order. The standard three letter abbreviation for the month shall be used in all cases. If a visitor visa is to be made valid for an indefinite period the word "indefinite-

ly" shall be inserted in the space provided for the expiration date of the visa.

(g) *Restriction to specified port of entry.* If a nonimmigrant visa is to be valid for admission only at a specified port or ports of entry the name or names of such port or ports shall be entered immediately below the expiration date of the visa and shall be preceded by the word "at".

(h) *Signature.* Except in the case of a nonimmigrant visa issued pursuant to § 41.124(d)(4), the signature or facsimile signature of the consular officer issuing the visa shall appear in the visa insert.

(i) *Delivery of visa and disposition of Form OF-156.* In issuing a nonimmigrant visa the consular officer shall deliver the visaed passport, or the prescribed Form OF 232 which bears the visa, to the alien or, in any cases in which personal appearance has been waived, to the authorized representative. The executed Form OF-156 and any additional statements furnished by the alien in accordance with § 41.115(b) shall be retained in the consular files.

(j) *Disposition of supporting documents.* Original supporting documents furnished by the alien shall be returned to the alien for presentation, if necessary, to immigration authorities at the port of entry and a notation to that effect shall be made on the Form OF-156. Duplicates of the documents may be retained at the consular office in the discretion of the consular officer.

(k) *Replacement of erroneously issued visas.* A nonimmigrant visa, once issued and signed may not be amended or altered except as provided in § 41.120(c). A visa erroneously issued in relation to any item appearing in the visa insert shall be cancelled and replaced by a corrected visa. No fee shall be charged for a visa so replaced unless an incorrect fee was originally charged. The procedure prescribed by § 41.126(b) shall be followed except that the word "Corrected" shall be placed on the upper margin of the visa insert in place of the word "Transferred". The procedure described in this paragraph may not be used to include additional persons in the visa. (For regulations regarding the revocation or invalidation of a visa see § 41.134.)

(l) *Olympic Games, Pan American Games or other Regional Games.* Notwithstanding the provisions of paragraph (c) of this section, in the case of an alien who:

(1) Is a participant in the Summer or Winter Olympic Games, the Pan American Games or other Regional Games under the auspices of the International Olympic Committee, held in the United States; and

(2) Is the holder of an official identity card which has been issued for participation in such Games under the Olympic Rules Bylaws, which includes the signature of a competent authority of the participating government and the assurance of that government's recognition of the card for reentry by the bearer for an additional period of six months beyond the expiration date of the card, and which otherwise meets the requirements of sections 101(a)(30) and 212(a)(26) of the Immigration and Nationality Act,

a stamp consisting of:

(i) The imprint of the issuing post's rubber stamp seal; and

(ii) The signature of a consular officer affixed on the identity card

shall constitute a multiple entry B-1/B-2 visa valid for the duration of the card, or, in the case of a representative of foreign press, radio, film or other foreign information media, a multiple entry I visa valid for the duration of the card.

(Sec. 101, 64 Stat. 116; 8 U.S.C. 1101; sec. 104, 66 Stat. 174; 8 U.S.C. 1104; sec. 109(9)(1), 91 Stat. 847)

[Dept. Reg. 108.411, 24 FR 6678, Aug. 18, 1959]

EDITORIAL NOTE: For Federal Register citations affecting § 41.124, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 41.125 Revalidation of visas.

(a) *Conditions for revalidation.* A nonimmigrant visa may, in the discretion of the consular officer, be revalidated for the period or periods specified under paragraphs (c) and (d) of this section in the same classification at any visa-issuing office if (1) the alien's nationality is the same, (2) the visa is about to expire or has expired, or has become invalid by reason of having been used for the number of applications for admission specified therein, (3) the application for revalidation is made within one year of the date of expiration of the original visa or any revalidation thereof, and (4) the consular officer is satisfied that the alien is a bona fide nonimmigrant and is otherwise eligible to receive a nonimmigrant visa.

(b) *Waiver of personal appearance.* Except as indicated in paragraph (d) of this section, the consular officer may, in his discretion, waive the personal appearance of an alien who is an applicant for revalidation of his visa.

(c) *Period for which visa may be revalidated.* A nonimmigrant visa issued under the provisions of any paragraph of section 101(a)(15) of the Act may, in the discretion of the consular officer, be revalidated any number of times for the period and number of applications for admission prescribed by the Secretary of State.

(d) *Revalidation of visas for crewmen—(1) Airmen.* If the requirements of paragraph (a) of this section are met, a nonimmigrant visa issued under the provisions of section 101(a)(15)(D) of the Act to an airman may be revalidated any number of times for the period and number of applications for admission prescribed by the Secretary of State provided that (i) the application for revalidation is supported by a letter from the employing carrier certifying that the applicant is employed as an airman, or (ii) if the applicant is not employed at the time of application for revalidation, he appears in person in connection with his application and presents satisfactory evidence the he continues to be a bona fide airman.

(2) *Seamen.* If the requirements of paragraph (a) of this section are met, a nonimmigrant visa issued under the provisions of section 101(a)(15)(D) of the Act to a seaman may be revalidated any number of times for the period and number of applications for admission prescribed by the Secretary of State provided that (i) the application for revalidation is supported by a letter from the employing carrier certifying that the applicant is employed as a seaman and that he is in possession of a valid alien crewman landing permit and identification card (Form I-184) issued by the Immigration and Naturalization Service, or (ii) if the applicant is not employed at the time of application for revalidation, he appears in person in connection with his application and submits satisfactory evidence that he continues to be a bona fide seaman.

(3) *Crewmen in transit.* A nonimmigrant visa issued under the provisions of section 101(a)(15)(C) of the Act to an airman or seaman who is being issued, or is in possession of, an individual D visa, may be revalidated any number of times for the period and number of applications for admission prescribed by the Secretary of State if the conditions set out in paragraph (a) of this section and in paragraphs (d)(1) and (2) of this section are met.

(e) *Procedure for revalidation.* In revalidating a nonimmigrant visa, the consular officer shall follow the procedure prescribed in § 41.124. An alien seeking revalidation of a nonimmigrant visa shall make application therefor as prescribed in § 41.115. A photograph of the alien shall not be required unless it appears to the consular officer that the alien has not previously submitted a photograph in connection with an application for a visa and that the alien does not come within any of the excepted classes described in § 41.111(c). The visa stamp shall be placed in the alien's passport and all pertinent data contained in the original visa shall be transferred to the revalidated visa. The word "REVALIDATED" shall be inserted on the upper margin of the visa stamp.

(f) *Automatic revalidation of visas in certain cases.* (1) An expired nonimmigrant visa issued pursuant to the provisions of section 101(a)(15) (F) or (J) of the Act, or an expired or unexpired nonimmigrant visa issued pursuant to the provisions of another paragraph of section 101(a)(15) if the nonimmigrant status has been changed by the Immigration and Naturalization Service to that of a nonimmigrant as defined in paragraph (F) or (J), may be considered to be automatically revalidated to the date of application for

readmission to the United States and converted, if necessary, to classification under paragraph (F) or (J), in the case of a nonimmigrant alien who:

(i) Is applying for readmission into the United States after an absence not exceeding 30 days solely in contiguous territory or adjacent islands other than Cuba;

(ii) Has maintained and intends to resume his status under paragraph (F) or (J) in the United States;

(iii) Presents, or is the accompanying spouse or child of an alien who presents, a current Form I-20 (in the case of student) or Form DSP 66 (in the case of an exchange visitor) issued by the school the student has been authorized to attend by the Immigration and Naturalization Service, or by the sponsor of the exchange program in which he has been authorized to participate by the Immigration and Naturalization Service, and endorsed by the issuing school official or program sponsor to indicate the period of initial admission or extension of stay authorized by the Immigration and Naturalization Service;

(iv) Is applying for readmission within the authorized period of initial admission or extension of stay;

(v) Is in possession of a valid passport; and

(vi) Does not require the authorization of his temporary admission into the United States under section 212(d)(3) of the Act.

(2) An expired nonimmigrant visa issued pursuant to the provisions of any paragraph of section 101(a)(15) of the Act may be considered to be revalidated to the date of application for readmission to the United States and an expired or unexpired nonimmigrant visa issued pursuant to the provisions of any paragraph of section 101(a)(15) of the Act may, if the original nonimmigrant status has been changed by the Immigration and Naturalization Service to another nonimmigrant status, be considered to be revalidated to the date of application for readmission to the United States and converted to that changed status in the case of a nonimmigrant alien who:

(i) Has maintained nonimmigrant status in the United States and is in possession of an Arrival-Departure Card (Form I-94) endorsed by the Immigration and Naturalization Service to show an unexpired period of initial admission or extension of stay;

(ii) Is applying for readmission into the United States after an absence not exceeding 30 days solely in contiguous territory;

(iii) Intends to resume nonimmigrant status in the United States;

(iv) Is applying for readmission within the authorized period of initial admission or extension of stay;

(v) Is in possession of a valid passport; and

(vi) Does not require the authorization of his temporary admission into the United States under section 212(d)(3) of the Act.

(g) *Revalidation in the United States in certain cases.* The Director of the Visa Office of the Department and such other officers of the Department as he may designate are authorized, in their discretion, to revalidate nonimmigrant visas, including diplomatic visas, for—

(1) Qualified aliens classifiable under the visa symbol C-2 or C-3;

(2) Other qualified aliens who—

(i) Are properly classifiable under subparagraph (A), (E), (G), (H), (I), or (L) of section 101(a)(15) of the Act or under the visa symbols NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, or NATO-7;

(ii) Present appropriate evidence that—

(a) Their period of authorized admission in such status has not expired; and

(b) They are currently maintaining such status; and

(iii) Intend, after a temporary absence, to reenter the United States in such status.

(h) *Fee for revalidation.* The fee for the revalidation of a nonimmigrant visa shall be that prescribed for the issuance of such a visa, if any: *Provided, however,* That

(1) When the visa was issued valid for a lesser number of applications for admission or for a period of validity less than the maximum permitted by reciprocity, it may be revalidated for the remaining number of applications for admission and validity permitted without the payment of an additional fee, and

(2) No fee shall be charged in the case of a visa considered to be automatically revalidated pursuant to the provisions of paragraph (f) of this section.

[Dept. Reg. 108.488, 28 FR 275, Jan. 10, 1963]

EDITORIAL NOTE: For Federal Register citations affecting § 41.125, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 41.126 Transfer of visas.

(a) *Conditions for transfer.* Upon the request of the bearer a valid nonimmigrant visa shall be transferred from one travel document to a different travel document which is valid for the required period if he is found eligible to receive such a visa, except in a case in which the travel document containing the original visa has been lost or stolen. A visa may be transferred only if the new passport indicates that the alien has the same nationality he had when the visa was issued.

(b) *Procedure for transfer.* Application for the transfer of a nonimmigrant visa from one passport to another shall be made on an appropriate form. The consular officer may, in his discretion, waive the personal appearance of the alien. The issuance of a transferred visa shall be evidenced by placing the visa stamp with all of the original data in the alien's passport. The validity of the transferred visa shall be the same as that of the original visa. The transferred visa shall be valid for the number of applications for admission remaining as of the date of the transfer. The word "Transferred" shall be inserted on the upper margin of the visa stamp.

(c) *Cancellation of visa in old passport.* Upon transfer of a visa to a new travel document the visa issued in the original passport shall be canceled, unless the passport has been surrendered to the issuing authority, except that where the visa is being transferred for only one of several persons included in it, only the name of that person shall be stricken from the visa originally issued.

(d) *Fee for transfer.* No fee shall be charged for the transfer of a valid nonimmigrant visa.

[Dept. Reg. 108.411, 24 FR 6690, Aug. 18, 1959, as amended by Dept. Reg. 108.684, 38 FR 4577, Feb. 10, 1973]

§ 41.127 Crew-list visas.

(a) *Definition.* A crew-list visa is a nonimmigrant visa issued on a manifest of crewmembers of a vessel or aircraft which includes all aliens listed in the manifest unless otherwise stated.

(b) *Application.* (1) A list of all alien crewmen who are serving on board a vessel or aircraft which is proceeding to the United States and who are not in possession of valid individual entry documents shall be submitted, in duplicate, to a consular officer on Immigration and Naturalization Service Form I-418 (Crew List) or such other forms as may be prescribed. In lieu of a manifest on Form I-418, the manifest of alien crewmen serving on board an aircraft may be submitted on the International Civil Aviation Organization (ICAO) manifest, or on Customs Form 7507 (General Declaration) whenever the number of crewmen does not exceed the number which can be listed on the form. In cases of alien seamen serving on vessels, the duplicate copy of Form I-418, shall contain in column (4) the date, city and country of birth of each alien seaman listed who does not have in his possession a valid individual visa or an Immigration and Naturalization Service Form I-551 and, in column (5), the place of issuance and the authority issuing the passport held by such alien seaman. The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(2) The submission of the crew list together with such other information as the consular officer may deem necessary to determine the eligibility of an individual crewman to be included in the crew-list visa shall be considered the formal application for a crew-list visa. No other application form shall be required.

(3) The manifest should list separately, in alphabetical order, those alien crewmen who are to be consid-

because of entry without inspection or lack of required documents.

(d) *Validity.* A nonresident alien Mexican border crossing identification card issued solely or in combination with a B-1/B-2 visitor visa pursuant to the provisions of this section shall be valid until invalidated under the same conditions as provided in § 41.122(e) for the termination of nonimmigrant visas or revoked under the same conditions and procedures as provided in § 41.134 for the revocation of nonimmigrant visas. A nonresident alien Mexican border crossing identification card previously issued by a consular officer in Mexico on Form I-186 or Form I-586 shall be valid until revoked or voided regardless of any expiration date on the card.

(e) *Invalidation or revocation.* A nonresident alien Mexican border crossing identification card issued solely or in combination with a B-1/B-2 visitor visa pursuant to the provisions of paragraph (a) or (b) of this section may be invalidated pursuant to the provisions of § 41.122(e) or revoked pursuant to the provisions of § 41.134. Upon invalidation or revocation of such a card, the consular or immigration officer shall cancel the card by writing or stamping the word "canceled" plainly across the face of the card and indicating the location of the consular or immigration office at which the card was invalidated or revoked.

(f) *Voidance of Mexican border crossing cards issued in Mexico on Form I-186 or Form I-586.* A consular officer in Mexico may declare void, without notice, a nonresident alien Mexican border crossing card previously issued in Mexico on Form I-186 or Form I-586, upon a finding that the holder is ineligible to receive a nonimmigrant visa. The card shall be surrendered immediately upon voidance.

(g) *Replacement.* When a nonresident alien Mexican border crossing identification card issued solely or in combination with a B-1/B-2 visitor visa under the provisions of this section has been lost, mutilated or destroyed, the person to whom such card was issued may apply for a new card under the applicable provisions of this section. A nonresident alien whose border crossing identification card previously issued on Form I-186 or Form I-586 by a consular officer in Mexico has been lost, mutilated or destroyed, may apply for a combined border crossing identification card and B-1/B-2 visitor visa at any consular office in Mexico, provided the alien qualifies under the provisions of paragraph (b) of this section.

(Sec. 101, 66 Stat. 170, 8 U.S.C. 1101; sec. 109(b), 91 Stat. 847)

[Dept. Reg. 108.835, 48 FR 48080, Oct. 20, 1983]

§ 41.129 Nonresident alien Canadian border crossing identification cards.

(a) *Aliens eligible to apply.* Under the conditions prescribed in this section a consular officer assigned to a consular office in Canada may issue a nonresident alien border crossing identification card, as that term is defined in section 101(a)(6) of the Act, to a nonimmigrant alien who satisfactorily establishes that he:

(1) Has been admitted to Canada for permanent residence as a "Landed Immigrant";

(2) Seeks to enter the United States from Canada, or from Mexico if he has visited no countries other than Mexico and the United States since departing Canada, and only as a bona fide temporary visitor for business or pleasure as defined in section 101(a)(15)(B) of the Act for periods of stay not exceeding 6 months; and

(3) Is otherwise eligible to receive a temporary visitor visa or is the beneficiary of a waiver under section 212(d)(3)(A) of the Act of a ground of ineligibility which is valid for multiple applications for admission into the United States and for an indefinite period of time and which contains no restrictions as to extensions of temporary stay or itinerary.

(b) *Application for Canadian border crossing identification cards.* Application for a nonresident alien Canadian border crossing identification card shall be made on Form OF-156, accompanied by evidence of the applicant's "Landed Immigrant" status in Canada; a valid or expired passport or other travel document showing his origin, identity, and nationality, if any, and containing a photograph of the bearer if over the age of 14; and a photograph 1½ inches square if the applicant is over the age of 14. Personal appearance of the applicant may be waived at the discretion of the consular officer.

(c) *Issuance and format of border crossing cards.* A nonresident alien Canadian border crossing identification card shall consist of a stamp placed in the alien's passport or other travel document by a consular officer in Canada. Such stamps shall be numbered serially by each consular office beginning with the number 1 on each July 1, shall be in the format prescribed by the Department, and shall contain the following data:

(1) The post symbol;

(2) The number of the card;

(3) The title and location of the issuing office;

(4) The date of issuance;

(5) The name(s) of the person(s) to whom issued; and

(6) The signature and title of the issuing officer.

(d) *Signature of border crossing identification cards.* The consular officer who issues a nonresident alien Canadian border crossing identification card shall affix his signature to, and indicate his title in, the border crossing card stamp.

(e) *Validity of border crossing identification cards.* A nonresident alien Canadian border crossing identification card issued pursuant to the provisions of this section shall be valid until canceled.

(f) *Cancellation of border crossing identification cards.* (1) A nonresident alien border crossing identification card shall be canceled by a consular officer if information is developed indicating that the holder of such a card is ineligible to receive a nonimmigrant visa or by a District Director of the Immigration and Naturalization Service if he finds that the alien has violated the conditions of his admission into the United States.

(2) In canceling such a card the consular officer shall write or stamp the word "Canceled" plainly across the face of the border crossing card stamp, shall show the location of the consular office concerned and shall follow the procedures set forth in § 41.130.

(3) In canceling such a card the District Director shall write or stamp the word "Canceled" plainly across the face of the border crossing card stamp and shall show the location of the District Office of the Immigration and Naturalization Service concerned.

[Dept. Reg. 108.611, 36 FR 15745, Aug. 18, 1971, as amended by Dept. Reg. 108.719, 42 FR 32536, June 27, 1977]

Refusal and Revocation of Nonimmigrant Visas

§ 41.130 Procedure in refusing individual visas.

(a) *Refusal procedure.* If a consular officer knows or has reason to believe that an alien is ineligible to receive a visa on grounds of ineligibility which cannot be overcome by the presentation of additional evidence, Form OF-156, if practicable, shall be executed before the refusal is recorded. If the alien fails to execute a visa application after being informed of a ground of ineligibility to receive a nonimmigrant visa, the visa shall be considered refused. The consular officer shall then insert the pertinent data on Form OF-156 with the reasons for the refusal and the form shall be filed in the consular office. In all cases the applicant shall be informed of the provision of law, or regulations issued thereunder, upon which the refusal is based. When refusing a nonimmigrant visa the consular officer may return the original of all supporting documents furnished by the alien with his application. The duplicate of each document upon which the refusal is based and the duplicate of each document which indicates a possible ground of ineligibility to receive a visa, whether or not related to the ground of refusal, shall be retained at the consular office with the memorandum of refusal. Duplicates of other documents may be returned to the alien in the consular officer's discretion.

(b) *Review of refusals at consular offices.* If the grounds of ineligibility upon which the visa was refused cannot be overcome by the presentation of additional evidence, the princi-

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SURVEY OF TRANSPOLAR STOPOVER VISITOR MARKET

Executive Summary

Commissioned by: Anchorage Convention & Visitors Bureau

Conducted by: Alaska Pacific University

June 1983

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1. INTRODUCTION

The Anchorage economy would benefit substantially if the gap between summer and winter capacity utilization could be narrowed by increasing off-season business. One potential market consists of international travelers who fly through Anchorage en route to other final destinations and who are able to allocate several days to a stopover "vacation" in Anchorage. Thus, ACVB commissioned Alaska Pacific University to survey passengers during their "one hour" stops at the Anchorage airport international terminal. The fundamental purpose of this study was to perform exploratory market research to determine if this untapped market potential actually exists, and to obtain basic data about its characteristics.

As part of the contract, the consultants have provided ACVB with a computer printout of data tables as well as a computer tape of data and programs. The most significant information is summarized in the tables of this report and briefly discussed here.

The main conclusions are summarized below:

- There is a market!

  - 84% indicated an interest in visiting Anchorage
  - 80% vacation at least once a year between September and May
  - 62% like winter oriented vacations
  - 50% could have planned a stop THIS trip
  - half would stop for 4 to 7 days

  and

  - 76% have landed in Anchorage before

- "Alaskan" activities are the most significant attraction for those interested in visiting Anchorage

  - 70% would like to visit a glacier/mountain
  - 40% would like to take a dog sled ride
  - 1/3 are interested in each of the following: downhill skiing, city sightseeing, and ice fishing.

- How to influence passengers interested in visiting Anchorage:

  - Highly important factors in deciding:
    75% selected uniqueness of Alaska
    55% selected cost of food and lodging
    53% selected desirability of activities
  - Only 1/4 of the Asian, and 1/2 of the non-Asian passengers knew that airlines allowed stopovers.
  - Prior commitments and/or no vacation time were the main reasons why passengers could not have stopped this trip.

Based on this research, the consultant team concludes that a large, virtually untapped market exists. While developing a marketing strategy was not part of this assignment, we believe that travelers can be efficiently reached while they are "captive" in the terminal during the "one-hour" stopovers. We also believe that the large number of of "repeat" passengers - 86% of business travelers - represents the most promising market for these increased efforts.

Organization of the Report

The balance of this report briefly explains the project methodology (section 2) and then presents a summary of the significant results in a series of tables:

- Table 3.1 focuses on evidence for market feasibility by providing the percentages of the total sample, and of several major sub-samples, that had landed in Anchorage before, understood stopover privileges, liked and took winter-oriented vacations, and had an interest in visiting Anchorage.

- Tables 4.1 through 4.4 are based only on the 84% of the passengers who indicated they are interested in visiting Anchorage. The tables indicate what these potential visitors want to do on a stopover, by providing the percentage of each group that is interested in each activity.

- Tables 5.1 through 5.8 are based on the same 84% of the passengers who indicated they are interested in visiting Anchorage. The tables provide data useful in developing strategies for increasing the number of stopovers by indicating the reasons why a stop could not be made, and the importance of various factors in deciding on an Anchorage visit.

- Table 6.1 summarizes responses for those questions not included in the other tables, including demographic information on the sample. Tables 6.2 and 6.3 are the English and Japanese versions of the questionnaire.

2. METHODOLOGY

This section briefly describes the steps and procedures that were followed in conducting this survey.*

A stratified sample of 707 passengers was gathered between January 28 and May 13, 1983, with additional pretests during October and December of 1982. Because of language difficulties during the pretest, an even split of English and Japanese questionnaires was used for the main sample. The survey was conducted at the international terminal of the Anchorage airport by asking passengers in the hallways, seating areas, and customs area to respond to questions read from a survey form. To ensure that the questions were properly understood and answered, passengers did not complete the questionnaire on their own, although they could read the questionnaire from the English or Japanese versions of the form. The sample was designed so that all the days of the week, all flights, and all months during the survey period were sampled. English and Japanese speaking surveyors of various ages and both sexes were used to eliminate a potential source of bias. Although a completely random sample could not be achieved, no serious bias seems to have occured.

The survey forms were coded and keypunched on a continuous basis so that interim checks on the survey procedures and results could be conducted. Coded results were analyzed using the Statistical Package for the Social Sciences (SPSS) and the resulting 1800 pages of tables were winnowed down into those that are presented in this Executive Summary. The complete computer runs were annotated and delivered to the Anchorage Convention and Visitors Bureau, along with a computer tape of the data and the programs so that further analysis can be conducted by ACVB.

* Any questions regarding specific statistical procedures used in this study should be addressed to Dr. Ted Eschenbach, School of Engineering, University of Alaska, Anchorage - 3221 Providence Drive, Anchorage, Alaska 99508 or call (907) 786-1862.

In interpreting the percentages presented here, the following guidelines should be used:

If the sample had been totally random, the overall results would be accurate within plus or minus 3%. Due to the stratification and selection process, the sample was not totally random and thus the results are accurate to approximately plus or minus 5%. In comparing results, differences of less than 5% cannot be assumed to be significant. This rough estimate should be increased for smaller sub-groups; for example, 10% for sub-groups of 100.

While the stratification process produced sub-groups large enough to examine as sub-groups for meaningful results, the overall percentages are sometimes affected by differences between the sub-groups. Thus, some tables include a "weighted" column in addition to the "all" column This weighted column adjusts the sample based on a sex/race stratification.

Table Interpretation

All tables in this report are constructed by combining individual sub-sample columns into master tables. Each column is individually tied to the row labels without reference to any other column. For example, Table 3.1 actually consists of 12 "individual" tables. As indicated by the column headings, many of these "individual" columns can also be usefully compared. Unless otherwise noted, table entries in a column indicate what percentage of the column's sub-sample met the row label characteristic or condition. The actual number of persons in each sub-sample is given in the bottom row. Using Table 3.1 as an example, the "Asian Male" column can be interpreted as showing that for this sub-group:

- 83% had landed in Anchorage before with an average of 7.4 landings.
- 27% knew airlines allowed stopovers and 48% could have planned a stopover this trip.
- There were 277 Asian males in the sub-sample.

3. THERE IS A MARKET

Table 3.1

INDICATIONS OF MARKET FEASIBILITY

		ALL	WEIGHTED ALL	WHY TRAVEL? BUSINESS	BUSINESS & PLEASURE	VACATION	BUSINESS & PLEASURE ADDED DAYS	ASIAN MALE	ASIAN FEMALE	NON-ASIAN MALE	NON-ASIAN FEMALE	SPEAKS ENGLISH NO	SPEAKS ENGLISH YES
Landed in Anchorage before	Yes (%)	76	77	86	68	55	66	83	68	75	64	62	79
	Mean #	5.4	5.6	7.8	3.1	1.3	2.8	7.4	3.0	5.6	2.1	3.2	6.0
	Median #	2.0	2.0	4.0	1.0	1.0	1.0	4.0	1.0	2.0	1.0	1.0	2.0
Knew airlines allow stopovers		39	33	39	44	34	48	27	26	50	52	23	42
Could have planned a stopover		51	47	53	52	44	47	48	38	54	55	35	54
Used stopovers on other routes		38	31	38	50	29	57	25	21	52	52	12	43
Frequency of September to May vacations	several each yr	37	41	31	33	51	27	40	55	27	32	43	36
	once a year	43	41	46	50	32	49	43	35	46	43	36	44
	every 2-5 yrs	3	2	3	4	4	6	1	0	6	7	1	4
	Never	17	16	20	13	13	18	16	10	21	18	20	17
Like winter oriented vacations		62	62	62	64	62	67	58	63	71	54	63	62
Would like to visit Anchorage		84	83	84	88	81	87	84	80	84	84	74	86
Potential length of visit	1-3 days	30	29	34	35	17	39	25	28	37	25	19	32
	4-7 days	52	52	52	46	55	44	58	47	47	54	58	50
	8-14 days	13	14	12	12	18	6	13	17	11	15	12	14
Have visited Anchorage during the last year		6	5	6	6	5	8	6	1	6	8	2	7
Sub-sample size		707	707	425	100	176	63	277	81	226	104	123	584

4. ACTIVITIES PREFERRED BY THOSE WISHING TO VISIT ANCHORAGE

Table 4.1

ACTIVITIES PREFERRED BY THOSE WISHING TO VISIT ANCHORAGE

(By Why Traveling/Off-season Vacation Pattern/"Special" Groups)

	ALL-WEIGHTED	ALL	WHY ARE YOU TRAVELING? BUSINESS	BUSINESS & PLEASURE	VACATION	BUSINESS & PLEASURE WHO ADDED DAYS	HOW OFTEN DO YOU VACATION BETWEEN SEPTEMBER & MAY? SEVERAL TIMES EACH YEAR	ONCE A YR	ONCE EVERY 2-5 YRS	NEVER	COULD HAVE PLANNED A STOP	FIRST TIME IN U.S.	LANDED IN ANCHORAGE BEFORE
Visit glacier/ mountain	72	74	75	72	72	75	76	75	76	66	77	67	76
Dog sled ride	38	41	40	46	41	46	38	41	48	45	43	43	40
Downhill skiing	32	34	37	37	26	38	31	37	57	29	35	32	34
City sightseeing	31	34	33	40	33	42	28	36	57	33	36	38	33
Ice fishing	30	34	35	44	25	40	32	37	24	35	41	32	36
Snowmobiling	20	23	26	20	18	18	19	25	43	16	26	17	23
Cross-country skiing	20	27	28	25	27	31	23	29	71	21	28	23	25
Museum visit	19	24	20	34	27	40	21	25	43	20	24	20	23
Visit gold mine	17	25	25	28	22	38	24	24	52	22	27	18	24
Hot air ballooning	16	18	17	20	22	20	17	19	29	19	18	18	18
Concert, theatre, or ballet	12	15	11	20	24	24	12	18	38	10	16	17	13
Shopping	11	14	13	14	15	15	13	14	24	14	16	13	13
Sub-sample size	586	586	353	89	143	55	206	252	21	100	319	176	433

Table 4.2

ACTIVITIES PREFERRED BY THOSE WISHING TO VISIT ANCHORAGE (By Country)

	ALL	JAPAN	BRITAIN	GERMANY	FRANCE	SCANDINAVIA	NETHERLANDS BELGIUM	OTHER EUROPE	N. AMERICA	AUSTRALIA	OTHER
Visit glacier/ mountain	74	73	77	79	77	58	64	69	92	86	86
Dog sled ride	41	38	51	32	41	39	59	41	58	67	27
Downhill skiing	34	30	36	36	47	39	36	31	42	52	27
City sightseeing	34	26	43	53	32	33	46	38	38	43	68
Ice fishing	34	32	21	32	44	42	27	52	38	57	27
Snowmobiling	23	16	45	21	29	19	32	31	29	38	32
Cross-country skiing	27	14	38	38	47	67	32	41	42	38	18
Museum visit	24	16	26	23	24	36	46	35	33	62	27
Visit gold mine	25	10	53	28	44	44	46	28	38	43	32
Hot air ballooning	18	13	28	15	29	22	27	14	42	29	23
Concert, theatre, or ballet	15	8	23	17	18	28	32	14	29	33	27
Shopping	14	9	17	19	12	17	9	17	25	38	18
Sub-sample size	586	298	47	47	34	36	22	29	24	21	22

Table 4.3

ACTIVITIES PREFERRED BY THOSE WISHING TO VISIT ANCHORAGE (By Sex, Race, Age)

	ALL	ASIAN		NON-ASIAN		AGE				
		MALE	FEMALE	MALE	FEMALE	1-20	21-30	31-45	46-60	61- & UP
Visit glacier/ mountain	74	77	60	71	82	38	72	77	78	61
Dog sled ride	41	35	37	40	63	50	39	46	36	13
Downhill skiing	34	31	26	44	30	25	42	40	23	4
City sightseeing	34	23	35	40	48	33	20	34	43	52
Ice fishing	34	34	14	41	35	8	27	38	39	30
Snowmobiling	23	17	15	28	30	4	23	26	20	26
Cross-country skiing	27	11	11	43	48	25	30	27	26	22
Museum visit	24	11	22	30	47	8	12	23	34	52
Visit gold mine	25	11	6	34	56	4	15	27	33	26
Hot air ballooning	18	8	20	25	33	25	18	19	16	17
Concert, theatre, or ballet	15	4	14	20	35	8	13	12	23	17
Shopping	14	8	9	12	36	25	8	12	20	9
Sub-sample size	586	228	65	188	87	24	128	266	143	23

Table 4.4

ACTIVITIES PREFERRED BY THOSE WISHING TO VISIT ANCHORAGE (By Profession)

	ALL	PROFESSIONAL TECHNICAL	MANAGER	SALES	SKILLED WORKER	TEACHER PROFESSOR	STUDENT	CLERICAL	HOUSEWIFE	ARTIST	OTHER
Visit glacier/ mountain	74	79	64	81	70	85	46	75	73	70	84
Dog sled ride	41	41	40	40	52	55	41	32	48	57	21
Downhill skiing	34	40	38	41	22	35	35	29	15	26	16
City sightseeing	34	38	29	29	22	65	22	18	45	39	47
Ice fishing	34	41	32	38	35	15	14	25	30	52	32
Snowmobiling	23	26	18	26	22	40	16	18	18	22	21
Cross-country skiing	27	30	32	27	22	30	24	14	25	39	36
Museum visit	24	27	19	16	17	50	11	5	40	44	42
Visit gold mine	25	28	31	29	26	35	5	3	38	26	21
Hot air ballooning	18	18	15	16	22	30	30	2	33	26	21
Concert, theatre, or ballet	15	15	14	11	17	35	14	6	30	17	16
Shopping	14	15	13	11	4	10	14	8	13	26	37
Sub-sample size	586	214	72	73	23	20	37	63	40	23	19

5. DECISION FACTORS AND RESTRICTIONS

Table 5.1

FACTORS THAT ARE HIGHLY IMPORTANT TO THOSE WISHING TO VISIT ANCHORAGE

(By Why Traveling/Off-season Vacation Pattern/"Special" Groups)

	ALL	WHY ARE YOU TRAVELING?			HOW OFTEN DO YOU VACATION BETWEEN SEPTEMBER & MAY				COULD HAVE PLANNED A STOP	NEVER IN U.S. BEFORE	LANDED IN ANCHORAGE BEFORE
		BUSINESS	BUSINESS & PLEASURE	VACATION	SEVERAL TIMES EA YR	ONCE A YR	EVERY 2-5 YRS	NEVER			
Uniqueness of Alaska	75	78	73	70	67	81	91	76	78	72	76
Cost of food & lodging	55	53	58	58	55	54	52	59	55	59	54
Desirability of activities	53	51	57	57	48	58	76	50	55	44	53
Chance to break up trip	44	46	41	39	38	46	57	42	46	38	44
Weather & temperature	36	32	43	42	33	36	29	44	36	36	37
Chance to stop in the U.S.	29	27	31	33	24	30	52	30	28	32	27
Sub-sample size	573	436	84	142	202	246	21	97	315	171	421

Table 5.2

FACTORS THAT ARE HIGHLY IMPORTANT TO THOSE WISHING TO VISIT ANCHORAGE

(By Country)

	ALL	JAPAN	BRITAIN	GERMANY	FRANCE	SCANDINAVIA	BELGIUM	OTHER EUROPE	NORTH AMERICA	AUSTRALIA	OTHER
Uniqueness of Alaska	75	69	81	78	74	92	81	79	87	95	81
Cost of food & lodging	55	58	57	41	47	53	43	46	48	75	57
Desirability of activities	53	36	75	72	62	81	76	61	74	90	67
Chance to break up trip	44	32	49	59	59	64	29	75	48	65	57
Weather & temperature	36	34	32	37	32	42	29	39	39	35	62
Chance to stop in the U.S.	29	21	43	24	29	69	19	46	4	40	48
Sub-sample size	573	292	47	46	34	36	21	28	23	20	21

Table 5.3

FACTORS THAT ARE HIGHLY IMPORTANT TO THOSE WISHING TO VISIT ANCHORAGE

(By Sex, Race, & Age)

		NON-ASIAN				AGE				
	ALL	ASIAN MALE	ASIAN FEMALE	NON-ASIAN MALE	NON-ASIAN FEMALE	1-20	21-30	31-45	46-60	61 & UP
Uniqueness of Alaska	75	71	61	81	85	39	65	81	80	70
Cost of food & lodging	55	57	57	48	59	61	56	52	55	70
Desirability of activities	53	32	44	72	77	39	51	53	56	74
Chance to break up trip	44	30	24	58	64	30	26	47	52	65
Weather & temperature	36	32	40	39	38	35	31	33	41	65
Chance to stop in the U.S.	29	21	15	35	41	35	28	28	28	48
Sub-sample size	573	224	62	184	85	23	127	257	141	23

Table 5.4

FACTORS THAT ARE HIGHLY IMPORTANT TO THOSE WISHING TO VISIT ANCHORAGE
(By Profession)

	ALL	PROFESSIONAL TECHNICAL	MANAGER	SALES	SKILLED WORKER	TEACHER PROFESSOR	STUDENT	CLERICAL	HOUSEWIFE	ARTIST	OTHER
Uniqueness of Alaska	75	78	80	83	64	95	50	61	85	81	63
Cost of food & lodging	55	53	42	53	46	75	58	60	69	52	68
Desirability of activities	53	58	59	51	64	80	42	23	54	57	63
Chance to break up trip	44	51	54	42	41	45	28	16	44	48	53
Weather & temperature	36	37	33	38	32	40	39	19	44	48	58
Chance to stop in the U.S.	29	32	36	17	46	30	25	11	39	33	37
Sub-sample size	573	211	69	72	22	20	36	62	39	21	19

Table 5.5

WHY AN ANCHORAGE STOPOVER COULD NOT BE PLANNED (By Why Traveling/ Off-season Vacation Pattern)

		WHY ARE YOU TRAVELING?			HOW OFTEN DO YOU VACATION BETWEEN SEPT & MAY			
	ALL	BUSINESS	BUSINESS & PLEASURE	VACATION	SEVERAL TIMES EA YR	ONCE A YR	EVERY 2-5 YRS	NEVER
Prior Committments	34	40	33	23	28	40	25	40
No Vacation Time	25	29	31	18	25	28	38	23
Other	21	14	19	36	26	17	12	19
Company Policy	13	15	8	3	12	11	13	9
Traveling with a group	7	1	8	20	9	5	12	8
Sub-sample size	260	146	36	66	91	101	8	47

Table 5.6

WHY AN ANCHORAGE STOPOVER COULD NOT BE PLANNED (By Country)

	ALL	JAPAN	BRITAIN	GERMANY	FRANCE	SCAND'NAVIA	NETHERLANDS BELGIUM	OTHER EUROPE	N. AMERICA	AUSTRALIA	OTHER
Prior Committments	34	24	46	63	21	50	67	53	30	50	36
No Vacation Time	25	25	29	25	50	33	0	27	30	25	18
Other	21	29	4	6	14	8	17	13	20	0	27
Company Policy	13	12	21	6	14	0	8	0	10	25	9
Traveling with a group	7	10	0	0	0	8	8	7	10	0	9
Sub-sample size	260	128	24	16	14	12	12	15	10	4	11

Table 5.7

WHY AN ANCHORAGE STOPOVER COULD NOT BE PLANNED (By Sex, Race, & Age)

	ALL	ASIAN		NON-ASIAN		AGE				
		MALE	FEMALE	MALE	FEMALE	1-20	21-30	31-45	46-60	61 & UP
Prior Committments	34	26	18	52	37	20	27	31	52	67
No Vacation Time	25	30	15	22	34	13	28	30	22	22
Other	21	26	39	10	12	53	22	24	8	0
Company Policy	13	14	3	14	6	0	12	13	8	0
Traveling with a group	7	4	24	2	11	13	11	3	10	11
Sub-sample size	260	96	33	81	35	15	64	108	50	9

Table 5.8

WHY AN ANCHORAGE STOPOVER COULD NOT BE PLANNED (By Profession)

	ALL	PROF. TECHNICAL	MANAGER	SALES	SKILLED WORKER	TEACHER PROFESSOR	STUDENT	CLERICAL	HOUSEWIFE	ARTIST	OTHER
Prior Committments	34	34	37	50	57	25	25	29	33	29	14
No Vacation Time	25	31	33	21	14	50	13	21	17	43	14
Other	21	13	17	18	14	12	29	39	28	21	43
Company Policy	13	19	10	7	14	0	0	4	6	7	29
Traveling with a group	7	3	3	4	0	13	33	7	17	0	0
Sub-sample size	260	77	30	28	14	8	24	28	18	14	7

6. ADDITIONAL TABULATIONS AND QUESTIONNAIRES

Figure 6.1

TABULATIONS OF QUESTIONS NOT INCLUDED IN PREVIOUS TABLES

1. Airline and flight number?

JAL	39%
Lufthansa	13%
AirFrance	13%
SAS	11%
British Airways	9%
Korean Airlines	7%
KLM	5%
Sabena	4%

2-6. See other tables

7. Are you traveling alone? Yes 54% No 46%

If no, number in group: average number= 12.4

Breakdown:

2-4 members	62%
5-20 members	18%
12-50 members	15%
50+ members	5%

Type of Group:

51%	Business
28%	Family/friends
21%	Packaged tour

8. Why are you traveling?

61%	Business
14%	Business & Pleasure
	Did you add days to your trip for pleasure activities? Yes 91% No 9%
25%	Vacation

9-11. See other tables.

Figure 6.1 (continued)

12. How far in advance did you plan this trip?

Days	Percentage Responding
1-7	17%
8-14	11%
15-30	26%
31-90	24%
91+	21%

13. How did you book/arrange this trip?

66%	Travel agent or tour operator	22%	Secretary or Office
9%	Airline office	3%	Other

14. Where do you live?

51%	Japan	6%	Other European
9%	British Isles	4%	North America
8%	West Germany	3%	Australia/New Zealand
6%	Scandinavia	1%	Other Orient
5%	France	3%	Other
4%	Belgium/Netherlands		

15. Which languages do you speak?

83%	English	54%	Japanese
29%	French	2%	Korean
32%	German	3%	Other Asian
7%	Italian	21%	Other European

Figure 6.1 (continued)

16. What is your job or profession?

Professional/Technical	37%
Sales	13%
Manager/Administrative	13%
Clerical	10%
Housewife	7%
Student	6%
Skilled Worker	4%
Artist	3%
Teacher/Professor	3%
Other	4%

17. Please, how old are you?

10-20	4%
21-30	22%
31-45	45%
46-60	24%
61+	5%

ANCHORAGE STOPOVERS ONLY

18. how many times have you stopped over in Anchorage?

1% Spring 1% Summer

1% Fall 2% Winter

19. Why did you choose to stop over then?

Business	29%
Sightseeing	21%
Outdoor Activities	4%
Visit Friends	4%
Other	42%

Figure 6.1 (continued)

SURVEY CONTROL BLOCK

Male 73% Female 27%

Racial Group
47% White
52% Oriental
.1% Indian
.7% Black
.4% Other

Where interviewed?
79% Seating Area
18% Hallway
3% Customs area

Day of the Week	% interviewed	Date	% interviewed
Sunday	9%	1/28-1/31	26%
Monday	11%	2/16-2/18	22%
Tuesday	14%	3/8-3/13	18%
Wednesday	8%	4/1-4/4	14%
Thursday	9%	4/21-4/24	14%
Friday	39%	5/10-5/13	16%
Saturday	10%		

Table 6.2

Stopover Questionnaire

ENGLISH VERSION

ALASKA PACIFIC UNIVERSITY

for

THE ANCHORAGE CONVENTION &
VISITORS BUREAU

1. Airline and flight number? _____

2. How many times have you landed in Anchorage before? _____

   If more than 3, how often in the last year? _____

   Have you visited Anchorage on any of these trips?

   Yes ____ No _____

3. Did you know airlines allow you to stop over here? Yes ____ No ____

4. Could you have planned a stop, if you had wanted to? Yes ____ No ___

   If not, Why?
   _____ Company Policy
   _____ Traveling with a group
   _____ No vacation time to use for such a stop
   _____ Prior committments/schedule too tight
   _____ Other (please note)

   _____

5. Have you used stopover privileges on other routes? Yes ____ No ____

6. Have you visited the United States before? Yes ____ No ____

7. Are you traveling alone? Yes ____ No ____

   If no, number in group:_____ Type of Group:

   ____Business (corporate) group
   ____Family/friends
   ____Packaged tour group

8. Why are you traveling? _____ Business
   _____ Business & Pleasure
   Did you add days to your trip for pleasure activities? Yes ___ No ____
   _____ Vacation

9. How often do you vacation during the months September to May? (not including June, July, or August)

   ____Several times each year
   ____Once a year
   ____Every other year
   ____Once in five years
   ____Never
   ____

10. Do you like winter oriented vacations? Yes ____ No ___

FOLD

11. If you had time, would you be interested in visiting Anchorage? Yes ____ No ____

    If yes, which activities would interest you? Check all that apply:

    ____ City sightseeing
    ____ Shopping
    ____ Visit to a glacier/mountain
    ____ Hot air ballooning
    ____ Visit to a gold mine
    ____ Concert, theatre, or ballet
    ____ Museum visit
    ____ Ice fishing
    ____ Dog sled ride
    ____ Snowmobiling
    ____ Downhill skiing
    ____ Cross country skiing
    ____

    In deciding, how important would the following be?

	Importance	
	High	Low
Cost of Food & lodging	____	____
Chance to break up trip	____	____
Chance to stop in U.S.	____	____
Desirability of activities	____	____
Uniqueness of Alaska	____	____
Weather & temperature	____	____

    For how long would you stop over? _____

12. How far in advance did you plan this trip? _____

13. How did you book/arrange this trip?

    ____ Travel agent or tour operator
    ____ Airline office
    ____ Secretary or Office
    ____ Other

14. Where do you live? _____ (city) _____ (country)

15. Which languages do you speak?

    ____ English
    ____ French
    ____ German
    ____ Italian
    ____ Japanese
    ____ Korean
    ____ Other Asian
    ____ Other European

16. What is your job or profession? _____

17. Please, how old are you? _____

ANCHORAGE STOPOVERS ONLY

18. How many times have you stopped over in Anchorage?

____ Spring ____ Summer

____ Fall ____ Winter

19. Why did you choose to stop over then?

_____

SURVEY CONTROL BLOCK

Male ____ Female ____ How many helped? ____

Racial Group
____ White
____ Oriental
____ Indian
____ Black
____ Other

Where interviewed?
____ Seating area
____ Hallway
____ Customs area

Time of day _____ Day of the Week _____ Date _____

Table 6.3

ストップオーバー（一時滞在）　質問書

アンカレッジ観光局ではアンカレッジにてストップオーバーされる皆様に簡単な質問書を用意しお答えいただいております。皆様のご協力をお願い申し上げます。

1．ご利用の航空会社およびその便名：＿＿＿＿＿＿航空、＿＿＿＿＿便。

2．以前に、数時間のトランジット滞在も含めて、何回アンカレッジにて搭機されましたか。＿＿＿回。3回以上とお答の方、昨年は何回お来しになりましたか。＿＿＿回。
それらの旅行でアンカレッジに（一泊以上）滞在されましたか。
はい＿＿＿　いいえ＿＿＿

3．航空会社がここでのストップオーバー（一時滞在）を許しているのをご存知でしたか。
はい＿＿＿　いいえ＿＿＿

4．もしあなた自身が希望されれば、ここに滞在できたとお考えになりますか。
はい＿＿＿　いいえ＿＿＿

なぜ（いいえ）なのでしょうか。＿会社の規則だから
＿グループで旅行中だから
＿一時滞在にあてるような休暇時間がないため
＿事前に予定が確定／余裕のないスケジュール
＿その他＿＿＿＿＿＿＿＿＿＿＿＿＿＿

5．他のルート（航空路）でストップオーバーの特権・特典を使用されたことがありますか。
はい＿＿＿　いいえ＿＿＿

6．以前にアメリカ合衆国を訪問されたことがありますか。
はい＿＿＿　いいえ＿＿＿

7．おひとりでご旅行中ですか。　はい＿＿＿　いいえ＿＿＿
おひとりでなければ何名のグループですか。＿＿＿名。
グループの種類：＿＿＿ビジネス（会社関係）のグループ
＿＿＿家族・友人
＿＿＿パッケージツアー　グループ

8．旅行目的は何でしょうか。＿＿＿商用
＿＿＿商用兼観光、観光の為に特に時間をさきますか。
はい＿＿＿　いいえ＿＿＿
＿＿＿休暇／観光

9．9月から翌年5月までの間で、どれ程休暇がとれますか。
数回
一回
二年に一回
五年に一回
なし

10．冬に組む休暇はお好きですか。　はい＿＿＿　いいえ＿＿＿

11．もし時間があればアンカレッジを訪ずれてみたい、とお考えですか，はい___いいえ_____
はいとお答えの方、どの様なことに興味をお持ちでしょうか。

___市内観光
___ショッピング
___氷河／峡谷ツアー
___熱気球乗り（ホットエアー　バルーン）
___金鉱探訪
___コンサート、映画、バレー
___博物館
___アイス　フィッシング
___犬ソリ乗り
___スノーモービル
___ダウンヒル　スキー
___クロスカントリー　スキー

決定要素として、次の事項はどの程度重要でしょうか。

	重要性 高	低
食事と宿泊料金	___	___
旅行中の滞在（ストップオーバー）の機会	___	___
アメリカに入国するかの機会	___	___
アラスカでの活動の好み	___	___
アラスカのユニークさ	___	___
気候および気温	___	___

どの程度の期間滞在したいとお考えですか，_____日間。

12．今回のご旅行は、どれくらい以前からご計画でしたか，_____

13．どのようにご予約／手配なさいましたか。

_____旅行代理店あるいは旅行業者　___航空会社あるいは事務所を通じて
_____直接会社から　___その他

14．どこにお住いですか．_____市／区_____州／府／道／県

15．この質問をお答えください．

英　語　　日本語
フランス語　　韓国語
中国語　　その他アジア
イタリア語　　その他ヨーロッパ

16．あなたのご専門あるいはご職業は何ですか，_____

17．最後に、あなたの年齢をお聞かせ下さい，_____

ご協力ありがとうございました。

アンカレッジでストップオーバーされるあるいはされた皆様

18．何回アンカレッジでストップオーバーされましたか，____春　____夏
____秋　____冬

19．なぜストップオーバーすることになさいましたか。

SURVEY CONTROL BLOCK

Male ____　Female ____　How many helped? ____

Racial Group ____White ____Oriental ____Indian ____Black ____Other

Where interviewed? ____Seating area ____Hallway ____Customs area

Time of day _____　Day of the Week _____　Date _____

Alaska State Legislature
House of Representatives

P.O. BOX 110623
ANCHORAGE, ALASKA 99511
(907) 346-1986

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

REPRESENTATIVE STEVEN RIEGER
DISTRICT 8, SEAT B

March 13, 1985

VISA WAIVERS FOR CERTAIN VISITORS

What are the current guidelines for nonimmigrant visitors in this country?

Current law requires almost all nonimmigrant visitors to this country to have a valid nonimmigrant visa before being admitted into the United States -- that is, most nonimmigrant visitors must obtain a visa in their home country before beginning their trip. The present process of applying for a visa is time consuming and involves considerable pre-planning. (For more detail, please see federal regulations.)

What is a "visa waiver"?

A visa waiver, as defined in S. 529, is special permission to a nonimmigrant visitor from any eligible foreign country to remain in the United States for up to 90 days without having obtained the customary nonimmigrant visa, subject to the provisions of Section 213 of S. 529.

What is S. 529?

S. 529, the Immigration Reform and Control Act of 1983, was a bill introduced in the United States Senate by Senator Alan K. Simpson of Wyoming. Different versions of the bill passed the U.S. Senate and the U.S. House of Representatives, but the bill ultimately died in Conference Committee when Conferees became bogged down in details of the bill. The visa waiver portion of the bill was never controversial and had broad support in both houses.

S. 529 is similar to H.R. 1510 by Representative Romano L. Mazzoli. The legislation is often cited as the Simpson-Mazzoli bill.

(For more information, please see "Immigration Reform Bill Dies As Compromise Efforts Fail". Congressional Quarterly. October 13, 1984. p. 2623.)

[redacted]

— Backup

What was Section 213 of S. 529?

Section 213 was the section of S. 529 which outlined the pilot visa waiver program. (Please see reprint of this section of the bill from the Congressional Record.)

Who could have received a visa waiver under the pilot program?

S. 529 would have allowed the Secretary of State and the Attorney General, acting in conjunction, to establish a pilot program to grant visa waivers to aliens who

(1) are visiting in the United States for no more than 90 days;

(2) are nationals of countries which extend reciprocal privileges to U.S. citizens and which are designated as pilot countries under the visa waiver program;

(3) complete a form requesting a visa waiver and execute a waiver of repeal and review;

(4) have round trip, nonrefundable, nontransferable, open-dated transportation tickets with eligible carriers; and

(5) have been determined not to represent a threat to the welfare, safety or security of the United States.

What were the other provisions of Section 213?

This section of the bill also required

(1) establishment of an automated monitoring system for nonimmigrant visitors who receive visa waivers;

(2) designation of countries to participate in the pilot program;

(3) establishment and enforcement of guidelines regarding acceptable standards of compliance of visitors who receive visa waivers; and

(4) establishment of agreements with foreign carriers to allow patrons of their services to participate in the visa waiver program.

Who in Alaska supports the creation of a visa waiver program?

The Alaska Visitors' Association, the Anchorage Convention and Visitors' Bureau and the state's Division of Tourism support creation of a visa waiver program.

What benefits would a visa waiver program offer to Alaska?

A visa waiver program would help the state to gain access to the 1.5 million travellers who annually transit the state. A study by the Anchorage Convention and Visitors' Bureau showed that among those passengers interviewed, all of whom were passing through the state during transpolar flights, 83% were interested

in visiting Alaska. Subsequent questions revealed that one main obstacle to such a stopover was the requirement of a nonimmigrant visa.

What are the prospects for passage of a bill creating a visa waiver program?

According to informed sources in Washington, the visa waiver proposal has broad support from the tourist industry and other interest groups, from both Houses of Congress, and from the Reagan Administration. With such interest, chances for passage of a bill which creates a visa waiver program similar to that outlined in Section 213 of S. 529 are very good.

What does HJR 20 do to help?

One representative of the tourist industry who was involved in the effort to gain passage of this specific provision in the Senate said that the main obstacle to passage of the visa waiver program this year was the low level of awareness among the general public. Strong vocal support could get a bill like this through the Congress.

HJR 20 is an opportunity for the legislature to make a strong statement of support for the creation of a visa waiver program, and to broaden public awareness of the issue and the program's potential benefits to Alaskans.

/wtl

OBJECTIVES AND PERFORMANCE MEASURES	PRIOR YEAR FY 84		CURRENT YEAR PLAN FY 85	BUDGET YEAR FY 86			
				AGENCY			GOVERNOR'S BUDGET
	PLAN	ACTUAL		ADJUSTED BASE	INCREMENT/ DECREMENT	REQUEST	
5. Number of consumer and travel trade shows serviced.	13	13	13	13		13	
Number of qualified inquiries generated.	11.0	11.2	14.0	14.0		14.0	
6. Visitor industry research project completed.	1	2	3	3		3	
7. Number of matching grants awarded.	58	79	74	49	25	74	
8. The number of nonresident visitors to Alaska in 1986.	**	687.7	725.8	762.3	7.1	769.4	
9. The number of full-time equivalent jobs attributable to nonresident visitation in 1986.	**	9.8	10.4	10.9	.1	11.0	
10. Dollar value of in-State sales to nonresident visitors in 1986.	**	$613,500.0	$683,700.0	$754,900.0	$6,000.0	$760,900.0	

* Due to depletion of FY '84 brochure supplies, 112.9, FY '84 inquiries were held for fulfillment with 1985 brochures.

** No meaningful figure was established for this year as a study was in progress to establish a valid data base.

B4 BRU PERFORMANCE PLAN

AGENCY Commerce & Economic Development

PROGRAM Economic Development

BRU Tourism

PAGE 2 OF 2

REVISED DATE

FY 86

1970

(6/84)-b4

Testimony for: House Labor & Commerce Committee
in support of HJR20

Chairman: Mike Navarre, members of the Labor & Commerce Committee

My name is Reyn Bowman. I am president of the Anchorage Convention & Visitors Bureau. I apologize for not being able to present this testimony in person today due to a Board of Directors meeting.

The ACVB is Anchorage's way to attract and serve visitors. We are a non-profit vehicle for public/private cooperation combining the resources of 600 members with half of the visitor paid bed tax.

ACVB is also pleased along with the AVA trade association and 124 other partners to be a part of statewide cooperative marketing with the Alaska Division of Tourism.

For more than two decades Alaska has been a fuel stop on the trans-polar air route between Europe and Asia. This year more than 1.3 million passengers will transit the route.

In 1983, ACVB conducted the first research to define the potential of stopover visitors. The survey showed tremendous market potential for Alaska and helped us enlist the moral support of the Alaska Visitors Association and the marketing participation of the Division of Tourism and its other cooperative marketing partners. We have provided copies of this research and we hope you find it helpful.

There are a number of very significant barriers to development of this market. Many are being very rapidly addressed.

* ACVB is working with DOT/PF and the Department of Commerce & Economic Development to upgrade the information center we operate in the Overseas Terminal of the Anchorage International Airport. This project should be complete later this year.

* ACVB and the Division of Tourism are putting increased promotional dollars into brochures and advertising to enlist future stopovers and to educate passengers on the requirements.

* We hope to join with a high level representative of the State later this year in meetings with each of the International Air Carriers to enlist their cooperation with assurances that stopover visitors will be encouraged in the time periods most beneficial to the carriers and the State...September-May. This is, fortunately, the same period of interests to a great number of potential stopover visitors.

But there remain a number of political obstacles to stopover visitors. While the bilateral treaties all permit stopovers, they are inhibited by:

* IATA (International Air Transport Association) refusal to permit stopovers on discount or special fares.

* the requirement of a U.S. Visa and

ACVB and many other organizations have worked for several years in support of a bill to grant visa waiver to citizens traveling to the U.S. from countries with a low incidence of Customs/Immigration violations and which grant reciprocal priviledges to U.S. citizens travelling abroad. The waiver would apply to many other U.S. ports in addition to Alaska.

Unfortunately, the widely popular visa waiver legislation has been fatally caught up in other immigration reform controversies a la the ill fated Simpson Mazzoli bill last year.

We strongly support the resolution HJR20 before the Alaska State Legislature in support of visa waiver and encouraging Alaska's congressional delegation to continue to work to eliminate this and other political barriers to stopover visits on the transpolar route.

The benefits are very dramatic. Stopover visitors will not only add directly to the economy. Through stopover promotions, transpolar passengers will develope interest in Alaska as a destination. This interest will help us retain transpolar air service long after the carriers will be able to over-fly Alaska. The resultant revenues will continue to provide 50% of the funds that go to subsidize Alaska's airport system.

Thank you for this opportunity to testify.

M E M O R A N D U M

To: All Members, House Labor and Commerce Committee

From: Roger Poppe, Committee Staff

Date: March 13, 1985 Wednesday

Subject: Overview, HJR 20

On March 13 the Committee met in Room 102 Capitol Building at 1:15-2:45 pm on HJR 20: An Act relating to Tourism and International Airline Travelers Visa Waivers, by Rieger.

This resolution would encourage our Congressional delegation to push for federal legislation that would ease the visa restrictions for non-immigrant visitors on a nation-wide basis, either through separate legislation or as part of some renewed effort to revive the Immigration Bill during the current session of Congress.

This resolution was not brought up in the legislature last year nor is there a companion piece in the Senate this year. The resolution grew out of a piece of federal legislation, S 529, The Immigration Reform and Control Act of 1983, otherwise referred to as the Simpson-Mazzolli Bill. This bill died in Congress last year after differences over its funding, as well as disagreements over many of the bill's points by different lobby groups.

However, one of the subject areas of the bill that was non-controversial dealt with visa waivers for certain types of visitors. That particular section of the bill is reproduced from the Congressional Record in your file (the House and Senate versions were identical).

For your reference, the federal law for Admission Qualifications for non-immigrants is spelled out in detail in 3 USC, 1182, and the particular part of federal law this resolution deals with is found in your file on page 187, Chp. 12 of the federal statutes, (26). Further, the federal regulations on this matter can be found in Title 22, paragraph 41.110: Application for Non-imigrant visas (see page 170 in your file on Subchapter E- Visas).

Finally, there is a survey that was conducted by Alaska Pacific University in June of 1983 for the Anchorage Convention and Visitor's Bureau that demonstrates that a potential market is available among the international travelers who fly through Anchorage year-around. These travelers could provide additional money for the local economy if they were allowed to stop off for a few days without having to go through the hassles of obtaining visas in advance from their home country.

People testifying on this bill will include representatives from the Anchorage Convention and Visitor's Bureau, and the AVA.

Sponsors Assessing 1985 Outlook:

Immigration Reform Bill Dies As Compromise Efforts Fail

For the third year in a row, a sweeping immigration reform measure died in Congress, the victim of swirling interest-group pressures and election-year political qualms.

The legislation (S 529) had been on its deathbed for two weeks. But supporters worked into the final days of the 98th Congress, hoping for agreement on a House-Senate conference report in time for approval by both chambers. The effort failed Oct. 11, two days after conferees deadlocked on a money issue. The dispute was over the amount of federal funds states should get to defray social-service costs anticipated from a proposal to grant amnesty to millions of illegal aliens. *(Weekly Report p. 2473)*

In 1982, an immigration bill passed the Senate but died on the House floor in the last days of a lame-duck session. Last year, S 529 passed the Senate but a companion bill was blocked in the House by Speaker Thomas P. O'Neill Jr., D-Mass. This year, that measure (HR 1510) passed June 20 by a 216-211 margin. *(1982 Almanac p. 405; 1983 Almanac p. 287)*

Try Again Next Year?

Sen. Alan K. Simpson, R-Wyo., and Rep. Romano L. Mazzoli, D-Ky., chief sponsors of the legislation, offered differing assessments about the prospects for action next year.

Simpson said he was ready to "crank up" a new bill early in 1985. Mazzoli said he was going back to Kentucky to think about the matter.

Several members, including Simpson and Mazzoli, said a great deal will depend on who is in the White House in 1985. They said that leadership from the president is critical to getting a bill through Congress.

President Reagan generally supported S 529, particularly a section that would penalize employers who knowingly hire illegal aliens. But he did not make it a priority issue.

Democratic presidential nominee Walter F. Mondale has strongly opposed employer sanctions and has said that he would never support such a program. Hispanic lobbyists contended that the penalties would result in discrimination against anyone who looked or sounded foreign, and they pressed their cause at the Democratic National Convention this summer.

Funding Snag

Conferees met 10 times over four weeks and resolved a number of thorny issues, including the sanctions provisions, the scope of the legalization program, and an expansion of an existing program that allows employers to bring in foreign workers temporarily for agricultural work.

That the cap on federal aid proved the bill's undoing surprised many conferees. On Sept. 20, members had agreed to an informal $1 billion yearly cap over four years for the legalization program. The cap was to be part of a statement of managers to accompany the conference report.

Simpson had said that some kind of cap was required or Reagan would veto the bill. He believed that the Sept. 20 action would be satisfactory, but he subsequently reported to conferees that the administration would not accept the informal cap.

Rescue Efforts Fail

During the week of Oct. 1, Rep. Charles E. Schumer, D-N.Y., who had not previously been a key player, tried to put together a compromise on the funding issue and another dispute involving anti-discrimination provisions designed to reduce bias that might result from the sanctions.

Schumer acted as mediator for Simpson and Rep. Barney Frank, D-Mass., the chief advocate of the anti-bias provision, and produced a compromise that commanded a majority of the conferees.

The compromise dropped House language barring discrimination based on "alienage." Simpson and others said this would subject employers to lawsuits if they chose a U.S. citizen over a legal alien. Conferees agreed to allow aliens who signed a document affirming their intent to become U.S. citizens to seek administrative remedies for employment discrimination.

Part of the deal, Schumer said, was making the $1 billion cap part of the legislation, as the administration had wanted.

When conferees convened Oct. 9 to ratify the agreement, the anti-bias provision was accepted. But House conferees voted 13-15 to reject the $1 billion yearly cap as part of the bill. Seven members who had voted for the cap in the statement of managers switched their votes and voted against the cap as part of the bill.

Conferees from states with large illegal alien populations contended that the $1 billion would be insufficient to cover the anticipated costs of legalization, leaving the states with a heavy financial burden.

Judiciary Chairman Peter W. Rodino Jr., D-N.J., who ran the conference, recessed the meeting and said he would reconvene members only if some new agreement were reached.

Schumer started a new round of negotiations with Reps. Larry Smith, D-Fla., and Leon E. Panetta, D-Calif., who had voted against the cap. By the evening of Oct. 10, Schumer had worked out a new compromise with Simpson that drew Panetta's support. But Schumer was unable to convince any other House conferee to switch.

"We exhausted our potential for compromise," Mazzoli said Oct. 11. "Pretty soon you don't have any tools to split hairs any finer."

Even if time had not run out, the bill faced problems on a final vote. Sens. John Tower, R-Texas, and Alan Cranston, D-Calif., had threatened a filibuster, and 40 or so House members had pledged to try to block passage in that chamber.

Simpson conceded that opposition to S 529 was strong and well-organized. "They formed coalitions for 'immigration reform' and then lobbed bombs from the balcony," he said.

"Next year," he added, "we'll have more time to pull their molars." ■

—*By Nadine Cohodas*

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ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
4221 SLAB HJR 20 - HJR 23 1101

this Act or who otherwise acquire such status after such date.

(2) The amendments made by subsection (b) apply to aliens without regard to the date the aliens enter the United States.

(3) The amendments made by subsection (c) apply to periods occurring on or after the date of the enactment of this Act and shall not have the effect of excluding (in the determination of a period of continuous physical presence in the United States) any period before the date of the enactment of this Act.

VISA WAIVER FOR CERTAIN VISITORS

SEC. 213. (a) Section 212 (8 U.S.C. 1182) is amended by adding at the end thereof the following new subsections:

"(l)(1) The Attorney General and the Secretary of State are authorized to establish a pilot program (hereinafter in this subsection referred to as the 'program') under which the requirement of paragraph (26)(B) of subsection (a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this subsection, in the case of an alien who—

"(A) is applying for admission during the pilot program period (as defined in paragraph (5)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding ninety days;

"(B) is a national of a country which—

"(i) extends or agrees to extend reciprocal privileges to citizens and nationals of the United States, and

"(ii) is designated as a pilot country under paragraph (3);

"(C) before such admission completes such immigration form as the Attorney General shall establish under paragraph (2)(C) and executes a waiver of review and appeal described in paragraph (2)(D);

"(D) has a round trip, nonrefundable, nontransferable, open-dated transportation ticket which—

"(i) is issued by a carrier which has entered into an agreement described in paragraph (4), and

"(ii) guarantees transport of the alien out of the United States at the end of the alien's visit; and

"(E) has been determined not to represent a threat to the welfare, safety, or security of the United States;

except that no such alien may be admitted without a visa pursuant to this subsection if the alien failed to comply with the conditions of any previous admission as a nonimmigrant.

"(2)(A) The program may not be put into operation until the end of the thirty-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in subparagraph (B) is operational and that the form described in subparagraph (C) has been produced.

"(B) The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and departure control system to screen and monitor the arrival and departure into the United States of nonimmigrant visitors receiving a visa waiver under the program.

"(C) The Attorney General shall develop a form for use under the program. Such form shall be consistent and compatible with the control system developed under subparagraph (B). Such form shall provide for, among other items—

"(i) a summary description of the conditions for excluding nonimmigrant visitors from the United States under subsection (a) and this subsection,

"(ii) a description of the conditions of entry with a waiver under this subsection, including the limitation of such entry to ninety days and the consequences of failure to abide by such conditions, and

"(iii) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

"(D) An alien may not be provided a waiver under this subsection unless the alien has waived any right (i) to review or appeal under the Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States or (ii) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

"(3)(A) The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot countries for purposes of this subsection.

"(B) For the period beginning after the thirty-day period described in paragraph (2)(A) and ending on the last day of the first fiscal year which begins after such thirty-day period, a country may not be designated as a pilot country unless—

"(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(ii) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(C) For each fiscal year (within the pilot program period) after the period specified in subparagraph (B)—

"(i) in the case of a country which was a pilot country in the previous fiscal year, a country may not be designated as a pilot country unless the sum of—

"(I) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

"(II) the total number of nationals of that country who were admitted as nonimmigrant visitors during previous fiscal year and who violated the terms of such admission,

was less than 2 per centum of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year, or

"(ii) in the case of another country, the country may not be designated as a pilot country unless—

"(I) the average number of refusals of nonimmigrant visitor visas for national of that country during the two previous full fiscal years was less than 2 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(II) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(4) The agreement referred to in paragraph (1)(D)(i) is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under this subsection—

"(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the ninety-day period described in paragraph (1)(A)(i), and

"(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under this subsection.

The Attorney General may terminate such an agreement with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

"(5) For purposes of this subsection, the term 'pilot program period' means the period beginning at the end of the thirty-day period referred to in paragraph (2)(A) and ending on the last day of the third fiscal year which begins after such thirty-day period.

"(6) The Attorney General and the Secretary of State shall jointly monitor the program and shall report to the Congress not later than two years after the beginning of the pilot program, and shall include in such report recommendations respecting extension of the pilot program period and of the number of countries that may be designated under paragraph (3)(A).

"(m) The requirement of paragraph (26)(B) of subsection (a) may be waived by the Attorney General, the Secretary of State, and the Secretary of the Interior, acting jointly, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay on Guam for a period not to exceed fifteen days, if the Attorney General, the Secretary of State, and the Secretary of the Interior jointly determine that—

"(1) the territory of Guam has developed an adequate arrival and departure control system, and

"(2) such a waiver does not present a threat to the welfare, safety, or security of the United States.".

(b) Section 214(a) (8 U.S.C. 1184(a)) is amended by adding at the end the following new sentence: "No alien admitted to the United States without a visa pursuant to subsection (l) or (m) of section 212 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding ninety days or fifteen days, respectively, from the date of admission.".

(c) For amendment prohibiting nonimmigrant visitors entering under visa waivers from adjusting their status to immigrants, see section 212(b) of this Act.

(d) Section 248 (8 U.S.C. 1258) is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and" and by adding at the end thereof the following new paragraph:

"(4) an alien classified as a nonimmigrant under section 101(a)(15)(O) or admitted as a nonimmigrant visitor without a visa under subsection (l) or (m) of section 212.".

NONIMMIGRANT SEASONAL AGRICULTURAL PROGRAM

SEC. 214. (a) Section 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by sections 204(b) and 211(a)(2) of this Act, is further amended by striking out "or" at the end of subparagraph (N), by striking out the period at the end of subparagraph (O) and inserting in lieu thereof "; or", and by adding at the end the following new subparagraph:

"(P) an alien having a residence in a foreign country which he has no intention of abandoning who is coming to the United States for a period of not longer than 11 consecutive months to perform services or

om foreign contiguous territory the Attor-
l to their applying or reapplying for ad-

vaways;

ks to procure, or has sought to procure,
r other documentation, or seeks to enter
d, or by willfully misrepresenting a ma-

se specifically provided in this chapter,
time of application for admission is not
nexpired immigrant visa, reentry permit,
ion card, or other valid entry document
and a valid unexpired passport, or other
or document of identity and nationality,
ed under the regulations issued by the At-
o section 1181(a) of this title;

specifically provided in this chapter, any
f application for admission whose visa
ompliance with the provisions of section

igible to citizenship, except aliens seeking
; or persons who have departed from or
ic the United States to avoid or evade
armed forces in time of war or a period
to be a national emergency, except aliens
such departure nonimmigrant aliens and
nited States as nonimmigrants;

s been convicted of a violation of, or a
law or regulation relating to the illicit
narcotic drugs or marihuana, or who has
n of, or a conspiracy to violate, any law or
trolling the taxing, manufacture, produc-
rtation, sale, exchange, dispensing, giving
tion, or the possession for the purpose of
n, compounding, transportation, sale, ex-
f away, importation, or exportation of
, marihuana, or any salt derivative or
oca leaves, or isonipecaine or any addic-
ustaining opiate; or any alien who the
ration officers know or have reason to
illicit trafficker in any of the aforemen-

aliens described in section 1101(a) (27)
who seek admission from foreign contigu-

ous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory line, or if signatory, a noncomplying transportation line under section 1228(a) of this title and who have not resided for at least two years subsequent to such arrival in such territory or adjacent islands;

(25) Aliens (other than aliens who have been lawfully admitted for permanent residence and who are returning from a temporary visit abroad) over sixteen years of age, physically capable of reading, who cannot read and understand some language or dialect;

(26) Any nonimmigrant who is not in possession of (A) a passport valid for a minimum period of six months from the date of the expiration of the initial period of his admission or contemplated initial period of stay authorizing him to return to the country from which he came or to proceed to and enter some other country during such period; and (B) at the time of application for admission a valid nonimmigrant visa or border crossing identification card;

(27) Aliens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States;

(28) Aliens who are, or at any time have been, members of any of the following classes:

(A) Aliens who are anarchists;

(B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, (ii) any other totalitarian party of the United States, (iii) the Communist Political Association, (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state, (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party, or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: *Provided*, That nothing in this paragraph, or in any other provision of this chapter, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means;

(D) Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and gov-

COPY FOR YOUR INFORMATION

M E M O R A N D U M April 11, 1985

TO: Representative Steve Rieger
FROM: Bill Lovell, Staff

RE: HJR 20 (Visa Waivers)

I suggest that we present the attached draft SCS to the Senate Labor and Commerce Committee for their consideration for adoption in lieu of the House Labor and Commerce CS for CSHJR 20.

I make this suggestion for the following reason:

The House Labor and Commerce Committee amendments changed the perspective of the resolution. As you know HJR 20 was originally drafted to be directed to Senators Stevens and Murkowski. The L & C CS added that copies were to be sent to various national leaders also and changed the resolution clause to include references to them.

However the CS did not change any of the language in the resolution's "whereas" clauses -- language which was also originally intended to be directed to Senators Stevens and Murkowski, "two of our own," so to speak.

The amendments I recommend do not change the basic arguments in favor of the bill, do not delete any of the specifically Alaskan issues mentioned, and do not detract from the House's position on the original bill; however, the amendments do broaden the resolution's message and would serve, I think, to lessen the provincial "sound" of the Labor and Commerce CS.

/wtl
Attachment

-- Memo from Rep. Rieger's staff explaining proposed CS

DRAFT

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(_____ = material added to HCS [ ] = material deleted from HCS)

Original Sponsors: Rieger, Pearce, Collins, et al

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

SCS FOR CS FOR HOUSE JOINT RESOLUTION NO. 20 (L & C)
IN THE LEGISLATURE OF E STATE OF ALASKA
FOURTEENTH LEGISLATU.. FIRST SESSION

Re ng to visa waivers for in.. national airline passengers.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS visa waivers would encourage eligible international airline passengers and other eligible nonimmigrants to visit the United States thereby benefiting the nation's tourism industry; and

WHEREAS all the states of the nation would benefit by granting visa waivers to eligible nonimmigrants; and

WHEREAS the state of Alaska is particularly interested in securing a visa waiver program because tourism is an important element in the state's immediate future and a vital part of ensuring stable and continuing economic growth; and

WHEREAS 1.5 million international airline passengers annually transit the Anchorage International Airport on the transpolar route between Europe and Asia; and

WHEREAS research by the Anchorage Convention and Visitors Bureau reveals that among the annual airport transpolar passengers, 84 percent indicated an interest in the state, 80 percent vacation at least once a year in the period from September to May when the state needs more visitors, 62 percent like winter-oriented vacations, 50 percent could have planned a stopover in Anchorage, 50 percent would stop for four to seven days, and 76 percent are frequent transpolar route passengers and previously have landed in Anchorage; and

WHEREAS state revenue from transpolar passengers constitutes more than 50 percent of the revenue necessary to operate all international airports in the state; and

WHEREAS there is the strong likelihood that carriers on the transpolar route will no longer need this state as a refueling stop in the foreseeable future and passenger interest in visits or stopovers in the state will be the only incentive for transpolar air carriers to continue to stop in the state; and

WHEREAS one of several obstacles to a stopover in Alaska or any other state [THE STATE] is the present requirement of a

United States visa; and

WHEREAS last year Congress considered but failed to pass legislation providing for the granting of visa waivers;

BE IT RESOLVED that the Alaska State Legislature requests the President and the Congress of the United States to support the renewed effort to secure the waiver of visa requirements for eligible international airline [TRANSPOLAR] passengers and other eligible nonimmigrants wishing to exercise stopover privileges in Alaska and other states [THE STATE].

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States, the Honorable Robert Dole, Majority Leader of the Senate, the Honorable Thomas P. "Tip" O'Neill, Jr., Speaker of the House of Representatives; the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Alaska State Legislature
House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M March 18, 1985

TO: Senator Fred Zharoff, Chairman, Senate Labor and Commerce
FROM: Representative Steve Rieger

RE: CSHJR 20 (Labor and Commerce), Relating to visa waivers for international airlines passengers.

Attached please find back-up information on CSHJR 20 (Labor and Commerce).

This resolution offers the opportunity for the state legislature to express support for an idea which will benefit all Alaskans -- a federal visa waiver program for eligible nonimmigrants. As you may know, a visa waiver program was proposed during the last Congress and was defeated only after it became embroiled in another, unrelated controversy.

CSHJR 20 (Labor and Commerce) encourages our Congressional delegation in their continuing efforts to secure passage of a visa waiver bill. Copies of the resolution, if passed, will be sent to other Congressional leaders to make our position known with them as well.

Senator, I would sincerely appreciate your timely consideration of this resolution. A prompt hearing by your Committee will help make it possible for Alaska to get on record in support of this important program.

Thank you.

/wtl
Attachments

— Memo from original sponsor, Rep. Rieger, to Sen. Zharoff —

SCS CS HJR 20 (L&C)

CHAIRMAN SHOULD MOVE FOR THE ADOPTION OF THE L&C SCS;

Trans Polar route

THIS RESOLUTION ENCOURAGES THE US CONGRESS IN THEIR EFFORT TO PASS A FEDERAL "VISA WAIVER" BILL. PASSAGE OF A VISA WAIVER BILL WILL ENHANCE TOURISM BY ALLOWING ELIGIBLE INTERNATIONAL AIRLINE PASSENGERS AND ELIGIBLE NONIMMIGRANTS TO VISIT IN THE UNITED STATES.

A VISA WAIVER AS DEFINED IN FEDERAL LEGISLATION IS SPECIAL PERMISSION FOR A NONIMMIGRANT VISITOR, FROM AN ELIGIBLE FOREIGN COUNTRY, TO REMAIN IN THE U.S. FOR UP TO 90 DAYS WITHOUT HAVING OBTAINED THE CUSTOMARY NON-IMMIGRANT VISA.

THE LABOR AND COMMERCE CS MADE MINOR CHANGES AT THE SUGGESTION OF THE SPONSOR, AND IT EXPANDED THE LANGUAGE TO REFLECT THE BENEFITS TO ALL STATES AS WELL AS ALASKA.

THE ALASKA VISITORS ASSOCIATION, THE ANCHORAGE CONVENTION AND VISITORS BUREAU, AND THE DIVISION OF TOURISM SUPPORT SUPPORT SUCH A PROGRAM.

Currently law requires nonimmigrant visitors to have a valid nonimmigrant visa before being admitted into the US. Most nonimmigrant visitors must obtain a visa in their home country before beginning a trip. The current process of applying for a visa is time consuming and involves considerable pre planning.

Chairman's Information:

1) CSHJR 20: "Relating to visa waivers for international airline passengers"

   a) Introduced: Rep Reiger
   b) Co-Sponsors:

2) INTENT: This resolution encourages the US Congress in their effort to pass a visa waiver bill. Passage of a visa waiver bill would enhance tourism by allowing eligible international airline passengers and eligible nonimmigrants to visit in the United States.

   FISCAL NOTE: none
   NOTE: Need to move for the adoption of SCS

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

   a) Sponsor:

   b) Public witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from Committee?
   d) close public hearings?

6) COMMITTEE ACTION:
   a) amendments?
   b) CS adoption? We have a SCS for CS HJR 20 (L&C)

Ford
4/12/85

Original sponsors: Rieger, Pearce,
Collins, et al

INDICATES CS LANGUAGE

IN THE HOUSE BY THE LABOR AND COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE JOINT RESOLUTION NO. 20 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to visa waivers for international airline passengers.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS visa waivers would encourage eligible international airline passengers and other eligible nonimmigrants to visit the United States; and

WHEREAS all the states of the nation would realize an increase in tourism by granting visa waivers to eligible nonimmigrants; and

WHEREAS Alaska is particularly interested in securing a visa waiver program because tourism is an important element in the state's immediate future and a vital part of ensuring stable and continuing economic growth; and

WHEREAS 1,500,000 international airline passengers annually transit the Anchorage International Airport on the transpolar route between Europe and Asia; and

WHEREAS research by the Anchorage Convention and Visitors Bureau reveals that among the annual airport transpolar passengers, 84 percent indicated an interest in the state, 80 percent vacation at least once a year in the period from September to May when the state needs more visitors, 62 percent like winter-oriented vacations, 50 percent could have planned a stopover in Anchorage, 50 percent would stop for four to seven days, and 76 percent are frequent transpolar route passengers and previously have landed in Anchorage; and

WHEREAS state revenue from transpolar passengers constitutes more than 50 percent of the revenue necessary to operate all international airports in the state; and

WHEREAS there is the strong likelihood that carriers on the transpolar route will no longer need this state as a refueling stop in the foreseeable future and passenger interest in visits or stopovers in the state will be the only incentive for transpolar air carriers to continue to stop in the state; and

WHEREAS one of several obstacles to a stopover in Alaska or any other state is the present requirement of a United States visa; and

WHEREAS last year Congress considered but failed to pass legislation providing for the granting of visa waivers;

BE IT RESOLVED that the Alaska State Legislature requests the President and the Congress of the United States to support the renewed effort to secure the waiver of visa requirements for eligible international airline passengers and other eligible nonimmigrants wishing to exercise stopover privileges in Alaska and other states.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States, the Honorable Robert Dole, Majority Leader of the Senate, the Honorable Thomas P. "Tip" O'Neill, Jr., Speaker of the U.S. House of Representatives; the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Offered: 3/15/85
Referred: Rules

Original sponsors: Rieger, Pearce, Collins, et al

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 20 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to visa waivers for international airline passengers.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS tourism is an important element in the state's immediate future and a vital part of ensuring stable and continuing economic growth; and

WHEREAS 1.5 million passengers annually transit the Anchorage International Airport on the transpolar route between Europe and Asia; and

WHEREAS research by the Anchorage Convention and Visitors Bureau reveals that among the annual airport transpolar passengers, 84 percent indicated an interest in the state, 80 percent vacation at least once a year in the period from September to May when the state needs more visitors, 62 percent like winter-oriented vacations, 50 percent could have planned a stopover in Anchorage, 50 percent would stop for four to seven days, and 76 percent are frequent transpolar route passengers and previously have landed in Anchorage; and

WHEREAS state revenue from transpolar passengers constitutes more than 50 percent of the revenue necessary to operate all international airports in the state; and

WHEREAS there is the strong likelihood that carriers on the transpolar route will no longer need this state as a refueling stop in the foreseeable future and passenger interest in visits or stopovers in the state will be the only incentive for transpolar air carriers to continue to stop in the state; and

WHEREAS one of several obstacles to a stopover in the state is the

present requirement of a United States visa; and

WHEREAS last year Congress considered but failed to pass legislation providing for the granting of visa waivers;

BE IT RESOLVED that the Alaska State Legislature requests the President and the Congress of the United States to support the renewed effort to secure the waiver of visa requirements for transpolar passengers wishing to exercise stopover privileges in the state.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States, the Honorable Robert Dole, Majority Leader of the Senate, the Honorable Thomas P. "Tip" O'Neill, Jr., Speaker of the House of Representatives; the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HJR

23

Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

HJR 23: "Relating to US Customs Service Offices on the West Coast"

Urges the US Customs Service to maintain its current uniform jurisdiction over all west coast ports, and also to increase the number of customs inspectors to expedite trade thru west coast ports.

Discussions are being held on a federal level to separate Alaska, Washington, and Oregon into a jurisdiction headquartered in Chicago Illinois, and there is a concern that the proposed separation would be interuptive to uniform customs operations and detrimental to international trade activities.

HJR 23 "RELATING TO U.S. CUSTOMS SERVICE OFFICES ON THE WEST COAST"

CURRENTLY, DISCUSSIONS ARE BEING HELD AT THE FEDERAL LEVEL TO SEPARATE ALASKA, WASHINGTON, AND OREGON INTO THE JURISDICTION OF A CUSTOMS OFFICE HEADQUARTERED IN CHICAGO, ILLINOIS.

THIS RESOLUTION URGES THE U.S. CUSTOMS SERVICE TO MAINTAIN ITS CURRENT UNIFORM JURISDICTION OVER ALL WEST COAST PORTS, AND TO INCREASE THE NUMBER OF CUSTOMS INSPECTORS TO EXPEDITE TRADE THRU WEST COAST PORTS.

Chairman's Information:

1) HJR 23: "Relating to US Customs Service Offices on the West Coast"

   a) Introduced: Rep Martin

   b) Co-Sponsors:

2) INTENT: This resolution urges the US Customs Service to maintain its current uniform jurisdiction over all west coast ports, and to increase the number of customs inspectors to expedite trade through west coast ports.

   FISCAL NOTE: none
   NOTE:

3) ADDITIONAL REFERRALS: Rules

4) PUBLIC HEARINGS:

   a) Sponsor:

   b) Public witnesses:

5) BILL ACTION:

   a) Hold in committee?
   b) Assign to sub committee for further review?
   c) Move from Committee?
   d) close public hearings?

6) COMMITTEE ACTION:
   a) amendments?
   b) CS adoption?