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429

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/17/90

FURTHER:

DATE TURNED INTO OFFICE: \_\_\_\_\_

The Finance Committee considered

SB 429

"An Act relating to a surety fund fee and the bond for licensure as an operator of a game of chance or contest of skill; creating the charitable gaming surety fund; and providing for an effective date."

and recommended:

replace with \_\_\_\_\_ CS \_\_\_\_\_  same title  
 or adopt \_\_\_\_\_ CS \_\_\_\_\_  new title  
 attached amendment(s)  technical title change (HB only)  
 \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

*Bill died in Committee.*

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

Co-Chairs: Signatures and Recommendations

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

DATE: 2/1/90

FURTHER: Finance

Date of 5-Day Notice: 2/22/90  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4/12/90

Labor and Commerce Committee considered SB 429

"An Act relating to a surety fund fee and the bond for licensure as an operator of a game of chance or contest of skill; creating the charitable gaming surety fund; and providing for an effective date."

and recommended: and report it back as follows

[ ] replace with \_\_\_\_\_ CS \_\_\_\_\_ [ ] same title  
[ ] attached amendment(s) [ ] new title

[ ] \_\_\_\_\_ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[x] individual recommendations

[ ] further referral to \_\_\_\_\_

*[Handwritten signature]*

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

[ ] fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[ ] zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[ ] appropriation-no fiscal note

[x] Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

*[Handwritten signature]*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*3* *Do Not Pass*  
*Patricia Foxley*  
*no rec.*  
\_\_\_\_\_  
\_\_\_\_\_

*[Handwritten signature]*  
Chair: Signature and Recommendation

Introduced: 2/1/90  
Referred: Labor and Commerce and Finance

go00250s

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 429

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a surety fund fee and the bond  
7 for licensure as an operator of a game of chance or  
8 contest of skill; creating the charitable gaming  
9 surety fund; and providing for an effective date."

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

11 \* Section 1. AS 05.15.122(b) is amended to read:

12 (b) The department may issue an operator's license to a natural  
13 person, municipality, or qualified organization that

14 (1) applies on the form provided by the department;

15 (2) pays the annual fee of \$500;

16 (3) discloses the identity of persons employed by the  
17 applicant in a managerial or supervisory capacity;

18 (4) submits proof of liability insurance satisfactory to  
19 the department; and

20 (5) pays a surety fund fee to the department as required  
21 under AS 05.15.230 [POSTS A BOND OR SECURITY SATISFACTORY TO THE  
22 DEPARTMENT IN THE AMOUNT OF \$25,000 FOR EACH PERMIT UNDER WHICH THE  
23 OPERATOR OPERATES UP TO A MAXIMUM OF \$100,000].

24 \* Sec. 2. AS 05.15 is amended by adding new sections to read:

25 ARTICLE 4. CHARITABLE GAMING SURETY FUND.

26 Sec. 05.15.220. CHARITABLE GAMING SURETY FUND ESTABLISHED. The  
27 charitable gaming surety fund is established as a special account in  
28 the general fund.

29 S Sec. 05.15.225. MONEY DEPOSITED IN GENERAL FUND. Money received

1 by the department under AS 05.15.220 - 05.15.275 shall be deposited in  
2 the charitable gaming surety fund established by AS 05.15.220. The  
3 commissioner of administration shall separately account for the money  
4 deposited in the charitable gaming surety fund. The annual estimated  
5 balance in the account may be used by the legislature to make appro-  
6 priations to the department to carry out the purposes of the  
7 charitable gaming surety fund, including the cost of investigations  
8 and hearings under AS 05.15.220 - 05.15.275.

9 Sec. 05.15.230. SURETY FUND FEE. (a) A distributor, operator,  
10 municipality, or qualified organization, when obtaining or renewing a  
11 charitable gaming license or permit, shall, subject to (b) of this  
12 section, pay to the department, in addition to the license fee or  
13 permit fee, a surety fund fee that the department sets by regulation  
14 in an amount

15 (1) not to exceed \$250 for municipalities and qualified  
16 organizations; and

17 (2) not to exceed \$1,000 for distributors and operators.

18 (b) When the total amount of money in the charitable gaming  
19 surety fund reaches \$1,000,000, the department may not require payment  
20 of the surety fund fee. When the amount in the fund drops below  
21 \$900,000, the department again shall require a surety fund fee as set  
22 under (a) of this section.

23 Sec. 05.15.235. CLAIM FOR PAYMENT. (a) Only a permittee hold-  
24 ing a valid permit issued under this chapter may seek reimbursement  
25 from the charitable gaming surety fund for a loss as described in (b)  
26 of this section.

27 (b) A permittee seeking reimbursement for a loss suffered in a  
28 transaction as a result of fraud, misrepresentation, deceit, or negli-  
29 gence on the part of a distributor or operator licensed under this

1 chapter shall file a claim for reimbursement with the department. The  
2 department shall by regulation set the period of time within which a  
3 permittee seeking reimbursement must make a claim. The permittee  
4 shall make a claim for reimbursement to the department on a form  
5 furnished by the department. The form shall be executed under penalty  
6 of perjury, and information required to be supplied must include the  
7 following:

- 8 (1) the name and address of the permittee;
- 9 (2) the name and address of the distributor or operator;
- 10 (3) the amount of the alleged loss;
- 11 (4) the date or period of time during which the alleged  
12 loss occurred;
- 13 (5) the date upon which the alleged loss was discovered;
- 14 and
- 15 (6) a general statement of the facts pertaining to the  
16 claim.

17 (c) The claimant shall mail or deliver to the distributor or  
18 operator alleged to have committed the conduct resulting in the loss a  
19 copy of a claim filed with the department under (b) of this section,  
20 within 10 days after filing the claim.

21 (d) A permittee who files a claim under this section shall pay a  
22 filing fee to the department at the time the claim is filed. The  
23 department shall by regulation set the amount of the filing fee. The  
24 filing fee shall be refunded only if

- 25 (1) the department makes an award to the permittee from the  
26 charitable gaming surety fund; or
- 27 (2) the claim is withdrawn by the permittee before the  
28 department holds a hearing on the claim.

29 **Sec. 05.15.240. CONSIDERATION OF CLAIM. (a) In considering a**

1 claim for reimbursement, the department may

2 (1) investigate the alleged facts and engage the services of  
3 an investigator, accountant, or other expert necessary to process the  
4 claim;

5 (2) compel, by subpoena, the attendance of witnesses and  
6 the production of books, papers, and documents pertaining to the  
7 claim; and

8 (3) administer oaths and affirmations.

9 (b) The department shall conduct a hearing if requested by the  
10 claimant or the distributor or operator.

11 (c) A certified or authenticated copy of a record, including a  
12 transcript of testimony, of a hearing held under AS 05.15.128 in which  
13 fraud, misrepresentation, deceit, or negligence on the part of a  
14 distributor or operator is established, constitutes sufficient  
15 evidence to support a finding.

16 (d) Before the department awards payment of a claim, the dis-  
17 tributor or operator shall be afforded an opportunity to file with the  
18 department, within 10 days after receipt of notification of the claim  
19 under AS 05.15.235, either a written statement in opposition to the  
20 claim or an application for the presentation of additional evidence at  
21 a hearing conducted by the department.

22 (e) The permittee bears the burden of proof of establishing that  
23 the permittee suffered losses in a transaction as a result of fraud,  
24 misrepresentation, deceit, or negligence on the part of a distributor  
25 or operator and the extent of those losses. All facts must be estab-  
26 lished by a preponderance of the evidence.

27 (f) The department may postpone consideration of a claim until  
28 after a hearing under AS 05.15.128 or until after a pending or contem-  
29 plated court proceeding is completed.

1           Sec. 05.15.245. FINDINGS AND PAYMENT. At the conclusion of the  
2 department's consideration of a claim filed under AS 05.15.235, it  
3 shall state in writing its findings and conclusions. If the depart-  
4 ment finds that the permittee has suffered a loss in a transaction as  
5 a result of fraud, misrepresentation, deceit, or negligence on the  
6 part of a distributor or operator, the department may award a  
7 permittee reimbursement up to \$100,000.

8           Sec. 05.15.250. HEARING COSTS. Costs incurred by the department  
9 for an investigation or a hearing under AS 05.15.240 may not be con-  
10 sidered in determining the maximum reimbursement to be awarded under  
11 AS 05.15.245 and 05.15.255.

12           Sec. 05.15.255. MAXIMUM AWARD. (a) The maximum award under  
13 AS 05.15.245 is \$100,000 for any one distributor or operator.

14           (b) If the \$100,000 limit specified in (a) of this section is  
15 insufficient to pay in full the valid claims of all permittees who  
16 have filed claims against that distributor or operator, the \$100,000  
17 shall be distributed among the permittees in the ratio that their  
18 individual claims bear to the aggregate of valid claims, or in another  
19 manner that the department considers equitable. Distribution shall be  
20 made among the permittees entitled to share in the recovery, without  
21 regard to the sequence in which their claims were filed.

22           Sec. 05.15.260. SEQUENCE OF CLAIM PAYMENT. If the money  
23 appropriated from the charitable gaming surety fund is insufficient at  
24 a given time to satisfy an award, the department shall, when  
25 sufficient money has been appropriated, satisfy unpaid claims in the  
26 sequence that the claim orders were originally issued, plus  
27 accumulated interest at the rate of 10.5 percent a year.

28           Sec. 05.15.265. RIGHT TO SUBROGATION. When the department has  
29 paid an award to a permittee, the department is subrogated to all

1 rights of the claimant to the amount paid, and the claimant shall  
2 assign to the state all right to that portion of the claim. Amounts  
3 subsequently recovered by the department shall be deposited in the  
4 charitable gaming suraty fund in the general fund.

5 Sec. 05.15.270. DISCIPLINARY ACTION AGAINST DISTRIBUTORS AND  
6 OPERATORS. (a) Except as provided in (b) of this section, a distrib-  
7 utor's or operator's full repayment of all obligations to the state in  
8 connection with a claim under AS 05.15.235 does not affect  
9 disciplinary proceedings brought under this chapter.

10 (b) When an award is made, the department shall suspend the  
11 license of the distributor or operator. A suspension ordered under  
12 this subsection may be lifted if the distributor or operator reaches  
13 an agreement with the department and has repaid to the state the  
14 amount awarded to the permittee and the costs of investigating and  
15 hearing the claim under AS 05.15.240.

16 Sec. 05.15.275. SURETY FUND REGULATIONS. The department may  
17 adopt regulations under the Administrative Procedure Act (AS 44.62)  
18 necessary to carry out the purposes of AS 05.15.220 - 05.15.275.

19 \* Sec. 3. AS 05.15.167 is repealed.

20 \* Sec. 4. Sections 1 and 2 of this Act take effect immediately under  
21 AS 01.10.070(c).

22 \* Sec. 5. Section 3 of this Act takes effect July 1, 1990.  
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24  
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27  
28  
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## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: Charitable Gaming Surety Fund

Agency Affected: Commerce & Economic Dev.  
BRU: Occupational Licensing

Sponsor: Rules Committee  
Requestor: Governor

Components: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS *	174.0	*	*	*	*	*
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>174.0</b>	<b>*</b>	<b>*</b>	<b>*</b>	<b>*</b>	<b>*</b>

CAPITAL	0	0	0	0	0	0
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REVENUE	174.0	174.0	174.0	174.0	174.0	174.0
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**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER Surety Fund	174.0	*	*	*	*	*
<b>TOTAL</b>	<b>174.0</b>	<b>*</b>	<b>*</b>	<b>*</b>	<b>*</b>	<b>*</b>

**POSITIONS:**

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

**ANALYSIS :** (Attach a separate page if necessary) Since the surety fund is established as an account within the general fund, legislative appropriation will be required each fiscal year in order for claims to be paid.

\*The amount the division will request in FY 92 to FY 96 is indeterminate at this time and will depend on the amount of claims paid out in the previous year(s).  
(See attached for revenue analysis.)

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144  
Division: Occupational Licensing Date: \_\_\_\_\_

Approved by Commissioner: Larry Morsuli Date: 1/29/90  
Agency: Department of Commerce & Economic Development

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

## FISCAL NOTE ANALYSIS

### CHARITABLE GAMING SURETY FUND

The Charitable Gaming Surety Fund is anticipated to be established in late FY 90, with an initial surety fund assessment of \$174.0 being collected in FY 90 prior to the release of existing operator bonds in July of 1990..

Revenue coming into the Charitable Gaming Surety Fund each year is based on:

Permittees:	973 permittees x \$150 <sup>1/</sup> each year	\$145,950.00
Operators:	12 operators x \$1000 <sup>1/</sup> each year	12,000.00
Distributors:	16 distributors x \$1000 <sup>1/</sup> each year	<u>16,000.00</u>
	YEARLY TOTAL	<u>\$173,950.00</u>

The purpose of the charitable gaming surety fund is to reimburse a permittee for a loss suffered in a transaction resulting from fraud, misrepresentation, deceit, or negligence on the part of a licensed operator or distributor. It is estimated that approximately \$175.0 will be collected each year into the surety fund during renewal of the gaming permits and licenses. Therefore, the balance of the surety fund each year, assuming no payment of claims, will be:

FY 91	\$ 173,950.00
FY 92	\$ 347,900.00
FY 93	\$ 521,850.00
FY 94	\$ 695,800.00
FY 95	\$ 869,750.00
FY 96	\$1,043,700.00

Once the fund reaches the \$1,000.0 level, the division would revise annual surety fund fees to maintain the fund near the \$1,000.0 level, taking into account any payments made from the fund during the previous fiscal year. We would recommend that an initial contribution to the surety fund always be set at the same level.

Expenditures from the surety fund cannot be predetermined at this time; however, the bill specifies that a maximum of \$100,000 may be paid upon conclusion of a claim against an operator or a distributor for each transaction. In addition, the bill provides that appropriate administrative costs may be charged against the fund. Until the fund develops a claims history, the division is not able to estimate with any accuracy the potential administrative costs associated with claims processing.

<sup>1/</sup> The \$150 and \$1,000 surety fund fees shown above are used for projection purposes. Actual fees would be set by regulation after public hearing.

STEVE COWPER  
GOVERNOR



429

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 1, 1990

The Honorable Tim Kelly  
President of the Senate  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to charitable gaming and creating a charitable gaming surety fund. This bill will create a surety fund to protect charities that are harmed by an operator or distributor of a game. The bill will also repeal the current licensure bonding requirement for operators, thus removing an obstacle to licensing operators. This bill will aid charities while at the same time making it easier for operators to become licensed.

The bill has three main components. First, the bill creates the charitable gaming surety fund. Next, the bill specifies the procedures that must be used to file and decide claims. Finally, the bill provides for the complete repeal of all licensure bonding requirements for operators of charitable games as of July 1, 1990.

The charitable gaming surety fund, a special account in the general fund, will be composed of fees paid by permittees, distributors, operators, municipalities, or qualified organizations when they obtain or renew their permits or licenses to participate in charitable gaming. The money generated by the fees will be deposited in the general fund where the commissioner of administration shall separately account for it. The legislature may appropriate the annual estimated balance of this account to the Department of Commerce and Economic Development to carry out the purposes of the charitable gaming surety fund. This method of creating the fund does not violate Alaska's constitutional prohibition against dedicated funds, art. IX, sec. 7, since the money from the fees must be first deposited into the general fund and go through the legislature's appropriation process before it can be used by the department.

The Department of Commerce and Economic Development will control amounts appropriated from this fund, as it is the

entity that regulates games of chance and skill. When sec. 3 of this bill becomes law, operators will no longer have to post a bond with the department to be licensed. However, bonds that are currently posted will remain with the department until July 1, 1990, to protect permittees until the surety fund has a chance to grow. If the fund does not grow fast enough to cover valid claims, there are still provisions in the bill that will provide for an eventual recovery for the claimant, but it is hoped that the fees will accumulate quickly enough to assure an adequate balance in the fund fairly soon after its creation.

The claim procedures are fairly straightforward. When a permittee is harmed through an operator's or a distributor's actions, the permittee may file a claim with the department for reimbursement of the permittee's loss. The permittee must prove by a preponderance of the evidence that the loss was suffered as a result of fraud, misrepresentation, deceit, or negligence on the part of an operator or distributor, but once the permittee has done so the department will make an award to the permittee to cover the loss. The operator or distributor must be notified of the claim, and the operator or distributor may respond to the claim either in writing or at a hearing.

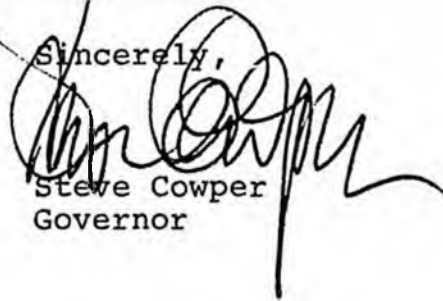
After the hearing, if the permittee is successful, the department shall reimburse the permittee for the permittee's loss up to the amount of \$100,000 per operator or distributor. Not more than \$100,000 may be paid for each operator's or distributor's conduct, regardless of the number of permittees injured. If there are valid claims over the \$100,000 limit, the \$100,000 shall be distributed pro rata among the permittees. If there is not enough money appropriated to pay valid claims, as soon as there is sufficient money the permittees' claims will be satisfied (but again, only up to the \$100,000 limit per operator or distributor).

If a claim is found valid, the department shall suspend the license of the operator or distributor involved. The operator or distributor must repay awards and hearing costs and must also reach an agreement with the department before a suspension may be lifted.

The surety fund provisions in this bill have an immediate effective date; thus the department may begin collecting fees to begin building the fund the day after the bill becomes law. As explained previously, bonds that are currently posted will not be released until July 1, 1990, so that they will continue to protect permittees until then.

This legislation is a progressive step toward dealing with an obstacle to licensing operators and distributors of charitable games. The method proposed by this bill will protect permittees while at the same time easing licensing hurdles. This bill is an attempt to come to a solution that will lessen the burden on both sides of the charitable gaming community. I appreciate your efforts concerning this topic and urge your favorable action on the bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name and title.

Steve Cowper  
Governor