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# STATE OF ALASKA THE LEGISLATURE

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

## LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H HESS	4-20-88	8:30 a.m.
H HESS	4-21-88	8:30 a.m.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600

June 16, 1987

Honorable Steve Cowper  
Governor  
State of Alaska  
P.O. Box A  
Juneau, AK 99811

Re: CSHB 205(HESS) am -- occupational  
therapists and naturopaths  
Our file: 883-87-0080

Dear Governor Cowper:

At Bob Evans' request on your behalf, we have reviewed this bill, which establishes two new licensed occupations in AS 08.54, "occupational therapists" and "occupational therapy assistants," and requires insurance companies to pay for the services of not only the newly licensed occupational therapists but also physical therapists, who have been licensed under AS 08.54 since 1957, and naturopaths, who have been licensed under AS 08.45 only since 1986.

Primarily because of the serious overbreadth of one of the central provisions of the bill, the definition of "occupational therapy" itself, we must urge to you to veto this bill. We believe that the extremely broad definition makes the new licensing systems created by this bill not only inappropriate but also practically unenforceable. If the bill becomes law it would be likely to create new costs for school districts, the Department of Education, the Department of Health and Social Services, and indirectly, for this department. It would also create the possibility of higher disability and workers' compensation insurance premiums.

This bill is an example of much that is wrong with the worst of our occupational licensing statutes. It was for the most part drafted by, and was introduced at the request of, the private association of the only people who stand to benefit for certain from its enactment -- the occupational therapists themselves. There was no outcry from consumers for protection against incompetent or unscrupulous practitioners. The bill is simply a self-serving solution without a problem.

Most of the bill (13 of its 17 pages and 25 of its 31

sections subject to codification) makes additions or changes to AS 08.84 that are mostly parallel to existing provisions on licensure of physical therapists. The best we can say about this part of the bill is that it does not create a new licensing board, even though it creates two new licensed occupations. Rather, it simply adds to the duties, membership, and name of the existing Physical Therapy Board.

The biggest problem with the occupational licensing part of the bill involves secs. 20 and 24 of the bill. Section 20 would add new AS 08.84.150(b), which prohibits a person from practicing occupational therapy without being licensed unless the person is a supervised student or foreign graduate, a federal employee, or the holder of a 120-day limited permit under new AS 08.84.075 that would be added by sec. 13 of this bill. Violations of this prohibition could result in issuance of a citation under new AS 08.01.102 -- 08.01.104, added this year by sec. 11 of CSHB 222(Fin) am S (our file no. 883-87-0082).

The root of the problem created by this new prohibition is that the definition of "occupational therapy" in new AS 08.-84.190(6) that would be added by sec. 24 of this bill is so extremely broad that it includes almost anything that anyone does for someone else who, for whatever reason, needs help to cope with daily life. This definition, which is almost a full page in the bill, is so sweeping that we set out just the first part of it for emphasis:

(6) "occupational therapy" means the use of purposeful activity, evaluation, treatment, and consultation with human beings whose ability to cope with the tasks of daily living are [sic] threatened with, or impaired by developmental deficits, learning disabilities, aging, poverty, cultural differences, physical injury or illness, or psychological and social disabilities to maximize independence, prevent disability, and maintain health; "occupational therapy" includes

(A) developing daily living, play, leisure, social, and developmental skills;

\* \* \* \*

(F) . . . .

The further examples listed in (B) -- (F), unfortunately, do little to help narrow the scope of the practice of occupational

therapy. Curiously, the definition does not seem to specifically include anything directly related to helping people learn an occupation or how to earn their own living.

The result of the blanket prohibition against practicing occupational therapy without a license combined with the extremely overbroad definition of occupational therapy itself is that a license would be required under this bill for much of what teachers, teacher-aides, licensed health care practitioners, and even parents, various public employees, and volunteers do for people, old or young, who, for whatever reason, need help "to cope with the tasks of daily living." Because they are not included in the list of exemptions in new AS 08.54.150(b)(1) -- (4) added by sec. 20 of the bill, these people will be subject to citation for continuing their productive activities.

This obviously unacceptable result was apparently incorrectly explained away by proponents of the bill during House committee hearings by the allegation that this bill was only a "title bill" not a "practice bill." An occupational licensing "title bill" prohibits unlicensed people only from using the title of a licensee, but a "practice bill" also prohibits unlicensed people from doing anything included in the definition of the licensed occupation. This bill has a title use prohibition in sec. 18, adding new AS 08.84.130(c) and (d), but it unfortunately also has the above-mentioned unlicensed practice prohibition in sec. 20, adding new AS 08.84.150(b). We have discussed this problem with the Washington, D.C. attorney for the American Occupational Therapy Association and he agrees with our interpretation of the bill, but expresses vague confidence that "any problems can be worked out" after the bill becomes law.

However, this severe overbreadth problem should, in our view, be fatal to this bill. The problem could have been avoided in any of several ways, but it was not. Section 20 could have been omitted, leaving the bill a true title bill as we understand its proponents claimed. The definition of occupational therapy could have been narrower and more precise, or the short list of exemptions from the license requirement could have been expanded to include volunteers and school and other public employees. Because not one of these steps was taken, we believe that your veto is advisable.

There are several reasons why this bill passed the legislature despite all of its defects. These reasons have little to do with the substance of the bill, but you should be aware of them as you consider whether to veto it. The bill was not introduced until the end of March, and it was referred to three

Hon. Steve Cowper, Governor  
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June 16, 1987  
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House committees, so it seemed likely that the most that could happen was that the bill could be pushed through the House by its sponsor, House Rules Committee Chairman Navarre. This estimation seemed to be reinforced, albeit in retrospect mistakenly, when the bill did not reach the House floor until the last week of the session, and then was further burdened by a floor amendment offered by Representative Walt Furnace. The floor amendment added sec. 28 of the bill which prohibits insurance companies from discriminating against (i.e., refusing to cover services provided by) occupational therapists and physical therapists and naturopaths. Although we have not had time to fully evaluate the likely effect of this floor amendment, we believe it could cause an increase in insurance premiums and a decrease in availability of insurance, especially in the areas of disability and workers' compensation coverage. It appears that this amendment may have resulted in added support for the bill, especially from naturopaths, to help it through the Senate so quickly.

The substance of the House floor amendment has never had the benefit of any public hearing, just as the entire bill has never had the benefit of a Senate committee hearing. The bill, as amended on the House floor made it through four Senate committee referrals in six days without a public hearing and ended up being passed by the Senate late in the evening of Tuesday, May 19 -- the last day of the session. Two of the committee referrals were ultimately waived by the committee chairs.

This leaves those who have problems with this bill in the somewhat embarrassing position of having now to express the concerns being saved for Senate committee hearings next year. It also leaves some serious question whether the Senate committees that so quickly considered this bill complied with the reasonable notice requirement of AS 44.62.310(e). Of course, the applicability of that provision, along with our entire "Open Meeting Act," to the legislature and its committees currently is at issue in Adams v. League of Women Voters, Alaska Supreme Court No. S-1831 (1986).

No one is currently being injured or victimized under the status quo without the new licensing systems for occupational therapists and their assistants that this bill would create. So, there is really no one to be protected by the bill. It would do nothing whatsoever to improve the quality of service provided by our currently unlicensed occupational therapists because, under sec. 33 of the bill, they would all be automatically licensed without examination regardless of education or experience, if they belong to the American Occupational Therapist Association.

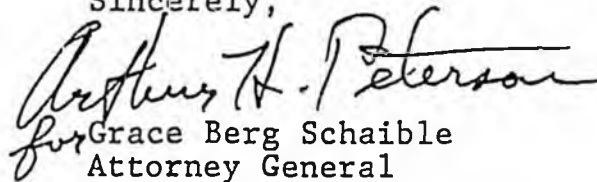
Hon. Steve Cowper, Governor  
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Page 5

A veto would deprive the Department of Commerce and Economic Development of the estimated \$13,000 in license fees that would be generated by the new licensing system, but it would more importantly avoid the burden of implementing an unenforceable system on that agency, on the Departments of Education, Health and Social Services, and Law, and on our school systems. Most of the bill would not take effect until January 1, 1988 so little real time would be lost if it were somehow determined during the interim and next session that there really is a problem with occupational therapy in Alaska that our state government should address by imposing more new licensing systems. If such a determination is made, any new licensing system should maximize public, not occupational, protection and minimize disruption to schools, governmental and private service delivery programs, and insurance rates.

A draft veto letter is attached for your convenience.

Sincerely,

  
for Grace Berg Schaible  
Attorney General

GBS:PBF:md



## AKOTA Alaska Occupational Therapy Association

3605 Arctic Blvd. #1616, Anchorage, Alaska 99503  
(907) 345-0034

March 24, 1988

Labor & Commerce Committee  
Dave Donley, Chair  
House of Representatives  
Room 17, Capitol  
Juneau, Alaska 99811

Members of the Labor & Commerce Committee:

The Alaska Occupational Therapy Association will favor passage of CS HB 368 only if there is an amendment to page 2 lines 9 and 10. The amendment would be practice occupational therapy (provide independent or unsupervised occupational therapy services.)

It is essential that the statute be clear and that the public not be misled about services which are called occupational therapy.

The Association believes that if CS HB 368 is amended as indicated, the two areas of concern about the occupational therapy licensing act will be covered. It will clarify that schools can continue to utilize programs written by licensed occupational therapists and carried out by teachers and aides; it will clarify the use of activities within the definition of occupational therapy when carried out by other professionals as within the law; and it will continue to protect the Alaskan public by identifying those qualified to practice occupational therapy.

Thank you for your concern and interest in providing Alaskans with services by qualified occupational therapists.

A handwritten signature in cursive script that reads "Mary Melissa Robinson".

Mary Melissa Robinson, OTR/L  
President, Ak.O.T.A.

POSITION PAPER  
HOUSE BILL NO. 368

"An Act exempting certain persons from the requirement to be licensed as an occupational therapist or occupational therapy assistant; and providing for an effective date."

EFFECT OF BILL

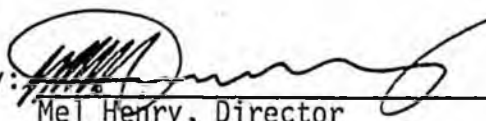
This bill would exempt government employees and educational institution employees who provide occupational therapy services from the licensing requirement in Chapter 2, FSSLA 1987.

DISCUSSION

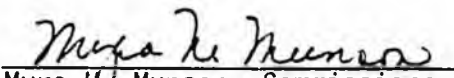
Such an exemption is necessary because many activities falling under the overly broad definition of "occupational therapy" in Chapter 2 are performed by personnel who have no formal occupational therapy training. If licensed personnel were required for these activities, many of the services would not be performed. Occupational therapists with formal training are in short supply. The most efficient way to provide the services is to use other personnel for provision of the less complex activities falling under the definition of "occupational therapy" in Chapter 2, FSSLA 1987. Without the exemption contained in this bill, that would not be possible.

RECOMMENDATION

The Department of Health and Social Services supports the passage of HB 368.

Recommended by:   
Mel Henry, Director

Date: 20<sup>th</sup> January, 1988

Approved by:   
Myra W. Munson, Commissioner

Date: Feb 9, 1988

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act exempting certain persons  
. . . occupational therapist . . ."  
Sponsor: Rules  
Requestor: Governor

Agency Affected: Health & Social Services  
BRU: Institutions and Administration

Components: API, Harborview

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS : (Attach a separate page if necessary)

The enactment of HB 368 would have no direct fiscal impact on the Department of Health and Social Services.

Prepared by: Mel Henry, Director  
Division: Mental Health & Developmental Disabilities

Phone: 465-3370  
Date: 1/21/88

Approved by Commissioner: Myra M. Munson  
Agency: Health & Social Services

Date: 2-9-88

Distribution (by preparer):

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**PHYSICAL  
THERAPY  
CENTER**

Beth Hansen, LPT

Denice A.B. McPherson, LPT

789-4880

February 19, 1988

RECEIVED  
FEB 22 1988

Rep. Dave Donley, Chairman  
House Commerce Committee  
P. O. Box 7  
Juneau, Alaska 99801

Dear Representative Donley,

I would like to express my concern regarding HB 368. This bill proposes that occupational therapy done in the school system be done by a non-licensed person. The requirements of licensing are not at all exclusive; so there is no rational reason why any Occupational Therapist would avoid the process. Therefore, the intent of this legislation is to allow untrained persons to perform therapy skills. There is only one reason to explain this move: saving money by having therapy performed by nonqualified persons.

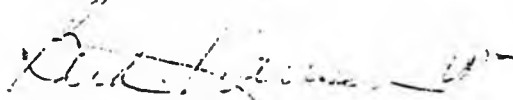
The duties required of the Physical Therapists and Occupational Therapists in the school system often involve severely handicapped children. The skills used in this type of treatment are now being recognized as a sub-speciality in both professions.

I am an orthopedically oriented Physical Therapist and have practiced therapy in the hospital and clinical setting for 12 years. To convert to the practice of neurologically involved pediatrics would involve at least a year of education to upgrade my skills in that area.

I would hate to think of these special children being given less than adequate treatment by an unskilled person. I am concerned for the parents who will think that their children are being treated by a professional.

I also recommend that the legislature be sure that this would not be a violation of the Federal government requirement in public law 94-142.

Sincerely,

  
Beth Hansen, LPT

BH:FW



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# AKOTA Alaska Occupational Therapy Association

3605 Arctic Blvd. #1616, Anchorage, Alaska 99503  
(907) 345-0034

February 2, 1988

Representative Dave Donley, Chairman  
Labor and Commerce Committee  
House of Representatives  
P.O. Box V  
Juneau, Ak 99801

RECEIVED  
FEB 9 1988

Dear Representative Donley:

The Alaska Occupational Therapy Association is strongly opposed to passage of HB 368. This bill would allow schools and governmental units, to employ persons to perform occupational therapy services without meeting qualifications for the practice of occupational therapy as defined in Alaska statutes.

Passage of this bill would allow consumers to receive treatment which is substandard and harmful. Consumers, including handicapped students, psychiatric patients, and developmentally disabled persons, in Alaska do not deserve less than qualified service providers.

To allow untrained, unqualified persons to say they are delivering occupational therapy services is certainly not in the best interest of the State of Alaska.

Please, consider the effect the passage of this bill would have on the health care consumers in Alaska.

The Alaska Occupational Therapy Association is eager to assist the Labor and Commerce Committee, the Department of Education or the Office of the Governor in understanding the potential effect of this bill. We are also willing to assist with any potential difficulties in the practice of occupational therapy. House Bill 368 must not be supported because it would allow unqualified persons to deliver occupational therapy services.

Sincerely,

Mary Melissa Robinson, OTR  
President, Ak.O.T.A.

February 9, 1988

RECEIVED  
FEB 16 1988

Labor & Commerce Committee Members  
PO Box V  
Juneau, AK 99811

Dear Labor & Commerce Committee Members: *Carol J. Laurion*

I am writing to you for my concerns of HB 368 introduced by Governor Cowper to exempt government units and educational institutions from occupational therapy licensure. Passage of this bill would mean occupational therapists and certified occupational therapy assistants working for school districts and state agencies would not have to be qualified or meet the qualifications for licensure.

I work at Alaska Psychiatric Institute with many chronic and acutely ill schizophrenic patients. These patients don't usually have the abilities to distinguish whether a therapist is qualified or not. Even if they did several are committed and they don't usually have a choice of leaving API to seek a more qualified therapist.

Before API, I worked at Hope Cottages with the same children who receive occupational therapy in the schools. I was often called upon to consult and teach caregivers on how to feed a profoundly retarded, multiply handicapped child who couldn't swallow properly and choked on each bite of food that was given him. I ask you - can this child distinguish between a qualified and unqualified occupational therapist? Can he choose who will give advice on how he's to be fed? Passage of HB 368 would allow consumers of governmental and educational units to receive substandard service. Is this the pride we take in our State services?

The Department of Education has voiced many concerns that the occupational therapy licensure law prohibits any person who may be involved in any aspect of the occupational therapy definition from performing their work. The Alaska Occupational Therapy Association believes the purpose of the law is not to limit qualified professionals from practicing what they are qualified to practice as long as it is not represented as occupational therapy. Any clarification of this law could have been appropriately handled with regulations. There are several alternatives that could have handled the Department of Education's concerns. Yet, Governor Cowper chose to introduce HB 368 and attach governmental units to the Educational Department's concerns for no apparent reason. I ask you who must know him better than I... I ask you - Why? Why would he choose to introduce a bill that would be so detrimental to the needy people of this State? Why?

The Alaska Occupational Therapy Association has chosen to take a stance of proposing alternative language to HB 368 that will allow teachers and teacher aides to develop daily living, play, leisure, social, and developmental skills as long as such a person does not represent themselves as an occupational therapist.

Page 2  
Carol J. Laurion  
HB 368

I ask you to send a message to the needy people of this State and send a message to Governor Cowper by adopting the Alaska Occupational Therapy Association's language to HB 368 and encouraging your colleagues to do the same.

Sincerely,



Carol J. Laurion, OTR  
Occupational Therapist Registered

cc: Alaska Occupational Therapy Association  
ASK  
Mental Health Consumers of Alaska  
Alliance for the Mentally Ill