

ALASKA LEGISLATURE

2089

HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000

1-800-368-8772

Wancy Jones - PFA director

Karen Campbell

Janice Leinhardt

Sara Short

Diane Wendlandt - AG off. 50100

Committee Meetings



(S) FINANCE		STANDING COMMITTEE	*
Mar 31	Wednesday	8:00 AM	SENATE FINANCE 532
SB 9		PERS CREDIT FOR NONCERTIFICATED EMPLOYEES	
SB 85		CREDITED SERVICE FOR TEMP EMPLOYEES:PERS	
SB 33		TASK FORCE ON PRIVATIZATION	
		BALANCED BUDGET PLAN PRESENTATIONS:	
		-PERMANENT FUND CORPORATION, JIM KELLY	
		BILLS PREVIOUSLY HEARD/SCHEDULED	

(S) FINANCE		STANDING COMMITTEE	*
Mar 31	Wednesday	6:00 PM	SENATE FINANCE 532
*+SB 113		FINANCES OF ALASKA HOUSING FINANCE CORP	TELECONFERENCED
+SB 42		1999 REVISOR'S BILL	TELECONFERENCED
+SB 84		CIGARETTE SALES: AGREEMENT/ESCROW	TELECONFERENCED
+SB 24		REGULATIONS: ADOPTION & JUDICIAL REVIEW	TELECONFERENCED
		BILLS PREVIOUSLY HEARD/SCHEDULED	

Bill Root:

[Return to BASIS Main Menu\(21th Legislature\)](#)
BASIS Last Updated 3/29/99 6:00 PM

SB 6

SB 11

SJR 9

SB 24

SB 33

SB 101

SB

90

SFIN

FILE



OFFICIAL BUSINESS

Alaska State Legislature
Senate
Office of the Secretary

STATE CAPITOL, ROOM 213
JUNEAU, ALASKA 99801-1182
(907) 465-3701
FAX: 465-2832
EMAIL: senate_secretary@Legis.state.ak.us

FOR YOUR IMMEDIATE ATTENTION

DATE: May 12, 1999
TO: Finance Committee
(JerryLee/Mindy - Room 520)
FROM: Office of the Senate Secretary

The Chair of the Committee noted above has waived referral on the following bill(s):

RETRIEVE

SENATE BILL NO. 90
STATE JURISDICTION OVER FISH & GAME

SENATE BILL NO. 91
ENFORCEMENT OF SUBSISTENCE LAWS

Please give the bill file(s) to the page for forwarding to the next Committee of referral.

Thank you.

Alaska State Legislature

Chairman,
Judiciary Committee
Administrative Regulations
Revenue Committee

Vice Chairman,
Resources Committee



Senator Robin L. Taylor

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SPONSOR STATEMENT SB 90

State Jurisdiction over Fish and Game

The State of Alaska is currently fighting the federal government's encroachment into Alaska's Sovereign ability to manage its fish and wildlife resources. Recently, the Governor officially notified the federal government of Alaska's opposition to federal regulations regarding the management and harvest of Alaska's fishery resources in Glacier Bay. Senate Bill 90 is necessary to bolster Alaska's Sovereign authority as provided by the Alaska Statehood Act and preempt the federal government from exercising management over Alaska's fish and wildlife resources.

This legislation is necessary and will, by its enactment, further restrict the federal government's encroachment on Alaska's Sovereign authority to manage our wildlife and fish resources.

The Act prohibits our law enforcement agents from enforcing laws or regulations that usurp Alaska's ability to manage our fish and game resources.

This Act does not apply to assistance provided to a federal law enforcement officer that is necessary in the unforeseen absence of available assistance from a federal source to avert a present and substantial risk of physical harm to a person.

Simply put, we the State of Alaska, do not intend to assist the federal government in breaking our Statehood Compact or violating our Constitution.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

SB

91

SFIN

FILE



OFFICIAL BUSINESS

Alaska State Legislature
Senate
Office of the Secretary

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SPONSOR STATEMENT

SB 91

Enforcement of Subsistence

SB 91 prohibits Alaska law enforcement officers from enforcing federal laws or regulations relating to subsistence eligibility if those laws or regulations can not be adopted by the State of Alaska because of constitutionality. SB 91 makes it very clear that in Alaska, only Alaskan governmental agencies may exercise enforcement activities regarding fish and game resources. This legislation is necessary and will, by its enactment, further restrict the federal government's encroachment on Alaska's Sovereign authority to manage our wildlife and fish resources.

This Act does not apply to assistance provided to a federal law enforcement officer that is necessary in the unforeseen absence of available assistance from a federal source to avert a present and substantial risk of physical harm to a person.

Simply put, we the State of Alaska, do not intend to assist the federal government in breaking our Statehood Compact or violating our Constitution.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

SB

93

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: May 3, 1999

FURTHER REFERRALS:

Date of Committee Action: 5/5/99

The FINANCE Committee considered:

CSSB 93(FIN)

CS FOR SENATE BILL NO. 93(FIN)

NAMES OF ORGANIZATIONS & BUSINESSES

"An Act relating to the purposes of certain businesses and corporations; relating to the names of businesses and organizations; relating to the registration under the Alaska Trademark Act of marks that resemble the name of another business or organization; and providing for an effective date."

recommends it be replaced with the following committee substitute [] the same title [] a new title

[] additional referral to Committee [] attached amendment(s)

ADOPTS: Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[] fiscal note(s) [X] fiscal note(s) Senate DCED, 3/26/99

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

Table with columns: SIGNING WITH RECOMMENDATIONS, DP, DNP, NR, AM. Rows include names like Therriault, Foster, Williams, Davis, Moses, Grussendorf, Davies, Austerman, Kohring.

CHAIR'S SIGNATURE [Signature]

FISCAL NOTE No. 1

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: SB93
(S) Publish Date: 3/26/99

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ. Dev.
 Title Names of Organizations and Businesses BRU Banking, Securities and Corporations
 Component Banking, Securities and Corporations
 Sponsor Senate Labor & Commerce
 Requester Senate Labor & Commerce Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	30.0	33.0	36.3	39.9	43.9	48.3
-------------------------------	-------------	-------------	-------------	-------------	-------------	-------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

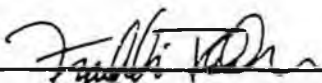
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation is intended to reduce confusion and make it clearer in cases where the name of a business may be viewed "deceptively similar" to another business name.

The purpose of this bill is to eliminate the confusion that currently exists within the three standards of business name distinction. This bill will change current statutes from three standards of business name distinction to one standard.

With passage of this bill and subsequent implementation of new statutes, name disputes will be resolved between the parties, not the State of Alaska.



Prepared by Franklin T. Elder, Director Phone 465-2521
 Division Banking, Securities and Corporations Date/Time 3/9/99 8:57 AM
 Approved by Commissioner Deborah B. Sedwick Date _____
 Agency Commerce and Economic Development

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STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, AND CORPORATIONS

TONY KNOWLES, GOVERNOR

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Corporation Section (907) 465-2530
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Corporation Information (907) 269-8140
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Attn: Dave Gray – Senator Mackie
April 8, 1999

From: Dawn Williams

CS for Senate Bill No. 93(L&C)

“An Act relating to the names of businesses and organizations and to the registration under the Alaska Trademark Act of marks that resemble the name of another business or organization; and providing for an effective date.”

The State of Alaska Corporation Section, under the Department of Commerce, is responsible for filing documents for corporations, limited partnerships, limited liability partnerships, and limited liability companies doing business in the State of Alaska, as well as the registration of business names.

Currently, there are three different guidelines under Title 10 and Title 32 that the Corporation Section must follow when determining name availability.

1. Deceptively similar
2. Distinct
3. Distinguishable on the record

This bill will bring all the chapters in Title 10 and Title 32 to the same standard, “distinguishable on the record”, when determining the availability of all entity names to be filed with the Corporations Section. This is the standard used in the Uniform Act and to this date has been adopted by at least 25 other states.

The current three guidelines allow for conflicts to arise in which one entity feels the Department erred in filing a name because it could be viewed as too similar to another name on file. The public feels that when a name is filed it is “protected”, however this is not the case in any state. A business entity must protect its own name from disparaging use, and there are remedies in the courts for that purpose. The Corporations Section is a filing agency, not an enforcement agency, therefore, these conflicts should not include the State and should at all times be discussed between the two conflicting entities. Consolidating to one guideline will lessen confusion and keep the state out of essentially private disputes over names.

This bill would have a positive fiscal impact for the Department. The standard of “distinguishable on the record” would allow for more entities to file their name with the department because the standard of “distinguishable” is less prohibitive than the “deceptively similar” standard. There are several names rejected per week based on the “deceptively similar” standard.

BURR, PEASE & KURTZ
A PROFESSIONAL CORPORATION

OF COUNSEL

DONALD A. BURR
THEODORE M. PEASE, JR.
L. S. KURTZ, JR.

CHARLES P. FLYNN
ARDEN E. PAGE
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ANN C. LIBURD
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TAX ID NO. 82-0887898

February 8, 1999

Deborah B. Sedwick, Commissioner
Department of Commerce and Economic Development
Post Office Box 110808
Juneau, Alaska 998011-0808

Re: Business Name Registration

Dear Commissioner Sedwick:

I applaud the Department's efforts to resolve a long-standing problem of having the State determine business names which are "deceptively similar" to other names. The State should not be making those determinations in the guise of corporate regulation; if they need be made, such determinations are more properly made by private parties, with the assistance of the courts if necessary, under concepts of unfair trade practices. Indeed, to the extent that the State has been forced into making such determinations (under the "deceptively similar" standard, *see, e.g.* Alaska Statutes 10.06.105 (business corporations), 10.20.021 (nonprofit corporations); 10.35.020 (business names); *cf.* AS 10.50.025 (limited liability companies)), the result has proved very frustrating to many of my clients, who find the State's determinations confusing and, at times, arbitrary.

I daresay I speak on behalf of many others in wholeheartedly supporting passage of legislation in the First Session of the Twenty-First Legislature to eliminate the "deceptively similar" standard currently set forth throughout Title 10 and elsewhere in the Alaska Statutes.

Thank you for your consideration.

Very truly yours,

BURR, PEASE & KURTZ


Ralph E. Duerre

nrb

bcc: Jerome O. List, D.D.S., M.D.
3531-1W22606

BRIAN W. DURRELL, P.C.

L A W O F F I C E

BRIAN W. DURRELL

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RECEIVED
BANKING AND CORPORATIONS
January 28, 1999

Deborah Sedwick, Commissioner
State of Alaska, Dept. of Commerce
and Economic Development
P.O. Box 110808
Juneau, Alaska 99811-0808

2-1-99

Re: Proposed business entity names legislation

Dear Commissioner:

I was pleased to see the proposed legislation from your department that would iron out many of the wrinkles and provide consistency to the various statutes in Titles 10 and 32 dealing with business entity names.

My office has a very active practice working with entrepreneurs and investors in organizing Alaska businesses that include corporations, partnerships and limited liability companies. My office is in almost daily contact with representatives of the Department addressing issues surrounding the organization of these business entities. Frequently, my office and our clients are faced with issues surrounding the use of business names and the determination of whether certain business names have already been taken or are available for new business entities. As the cover memo to the new legislation reflects, we currently face a labyrinth of varying rules addressing the use of business entity names.

I have read the proposed bill. I believe it would clarify and make consistent the rules surrounding the use of business entity names. The new legislation will substantially improve the current statutes dealing with business entity names and will avoid a significant amount of confusion that the Department, attorneys who organize businesses, and members of the business community would face in the absence of such clarifying legislation. I give this new legislation my wholehearted support.

Very truly yours,

BRIAN W. DURRELL, P.C.



Brian W. Durrell

BWD:jk

cc: Dawn Williams (via fax)

ASHBURN AND MASON

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DONNA J. McCREADY
A. WILLIAM SAUPE
KIRSTEN TINGLUM

January 29, 1999
DIVISION OF
SECURITIES,
AND CORPORATIONS

Debra B. Sedwick, Commissioner
State of Alaska
Department of Commerce and Economic Development
Division of Banking, Securities and Corporations
P.O. Box 110808
Juneau, Alaska 99811-0808

RE: Proposed Business Entity Names Legislation

Dear Commissioner:

Ashburn & Mason, P.C., has a very active corporate practice, organizing and assisting Alaska businesses which include corporations, limited liability companies, and partnerships. We are often in contact with the Anchorage and Juneau Corporations Division offices, frequently over the issues of business entity names. This is why we are very pleased to see the Department's proposed legislation concerning business entity names.

We have read the bill and believe it will clear up many of the problems surrounding the use of business names. The Department, members of the business community, and attorneys who organize businesses will all benefit from the passage of this bill. We give it our support.

Very truly yours,

ASHBURN & MASON, P.C.

By: 

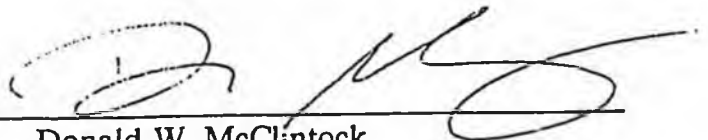
Mark E. Ashburn

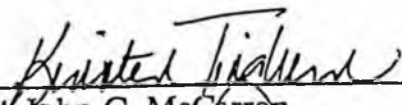
By: 

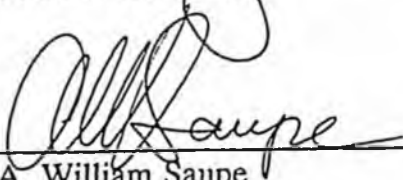
William S. Cummings

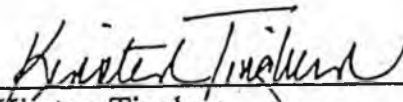
ASHBURN AND MASON, P.C.

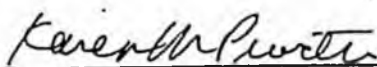
Debra B. Sedwick, Commissioner
January 29, 1999
Page -2-

By: 
Donald W. McClintock

By: 
for John C. McCarron

By: 
A. William Saupe

By: 
Kirsten Tinglum

By: 
Karen M. Procter, Legal Assistant

cc: Dawn Williams, Supervisor
Corporations Division

NAKMP\CORPLTR.AWS

Jan 20 1999 08:00P
JAMES M. BARRETT

January 15, 1999

Dawn Williams
State of Alaska
Department of Commerce and
Economic Development
Division of Corporations
Juneau AK, 99801

Dear Dawn Williams ,

SUBJECT: PROPOSED BUSINESS ENTITY LEGISLATION.

Complete Corporate Services of Alaska Incorporated has reviewed the proposed legislation. We feel that this legislation would be beneficial to the State of Alaska, and its citizens. We feel that the state's exposure due to the wording of the previous legislation is unnecessary and not beneficial. This exposure results in superfluous litigation. We at Complete Corporate Services of Alaska, Inc., believe that disputes over business entity names are better resolved by the parties involved. We believe that the state can improve service and reduce liability with the proposed legislation. From our experience, our customers would appreciate this more modern approach to name registration.

Sincerely,



James M. Barrett
Vice President
Complete Corporate Services of Alaska, Inc.

3839 RIVERSIDE DRIVE
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PROFESSIONAL STAFF
BARBARA CORY HOMPESCH
ACCREDITED TAX ADVISOR
ENROLLED AGENT (IRS)

Email: hompesch@ptalaska.net

January 26, 1999

VIA FAX

Ms. Dawn Williams
Records and Licensing Supervisor
Division of Banking, Securities
and Corporations
P.O. 110808
Juneau, Alaska 99811-0808

Dear Dawn:

I have reviewed and I support the proposed business entity names legislation to replace the old name standard of "deceptively similar" to the new less stringent name standard of "distinguishable on the record."

Sincerely,

HOMPESCH & ASSOCIATES
A Professional Corporation



Susan L. Evans

SLE/sg



Official Business

Alaska State Legislature

SENATE LABOR & COMMERCE COMMITTEE

State Capitol
Juneau, AK 99801-1182

(907)465-3844

SPONSOR STATEMENT

SB 93, Names of Businesses and Organizations.

The Alaska Department of Commerce and Economic Development, Division of Banking, Securities, and Corporations, Corporation Section is responsible for filing documents for corporations, limited partnerships, limited liability partnerships, and limited liability companies doing business in the State of Alaska, as well as filing registered names for business entities and reservation of names for corporations. To do that, the Corporation Section must follow name availability guidelines under Title 10 and Title 32 of the Alaska Statutes.

This proposed legislation is drafted to change the current name availability standards under which business entities are allowed to file with the State of Alaska, from three conflicting guidelines to one.

The current guidelines under Title 10 and Title 32 are as follows:

1. Alaska Statutes 10.06, 10.20, 10.35 and 32.11 each use the guideline "...name may not be the same as, or deceptively similar to, the name of a corporation or registered/reserved name filed under this title."
2. Alaska Statute 10.25 uses the guideline "...name shall be distinct from the name of other cooperatives or corporations organized under the laws of or authorized to do business in this state."
3. Alaska Statutes 10.50 and 32.05 use the guideline "...name is distinguishable on the records of the department (from all other entities filed)."

As a result of the difference in the current guidelines and the margin of error encountered in determining name availability, many conflicts arise each year between different business entities within Alaska. Some of these private name conflicts ultimately result in a conflict with the State of Alaska if an entity believes a name was filed inappropriately. The State expends scarce resources when it must be party to a lawsuit resulting from "conflicting" registered names.

The old standards of "deceptively similar" and "distinct" should be replaced by the newest guideline "distinguishable on the record." This guideline would allow for more entities to file with the State of Alaska, because it is not as stringent as the "deceptively similar" standard.

The adoption of this newer standard would remove the state from these conflicts and allow those entities that see a problem in name similarity to resolve their disputes privately.

Sectional for CS SB 93 (FIN), Names of Organizations & Businesses

Section 1

Section 06.05.301(b)

This is amended to comply with the changes set forth in AS 10.06.105(a) to include a new section AS 10.06.105(d).

Section 2

Section 10.06.005

The current purpose exclusion of insurance is deleted. The current standard does not allow for the incorporation of insurance companies, however, this is in direct violation with Alaska Insurance statutes which require insurance companies to be incorporated.

Section 3

Section 10.06.105(a)

The old standard of determining name availability is deleted. The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 4

Section 10.06.105(d)

A new section is added, changing the old standard of determining name availability from "deceptively similar" to "distinguishable on the record", making it easier for corporations to file with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 5

Section 10.06.115

The standard of determining name availability is changed to "distinguishable on the record", making it easier for entities to reserve their name with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 6

Section 10.06.125

The standard of determining name availability is changed to "distinguishable on the record", making it easier for corporations to register their corporate name with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 7

Section 10.06.130

A corporation who has the exclusive right to the use of a name under AS 10.06 may enjoin the use of a name that is not distinguishable on the records of the department from the

corporation's name. A corporation who has the exclusive right to the use of a name under AS10.06 has a cause of action for damages against a person who uses a name that is not distinguishable on the records of the department from the corporation's name.

The current law does not allow this provision.

Section 8

Section 10.06.033(e)

A corporation that reinstates, must amend its name if the name is no longer distinguishable on the records of the department.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 9

Section 10.06.720

A foreign corporation may not obtain a certificate of authority unless its corporate name is distinguishable on the records of the department.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 10

Section 10.13.120(a)

The standard of determining name availability is changed to "distinguishable on the record", making it easier for corporations to file with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 11

Section 10.15.578

A section is added requiring the name of a cooperative corporation to be "distinguishable on the record", and to allow the department to adopt regulations under AS 44.62 to interpret or implement this section.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year. The current section does not include language allowing for the department to adopt regulations.

Section 12

Section 10.20.021

This section is repealed and reenacted to change the standard of determining name availability to "distinguishable on the record," making it easier for corporations to file with the state, and to allow the department to adopt regulations under AS 44.62 to interpret or implement this section

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year. The current section does not include language allowing for the department to adopt regulations.

Section 13

Section 10.20.470

A foreign corporation may not obtain a certificate of authority unless its corporate name is distinguishable on the records of the department.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 14

Section 10.20.471

When a foreign corporation has a name which is not distinguishable on the records of the department, it must select another name to use which is distinguishable on the records.

Section 15

Section 10.25.040

The old standard of determining name availability is deleted.

The current law uses a different standard, "distinct," to determine name availability.

Section 16

Section 10.25.040

New sections are added change the standard of determining name availability to "distinguishable on the record," making it easier for electric and telephone cooperatives to file with the state, and to allow the department to adopt regulations under AS 44.62 to interpret or implement this section. Section (c) is added to allow corporations that become subject to this chapter by compliance with AS 10.25.290 and 10.25.300 or 10.25.620 to retain a corporate name that does not comply with (a) of this section.

The current law uses a different standard, "distinct," to determine name availability. The change in this law will result in the conformity of each name availability statute which is implemented by this division. The current section does not include language allowing for the department to adopt regulations.

Section 17

Section 10.35.020

The standard of determining name availability is changed to "distinguishable on the record", making it easier for businesses to reserve their name with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 18

Section 10.35.020(b)

A new subsection is added to allow the department to adopt regulations under AS 44.62 to interpret or implement this section.

The current section does not include language allowing for the department to adopt regulations.

Section 19

Section 10.35.040

The standard of determining name availability is changed to "distinguishable on the record", making it easier for businesses to register their name with the state; and the term "organized entity" is defined; and a person who has the exclusive right to the use of a name under this section may to enjoin the use of a name that is not distinguishable on the records of the department from the registered name. A person who has the exclusive right to the use of a name under this section has a cause of action for damages against a person who uses a name that is not distinguishable on the records of the department from the registered name; and the department is allowed to adopt regulations under AS 44.62 to interpret or implement this section

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year. "Organized entity" is a term used to define those entities which are subject to name availability determinations under the guideline of "distinguishable on the records". The current section does not include language allowing for the department to adopt regulations.

Section 20

Section 10.35.500

The definition of "department" is added.

The old section did not include a definition of "department."

Section 21

Section 10.40.015

The standard of determining name availability is added to use "distinguishable on the record".

The current law does not have a standard of determining name availability.

Section 22

Section 10.45.120(b)

The standard of determining name availability is added to use "distinguishable on the record".

The current law does not have a standard of determining name availability.

Section 23

Section 10.50.025

The section is repealed and reenacted.

The old law is repealed and reenacted to conform to the language used in all sections where the term "organized entity" is used in determining name availability on the records of the department.

Section 24

Section 10.50.035

The standard of determining name availability is changed to "distinguishable on the record", making it easier for entities to reserve their name with the state.

The old law is amended to conform to the language used in all sections where the term "organized entity" is used in determining name availability on the records of the department.

Section 25

Section 10.50.040

The standard of determining name availability is changed to "distinguishable on the record", making it easier for entities to reserve their name with the state.

The current law is amended to conform to the language used in all sections where the term "organized entity" is used in determining name availability on the records of the department.

Section 26

Section 10.50.408(e)

A company that reinstates, must amend its name if the name is no longer distinguishable on the records of the department.

The current law is amended to conform to the language used in all sections where the term "organized entity" is used in determining name availability on the records of the department.

Section 27

Section 32.05.480

The standard of determining name availability is changed to "distinguishable on the record", making it easier for entities to reserve their name with the state.

The current law is amended to conform to the language used in all sections where the term "organized entity" is used in determining name availability on the records of the department.

Section 28

Section 32.05.510

A name must be distinguishable under AS 32.05.480.

Section 29

Section 32.05.520

A limited liability partnership who has the exclusive right to the use of a name under this section may enjoin the use of a name that is not distinguishable on the records of the department from the limited liability partnership's name. A limited liability partnership's who has the exclusive right to the use of a name under this section has a cause of action for damages

against a person who uses a name that is not distinguishable on the records of the department from the corporation's name.

The current law does not allow this provision.

Section 30

Section 32.05.620(e)

A partnership that reinstates, must amend its name if the name is no longer distinguishable on the records of the department.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 31

Section 32.11.120(d)

This section is amended to provide for the new standard of "distinguishable on the records".

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 32

Section 32.11.810

This section is amended to change the standard of determining name availability to "distinguishable on the record," making it easier for limited partnerships to file with the state, and to allow the department to adopt regulations under AS 44.62 to interpret or implement this section

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year. The current section does not include language allowing for the department to adopt regulations.

Section 33

Section 32.11.810

A section is added to allow the department to adopt regulations under AS 44.62 to interpret or implement this section.

The current section does not include language allowing for the department to adopt regulations.

Section 34

Section 32.11.820(b)

This section is amended to change the standard of determining name availability for reserving a limited partnership name to "distinguishable on the record," making it easier for limited partnerships to file with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 35

Section 45.50.010

This section is amended to allow the department to check the names of "organized entities" on the records of the department against an application for registration of trade mark or service mark.

The current law does not have a provision to check the name of an entity when determining the availability of a trade mark or service mark.

Section 36

Sections 1-33 may not be interpreted to allow the department or any other person to take action against any entity organized before the effective date of this section.

Section 37

The Department may immediately proceed to adopt necessary regulations.

Section 38

Applies only to actions taken on or after the effective date.

Section 39

Provides the effective date of the Act.

SB

93

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/26/99

FURTHER: 4/19/99

DATE TURNED IN TO OFFICE: 20 April 99

Finance Committee considered SENATE BILL NO. 93

"An Act relating to the names of businesses and organizations; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 93 _____ (FIN)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>John J. Keenan</i>	✓	<i>Not to be held</i>	✓		
		<i>at order</i>	✗		
		<i>Gary White</i>	✓		
		<i>Liz Green</i>	✓		
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair: <i>[Signature]</i>		Co-Chair: <i>[Signature]</i>			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
DCED	7/99		30.0

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

 No. 1

 Bill Version: SB93

 (S) Publish Date: 3/26/99

4/19/99

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Commerce & Econ. Dev.</u>
Title <u>Names of Organizations and Businesses</u>	BRU <u>Banking, Securities and Corporations</u>
Sponsor <u>Senate Labor & Commerce</u>	Component <u>Banking, Securities and Corporations</u>
Requester <u>Senate Labor & Commerce</u>	Component Serial No. <u>1233</u>

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	30.0	33.0	36.3	39.9	43.9	48.3
-------------------------------	-------------	-------------	-------------	-------------	-------------	-------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS


Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation is intended to reduce confusion and make it clearer in cases where the name of a business may be viewed "deceptively similar" to another business name.

The purpose of this bill is to eliminate the confusion that currently exists within the three standards of business name distinction. This bill will change current statutes from three standards of business name distinction to one standard.

With passage of this bill and subsequent implementation of new statutes, name disputes will be resolved between the parties, not the State of Alaska.



Prepared by	Franklin T. Elder, Director	Phone	465-2521
Division	Banking, Securities and Corporations	Date/Time	3/9/99 8:57 AM
Approved by Commissioner	Deborah B. Sedwick	Date	
Agency	Commerce and Economic Development		

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
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 19, 1999

SUBJECT: CSSB 93(FIN) (Work Order No. 21-LS0475\G)

TO: Senator John Torgerson, Co-Chair
Senate Finance Committee
Attn: Mindy

FROM:  Theresa Bannister
Legislative Counsel

This memo accompanies a final of the bill described above.

Pursuant to the committee's instructions, AS 10.06.005 has been amended to delete the restriction against incorporation under AS 10.06 for the purpose of insurance business. In the process of adding this requested amendment, I did not amend AS 21.03.010(b), which states that foreign and alien insurers doing business as authorized insurers under AS 10.21 are not subject to AS 10.06 (Alaska Corporations Code). The committee's amendment does not appear to be inconsistent with AS 21.03.010(b). The amendment applies to persons who incorporate under AS 10.06. Foreign and alien insurers under AS 21.03.010(b) would not, by definition under AS 21.90.900, be persons incorporated under the laws of this state.

If I may be of further assistance, please advise.

TLB:glc
99-189.glc

Attachment

Moved Sen. Adams
w/o obj. ADOPTED

SENATE FINANCE
COMMITTEE

Amendment Number: 1
Bill Number: SB 93
Sponsor: Tomson Date: 4/9/99
Logged In By: Mindy

A suggested title change:

"An Act relating to corporate purpose; the names of businesses and organizations and to the registration under the Alaska Trademark Act of marks that resemble the name of another business or organization; and providing for an effective date."

An added change:

AS 10.06.005 is amended to read:

Purposes. A corporation may be organized under this chapter for any lawful purpose [except for the purpose of insurance].

The current statute does not allow for the incorporation of companies whose purpose is insurance. However, under AS 21.69.040(d) (Insurance Statutes), an insurance corporation does not legally exist until the issuance of a certificate of incorporation by the Commissioner (under AS 10.06). There are currently Insurance corporations on our files. When AS 10.05 was changed to AS 10.06 in 1988, the purpose section was changed to exclude banking and insurance. The Banking Division changed their statutes in 1993(1994) including an amendment to AS 10.06.005 to take out the exclusion of banking.

Amend[#] 2 conceptual to delete "interpret"
w/o objection, Adopted

A FAX

Alaska State Legislature

Date: 19 April 99

To: Peggy

Fax #: 2029 Phone #: _____

From: Mindy - SFC

Phone #: 4935

Re: SB 113: Final with 1-LS0640\ D.1 Cook 4/7/99
SB 93: Final with attached amendment
SB 129: Final with attached amendment

Following this page, please find 3 pages(s). If this does not reach you in full, please inform us ASAP.

called & faxed 11:00



THANK YOU



Official Business

Alaska State Legislature

SENATE LABOR & COMMERCE COMMITTEE

State Capitol
Juneau, AK 99801-1182

(907)465-3844

SPONSOR STATEMENT

SB 93, Names of Businesses and Organizations.

The Alaska Department of Commerce and Economic Development, Division of Banking, Securities, and Corporations, Corporation Section is responsible for filing documents for corporations, limited partnerships, limited liability partnerships, and limited liability companies doing business in the State of Alaska, as well as filing registered names for business entities and reservation of names for corporations. To do that, the Corporation Section must follow name availability guidelines under Title 10 and Title 32 of the Alaska Statutes.

This proposed legislation is drafted to change the current name availability standards under which business entities are allowed to file with the State of Alaska, from three conflicting guidelines to one.

The current guidelines under Title 10 and Title 32 are as follows:

1. Alaska Statutes 10.06, 10.20, 10.35 and 32.11 each use the guideline "...name may not be the same as, or deceptively similar to, the name of a corporation or registered/reserved name filed under this title."
2. Alaska Statute 10.25 uses the guideline "...name shall be distinct from the name of other cooperatives or corporations organized under the laws of or authorized to do business in this state."
3. Alaska Statutes 10.50 and 32.05 use the guideline "...name is distinguishable on the records of the department (from all other entities filed)."

As a result of the difference in the current guidelines and the margin of error encountered in determining name availability, many conflicts arise each year between different business entities within Alaska. Some of these private name conflicts ultimately result in a conflict with the State of Alaska if an entity believes a name was filed inappropriately. The State expends scarce resources when it must be party to a lawsuit resulting from "conflicting" registered names.

The old standards of "deceptively similar" and "distinct" should be replaced by the newest guideline "distinguishable on the record." This guideline would allow for more entities to file with the State of Alaska, because it is not as stringent as the "deceptively similar" standard.

The adoption of this newer standard would remove the state from these conflicts and allow those entities that see a problem in name similarity to resolve their disputes privately.

SECTIONAL

<S SR 93(LFC)

Section 1

Section 06.05.301(b)

This is amended to comply with the changes set forth in AS 10.06.105(a) to include a new section AS 10.06.105(d).

Section 2

Section 10.06.105(a)

The old standard of determining name availability is deleted. The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 3

Section 10.06.105(d)

A new section is added, changing the old standard of determining name availability from "deceptively similar" to "distinguishable on the record", making it easier for corporations to file with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 4

Section 10.06.115

The standard of determining name availability is changed to "distinguishable on the record", making it easier for entities to reserve their name with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 5

Section 10.06.125

The standard of determining name availability is changed to "distinguishable on the record", making it easier for corporations to register their corporate name with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 6

Section 10.06.130

A corporation who has the exclusive right to the use of a name under AS 10.06 may enjoin the use of a name that is not distinguishable on the records of the department from the corporation's name. A corporation who has the exclusive right to the use of a name under AS 10.06 has a cause of action for damages against a person who uses a name that is not distinguishable on the records of the department from the corporation's name.

The current law does not allow this provision.

Section 7

Section 10.06.033(e)

A corporation that reinstates, must amend its name if the name is no longer distinguishable on the records of the department.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 8

Section 10.06.720

A foreign corporation may not obtain a certificate of authority unless its corporate name is distinguishable on the records of the department.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 9

Section 10.13.120(a)

The standard of determining name availability is changed to "distinguishable on the record", making it easier for corporations to file with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 10

Section 10.15.578

A section is added requiring the name of a cooperative corporation to be "distinguishable on the record", and to allow the department to adopt regulations under AS 44.62 to interpret or implement this section.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year. The current section does not include language allowing for the department to adopt regulations.

Section 11

Section 10.20.021

This section is repealed and reenacted to change the standard of determining name availability to "distinguishable on the record," making it easier for corporations to file with the state, and to allow the department to adopt regulations under AS 44.62 to interpret or implement this section

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year. The current section does not include language allowing for the department to adopt regulations.

Section 12

Section 10.20.470

A foreign corporation may not obtain a certificate of authority unless its corporate name is distinguishable on the records of the department.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 12

Section 10.20.471

When a foreign corporation has a name which is not distinguishable on the records of the department, it must select another name to use which is distinguishable on the records.

Section 14

Section 10.25.040

The old standard of determining name availability is deleted.

The current law uses a different standard, "distinct," to determine name availability.

Section 15

Section 10.25.040

New sections are added change the standard of determining name availability to "distinguishable on the record," making it easier for electric and telephone cooperatives to file with the state, and to allow the department to adopt regulations under AS 44.62 to interpret or implement this section. Section (c) is added to allow corporations that become subject to this chapter by compliance with AS 10.25.290 and 10.25.300 or 10.25.620 to retain a corporate name that does not comply with (a) of this section.

The current law uses a different standard, "distinct," to determine name availability. The change in this law will result in the conformity of each name availability statute which is implemented by this division. The current section does not include language allowing for the department to adopt regulations.

Section 16

Section 10.35.020

The standard of determining name availability is changed to "distinguishable on the record", making it easier for businesses to reserve their name with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 17

Section 10.35.020(b)

A new subsection is added to allow the department to adopt regulations under AS 44.62 to interpret or implement this section.

The current section does not include language allowing for the department to adopt regulations.

Section 18

Section 10.35.040

The standard of determining name availability is changed to "distinguishable on the record", making it easier for businesses to register their name with the state; and the term "organized entity" is defined; and a person who has the exclusive right to the use of a name under this section may to enjoin the use of a name that is not distinguishable on the records of the department from the registered name. A person who has the exclusive right to the use of a name under this section has a cause of action for damages against a person who uses a name that is not distinguishable on the records of the department from the registered name; and the department is allowed to adopt regulations under AS 44.62 to interpret or implement this section

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year. "Organized entity" is a term used to define those entities which are subject to name availability determinations under the guideline of "distinguishable on the records". The current section does not include language allowing for the department to adopt regulations.

Section 19

Section 10.35.500

The definition of "department" is added.

The old section did not include a definition of "department."

Section 20

Section 10.40.015

The standard of determining name availability is added to use "distinguishable on the record".

The current law does not have a standard of determining name availability.

Section 21

Section 10.45.120(b)

The standard of determining name availability is added to use "distinguishable on the record".

The current law does not have a standard of determining name availability.

Section 22

Section 10.50.025

The section is repealed and reenacted.

The old law is repealed and reenacted to conform to the language used in all sections where the term "organized entity" is used in determining name availability on the records of the department.

Section 23

Section 10.50.035

The standard of determining name availability is changed to "distinguishable on the record", making it easier for entities to reserve their name with the state.

The old law is amended to conform to the language used in all sections where the term "organized entity" is used in determining name availability on the records of the department.

Section 24

Section 10.50.040

The standard of determining name availability is changed to "distinguishable on the record", making it easier for entities to reserve their name with the state.

The current law is amended to conform to the language used in all sections where the term "organized entity" is used in determining name availability on the records of the department.

Section 25

Section 10.50.408(e)

A company that reinstates, must amend its name if the name is no longer distinguishable on the records of the department.

The current law is amended to conform to the language used in all sections where the term "organized entity" is used in determining name availability on the records of the department.

Section 26

Section 32.05.480

The standard of determining name availability is changed to "distinguishable on the record", making it easier for entities to reserve their name with the state.

The current law is amended to conform to the language used in all sections where the term "organized entity" is used in determining name availability on the records of the department.

Section 27

Section 32.05.510

A name must be distinguishable under AS 32.05.480.

Section 28

Section 32.05.520

A limited liability partnership who has the exclusive right to the use of a name under this section may enjoin the use of a name that is not distinguishable on the records of the department from the limited liability partnership's name. A limited liability partnership's who has the exclusive right to the use of a name under this section has a cause of action for damages against a person who uses a name that is not distinguishable on the records of the department from the corporation's name.

The current law does not allow this provision.

Section 29

Section 32.05.620(e)

A partnership that reinstates, must amend its name if the name is no longer distinguishable on the records of the department.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 30

Section 32.11.120(d)

This section is amended to provide for the new standard of "distinguishable on the records".

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 31

Section 32.11.810

This section is amended to change the standard of determining name availability to "distinguishable on the record," making it easier for limited partnerships to file with the state, and to allow the department to adopt regulations under AS 44.62 to interpret or implement this section

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year. The current section does not include language allowing for the department to adopt regulations.

Section 32

Section 32.11.810

A section is added to allow the department to adopt regulations under AS 44.62 to interpret or implement this section.

The current section does not include language allowing for the department to adopt regulations.

Section 33

Section 32.11.820(b)

This section is amended to change the standard of determining name availability for reserving a limited partnership name to "distinguishable on the record," making it easier for limited partnerships to file with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 34

Section 45.50.010

This section is amended to allow the department to check the names of "organized entities" on the records of the department against an application for registration of trade mark or service mark.

The current law does not have a provision to check the name of an entity when determining the availability of a trade mark or service mark.

Section 35

Sections 1-33 may not be interpreted to allow the department or any other person to take action against any entity organized before the effective date of this section.

Section 36

The Department may immediately proceed to adopt necessary regulations.

Section 37

Applies only to actions taken on or after the effective date.

Section 38

Provides the effective date of the Act.

BURR, PEASE & KURTZ

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TAX ID NO. 82-0887888

February 8, 1999

Deborah B. Sedwick, Commissioner
Department of Commerce and Economic Development
Post Office Box 110808
Juneau, Alaska 998011-0808

Re: Business Name Registration

Dear Commissioner Sedwick:

I applaud the Department's efforts to resolve a long-standing problem of having the State determine business names which are "deceptively similar" to other names. The State should not be making those determinations in the guise of corporate regulation; if they need be made, such determinations are more properly made by private parties, with the assistance of the courts if necessary, under concepts of unfair trade practices. Indeed, to the extent that the State has been forced into making such determinations (under the "deceptively similar" standard, *see, e.g.* Alaska Statutes 10.06.105 (business corporations), 10.20.021 (nonprofit corporations); 10.35.020 (business names); *cf.* AS 10.50.025 (limited liability companies)), the result has proved very frustrating to many of my clients, who find the State's determinations confusing and, at times, arbitrary.

I daresay I speak on behalf of many others in wholeheartedly supporting passage of legislation in the First Session of the Twenty-First Legislature to eliminate the "deceptively similar" standard currently set forth throughout Title 10 and elsewhere in the Alaska Statutes.

Thank you for your consideration.

Very truly yours,

BURR, PEASE & KURTZ


Ralph E. Duerre

nrb

bcc: Jerome O. List, D.D.S., M.D.
3531-1W22606

BRIAN W. DURRELL, P.C.

L A W O F F I C E

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RECEIVED
DIVISION OF
BANKING, FINANCE, AND CREDIT
AND CORPORATIONS
January 28, 1999

Deborah Sedwick, Commissioner
State of Alaska, Dept. of Commerce
and Economic Development
P.O. Box 110808
Juneau, Alaska 99811-0808

2-1-99

Re: Proposed business entity names legislation

Dear Commissioner:

I was pleased to see the proposed legislation from your department that would iron out many of the wrinkles and provide consistency to the various statutes in Titles 10 and 32 dealing with business entity names.

My office has a very active practice working with entrepreneurs and investors in organizing Alaska businesses that include corporations, partnerships and limited liability companies. My office is in almost daily contact with representatives of the Department addressing issues surrounding the organization of these business entities. Frequently, my office and our clients are faced with issues surrounding the use of business names and the determination of whether certain business names have already been taken or are available for new business entities. As the cover memo to the new legislation reflects, we currently face a labyrinth of varying rules addressing the use of business entity names.

I have read the proposed bill. I believe it would clarify and make consistent the rules surrounding the use of business entity names. The new legislation will substantially improve the current statutes dealing with business entity names and will avoid a significant amount of confusion that the Department, attorneys who organize businesses, and members of the business community would face in the absence of such clarifying legislation. I give this new legislation my wholehearted support.

Very truly yours,

BRIAN W. DURRELL, P.C.



Brian W. Durrell

BWD:jk

cc: Dawn Williams (via fax)

ASHBURN AND MASON

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A. WILLIAM SAUPE
KIRSTEN TINGLUM

FEB 3 PM 3 32

January 29, 1999
SIGN OF
SECURITIES,
AND CORPORATIONS

Debra B. Sedwick, Commissioner
State of Alaska
Department of Commerce and Economic Development
Division of Banking, Securities and Corporations
P.O. Box 110808
Juneau, Alaska 99811-0808

RE: Proposed Business Entity Names Legislation

Dear Commissioner:

Ashburn & Mason, P.C., has a very active corporate practice, organizing and assisting Alaska businesses which include corporations, limited liability companies, and partnerships. We are often in contact with the Anchorage and Juneau Corporations Division offices, frequently over the issues of business entity names. This is why we are very pleased to see the Department's proposed legislation concerning business entity names.

We have read the bill and believe it will clear up many of the problems surrounding the use of business names. The Department, members of the business community, and attorneys who organize businesses will all benefit from the passage of this bill. We give it our support.

Very truly yours,

ASHBURN & MASON, P.C.

By: Mark E. Ashburn
Mark E. Ashburn

By: William S. Cummings
William S. Cummings

ASHBURN AND MASON, P.C.

Debra B. Sedwick, Commissioner
January 29, 1999
Page -2-

By: 

Donald W. McClintock

By: 
for 

John C. McCarron

By: 

A. William Saupe

By: 

Kirsten Tinglum

By: 

Karen M. Procter, Legal Assistant

cc: Dawn Williams, Supervisor
Corporations Division

N:\KMP\CORPLTR.AWS

January 15, 1999

Dawn Williams
State of Alaska
Department of Commerce and
Economic Development
Division of Corporations
Juneau AK, 99801

Dear Dawn Williams,

SUBJECT: PROPOSED BUSINESS ENTITY LEGISLATION.

Complete Corporate Services of Alaska Incorporated has reviewed the proposed legislation. We feel that this legislation would be beneficial to the State of Alaska, and its citizens. We feel that the state's exposure due to the wording of the previous legislation is unnecessary and not beneficial. This exposure results in superfluous litigation. We at Complete Corporate Services of Alaska, Inc., believe that disputes over business entity names are better resolved by the parties involved. We believe that the state can improve service and reduce liability with the proposed legislation. From our experience, our customers would appreciate this more modern approach to name registration.

Sincerely,



James M. Barrett
Vice President
Complete Corporate Services of Alaska, Inc.

3839 RIVERSIDE DRIVE
STE 101
JUNEAU, AK 99801

HOMPESCH & ASSOCIATES
ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION
119 N. CUSHMAN STREET, SUITE 400
FAIRBANKS, ALASKA 99701-2879

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SHELLEY D. EDENAL
SUSAN L. EVANS
RICHARD W. HOMPESCH II
PROFESSIONAL STAFF
BARBARA CORY HOMPESCH
ACCREDITED TAX ADVISOR
ENROLLED AGENT (IRS)

Email: hompesch@ptlaska.net

January 26, 1999

VIA FAX

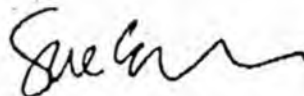
Ms. Dawn Williams
Records and Licensing Supervisor
Division of Banking, Securities
and Corporations
P.O. 110808
Juneau, Alaska 99811-0808

Dear Dawn:

I have reviewed and I support the proposed business entity names legislation to replace the old name standard of "deceptively similar" to the new less stringent name standard of "distinguishable on the record."

Sincerely,

HOMPESCH & ASSOCIATES
A Professional Corporation



Susan L. Evans

SLE/sg

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, AND CORPORATIONS

TONY KNOWLES, GOVERNOR

333 Willoughby Avenue, 9th Floor
P.O. BOX 110808
JUNEAU, ALASKA 99811-0808
Corporation Section (907) 465-2530
Banking & Securities (907) 465-2521

ANCHORAGE

Corporation Information (907) 269-8140
TDD: (907) 465-5437

Attn: Dave Gray – Senator Mackie
April 8, 1999

From: Dawn Williams

CS for Senate Bill No. 93(L&C)

“An Act relating to the names of businesses and organizations and to the registration under the Alaska Trademark Act of marks that resemble the name of another business or organization; and providing for an effective date.”

The State of Alaska Corporation Section, under the Department of Commerce, is responsible for filing documents for corporations, limited partnerships, limited liability partnerships, and limited liability companies doing business in the State of Alaska, as well as the registration of business names.

Currently, there are three different guidelines under Title 10 and Title 32 that the Corporation Section must follow when determining name availability.

1. Deceptively similar
2. Distinct
3. Distinguishable on the record

This bill will bring all the chapters in Title 10 and Title 32 to the same standard, “distinguishable on the record”, when determining the availability of all entity names to be filed with the Corporations Section. This is the standard used in the Uniform Act and to this date has been adopted by at least 25 other states.

The current three guidelines allow for conflicts to arise in which one entity feels the Department erred in filing a name because it could be viewed as too similar to another name on file. The public feels that when a name is filed it is “protected”, however this is not the case in any state. A business entity must protect its own name from disparaging use, and there are remedies in the courts for that purpose. The Corporations Section is a filing agency, not an enforcement agency, therefore, these conflicts should not include the State and should at all times be discussed between the two conflicting entities. Consolidating to one guideline will lessen confusion and keep the state out of essentially private disputes over names.

This bill would have a positive fiscal impact for the Department. The standard of “distinguishable on the record” would allow for more entities to file their name with the department because the standard of “distinguishable” is less prohibitive than the “deceptively similar” standard. There are several names rejected per week based on the “deceptively similar” standard.

SENATE FINANCE COMMITTEE

SIGN-IN

SB 93-NAMES OF ORGANIZATIONS & BUSINESSES

NAME: Down Williams Subject/Bill No: 93-NAMES

Co./Dept./Title: DCED - CORPORATIONS SUPERVISOR Phone: 465-2297

Address: POB 110808 Zip: 99811-0808

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

SENATE FINANCE COMMITTEE

SIGN-IN

SB 93-NAMES OF ORGANIZATIONS & BUSINESSES

NAME: DAWN WILLIAMS Sub./Bill No: 93

Co./Dept./Title: DEPT COMMERCE - BSC - CORPORATIONS SUPERVISOR Phone: 465-2297

Address: POB 110808 Zip: 99811-0808

Do you wish to testify? Yes No Respond to Questions

NAME: _____ Sub./Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond to Questions

NAME: _____ Sub./Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond to Questions

NAME: _____ Sub./Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond to Questions

SB

94

HFIN

FILE

Comments for House Finance Committee – Senate Bill 94

May 15, 1999

Thank you, Mr. Chairman.

Senate Bill 94 proposes several amendments to the Medical Marijuana Act that took effect this year on March 4. The changes address some serious law enforcement and public health concerns with this new statute, and also some practical concerns about how state agencies are going to implement what the voters have asked them to implement.

In crafting this legislation, we have worked closely with the Department of Law, the Department of Public Safety, and the Department of Health and Social Services. I am pleased to report that these three agencies are in support of the legislation before you. SB 94 is also supported by the Alaska State Advisory Board on Alcoholism & Drug Abuse, the Anchorage Police Department, and the Alaska Association of Chiefs of Police.

There are three major changes in the bill.

The first area is registration. The marijuana initiative approved last fall by voters establishes a state registry of patients who are entitled to use marijuana for medicinal purposes. However, there is no requirement that a patient register – the initiative still provides legal protection for the use of medical marijuana even if the person is not registered with the state. This creates a problem for law enforcement. Because pharmacies are prohibited by federal law from dispensing marijuana, the drug must be obtained through other channels, and it all looks the same through the eyes of a police officer. To ensure that all patients who need marijuana are protected from needless arrest or unwarranted hassle, SB 94 requires patients and their caregivers to register, and to carry a registry ID card. We modeled this after our successful permit system for those who qualify to carry concealed handguns. This system will help police distinguish between legitimate and illegitimate users of marijuana.

The second change deals with possession limits. The marijuana initiative established a presumptively legal possession limit of one ounce in usable form, and six plants. But the initiative also includes a paragraph that allows patients and their caregivers to possess an unlimited amount of marijuana, as long as it can be medically justified. The problem is, there is no definition of what is medically justified. The Department of Law and the Department of Public Safety have urged the Legislature to remove

any ambiguity in this area and set the limit at the same amount identified in the initiative, which is one ounce and six plants. SB 94 implements this change.

The third area concerns the role of the primary caregivers for patients who are using medical marijuana. SB 94 establishes some wise precautions to limit abuse. Each patient can have only one primary caregiver, and each primary caregiver can care for only one patient, with very limited exceptions. By creating a "one to one" relationship between the patient and caregiver, we will avoid scenarios such as what cropped up in California, where marijuana clubs sprouted up claiming to be the primary caregivers for 500 or 1000 patients. SB 94 also states that no person who has committed a felony violation of drug laws can be a primary caregiver, and no person who is on probation or parole can be a primary caregiver.

Mr. Chairman, that concludes my overview of this legislation, and I'd be happy to answer any questions.

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: May 14, 1999

FURTHER REFERRALS:

Date of Committee Action: 5/15/99

The FINANCE Committee considered:

CSSSB 94(FIN) am

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 94(FIN) am

MEDICAL USE OF MARIJUANA

"An Act relating to the medical use of marijuana; and providing for an effective date."

recommends it be replaced with the following committee substitute HCS CSSB 94(FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____

fiscal note(s) Senate HSS 5/4/99

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Gene Theriault</u> Theriault	X			
<u>Ellen Mulder</u> Mulder	X			
<u>Car Bunde</u> Bunde				✓
<u>Vic Kohring</u> Kohring	X			
<u>Alan Austerman</u> Austerman			X	
<u>Pat Davis</u> Davis	+			
<u>Bob Grussendorf</u> Grussendorf	X			
<u>Paul Davis</u> Davis	X			
<u>William Williams</u> Williams	+			
<u>Paul Foster</u> Foster			X	
<u>Paul Foster</u> Foster			X	

CHAIR'S SIGNATURE

Gene Theriault Ellen Mulder
Theriault Mulder

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CS SS SB 94 (HES)

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: An Act relating to the medical use of marijuana; and BRU: State Health Services
 Component: Bureau of Vital Statistics
 Sponsor: Leman COMPONENT SERIAL NO. 961
 Requestor: SENATE (HES) See also (SN#): _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY00	FY01	FY02	FY03	FY04	FY05
PERSONAL SERVICES	37.7	38.0	39.0	40.0	41.0	42.0
TRAVEL						
CONTRACTUAL	10.0	10.9	11.8	7.3	8.1	8.9
SUPPLIES	3.0	1.5	3.0	1.5	3.0	1.5
EQUIPMENT	7.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	57.7	50.4	53.8	48.8	52.1	52.4

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 CF Match						
1004 GF	52.7	45.4	48.8	43.8	47.1	47.4
1005 GF/Program Receipts	5.0	5.0	5.0	5.0	5.0	5.0
1037 GF/Mental Health						
Other (please specify)						
TOTAL	57.7	50.4	53.8	48.8	52.1	52.4

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of any current year (FY99) cost: _____

ANALYSIS: (Attach a separate page if necessary)

The Department estimates that changing the registry from voluntary to mandatory will double the workload. The department will also have to redraft the regulations covering medical marijuana and reprocess them through public hearings. These will require the following:

- Line 100 One Administrative Clerk III for data entry and review of records
- Line 300 Redraft existing regulations to conform to amendments and petition process and operating costs.
- Line 400 Card stock and miscellaneous computer and office supplies
- Line 500 Computer and workstation for new position

5/4/99
 Prepared by: Peter M. Nakamura, MD, MPH Phone: (907) 465-3090
 Division: Public Health Date: 05/04/99
 Approved by Commissioner: Karen Perdue, Commissioner Date: 5/4/99
 Agency: Department of Health & Social Services

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Adopted
5/15/99

1-LS0524\SA.9
Luckhaupt
5/15/99

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSSB 94(FIN) am

- 1 Page 8, line 5:
- 2 Delete "one-year"
- 3 Insert "16-month"

- 4 Page 8, lines 9 - 10:
- 5 Delete "one-year"
- 6 Insert "16-month"

Adopted
5/15/99

AMENDMENT

OFFERED IN THE HOUSE

TO: CSSSSB 94(FIN) am

Theriault

- 1 Page 5, line 24:
- 2 Delete "and"
- 3 Insert "card"

- 4 Page 6, line 1:
- 5 Delete "and"

the comfort of their upper-class homes, to dictate policies which we know are harmful?

Implications for Law Enforcement

Perhaps the most complex questions we are facing today as a result of these propositions pertain to law enforcement. As representatives on the panel of state and local experts will testify, the passage of these initiatives raises important law enforcement issues in both states. Earlier this month, General McCaffrey convened a meeting of representatives from state and local law enforcement to discuss the practical implications of these propositions, and how federal law enforcement together with their state and local task force partners will continue to target and arrest major drug traffickers.

I would like to discuss a few scenarios which raise questions and graphically illustrate the practical issues which face law enforcement in light of these developments.

- Can state and local law enforcement officers seize marijuana in California, and in Arizona, marijuana and other Schedule I drugs from individuals claiming to have received them as a result of a doctor's recommendation or prescription?
- Are these substances medicines under state law or contraband?
-
- Are police officers liable if they let individuals with marijuana, who claim a medical condition, drive off and later injure or kill someone?
-
- Are state and local officers able to detain individuals possessing Schedule I drugs, and call federal officials to come and arrest them on federal charges? How will the federal government meet the burdens of charging and prosecuting cases previously handled on a state level --- without any additional resources and with already staggering workloads?
-
- How will law enforcement officers respond to large marijuana plots when the owners claim that they are "caregivers" who must cultivate marijuana for their customers suffering from AIDS, cancer, or whatever medical conditions they identify?
-
- Can inmates in prison claim that they are suffering from a medical condition requiring treatment with Schedule I substances? Are prison officials obligated to allow the inmates to use these drugs? If so, how are prison officials in Arizona expected to maintain order and discipline with the inmates high on heroin, marijuana, LSD or other Schedule I drugs?
-
- How will law enforcement handle prescriptions or recommendations from doctors or caregivers from other states, or from Mexico and Canada?
- These are serious questions which now face California and Arizona law enforcement officials on a daily basis. There are also significant issues which face the citizens of both states. Parents should ask how these propositions will impact on the safety of their children; will workplaces, including schools and transportation, maintain drug-free requirements? How will parents be assured that their child's Little League Coach or scoutmaster is not using drugs? Perhaps the biggest question of all, however, is what impact the liberalization of drug policy will have on our children at a time when drug use has increased. The mixed messages we are sending will most likely have a terrible effect on parents' ability to provide unequivocal information about drugs to their young children.

What the Federal Government Can Do

The California and Arizona initiatives do nothing to change federal drug enforcement policy. The DEA will continue to target major drug traffickers, including major marijuana growers and

distributors. We also can take both administrative and criminal actions against doctors who violate the terms of their DEA drug registrations that authorize them to prescribe controlled substances. Doctors are registered with the DEA to prescribe only Schedule II-IV substances. Technically, those doctors who prescribe or recommend Schedule I substances are violating federal law. The licenses of over 900 physicians have either been surrendered or revoked in the last two years for fraudulent prescription practices.

The DEA is working with the Department of Justice and the Office of National Drug Control Policy to ensure close coordination between the federal government, and state and local law enforcement agencies. We have met with officials from California and Arizona in an effort to ensure that they have the necessary support from the federal government, but there are still many issues to be worked out. Although there are no guarantees, the DEA is hopeful that continuing consultations with state and local officials will ensure that the citizens of both states will be protected from major drug traffickers and unscrupulous medical practitioners. In some cases, they will be one and the same.

Conclusion

Mr. Chairman, it is important for us to recognize that the proponents of drug legalization will not stop with California and Arizona. They intend to support and finance initiatives in many other states. Citizens of California can overturn this proposition in 1998 through another ballot initiative. It is possible for the Arizona legislature to overturn Proposition 200 within a shorter period of time.

We should keep our attention focused on the next tier of states targeted by the legalizers, and should learn from the California and Arizona experiences. I firmly believe that the legalizers will pour millions of dollars into legalization campaigns, and will work diligently to disguise the legalization issue as a compassionate pain relief issue. However, we must continue to educate Americans about the true nature of the debate, and ensure that they have the facts necessary for them to make a sound decision.

It is instructional to look at what happened in Alaska after marijuana was decriminalized between 1975 and 1990. Marijuana abuse among teenagers doubled during that time period, and parents recognized the need to re-criminalize marijuana. In 1990, Alaskans voted to re-criminalize marijuana after a grass-roots effort educated voters in that state about the consequences of a liberalized drug policy. With marijuana use among 12-17 year olds dramatically increasing, and with surveys indicating that 35% of our children list drugs as their number one concern, we need to provide our next generation with the leadership necessary to reverse the current trends. We need to put our energies and limited resources into reducing the demand for drugs, not legalizing them. I firmly believe that most Americans recognize how dangerous and counterproductive these propositions are, and with encouragement and a fair airing of the pros and cons of the issue, they will stand up to the legalizers and their millions of dollars.

Thank you for the opportunity to speak today, and I look forward to answering any questions you may have.

(This testimony was not coordinated through the interagency clearance process and reflects the views of the Drug Enforcement Administration.)

Travel back to the [DEA Home Page](#)

Travel back to the [DEA Congressional Testimony List](#)



SENATOR LOREN LEMAN

Northwest Anchorage

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Sectional Analysis – CS for SSSB 94 (FIN) am

“An Act relating to the medical use of marijuana; and providing for an effective date.”

The following is a sectional analysis of CS for Sponsor Substitute for Senate Bill 94 (FIN) am (draft #1-LS0524\S.a) introduced on April 21, 1999. SSSB 94 proposes several amendments to AS 17.37.010 – 17.37.070, the “Medical Uses of Marijuana for Persons Suffering from Debilitating Medical Conditions Act,” approved by voters as “Ballot Measure No. 8” in November 1998. The new law created by the initiative became effective on March 4, 1999.

This analysis addresses only substantive changes. SSSB 94 also incorporates dozens of minor changes affecting the style, grammar, and sentence structure of the new marijuana law. These alterations are designed to add clarity and bring the initiative language into conformity with the drafting style of Alaska statutes. Unless a proposed amendment involves a substantive change to the law, it will not be addressed in this document.

In the interest of brevity, the statute created by Ballot Measure No. 8 will hereinafter be referred to as the “Medical Marijuana Act” or simply “MMA.”

Section 1

This establishes a new section under Title 11 (Criminal Statutes), Chapter 71 (Controlled Substances). It provides that a defendant charged with violating Alaska’s controlled substance law may utilize as an “affirmative defense” the fact that the defendant is a patient or a caregiver permitted to use or possess marijuana under the terms of the Medical Marijuana Act.

This affirmative defense provision replaces the broad-based immunity language now found in Sec. 17.37.030(a)-(b) of the Medical Marijuana Act (*see page 8, lines 13-31 & page 9, lines 1-6*). It also replaces the broad “exception clause” that MMA added to the state’s controlled substances law at AS 11.71.190(b), i.e., “Marijuana is a schedule VIA controlled substance *except for marijuana possessed for medical purposes under AS 17.37.*” The language emphasized in italics is deleted in Section 2 of SSSB 94 (*see page 2, lines 16-17*).

The affirmative defense requirement proposed in SSSB 94 closely follows the model of state law relating to concealed weapons at AS 11.61.220(b). That statute provides that a person who “knowingly possesses a deadly weapon... that is concealed on the person” is guilty of a Class B misdemeanor. However, a person charged with this offense may invoke as an “affirmative defense” the fact that he or she is “the holder of a valid permit to carry a concealed handgun.”

Under state law at Sec. 11.81.900(b)(1), the term "affirmative defense" means that "some evidence must be admitted which places in issue the defense" and that "the defendant has the burden of establishing the defense by a preponderance of the evidence." This is appropriate in circumstances where the defendant has special custody of, or access to information (e.g., a registration card, written medical diagnosis, etc.), that would clearly demonstrate to law enforcement officials that the person is protected by a statutory exception.

Some have criticized the "affirmative defense" approach in SSSB 94 on the grounds that it places the burden of proof on the defendant rather than law enforcement. However, this is consistent with how Alaska law is applied to all other cases involving drugs on the controlled substance list, whether the substance is legal to prescribe or not. The burden of proof in all cases involving controlled substances is set out clearly in AS 11.71.350, which has been law since 1982: "It is not necessary for the state to negate an exemption or exception provided for in this chapter in a complaint, information, indictment, or other pleading or at a trial, hearing, or other proceeding under this chapter or AS 17.30. *The defendant has the burden of proving by a preponderance of the evidence any exemption or exception claimed by the defendant*" (emphasis added).

Law enforcement officials and gun owners have stated that the "affirmative defense" structure used in Alaska's concealed-carry permit law works very well because it removes any ambiguity about who is allowed to carry a concealed weapon. In similar fashion, SSSB 94 will remove any ambiguity about who is entitled to use marijuana. It establishes what the U.S. Supreme Court has called the "bright line" that will help police distinguish between legitimate and illegitimate users of marijuana. It will help protect medical marijuana patients from being victims of mistaken arrest, and it will likewise allow the state to continue enforcing the state law that prohibits recreational use of marijuana. Alaskans voted to recriminalize possession of marijuana when they approved Ballot Measure No. 2 in 1990.

The affirmative defense provision in SSSB 94 contains appropriate safeguards to ensure marijuana will be legally used only for valid medical reasons and not for "recreational" use. Under Alaska's existing controlled substance law, a person can be charged with the following marijuana-related offenses:

- 1) manufacture
- 2) delivery
- 3) possession
- 4) possession with intent to manufacture or deliver
- 5) use
- 6) display

For any of the six charges referenced above, SSSB 94 requires a person to meet all of the following requirements to establish a valid affirmative defense:

- 1) Person must be a patient, primary caregiver for a patient, or alternative caregiver for a patient.

- 2) The patient must be currently registered with the Department of Health & Social Services as a person entitled to use marijuana to address a debilitating medical condition.
- 3) The person's use of marijuana must comply with all requirements of AS 17.37, the Medical Marijuana Act. Among these requirements: prohibition on using marijuana in a public place; prohibition on using marijuana in a manner that endangers the health or safety of any person; prohibition on selling or distributing marijuana to any person other than an exchange between the patient and his or her primary caregiver; and possession limits of one ounce of marijuana in usable form and six plants (*see page 10, lines 22-31 & page 11, lines 1-14*).
- 4) If the defendant is a primary caregiver or alternative caregiver for a patient, the person must be in physical possession of the caregiver registry identification card issued by DHSS.

Section 1 of SSSB 94 concludes with a series of definitional references (*see page 2, lines 12-14*). Some of the terms are new or changed slightly from those used in the Medical Marijuana Act. The changes are discussed in Section 7 of this analysis.

Section 2

As described earlier in this analysis, Section 2 of SSSB 94 eliminates the broad exception clause the Medical Marijuana Act tacked on to the state's Controlled Substances Act: "Marijuana is a schedule VIA controlled substance [EXCEPT FOR MARIJUANA POSSESSED FOR MEDICAL PURPOSES UNDER AS 17.37.]. Thus, SSSB 94 restores medical marijuana to the list of controlled substances.

It is not necessary or even wise to remove medical marijuana from Alaska's list of controlled substances – which includes other medications that are available for prescription by doctors. Our law should recognize that marijuana, like morphine or any other prescription drug, is a controlled substance, regardless of how it is used. Indeed, one of the duties of the state's Controlled Substances Advisory Committee is to "recommend regulations... to prevent excessive prescription of controlled substances *and the diversion of prescription drugs into illicit channels*" (emphasis added) (*see AS 11.71.110*).

By completely deleting medical marijuana from Alaska's list of controlled substances, the new Medical Marijuana Act has effectively removed this substance from the reach of any legal or regulatory authority under the Controlled Substances Act (Title 11, Chapter 71). At least for this portion of state law, "medical marijuana" now has no more legal significance than a can of soda, a stick of chewing gum, or a jar of peanut butter. It is difficult to fathom how this serves a public health interest.

Section 3

This section of SSSB 94 proposes several amendments to AS 17.37.010, which establishes a registry under DHSS of patients entitled to use marijuana.

- 1) To be listed on the registry, a patient must provide the department with a signed statement from his or her physician stating that the patient has been diagnosed with a

debilitating medical condition, and concluding that the patient might benefit from the medical use of marijuana. In the statement, the doctor must certify that he or she personally examined the patient in the context of a "bona-fide physician-patient relationship."

- 2) The physician's statement described above in (1) must also include a statement that the physician has "*considered other approved medications and treatments that might provide relief, that are reasonably available to the patient, and that can be tolerated by the patient, and that the physician has concluded that the patient might benefit from the medical use of marijuana.*" This additional requirement, not found in the original MMA, establishes a level of accountability from physicians who recommend use of marijuana. This higher level of accountability is prudent given the following facts related to the medical use of marijuana:

- A) A recent report from the National Academy of Sciences' Institute of Medicine recommended that short-term marijuana use (less than six months) by certain patients could be accepted only if the "**failure of all approved medications to provide relief has been documented.**" (*See Recommendation #6 of the Institute of Medicine Report, "Marijuana & Medicine: Assessing the Science Base," published by National Academy Press, Washington, D.C., 1999*).

This requirement was deemed prudent by the Institute of Medicine because of the harmful effects of smoking marijuana. As noted in the Institute report, "Although marijuana smoke delivers THC and other cannabinoids to the body, it also delivers harmful substances, including most of those found in tobacco smoke. In addition, plants contain a variable mixture of biologically-active compounds and cannot be expected to provide a precisely defined drug effect. For these reasons, the report concludes that the future of cannabinoid drugs lies not in smoked marijuana..." In a separate section devoted to the "physiological risks" of marijuana use, the Institute of Medicine noted: "Marijuana smoking is associated with abnormalities of cells lining the human respiratory tract. Marijuana smoke, like tobacco smoke, is associated with increased risk of cancer, lung damage, and poor pregnancy outcomes... Numerous studies suggest that marijuana smoke is an important risk factor in the development of respiratory disease."

- B) The principle authors of the Institute of Medicine report reiterated their findings in an editorial published in *The Standard-Times* (Massachusetts) on April 13, 1999: "in deciding whether marijuana should be smoked as medicine, society must weigh the reality of this crude drug-delivery system against the benefits it might bestow. Chronic smoking of marijuana increases a person's chances of developing cancer, lung damage, and problems with pregnancies, including low birth weight. Therefore, it is simply not an acceptable long-term option. Smoking should be allowed only for short-term use among patients with debilitating symptoms, or who are terminally ill *and do not respond well to approved medications.*" (emphasis added). The principle authors of the report (and the editorial) are Dr. John A. Benson, Dean and Professor of Medicine

Emeritus at the Oregon Health Sciences University School of Medicine in Portland; and Dr. Stanley J. Watson, Jr., Co-Director and Research Scientist at the Mental Health Research Institute, University of Michigan, Ann Arbor.

- C) The federal government classifies marijuana as a "Schedule I" drug: dangerous, addictive, and without medical benefit. Under federal law, it cannot be legally prescribed, grown, or sold – regardless of what Alaska statutes say. A doctor who recommends use of marijuana is effectively advising the patient to engage in activity that is prohibited by law. Out of concern for the welfare of the patient, it is reasonable to require that other legal treatments be considered first. Nothing in state law can protect a patient (or a physician) from enforcement action by the federal Drug Enforcement Administration.
- D) The main psychoactive ingredient in marijuana, Delta-9-tetrahydrocannabinol (THC), is already available in synthetic form in the drug Marinol, which can be legally prescribed. Unlike marijuana, it is "pure" and can be administered in precise, controlled doses. As the American Medical Association has stated, "Marijuana doesn't fit neatly into traditional protocols because the dosage is inexact, the quality and strength of marijuana varies, and each puff contains more than 400 chemicals, not just a single agent to be isolated." (*Source: editorial of American Medical News, April 7, 1997*)
- E) The American Medical Association has recommended that marijuana remain classified as a prohibited, Schedule I drug (i.e., illegal to prescribe) until further research can demonstrate whether the substance has any medical utility: "What patients and physicians deserve now is some much-needed clinical research that will decide the issue of whether medical marijuana is even worth talking about... Certainly medical marijuana has a loyal following of patients. As the ballot measures indicate, it has also captured the imagination of the public at large. Unfortunately, unproven therapies often do." (*Source: Report 10 of the Council on Scientific Affairs, American Medical Association & editorial of American Medical News, April 7, 1997*)
- F) The American Cancer Society has questioned the efficacy of medical marijuana: "Marijuana has also been suggested as a treatment for pain, loss of appetite and depression associated with cancer. To date, there is no scientific evidence that marijuana is as useful as currently available medications in controlling these symptoms. Claims that marijuana smoking can improve some patients' general sense of well-being cannot be readily verified by scientific research. Some states have recently passed legislation intended to promote access to marijuana for patients with cancer and other serious diseases. Evaluation of any medication involves weighing its benefits against adverse effects and other disadvantages. As a medication for controlling nausea and vomiting associated with cancer chemotherapy, smoked marijuana appears to offer little if any benefit over legally available medications (including dronabinol)." (*Source: statement posted on the American Cancer Society web page, available at www.cancer.org/murphy/week2.html*)

G) Marijuana is a dangerous substance and it is the most commonly abused illegal drug in the United States: "Today's street version [of marijuana], however, is 10 times more potent than what was available a decade or two ago. And it is that many times more dangerous. Marijuana... is far from harmless. It contains more harmful chemicals than cigarettes. The chemical ingredients can stay in the body for up to a month after the smoking of a single joint (marijuana cigarette). Marijuana affects every tissue in the body. It slows down brain activity and impairs concentration, depth perception, reaction time, and the ability to evaluate situations and outcomes. It can damage short-term memory and bring on a totally 'I don't care' attitude... Meanwhile, the smoke from one marijuana joint causes more lung damage than that from a whole pack of cigarettes. Over time the chemicals and smoke can cause lung cancer and emphysema. The body's ability to fight infection may be lowered because marijuana often lowers the white blood cell count." (Source: "The Perils of Pot," by Dr. Richard Heyman, Chairman of the Committee on Substance Abuse of the American Academy of Pediatrics, published in the American Medical Association book "Teen Talk.")

- 3) The registry must include not only the patient, but also the patient's primary caregiver and alternative caregiver, if either is designated. Only one primary caregiver and alternative caregiver can be listed for each patient. To be listed as a caregiver, a person must submit a sworn statement to DHSS stating that the applicant is at least 21 years of age not currently on probation or parole, and has never been convicted of a felony violation of the drug laws of Alaska or another state. The patient must include the following information about the primary and alternative caregivers in his or her application: name, address, date of birth, Alaska drivers license or identification card number. A person can be a caregiver for only one patient at a time, except in circumstances in which the person is caring for two or more patients who are related to the caregiver by at least the fourth degree of kinship by blood or marriage
- 4) If the patient is a minor, the registry application must be filed by the parent or guardian. The application must include a statement by the minor's parent or guardian that the physician has explained the risks and benefits of medical use of marijuana and that the parent or guardian consents to serve as the primary caregiver for the patient. SSSB 94 further requires that the parent or guardian "*control the acquisition, possession, dosage, and frequency of use of marijuana by the patient.*"
- 5) SSSB 94 revises the confidentiality language at AS 17.37.010(b) to ensure law enforcement personnel have access to registry information for official purposes (*see page 2, lines 19-31 & page 3, lines 1-16*). SSSB 94 stipulates that registry information is confidential and not considered a public record under AS 09.25.100 – 09.25.220 (the public records statute under the Code of Civil Procedure). However, law enforcement personnel are permitted access to the registry for the purpose of verifying that a person is listed as a patient or caregiver eligible to use marijuana for medical purposes."
- 6) DHSS is permitted to deny a registration card to a patient who "is not... qualified to be registered" (*see page 5, lines 2-7*). This authority is somewhat broader than what is

currently permitted under the Medical Marijuana Act, which authorizes a denial only if the patient (1) did not provide the required information; or (2) provided information that was falsified.

- 7) If a patient's application designates a caregiver and DHSS determines that the caregiver does not meet the statutory requirements to be listed, the department shall proceed to review the patient's application as if there were no designation of a caregiver. The patient may apply to have a new primary caregiver or alternate caregiver listed at any time.
- 8) When an application is approved, the department will issue a registration card for the patient and a duplicate card for the patient's primary caregiver, if one has been listed. The duplicate card will be clearly identified as the caregiver registry identification card.
- 9) The Medical Marijuana Act states that if DHSS fails to act on an application within 35 days of receipt, then the application is considered to have been automatically approved. SSSB 94 retains this provision, but adds a stipulation that if the department subsequently registers or denies registration to a patient or caregiver, this action revokes or supersedes the previous "automatic" approval.
- 10) A patient or primary caregiver who is questioned by a law enforcement officer regarding the medical use of marijuana must present proper identification to the official, and also one of the following documents: (1) the person's registry identification card; or (2) a copy of an application that has been pending before the department for more than 35 days without being approved or denied, along with proof of the date of delivery to the department.
- 11) The MMA states that a denial of a registry identification card is considered a final agency action subject to judicial review, and that only the patient has the standing to contest the denial. SSSB 94 amends this language to state that, in addition to a denial, the revocation of a registry identification card or the removal of a person from the registry (e.g., a primary caregiver) also constitutes a final action subject to judicial review. In addition to the patient, a parent or guardian of a patient who is a minor also has standing to contest the agency action.
- 12) The MMA requires a patient to notify the department within 10 days of any changes in the patient's name, address, physician, or primary caregiver. SSSB 94 expands this 10-day notice requirement to include any changes in name or address of the primary caregiver.
- 13) The MMA requires the patient to return his or her registry identification card within 24 hours of receiving a physician's diagnosis that the patient no longer has a debilitating condition. SSSB 94 expands this requirement to also require the primary caregiver to return his or her registration card within 24 hours of the new diagnosis.
- 14) SSSB 94 adds a new provision in subsection (m) designed to prevent abuse of the registration system: "A copy of a registry identification card is not valid. A registry

identification card is not valid if the card has been altered, mutilated in a way that impairs its legibility, or laminated." (see page 7, lines 17-19)

- 15) SSSB 94 adds a new subsection (n) permitting DHSS to revoke a patient's registration if the department determines that the patient has violated a provision of AS 17.37 (the Medical Marijuana Act) or AS 11.71 (Controlled Substances Act). (see page 7, lines 20-21)
- 16) SSSB 94 adds a new subsection (o) allowing DHSS to remove a primary or alternate caregiver from the state registry if it is determined that the caregiver is not qualified to be listed or has violated a provision of AS 17.37 (Medical Marijuana Act) or AS 11.71 (Controlled Substances Act). (see page 7, lines 22-25)
- 17) SSSB 94 adds a new subsection (q) stating that the primary caregiver acts as the primary caregiver only when in possession of the caregiver registration identification card. When the alternate caregiver is in possession of the caregiver ID card, the alternate acts as the primary caregiver for the patient. (see page 7, lines 29-31 & page 8, lines 1-2)
- 18) SSSB 94 adds a new subsection (r) stating that DHSS cannot register a patient unless the statement from the physician discloses that the patient was personally examined by the physician with the one-year period preceding the date of the patient's application. This requirement also applies to the annual renewal by patients who are already listed in the DHSS registry. (see page 8, lines 3-11)

Section 4

This section of SSSB 94 proposes several amendments to Sec. 17.37.030 of the MMA, entitled "Privileged medical use of marijuana."

- 1) In subsection (a), all material from the original MMA is deleted and replaced with new language (see page 8, lines 13-31). The language proposed for deletion is the most problematic in the Medical Marijuana Act, as it grants sweeping immunity to both patients and primary caregivers claiming a medical need for marijuana, even if the patient and primary caregiver are not registered with DHSS. Along with the MMA's removal of "medical marijuana" from Alaska's list of controlled substances (see page 2, lines 16-17), this provision effectively places the burden on law enforcement to prove that a person being questioned about marijuana use is NOT using it for a medical purpose. This shifting of the burden of proof will likely cause police to not bother making arrests in many situations because of the ambiguities in the law. This problematic language is replaced by the new "affirmative defense" provision described in Section 1 of this analysis. The new subsection (a) reads as follows: "*A patient, primary caregiver, or alternate caregiver registered with the department under this chapter has an affirmative defense to a criminal prosecution related to marijuana to the extent provided in AS 11.71.090.*"
- 2) The next subsection (b) begins on page 9, line 1. In its original form, as part of the MMA, this subsection grants sweeping immunity from prosecution related to the

medical use of marijuana, though at least this subsection limits the protection to those who are in "lawful possession of a registry identification card." Similar to the change in subsection (a), SSSB 94 deletes the general immunity language in this subsection because protection for medical marijuana use is covered by the affirmative defense provision in Section 1. However, the revised subsection retains the immunity language insofar as it relates to the specific act of applying to be listed on the state registry: *"Except as otherwise provided by law, a person is not subject to arrest, prosecution, or penalty in any manner for applying to have the person's name placed on the confidential registry maintained by the department under AS 17.37.010."*

- 3) The next subsection (c) in the Medical Marijuana Act (beginning on page 9, line 7) provides that a physician who advises a patient regarding the medical use of marijuana shall not be subject to prosecution or other disciplinary action for providing such advice, provided certain conditions are met. SSSB 94 adds a new condition to those already listed – specifically, that the physician's advice must be based on a contemporaneous assessment of *"other approved medications and treatments that might provide relief and that are reasonably available to the patient and that can be tolerated by the patient."*
- 4) The next subsection (d) of MMA (beginning on page 9, line 29) contains an exclusionary clause stating that a person is not "entitled to the protection of this section" (i.e., AS 17.37.030) for the non-medical use of marijuana. SSSB 94 expands the scope of this exclusionary clause to state that no person is "entitled to the protection of this chapter" (i.e., AS 17.37 in its entirety) for the non-medical use of marijuana. In other words, a person's use of marijuana for non-medical purposes makes that person ineligible for the protections in the entire Medical Marijuana Act, not merely the protections of one section.
- 5) SSSB 94 deletes the next subsection (e) of the MMA (*see page 10, lines 3-20*). This subsection contains cumbersome language addressing issues of forfeiture of property arising from seizures of medical marijuana. The deletion of this language was the result of an amendment adopted in the Senate HESS Committee at the recommendation of the Department of Law and Department of Public Safety. Alaska law already includes comprehensive guidelines for seizures and forfeiture of property in the area of controlled substances. These procedures are set out in AS 17.30.100 – 17.37.126, and they have been in effect since 1982. This law applies to all cases involving seizure of drugs on Alaska's list of controlled substances. There is no need to have a separate seizure and forfeiture law that applies exclusively to marijuana used for medical purposes. In addition, the provisions of SSSB 94 requiring registration and the carrying of a registry ID card make it extremely unlikely there will be any cases in which law enforcement officials mistakenly seize marijuana and other paraphernalia from a patient who is legally entitled to possess or use it.

Section 5

In this section, SSSB 94 proposes several amendments to Sec. 17.37.040 of the Medical Marijuana Act, entitled "Restrictions on medical use of marijuana" (*see page 10, lines 22-31; page 11, lines 1-*

31; & page 12, lines 1-2). Unfortunately, as the analysis below demonstrates, the “restrictions” in MMA are illusory:

- 1) The existing Medical Marijuana Act, now in force, provides in subsection (a) that a patient “in lawful possession of a registry identification card” shall not:
 - A) use medical marijuana “in a way that endangers the health or well-being of any person.”
 - B) use medical marijuana “in plain view of, or in a place open to, the general public.”
 - C) knowingly sell or distribute marijuana to any person not in lawful possession of a registry identification card, or eligible to possess such a card.

Curiously, the limitations above do not apply to:

- A) a primary caregiver; or
- B) a patient who is not in “lawful possession of a registry identification card.”

Therefore, under the terms of MMA, a primary caregiver, or a patient who qualifies for medical use of marijuana *but who refuse to participate in the optional registration process*, is not prohibited by this section from: (1) using marijuana in a public place; (2) using marijuana in a way that endangers the health and safety of another person; or (3) selling/distributing marijuana to persons who are not in lawful possession of a registry identification card or eligible for such a card.

SSSB 94 corrects these problems: it applies the restrictions to both patients and primary caregivers, and the restrictions apply regardless of whether one has a registration card or not. Also, to help the medical marijuana law work better for patients and caregivers, SSSB 94 adds an exception to the public use prohibition, stating that it is not a violation to carry less than one ounce of marijuana in a public place, provided the drug is kept in a closed container, carried on the person, is not visible to anyone other than the patient or primary caregiver, and the possession is limited to what is necessary to transport the marijuana to a place where the patient and caregiver can lawfully use the substance.

SSSB 94 also adds new requirements to subsection (a) to prohibit the sale or distribution of marijuana to any person, except that marijuana can be transferred between the patient and primary caregiver. It also sets possession limits of one ounce in usable form and six plants, of which no more than three can be mature and flowering and capable of producing usable marijuana at any one time (*see page 11, lines 8-1.*).

- 2) Subsection (d) of MMA (beginning on page 11, line 26) states that “nothing in this section shall require any accommodation of any medical use of marijuana” in a place of employment, a correctional facility, school bus, etc. Once again, the MMA employs the word “section” instead of the word “chapter” – which effectively renders the restrictions

meaningless and creates a gaping loophole. SSSB 94 corrects this problem by deleting "section" and inserting "chapter" in its place. In addition, SSSB 94 adds a new provision stating that marijuana use need not be accommodated in a "medical facility, or facility monitored by the department of the Dept. of Administration" (e.g., juvenile detention facility, Pioneer Home, etc.). These terms are defined on page 13, lines 15-31 & page 14, lines 1-5.

Section 6

This section of SSSB 94 amends Sec. 17.37.060 of the marijuana initiative, entitled "Addition of debilitating medical conditions."

The Medical Marijuana Act requires DHSS to adopt regulations governing the manner in which new debilitating medical conditions eligible for treatment with marijuana can be added "to the list provided in this section" (see page 12, lines 4-8). However, this statement is meaningless because there is no list of medical conditions in "this section," which is Sec. 17.37.060. Presumably, the drafters of MMA meant to refer to the list provided in the subsequent section, 17.37.070. To provide clarity, SSSB 94 amends this section to refer specifically to the list of debilitating conditions defined in Sec. 17.37.070 (see page 12, lines 28-31 & page 13, lines 1-12).

Section 7

This section of SSSB 94 makes several changes to the definitions section of the Medical Marijuana Act (AS 17.37.070).

- 1) SSSB 94 adds a new definition of "**alternate caregiver**," as the original MMA does not provide for alternate caregivers. The alternate caregiver, when in possession of the caregiver ID card, is able to carry out the responsibilities of the primary caregiver when that person is unable to fulfill them (such as during travel out of state).
- 2) SSSB 94 adds a definition of the term "**bona fide physician-patient relationship**." Although this term is used in the MMA at AS 17.37.030(c)(2), the drafters of the initiative neglected to include a definition. SSSB 94 defines the term as a relationship in which *"the physician obtained a patient history, performed an in-person physical examination of the patient, and documented written findings, diagnoses, recommendations, and prescriptions in written patient medical records maintained by the physician."*
- 3) The definition of "**correctional facility**" in MMA is deleted in favor of a more comprehensive definition already in Alaska law under Title 33, Chapter 30, entitled "Prison Facilities and Prisoners" (see Section 901): *"a prison, jail, camp, farm, half-way house, group home, or other placement designated by the commissioner for the custody, care, and discipline of prisoners."*
- 4) SSSB 94 includes a new definition of "**facility monitored by the department or the Department of Administration**." This definition is necessary because SSSB 94 states at AS 17.37.040(d)(2) that the medical use of marijuana is not required to be

accommodated at any of these facilities (*see page 11, lines 29-30*). The definition includes any "institution, building, office, or home" operated, funded, inspected, licensed, designated, or under contract with DHSS or the Department of Administration for the care of juveniles, the elderly, and the mentally ill (*see page 13, lines 15-31 & page 14, line 1*).

- 5) A new definition of "**medical facility**" is included, for the same reason identified in (4) above – namely, that SSSB 94 requires no accommodation for the use of medical marijuana in these facilities (*page 11, line 29*). Medical facility is defined as an "*institution, building, office, or home providing medical services, and includes a hospital, clinic, physician's office, or health facility as defined in AS 47.07.900, and a facility providing hospice care or rehabilitative services, as those terms are defined in AS 47.07.900.*"
- 6) "**Medical use**" of marijuana is redefined for greater clarity. The existing definition in the Medical Marijuana Act defines "medical use" as marijuana used, manufactured, etc., to "address the symptoms or effects of a debilitating medical condition." SSSB 94 defines medical use in more concise terms, as marijuana used to "*alleviate a debilitating medical condition.*"
- 7) SSSB 94 changes the definition of "**primary caregiver**" to add greater clarity and prevent abuse: "*primary caregiver means a person listed as a primary caregiver under AS 17.37.010 and in physical possession of a caregiver registry identification card; 'primary caregiver' also includes an alternate caregiver when the alternate caregiver is in physical possession of the caregiver registry identification card.*"
- 8) The definition of "**prisoner**" contained in MMA is deleted by SSSB 94. The need for this definition is not apparent, since the term is not employed anywhere in the main body of the initiative language. The only reference to the word "prisoner" is found in the definitions section, under "correctional facility." Since SSSB 94 proposes to use the standard definition of "correctional facility" contained in state statute at AS 33.30.901(4), there appears to be no need for a unique, tailor-made definition of prisoner. State law already defines the term "prisoner" at AS 33.30.901(12).
- 9) SSSB 94 deletes the definition of "**registry identification card**" because it is superfluous. The meaning of this term is self-evident in SSSB 94 at Sec. 3, AS 17.37.010(e) (*see page 5, lines 17-31 & page 6, lines 1-3*).
- 10) SSSB 94 deletes the definition of "**written documentation**" as the meaning of this term is self-evident in Sections 1 & 3 (*see page 3, lines 17-31; page 4, lines 1-17*).

Section 8

This section of SSSB 94 deletes two sections of the Medical Marijuana Act – AS 17.37.020 and 17.37.050.

- 1) Section 17.37.020 of MMA, entitled "Medical Use of Marijuana," establishes limits on the amount of marijuana a patient can "use" for medical purposes – no more than one ounce in usable form, and no more than six marijuana plants, with only three mature and flowering. In this context, it is odd that the MMA employs the term "use" rather than "possess." If the language is taken literally, it appears a patient could "possess" an unlimited quantity of marijuana, as long as the patient is currently "using" no more than one ounce in usable form. In fact, the next paragraph of this section [AS 17.37.020(b)] allows even these ill-defined limits to be exceeded if the patient or primary caregiver can prove by a preponderance of evidence that "any greater amount was medically justified to address the patient's debilitating medical condition." SSSB 94 deletes this entire section of MMA, and restates the limits on possession of marijuana in Section 5 (*see page 11, lines 11-14*). These limits are restated strictly in terms of "possession," not "use."
- 2) Section 17.37.050 of the marijuana initiative is entitled, "Medical use of marijuana by a minor." It states requirements that must be met if a minor is to use medical marijuana. SSSB 94 deletes this entire section and instead addresses the use of marijuana by minors in Section 3 of the bill (*see page 3, lines 17-19; page 4, lines 13-17; page 6, line 31, & page 7, lines 1-2*).

Section 9

This section of SSSB 94 provides for an immediate effective date, in accordance with AS 01.10.070(c).

Prepared by Mike Pauley, Staff Aide to Senator Loren Leman (465-3841)
Last updated: May 14, 1999



SENATOR LOREN LEMAN

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Sponsor Statement - CS for SSSB 94 (FIN)

"An Act relating to the medical use of marijuana; and providing for an effective date."

SSSB 94 proposes several amendments to AS 17.37.010 – 17.37.070, the "Medical Uses of Marijuana for Persons Suffering from Debilitating Medical Conditions Act."

In the 1998 Official Election Pamphlet, the sponsors of the medical marijuana initiative (Ballot Measure No. 8) stated their proposal was designed to help "terminally ill patients and others suffering from debilitating medical conditions." The sponsors further stated, "Marijuana would still be illegal for non-medical use. Ballot Measure No. 8 provides full protection against abuse of the new law."

However, scrutiny of the marijuana act by legal experts and people who work in law enforcement and youth services has revealed defects that create enormous potential for abuse. The initiative is rife with legal "loopholes," ill-defined terms, and vague language. SSSB 94 corrects these errors. It will still allow use of marijuana for medical purposes, but ensures that use of marijuana for "recreational" and other non-medical purposes remains illegal. SSSB 94 was written with input from the Dept. of Public Safety, the Dept. of Law, the Dept. of Health & Social Services, and local law enforcement agencies.

Earlier this decade, in 1990, Alaska voters approved Ballot Measure No. 2 to decriminalize marijuana possession. In the 1998 election, the sponsors of Ballot Measure No. 8 advertised that they were not seeking a general legalization of marijuana. Therefore, it is prudent to conclude that most Alaska voters who supported Measure 8 last year did so with the understanding that they were not acting to legalize marijuana for non-medical purposes. SSSB 94 is designed to reconcile the policy preferences expressed in both initiatives – both of which represent the majority will of the Alaskan people. It does not repeal the medical marijuana initiative, which the Legislature is prohibited from doing under the constitution. Rather, SSSB 94 will ensure the initiative works as it was intended.

One significant deficiency in the medical marijuana initiative can be found at AS 17.37.010. This section outlines a registration system for medical marijuana patients – but no one is actually required to sign up to legally use marijuana. This omission makes it difficult for law enforcement to distinguish valid users from recreational users. SSSB 94 corrects this flaw by making registration mandatory for both patients and primary caregivers, and requiring users to present a registry identification card when questioned by a law enforcement officer.

SSSB 94 also creates new standards for those persons who are designated as "primary caregivers" for patients using marijuana. Only one caregiver can be registered for a patient at any given time, and this person must be at least 21 years of age, not currently on probation or parole, and never convicted of a felony violation of the drug laws of Alaska or other state.

Prepared by Mike Pauley, Staff Aide to Senator Loren Leman (907-465-3841)
Last updated: May 13, 1999

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May 13, 1999

The Honorable Loren Leman
Alaska State Senate
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Dear Senator Leman:

This is in response to your request for an opinion about whether the limit of one ounce plus six plants in SB 94 might be held by a court to be an unreasonable restriction on the amount of marijuana that can be possessed by a patient or caregiver under the medical marijuana act.

The one-ounce-plus-six-plants limit is contained in the original ballot initiative that enacted the medical marijuana provisions, and thus is current Alaska law. As such, it is presumptively valid. Because SB 94 adopts that same limit, it would also be presumed to be valid by the courts.

The ballot proposition goes on to provide, however, that patients can possess more than one ounce and six plants if they can prove by a preponderance of the evidence that a greater amount is "medically justified". SB 94 does not adopt this exception.

Although the prime sponsor of the ballot initiative testified that some patients want to have more than one ounce plus six plants, there has been no testimony before any committee that explains why that is so from a medical perspective. One heavy medical user who testified in House Judiciary did not register any objection to the one-ounce-plus-six-plants limit. Indeed, there has been evidence presented that this is a large amount of marijuana.

There has been testimony in committee hearings that the *average* mature marijuana plant seized by the Alaska State Troopers in 1998 provided four ounces of dried and usable marijuana, that is, the dried leaves, buds and seeds, with roots and stalks removed. There was also testimony in the House HESS committee from a Fairbanks police officer who participated in the investigation of one of the largest marijuana growing operations, where plants tended by a skilled grower were up to 10 feet tall and yielded up to two pounds of marijuana each.