

327

SC

HB

739

-

SB

326

327



ANCHORAGE BOARD OF REALTORS.® INC.

1818 WEST NORTHERN LIGHTS BOULEVARD

ANCHORAGE ALASKA 99503

(907) 272-3833

March 1, 1978

Attn: ANCHORAGE AREA LEGISLATORS

Whereas a serious situation now exists in the State of Alaska with regard to materialmen and mechanics lien legislation, and

Whereas the legislature is now considering HB 739 and suggested amendments and revisions to HB 739 by the Homebuilders Association, and

Whereas we as Realtors are involved with all aspects of the real estate industry,

Therefore, be it resolved that the Anchorage Board of Realtors supports the enactment of effective legislation during this session to provide for protection of all parties involved in the creation, insuring, and financing of residential dwellings; and to further provide 1) protection for the individual homeowner from injudicious lien filing, 2) definition of procedures guaranteeing labor's rights to lien for work performed, 3) suppliers right to lien for materials provided to job site, & 4) definition of procedures allowing for prompt issuance of ALTA Title Insurance and subsequent long-term financing.

Board of Directors
Anchorage Board of Realtors

Shayne Oakley, Pres.

Al Christensen

Robert A. Becker

George J. Oliver

Robert E. ...

Barbara J. Hill

Jean Sheppard

Juan A. Gustafson

REALTOR®—IS A COLLECTIVE MEMBERSHIP MARK WHICH MAY BE USED ONLY BY REAL ESTATE PROFESSIONALS WHO ARE MEMBERS OF THE NATIONAL ASSOCIATION OF REALTORS®



ALASKA ASSOCIATION OF REALTORS®

1818 W. Northern Lights Blvd., Suite 104 • Anchorage, Alaska 99503
Telephone 907-272-8016

March 1, 1978

Honorable Joseph H. McKinnon, Chairman
Alaska House Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: H. B. 739

Dear Joe:

We know that you are aware of the considerable hardship now being felt by homebuilders and home buyers because of the inability to receive prompt issuance of ALTA Title Insurance as required by the lenders financing these homes.

We have no specific recommendations at this time but we are aware that the Homebuilders Association, the suppliers, banks and title companies will be giving testimony before your committee in the immediate future.

Inasmuch as we are involved in all the various aspects of the Real Estate Industry we can sympathize with each of these factions. However, small builders are going broke and prospective purchasers are being greatly inconvenienced because of the great length of time now needed for closing of sales requiring the issuance of ALTA title policies.

We urge you to consider the testimony, amend the bill as fairly as possible and report it out of committee. We will lend any assistance we can, thereafter, to secure quick passage of a bill in the House and Senate that would relieve the present chaotic condition.

Sincerely,

Audie L. Moore, Acting Chairman
Legislative Committee
Alaska Association of Realtors

ALM:pw



Alaska State Legislature

REPRESENTATIVE
STEVE COWPER
210 NERLAND BUILDING
FAIRBANKS, ALASKA 99701



WHEELER BUILDING
FLOOR
JUNEAU ALASKA
99801
1007 / 465 3706

House of Representatives

March 16, 1978

Mr. Edgar S. Philleo
President
Philleo Engineering &
Architectural Service Inc.
529 Sixth Avenue
Fairbanks, Alaska 99701

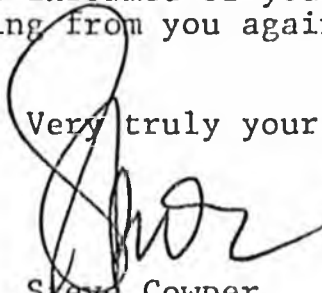
Dear Ed:

Thank you for your letter of March 3, 1978, in which you raise an important point in opposition to HB 739, which relates to materialmen and mechanics' liens.

I have taken the liberty of sending a copy of your letter to Rep. Joe McKinnon, chairman of the House Commerce Committee, to which that bill has been referred. I think your comments will prove valuable to them in their review of the bill.

Thank you for keeping me informed of your views on this. I look forward to hearing from you again.

Very truly yours,


Steve Cowper

SCC/mas
cc. Rep. Joe McKinnon

March 3, 1978

Steve Cowper
210 Nerland Bldg.
Fairbanks, Alaska 99701

Dear Steve:

I am writing to express my opposition on House Bill #739 which as I understand it would eliminate Architects and Engineers from any lien rights in that it would require manual labor to have been performed on a property before a lien could be filed.

I have availed myself of lien rights on several occasions in the past and see no reason that professional services should not be entitled to the same rights as laborers.

Very truly yours,



Edgar S. Philleo, P.E.
President

ESP/pal

Page 1 of 2 Roll of persons attending
Rep McLean Lien hour forum/meeting 3/28/78

HB 739 hours

NAME	COMPANY	Phone
RAY Holson	ace Electric	333 4071
Michael P. Kiel	" "	"
Red Smith	Ding hot Electric	694-2677
Frank Day	Western Utility Supp	272-1219
Vern White	AK Truss + Millwork	279-3522
Logan White	Alaska Truss Millwork	277-3522
Jerry Day	Builders Millwork	279-0901
Charlie Hamilton	Mikes Supply	274-1538
Jack Peterson	Arrow Lumber	
Mike Sanden	Susitna Supply	276-2818
Jerry Earp	" "	276-2818
Mr. ^{Roy} Cassel	Decor Ind.	277-7444
Mark NARDINI	DESIGN SUITE 204	274-6322
Joe De Costa	Bel Corp	277-5451
Roy L. Cassel	Decor End Inc	272-1593
Raenay Shimshava	Daily News	272-8561
Ray Hamilton	Hamilton Sons	
Slim Smith	General Prof.	2774682
Candice Schriber	Alaska Brick	344-0531

ROLL OF PERSONS ATTENDING
 LIEN LAW forum/meeting 3/28/77

NAME	COMPANY	Phone
Howard Holmstrom	United Lbr Co	274-5602
SWEDE Holmstrom	UNITED LBR. Co	274-5602
Bernie Hawthorn	self-emp	274-0116
Ray Rainwater	self-emp	349-4951
Berg, Walter	Stolt	277-7654
C. Lee Cooper	Jones Const.	
Leon T Brown	Brown Ect.	
Hodge Woods	Northwest Door	
Don McLeod	"	
Vern Rhode	AK Truss & Millwork	279-3522
Judy Russell	Allen & Peterson	279-3537
Jake Nevez	Nevez Const	337-4944
Jerry Pruitt	Associated Enterprises	
Ware Mero	Flintstone Inc.	344-2416

To: Rep Joe McKinnon

Page 1 of 2

From: ~~Bernie Gauthier~~

RE: House Bill No. 739, Tentative Draft Dated
March 24, 1978 (copy attached)

DATE: March 28, 1978

I have reviewed the tentative draft and will herein briefly outline my thoughts concerning the legislation. I have some general comments which I will set forth first and this will be followed by some specific comments.

I. General Comments

- (1) The overall approach taken by this legislation is wrong. First the Act gives the bank or lending institution priority over the materialman's lien rights and then makes numerous additional burdensome requirements upon the lien claimant. The bank is not required to do anything and is given first priority.
- (2) ~~This Act gives the laborer priority and subordinates the materialman. Under the current law, these two claimants are equal. This change is simply unfair and gives undue preference to the laborer (Page 2, Line 17; Page 2, Line 5).~~
- (3) The legislation not only encourages litigation, it requires it (see Page 4, Line 8). See 2.
- (4) The legislation is far too complex. In order to fully protect his interest, the lien claimant must prepare, record and serve a "notice of intent to lien", a "stop payment notice", file a lawsuit in superior court, and, finally record his lien within ten days from the recording of a notice of completion". This places so many technical requirements upon the lien claimant that it is a virtual certainty that one mistake along the line could result in the loss of lien rights and the imposition of liability upon the claimant. In short, the legislation will discourage the filing of lien claims.

To: Rep Joe McCann
Re: HB 739 Hearing

To: FBX
Re: HB 739 Hearing

PREPARED BY: THE
Home BUILDERS ASSN
OF ALASKA

OWNER OR GENERAL CONTRACTOR

SUPPLIER OR SUBCONTRACTOR

SUBCONTRACTOR (ONLY)

SUPPLIER OR SUBCONTRACTOR

SUPPLIER GIVES NOTICE OF RIGHT TO LIE TO OWNER AND TO LENDER, AND FURNISHES INFORMATION ON AMOUNT DUE, OR AMOUNT TO BECOME DUE, UPON DEMAND OF OWNER, LENDER OR GENERAL CONTRACTOR

NOTICE OF RIGHT TO LIEN TO LENDER AND TO OWNER

NO NOTICE OF RIGHT TO LIEN

OWNER OR GEN CONTRACTOR RECEIVES NOTICE

RIGHT TO STOP NOTICE IF PAYMENT IS 30 DAYS LATE

NO LIEN RIGHT

OWNER OR LENDER GIVES NOTICE 5 DAYS PRIOR TO RECORDING NOTICE OF COMPLETION

OWNER OR LENDER DOES NOT GIVE NOTICE 5 DAYS PRIOR TO RECORDING NOTICE OF COMPLETION

LENDER WITH FUNDS ASIDE FROM CONSTRUCTION LOAN - 30 DAYS

FUNDS DISPERSED PER AGREEMENT BETWEEN OWNER, CLAIMANT, AND LENDER

NO AGREEMENT IN 30 DAYS

LIEN RIGHTS EXPIRE 30 DAYS AFTER RECORDING NOTICE OF COMPLETION

LIEN RIGHTS EXTEND 30 DAYS AFTER COMPLETION

CLAIMANT MAY SUE AND BOND OUT WITHIN 30 DAYS

CLAIMANT DOES NOT ENTER BOND OUT; LENDER RELEASES FUNDS

COURT DETERMINES OUTCOME; LENDER HOLDS FUNDS

NOTICE OF RIGHT TO LIEN TO LENDER AND TO OWNER

NO NOTICE OF RIGHT TO LIEN

OWNER OR GEN CONTRACTOR RECEIVES NOTICE

RIGHT TO STOP NOTICE IF PAYMENT IS 30 DAYS LATE

NO LIEN RIGHT NO RIGHT TO STOP NOTICE

OWNER OR LENDER GIVES NOTICE 5 DAYS PRIOR TO RECORDING NOTICE OF COMPLETION

OWNER OR LENDER DOES NOT GIVE NOTICE 5 DAYS PRIOR TO RECORDING NOTICE OF COMPLETION

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CLAIMANT DOES NOT ENTER BOND OUT; LENDER RELEASES FUNDS

COURT DETERMINES OUTCOME; LENDER HOLDS FUNDS

LA 11 4003 16.13 JA01 0032 16.13 02/16/78

TO REPRESENTATIVE JOE MCKINNON CHAIRMAN, HOUSE COMMERCE
FROM SIGVALD STRANDBERG, 555 WEST NORTHERN LIGHTS BLVD, SUITE 201,
ANCHORAGE 99503 - PHONE 276-4555

WOULD APPRECIATE BEING ADVISED WHEN HEARINGS ARE SCHEDULED ON
HB 739, MATERIALMENS AND MECHANICS LIENS.

JH-EOM/

LA 11 3337 15.51 JA01 0049 15.51 03/15/78

TO REP MCKINNON CHAIR H. COMMERCE
ATTN: ALL MEMBERS

FROM BUILDERS MILLWORK & SUPPLY
999 E. TIDOR
ANCHORAGE, AK 99503
TEL: 279-0401

*Copies distributed
CBB*

RE: HB 739

AS A MATERIAL SUPPLIER AND SUBCONTRACTOR WE TAKE EXCEPTION TO
MANY CLAUSES IN THE PROPOSED BILL AS DRAFTED. WE REQUEST A COPY
OF THE NEWLY REVISED DRAFT AND TIME TO STUDY REDRAFT OF FINAL BILL.
AND AN OPPORTUNITY TO COMMENT BEFORE COMMITTEE TAKES FINAL ACTION.

WE CAN BE CONTACTED THROUGH C. B. JANTZEN, P.O. BOX 3546, ANCH.
AK 99501, 278-0115. 208

CER/EOM

LA 11 2097 12.03 JA01 0021 12.03 03/15/78

TO REPRESENTATIVE JOE MCKINNON

FROM SUPERSTRUCTURES, BOX 1227, SOLDOTNA 99589, PHONE 262-5338
DICK RUCKMAN, OWNER AND MISS COOPER, 908 SUIRDY, PAM WALSTRAN,
TERRY EVALVIN, BOB LINTZ

WE ARE NOT IN AGREEMENT WITH MANY OF THE CLAUSES IN PROPOSED BILL
HB 739. WE REQUEST TIME TO STUDY REDRAFT AND ALLOW OTHER INTERESTED
PARTIES TO BECOME FAMILIAR WITH PROVISIONS PRIOR TO PASSAGE.

JH EOM/

St. Mary's Suburban Realty, Inc.
St. Mary's Suburban Realty, Inc.
St. Mary's Suburban Realty, Inc.

LA11 1909 11.37 JAD1 0019 11.37 03/16/78

TO REP. JOE MCKINNON, CHAIR, H. COMMERCE
ATTN: ALL MEMBERS

FROM: DON MCLEOD
NORTHWEST DOOR OF ANCHORAGE
6721 ARCTIC SPUR RD
ANCHORAGE, ALASKA 99502
TEL: 274-8103

Copies distributed to Commerce members

AS A MATERIAL SUPPLIER, WE TAKE EXCEPTION TO MANY CLAUSES IN HB 739 AS PRESENTLY DRAFTED. WE REQUEST TIME FOR ALL INTERESTED PARTIES TO REVIEW ANY REDRAFTS PRIOR TO PASSAGE.
EDM

LA11 1183 15.39 JAD1 0015 15.39 03/15/78

TO REP. MCKINNON, CHAIR, H. COMMERCE COMMITTEE
ATTN: ALL MEMBERS

FR. UNITED BUILDING SUPPLY, INC
UNITED BROS. CO. INC. AND SUBSIDIARIES
D. HOLSTON, SALES MANAGER
P.O. BOX 5005
ANCH., AK 99502
TEL. 374-1604

REF: H-739

AS A MATERIAL SUPPLIER WE TAKE EXCEPTION TO MANY CLAUSES IN THE PROPOSED BILL AS PRESENTLY DRAFTED. IT IS OUR UNDERSTANDING THAT THE BILL WAS SUBSTANTIALLY REVISED MARCH 14TH, 1978, AND COPIES ARE NOT YET AVAILABLE. WE UNDERSTAND THERE WILL BE A COMMITTEE HEARING THURSDAY, MARCH 15, AT 7 P.M. TO REJECT CERTAIN PROPOSALS. WE ARE DESIROUS OF OBTAINING A COPY OF THE REDRAFT AND WE URGENTLY REQUEST TIME TO STUDY IT AND SUBMIT SUGGESTIONS IF NECESSARY, PRIOR TO SUBMITTAL TO THE LEGISLATURE FOR PASSAGE.
EDM

CINDY JNU
FR CHARITY ANCH

THIS MESSAGE WAS SENT YESTERDAY AFTERNOON BUT WAS GARBLED
AND PRINTED OUT AT ANOTHER SITE. I WAS TOLD BY THAT SITE
THIS MORNING SO AM RESENDING IT.

TO REP MCKINNON CHAIR. U. COMMERCE
ATTN: ALL MEMBERS

RE HB 739

THE UNDERSIGNED AS MATERIAL SUPPLIERS AND SUB CONTRACTORS
OBJECT TO MANY CLAUSES IN THE PROPOSED BILL AS DRAFTED.
WE UNDERSTAND THAT A COMMITTEE MEETING FOR 3/16/78 WILL
REDRAFT THIS BILL. WE REQUEST A COPY OF THE NEWLY DRAFTED
PROPOSAL AND TIME TO STUDY IT. WE REQUEST AN OPPORTUNITY
TO COMMENT BEFORE COMMITTEE TAKES FINAL ACTION.

WE CAN BE CONTACTED THROUGH G.M. GAUTHIER, P.O. BOX 3-546
ANCH., AK 99510, 274-0116.

- S/ WAY DEBENHAM...DEBENHAM ELECTRIC & SUPPLY INC
- MIKE NEVES.....NEVES CONSTRUCTION
- BEN DIGGINS.....DIGGINS CONCRETE
- SAM GIAMMALVA....ALASKA ASPHALT PAVING
- JOE GIAMMALVA...JOE'S TRUCKING INC
- RICHARD JOYSEN.....JOYSEN TRUCK ASPHALT INC.

EO4

CBK/EO4

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LA 4765 18.08 03/15/78 JA01 0005 07.32 03/16/78

TO REP MCKINNON, CHAIR, H. COMMERCE
ATTN: ALL MEMBERS

FROM FRED STEENMEYER
2433 POST RD
ANCHORAGE, AK 99501
TELE 276-5055

AS A CONTRACTOR AND SUPPLIER WE OPPOSE HB 739
AS DRAFTED. WE UNDERSTAND THERE IS A COMMITTEE
HEARING, THURS. 3/16 AT 7 P.M. TO REDRAFT THIS
PROPOSAL. WE REQUEST ADDITIONAL TIME TO STUDY
THIS REDRAFTED BILL BEFORE LEGISLATIVE ACTION
TAKES PLACE. EOM.

COPY OF P.O.W. REQUESTED: ATTN: JOANNA CBK/EOM

LA 4772 18.13 03/15/78 JA01 0006 07.32 03/16/78

TO REP MCKINNON, CHAIR, H. COMMERCE
ATTN ALL MEMBERS

FROM INLET GLASS INC
245 POST RD
ANCHORAGE, AK 99501
TEL 276-4551

AS A MATERIAL SUPPLIER IN THE ANCHORAGE AREA WE TAKE
EXCEPTION TO NUMEROUS CLAUSES IN HB 739 AS WRITTEN. WE
UNDERSTAND A COMMITTEE HEARING TO REDRAFT THIS BILL IS
SCHEDULED FOR THURS. 3/16, AT 7 P.M. WE REQUEST TIME TO
STUDY THIS REDRAFT PROPOSAL BEFORE COMMITTEE ACTION
IS TAKEN ON FINAL DRAFT. EOM

CBK/EOM

TO REPRESENTATIVE JOE MCKINNON
FROM ALLEN W. SMITH FOR HOME DECORATING

RE HB 739: AS A MATERIAL SUPPLIER AND SUBCONTRACTOR I TAKE EXCEPTION
TO MANY OF THE PROVISIONS OF THIS BILL AS DRAFTED. WE REQUEST COPY
OF REDRAFTED PROPOSAL FOR STUDY AND COMMENT BEFORE THE COMMITTEE
TAKES FINAL ACTION. 1950 FAIRBANKS STREET, ANCHORAGE 99503.
PHONE 279-3537.

Moore Business

LA 11 2505 13.47 JA 01 0023 13.51 03/16/79

TO REPRESENTATIVE JOE MC KINNON AND MEMBERS OF HOUSE COMMERCE COMMITTEE
RE HB 739

AS MATERIAL SUPPLIERS AND SUBCONTRACTORS WE TAKE EXCEPTION TO
MANY CLAUSES IN THE PROPOSED BILL AS CURRENTLY DRAFTED. WE REQUEST
TIME TO STUDY THE REDRAFT OF THE FINAL BILL AND AN OPPORTUNITY TO
COMMENT BEFORE THE COMMITTEE TAKES FINAL ACTION. WE CAN BE
CONTACTED THROUGH B. W. GAUTHIER, P. O. BOX 3-546, ANCHORAGE 99501
PHONE 274-0116.

SIGNED B.W. GAUTHIER, CONSTRUCTION CREDIT CONSULTANT
DAN JORDAN, JORDAN'S CARPET CENTER
CHARLES S. HAMILTON, MIKE'S SUPPLY, INC.
DAVID MERRO, FLINTSTONE, INC.
WAYNE STOLT, STOLT'S ELECTRIC
MIKE HAYDEN, QUALITY ASPHALT
LEON T. BROWN, BROWN'S SUPPLY COMPANY
ROBERT E. LINDSTROM, MC KINLEY FENCE
GLEN SMART, GENERAL ROOFING

Copies distributed to Commerce members

JH EOM/

LA 11 3343 15.45 JA 01 0047 15.45 03/16/79

TO REPRESENTATIVE JOE MC KINNON

FROM HELMUT WETZEL, MASTERCRAFT KITCHENS AND FIXTURES
4460 QUARTZ WAY ANCHORAGE 99503 PHONE 272-3433

PLEASE DELAY FINAL CONSIDERATION OF HB 739 UNTIL WE HAVE
HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON YOUR COMMITTEE'S
PROPOSAL.

JH EOM/

RE: HB 739
WE ARE TAKING EXCEPTION TO HB 739. PLEASE RECONSIDER AND DELAY
FOR THE TIME BEING IN ORDER TO GIVE SUPPLIERS AND THE BUSINESS
SIDE AND DAMAGING TO ALL SUPPLIERS AND SUB-CONTRACTORS. THANK
YOU. EOM/

FROM: GERALD E. EARP, PRES.
SUSTAIN SUPPLY, INC.
P.O. BOX 3-1033
ANCH., AK 99501
274-2810

TO: REP. JIM MCKINNON, CHAIRMAN, HOUSE COMMERCE COMMITTEE
AND ALL HOUSE COMMERCE COMMITTEE MEMBERS

DATE: 03/16/78 07:31 AM

*Copies given to
all members
EOM*

CRK/EOM

"THE PROPOSED BILL, HB 739, AS CURRENTLY DRAFTED CONTAINS
CONDITIONS UNACCEPTABLE TO A SUBCONTRACTOR. WE UNDERSTAND
THERE HAVE BEEN REVISIONS AND PENDING REVISIONS ARE BEING
DRAFTED CURRENTLY IN A COMMITTEE HEARING 3/16/78 AT 7 PM.
WE RESPECTFULLY REQUEST A COPY OF THE DRAFT AND A FEW DAYS
TO STUDY IT, AND OFFER SUGGESTIONS IF NECESSARY PRIOR TO
SUBMISSION TO THE LEGISLATURE FOR PASSAGE. EOM"

FROM RICHARD HOLMSTROM, ALASKA MGR.
CONCRETE COING CO.
1425 VIKING DR.
ANCH., AK 99501

TO: REP. MCKINNON, CHAIR, H. COMMERCE
ATTN: ALL MEMBERS

DATE: 03/16/78 14:53

*Copies
Mackinon
EOM*

LA11 4359 16.53 03/15/78 JA01 0001 07.31 03/16/78

TO: REP. JOE MCKINNON, CHAIRMAN, HOUSE COMMERCE COMMITTEE
AND ALL COMMITTEE MEMBERS

FROM: GORDON HILL, MANAGER
PACIFIC PLUMBING SUPPLY CO.
6260 OLD SEWARD HIGHWAY
ANCHORAGE, AK 99502 344-4523

RE: HB 739

PACIFIC PLUMBING SUPPLY CO. TAKES EXCEPTION TO THE BILL AS CURRENTLY DRAFTED. IT IS OUR UNDERSTANDING THAT THE BILL WAS SUBSTANTIALLY REVISED 3-14-78, AND COPIES ARE NOT YET AVAILABLE.. WE UNDERSTAND THAT THERE WILL BE A COMMITTEE HEARING ON MARCH 16, 1978, AT 7:00 PM TO REDRAFT CERTAIN PROPOSALS.

PACIFIC PLUMBING SUPPLY CO. IS EXTREMELY INTERESTED IN OBTAINING A COPY OF THE REDRAFTED BILL AND REQUESTS TIME TO STUDY IT AND SUBMIT RECOMMENDATIONS PRIOR TO SUBMITTAL FOR PASSAGE IN THE LEGISLATURE.

THANK YOU. EOM/

LA11 1383 10.23 JA01 0015 10.23 03/16/78

TO REPRESENTATIVE JOE MCKINNON
FROM TIM DUGAN 6501 A STREET ANCHORAGE 99502 PHONE 276-5614
R. GAYLOR ELECTRIC

I REQUEST A COPY OF THE NEWLY MARKED-UP CS FOR HB 739. I WOULD LIKE AN OPPORTUNITY TO REVIEW AND COMMENT ON THE REDRAFT BEFORE FINAL COMMITTEE ACTION.

JH EOM/

LA11 3471 17.29 03/16/78 JA01 0001 08.05 03/17/78

TO REPRESENTATIVE JOE MCKINNON

FROM LILLIAN CASTLE DECOR INDUSTRIES INC 4263 W MINNESOTA DRIVE
ANCHORAGE 99503 PHONE 272-1592

DECOR INDUSTRIES IS A MATERIAL SUPPLIER. WE ARE NOT IN AGREEMENT WITH SOME OF THE PROVISIONS IN THE PROPOSED SUBSTITUTE FOR HB 739 AND WOULD APPRECIATE HAVING A CHANCE TO READ AND COMMENT ON THE COMMITTEE'S FINAL PROPOSAL BEFORE COMMITTEE ACTION IS TAKEN.

JH EOM/

LA21 3673 17.40 03/16/73 JA01 0002 08.06 03/17/73

TO: CINDY, JNU
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGE TO THE HOUSE
COMMERCE COMMITTEE:

RE: HB 739

I STRONGLY OPPOSE THE WEAKENING OF THE LIEN RIGHTS OF
MATERIAL SUPPLIERS AND CONTRACTORS AS PROPOSED BY HOUSE
BILL 739. SUGGEST ORIGINAL MORTGAGE BE REPLACED AS SHOWN
IN SECTION 4, AS 34.35.060, PARA C IN BRACKETS: (OR FURNISHING
MATERIAL USED IN) AS OPPOSED TO NEW MORTGAGE. THE LIEN RIGHTS
OF MATERIAL SUPPLY COMPANIES AT WHOLESALE, RETAIL, OR
CONTRACTOR LEVELS NEED TO BE PLAIN AND CLEARLY WORDED. KEEP
IN MIND THAT MATERIAL SUPPLIERS PROVIDE AS IMPORTANT A FUNCTION
AS BANKS AND LABOR WITHOUT THE SECURITY OF MORTGAGES, DEEDS OF
TRUST, OR WEEKLY PAY CHECKS. SUPPLIERS PROVIDE MILLIONS OF
DOLLARS IN CREDIT WITH THEIR LIEN RIGHTS AS THEIR ONLY BASIC
SECURITY. TO INSURE A HEALTHY CONSTRUCTION INDUSTRY MATERIAL
SUPPLIERS MUST HAVE THE PROTECTION OF PREFERENTIAL LIEN RIGHTS
EQUAL TO LABORS.

THE BILL IN PRESENT FORM IS EXTREMELY CUMBERSOME AND DIFFICULT
FOR FAST MOVING INDUSTRIES SUCH AS WHOLESALERS TO CONFORM TO.
BILLINGS AND COLLECTIONS ARE OUR INDICATORS OF CREDIT EXPOSURE
AND THESE ARE FIFTEEN TO THIRTY DAYS AT BEST.

RESPECTFULLY REQUEST YOU ALLOW FAIRBANKS SUPPLIERS ENOUGH TIME
TO FORMULATE THEIR IDEAS AND PROVIDE INPUT OR ALLOW US TIME
TO REVIEW THE BILL BEFORE IT IS PUT IN ITS FINAL FORM AND
MAKE SUGGESTED REVISIONS.

JAMES HADD
CENTRAL SUPPLY COMPANY
P.O. BOX 140, ENKO, 92707
PH: 452-2125

PLEASE ACK WHEN MESSAGE DELIVERED. THANKS, /A/ 50M

LAH 3562 16.17 JAD1 0052 16.17 03/16/78

TO: REP. JOE MCKINNON, CHAIRMAN, HOUSE COMMERCE COMMITTEE
AND ALL COMMITTEE MEMBERS

FROM: ROBERT E. LINDSTROM
MT. MCKINLEY FENCE COMPANY
1855 E. THIRD AVENUE
ANCHORAGE, AK 99501 279-1567

RE: HB 739

AS A SUBCONTRACTOR AND MATERIALMAN WE DO NOT AGREE WITH PROPOSED
BILL 739 AND REQUEST TIME TO STUDY THE FINAL REDRAFT PRIOR TO ITS
PASSAGE FROM COMMITTEE. EOM/

LAH 3594 16.29 JAD1 0053 16.29 03/16/78

TO: REP. JOE MCKINNON, CHAIRMAN, HOUSE COMMERCE COMMITTEE
AND ALL COMMITTEE MEMBERS

FROM: MARCIE CLARK
TOXIC PLUMBING AND HEATING
3100 MOUNTAIN VIEW DRIVE
ANCHORAGE, AK 99501 279-9333

RE: HB 739

WE ARE NOT IN AGREEMENT WITH THE PRESENT PROVISIONS OF THIS
BILL AND REQUEST A COPY OF A REDRAFTED BILL. EOM/

L111 4064 15.19 J401 0042 16.21 03/15/78

TO REP MCKIRNON, CHR. H. COMMERCE
FROM KEVIN J. WELLS

KENNAI SUPPLY INC
P.O. BOX 499
KENNAI, AK 99511
TEL: 283-7521

RE: HB 739

AS A MATERIAL SUPPLIER, WE TAKE EXCEPTION TO HB 739 AS
CURRENTLY DRAFTED. WE UNDERSTAND THERE WILL BE A COMMITTEE
HEARING THURS., 7 P.M., 3/15/78, TO REDRAFT CERTAIN PROPOSALS.
WE REQUEST TIME TO DOY THE REDRAFT PRIOR TO SUBMITTAL TO
THE LEGISLATURE FOR PASSAGE. EOM

CRK/FOH

L111 4071 15.20 J401 0043 16.22 03/15/78

CINDY, THE PHOTOCOPY FOR MCKIRNON WAS ALSO REFERRED FOR
RUSSEKING. SORRY, BOB

Mc Manus Business Forms, Inc

LA21 3700 18.18 03/16/78 JA01 0003 08.07 03/17/78

TO: CINDY, JMI
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGE TO HOUSE COMMERCE:

RE: HB 739

AM ADAMENTLY OPPOSED TO BILL IN ITS PRESENT FORM WHICH APPEARS TO WEAKEN LIEN RIGHTS FOR MATERIAL SUPPLIERS AND CONTRACTORS AS PROPOSED BY THIS BILL.

REQUEST THAT BILL INCLUDE MATERIAL SUPPLIERS TO RETAIN EQUAL LIEN RIGHTS TO LABOR.

ALSO, BILL IN ITS PRESENT FORM IS EXTREMELY CUMBERSOME FOR MATERIAL SUPPLIERS AS OURS IS A FAST MOVING INDUSTRY AND REQUIRES SUFFICIENT TIME FOR BILLING AND COLLECTIONS. FEEL THAT TWENTY DAY PERIOD IS NOT SUFFICIENT TIME AND WOULD REQUIRE US TO SHOW INTENT TO LIEN UPON INITIAL SALES CONTRACT.

REQUEST SUFFICIENT TIME TO REVIEW BILL IN ITS FINAL FORM BEFORE ITS PRESENTED TO THE HOUSE FOR ACTION.

DAN RAMOS
PRESIDENT, TOTAL ELECTRIC SUPPLY COMPANY
2113 CUSHMAN ST, FBKS 99701
PH: 452-1931

PLEASE ACK WHEN MESSAGE DELIVERED. THANKS. ZM/ EOM

LA21 3740 18.33 03/16/78 JA01 0204 04.08 03/17/78

TO: CINDY, JMI
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGE TO HOUSE COMMERCE:

RE: HB 739

WE ARE STRONGLY OPPOSED TO THIS BILL AS WRITTEN. IT ALL BUT DESTROYS LIEN RIGHTS FOR MATERIAL SUPPLIERS AND CONTRACTORS.

WE REQUEST THE BILL BE ALTERED TO INCLUDE MATERIAL SUPPLIERS RETAINING LIEN RIGHTS EQUAL TO LABOR AND CONTRACTORS.

THE NATURE OF OUR INDUSTRY REQUIRES A CERTAIN TIME PERIOD FOR BILLING AND COLLECTION. THE TWENTY DAY PERIOD PROVIDED IN THIS BILL IS NOT SUFFICIENT AND WOULD FORCE US TO NOTIFY INTENT TO LIEN UPON INITIAL SALE.

REQUEST WE BE ALLOWED TO REVIEW THE BILL BEFORE IT IS SENT TO THE HOUSE.

MR. ROYAL BIRDWELL
AMFAC SUPPLY
2700 CUSHMAN ST, FBKS 99701
PH: 452-4424

TELEGRAM
PMA ALASKA TELECOMMUNICATIONS
PRIME SERVICE

1978 FEB 22 PM 5 54

#

02067 NL ANCHORAGE ALASKA 50 02-22 127P AST
PMS REP JOE MCKINNON

JUN

URGE HEARING HERE ON HB739 LITTLE GUY NEEDS CHANCE VS LARGER
PROponents OF BILL. THIS BILL WILL WORK HARDSHIP FOR SMALL
CONTRACTORS

BERTHA MIDYETT 1011 WEST 12TH APT 3 ANCHORAGE AK 99501

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

April 4, 1978

Alaska State Legislature

Attn: Russ Meekins, Joe L. Hayes, Larry Carpenter,
Ed Darkworth, Terry Gardiner, Clark Gruening,
Kris Lethin, Hugh Malone, Alvin Osterback,
Charles H. Park, Sandy Phillips, Leo House,
Richard Union.

Re: House Bill No. 739
Tentative Draft dated March 24, 1978

"General Comments"

In reviewing the Tentative Draft it is the opinion of the signers that this legislation is entirely too complex. It appears to be designed for the purpose of defeating a claimants lien rights through a series of complicated procedures which a claimant cannot comply with. It not only defeats a legitimate claimants rights, but it also exposes a supplier to fraud which could be perpetrated by a dishonest owner and sub-contractor. For a supplier to comply with the complicated procedures of sending notices of "Intent to Lien" and "Stop Payment" notices it not only encourages litigation but it requires it. While a supplier would be expected to comply with the above unworkable procedures, the bank or lending institution would be in a first priority position without having to do anything to protect their interest.

Needless to say this legislation will drive the cost of construction upward through a supplier needing additional personnel and increasing his credit risk factor. At a time when inflation is a major concern, it appears that little thought has been given to this aspect.

If any changes were to be made in the lien statute, we would have the following recommendation. It seems to us that the principal problem is that title companies are unable to write title policies on property until 90 days after completion. If this is indeed a problem in the real estate industry, it could simply be solved by requiring lien claimants to file their liens within ten days of completion. Certainly the delays involved in closing will not make this ten day provision a burden. If the supplier wishes to be informed of the exact date the completion occurs, he can simply send the bank a Notice of Intent to Lien. The statute could require that the bank then notify each such claimant prior to recording the Notice of Completion. Once the supplier receives notice that the completion will be recorded, he can take steps to immediately perfect his rights by recording his lien. This appears to be the only change which really is necessary and the remainder of this statute is simply overkill.

-7-

"Specific Comments"

Page (1) Line (18). It is nearly impossible to require a supplier to actually deliver material to a job site under contract with the owner. A large portion of materials used in construction are picked up at a suppliers place of business. All reference to any delivery requirements is contrary to existing practice. Proof that material was used on a specific project is provided by the legal property description written on the invoice and acknowledged by the owner or his agent at the time of purchase. This is sufficient and any delivery requirement simply creates a loophole to defeat a legitimate claim.

Page (1) Defining who may perfect a lien:

A supplier who provides material to a sub-contractor rarely if ever has a contract with the owner. Under this section such a supplier has no lien rights. This is not only unfair but it opens the door to possible fraud. A dishonest owner and sub-contractor through collusion could cause the majority of material to be purchased by the sub-contractor. Under this section the supplier has no lien rights and consequently would be unable to recover his money.

Page (3)&(5) Sec(4). "Stop Payment Provision":

This section not only encourages litigation but it requires it. This section should be dropped and the materialman be allowed to maintain a first position supported by invoices. Sub-Section "C" requiring a lawsuit within thirty (30) days should be dropped for obvious reasons. A materialman should only be required to send a stop payment notice to the bank since they are the one disbursing funds. An owner only has to refuse a registered letter containing a stop payment notice to invalidate the materialmans claim.

Page (4) Line (19).

Notice of Intent et Lien.

This notice appears to be just another device to defeat a claimants lien rights. Obviously if an owner fails to accept or pick up a registered letter containing this notice the claimants rights are invalid. This section should be optional and not mandatory.

Page (6) Lines (1) thru (24). Claim of Lien:

This again makes the notice of intent to lien mandatory. The notice of intent to lien should be an optional requirement sent only to the bank to establish a materialmans priority over the banks mortgage. If a notice is not given the materialman should still have a right to lien even though he would be second to the bank.

Page (6) Line (26). Notice of Completion:

This is another complex device which does not give a supplier time to respond. It also makes the notice of intent to lien mandatory before a supplier can be informed of the notice of completion. Also to give notice five (5) days prior to recording is unrealistic. Even if a supplier could comply with the other requirements his claim could be invalidated by slow mail delivery.

From:

Dobbenham Electric Supply Company, Inc.
Stoll's Electric Supply Company
Stoll's Home Builders Center
Jordan's Carpet Center
United Lumber Company
Concrete Cutting Company, Inc.
Alaska Wood Products
United Building Supply
Concrete Coring Company, Inc.
Decor Industries, Inc.
Susilna Supply, Inc.
Alaska Truss and Millwork
Tom's Plumbing and Heating Supply Inc.
Brown's Electrical
Inlet Glass Company

HB

756

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D - JUNEAU 99811

March 3, 1978

Honorable Joe McKinnon
Chairman
House Commerce Committee
Alaska Legislature
Juneau, Alaska 99811

Dear Chairman McKinnon:

A member of your staff has requested our comments on HB 756 (identification of Alaska arts and handicrafts).

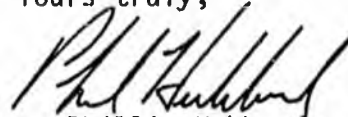
Under the present law (AS 45.65.030) which was enacted last session, four distinct seals were to be designed and distributed. Due to the cost involved, we have been unable to administer the program as specified.

House Bill 756 proposes two seals - one identifying native handicrafts and the other indentifying non-native resident handicrafts. This proposal would provide two easily recognizable symbols for certifying authentic Alaska-produced handicrafts and, at the same time, simplify the program's administration.

The enclosed fiscal note indicates that \$64,000.00 would be required to administer HB 756, which is beyond the Governor's budget limits. Thus, while we believe the bill worthy of support, we do not wish to displace other priority projects.

Please let me know if you desire additional information on this proposal.

Yours truly,



H. Phillip Hubbard
Commissioner

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 756
 Title Relating to identification of Alaska arts & handicrafts
 Requested by _____ Date 2/9/78

II. FISCAL DETAIL

Agency Affected Commerce & Economic Development
 Program Category Affected Development
 Budget Request Unit(s) Affected Economic Enterprise

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL			64.0	68.0		
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			64.0	68.0		

FUNDING (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
GENERAL FUND			64.0	68.0		
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
FULL TIME			-0-	-0-		
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The identification of Alaskan crafts is an integral part of an arts and crafts development program. The Alaska Federation of Natives is currently promoting this vital industry on a contractual basis. For FY-79, \$64,000 would be required as follows:

Personnel	\$31,200
Transportation, Per Diem	6,750
Promotion Silver Hand	10,000
Consumables, postage, rent, etc.	16,050
Total	\$64,000

IV. DATE Feb. 27, 1978 PREPARED BY James R. Deagen
 AGENCY Division of Economic Enterprise

HB

786

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

POUCH D - JUNEAU 99811

January 26, 1978

Honorable C. V. "Chat" Chatterton
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Chatterton:

Re: Private Offering Exemption 45.55.140(b)(5)
Definition of Issuer 45.55.130(7)(B)

PROBLEM

In the recently changed private offering exemption, certain oil, gas and mining programs were excluded from using this exemption because of a "peculiarity" in the definition of an "issuer," AS 45.55.130(7)(B), which states that there is no issuer in certain oil, gas and mining securities.

The intent of the private offering exemption legislation was not to exclude these groups from having the availability of the exemption but rather to have it apply to all types of private offerings.

PROPOSED SOLUTION

The problem lies not in the wording of AS 45.55.140(b) but in the archaic definition of an "issuer" as found in AS 45.55.130(7)(B) and, specifically, that part which states:

"(B) with respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of production under these titles or leases, there is not considered to be an "issuer";"

This clause was contained in the original enactment of the Alaska Securities Act of 1959 (406 ch. 198 SLA 1959) and was taken verbatim from the Uniform Securities Act as approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in August of 1956. The original drafter saw a possible problem with this language but felt that it could be dealt with under the rulemaking authority of the Administrator (see Official Code Comment. I CCH Blue Sky Law Reporter, 4931).

January 26, 1978

The Draftmen's Commentary to this problem states "...the existing statutes seem to have ignored the problem of determining who is the issuer of such a security." After several futile attempts to draft a definition of "issuer" as applied to this type of "security," it was concluded that the simplest solution was to say that there is no "issuer" at all. Loss and Cowett, Blue Sky Law, 1958 Ed, 341.

What resulted because of the begging of this question in the original Uniform Securities Act was that many states, and now even Alaska, have been faced with problems of dealing with issuers who are statutorily "non-issuers." As a result, 35 states have changed this definition so that there is now considered to be an issuer in these oil, gas and mining programs. Only 15 states, including Alaska, have failed to remedy this problem.

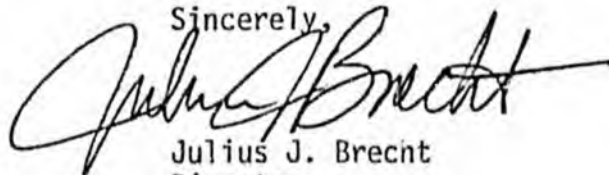
It is interesting to note that Alaska is the only Pacific Northwest state to keep the old definition. The only other west coast state to maintain it is Hawaii.

RECOMMENDATION

I am attaching hereto, for your consideration, a proposed amendment to AS 45.55.130(7)(B) which conforms to the definition now adopted by a majority of states. This amendment will solve the problem by defining issuer in certain oil, gas and mining programs and bring our uniform act into uniformity.

I appreciate the opportunity to express the division's views on this problem and remain at your disposal should you have any questions concerning this recommendation or proposed action on it.

Sincerely,



Julius J. Brecht
Director

JJB/va14/3

cc: Lum Lovely
Alaska Miners Association
Alaska Geological Society
Alaska Association of Petroleum Landmen
Alaska Oil and Gas Association

AS 45.55.130(7)(B) is amended as follows:

- (B) with respect to certificates of interest or participation in oil, gas or mining rights, titles or leases, issuer means the owner of any such right, title or lease, who creates fractional interest therein for the purposes of sale. [WITH RESPECT TO CERTIFICATES OF INTEREST OR PARTICIPATION IN OIL, GAS, OR MINING TITLES, OR LEASES OR IN PAYMENTS OUT OF PRODUCTION UNDER THESE TITLES OR LEASES THERE IS NOT CONSIDERED TO BE ANY "ISSUER";]

March 28, 1978

Mr. Richard D. Latham, Commissioner
Texas Board of Securities
P.O. Box 131 Capitol Station
Austin, Texas 78711

Dear Mr. Latham:

Re: Oil & Gas Exemption Questionnaire

Thank you for your memoandum of March 10, 1978 on a proposed oil and gas exemption. I appreciate the opportunity to comment on this important proposal. Although we have attempted to respond to each of the questions posed, there are some areas where the problems or implications are not entirely clear. I suspect I am not alone in this regard, and I look forward to some enlightenment in Washington at the spring meeting.

To preface my response, I feel that some type of exemption is in order, but the type of exemption has a great bearing on the standards that should apply. If the exemption is to be available to "sophisticated investors" meaning those with experience and knowledge in the industry then there probably should be fewer restrictions. On the other hand, if wealth is the criteria or the exemption takes the form of a "private offering" exemption, then other more stringent standards should apply.

I would also like to point out that the Alaska Securities Act (ASA) already defines oil and gas interests, as well as mining interests as securities and that ASA already provides a private offering exemption under which certain of these securities may be offered.

In addition, the Alaska Legislature is presently considering a further exemption for oil, gas and mining securities for those "in the business." I have included below excerpts from the Alaska Statutes as well as the proposed legislation in hopes that these responses to the questions posed may be seen in better context. Please note that the division is experiencing some minor problems with present private offering exemption (AS 45.55.140(b)(5)) and will attempt to tighten it up standards during the next legislative session after I have had time to perfect the amendments. I am also willing to consider amending ASA to encompass any exemption that may come out of this subcommittee's recommendations.

The following are excerpts from the ASA.

AS 45.55.130(12) Definitions:

AS 45.55.130(12) "'security' means... a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under the title or lease; or in any sale of or indenture or bond or contract for the conveyance of land or any interest in land;..."

AS 45.55.140 Exemptions:

AS 45.55.140(b)(5)(A)&(B). Sales by an Issuer.

(b) The following transactions are exempted from [registration under] this chapter...(5) sales by an issuer.

(A) to no more than 10 persons in this state other than those designated in (4) of this subsection [offer or sale to a bank, investment company, institutional buyer, etc.] during a period of 12 consecutive months whether or not the seller or any of the buyers is then present in this state, if

(i) no commission or other remuneration is paid or given directly or indirectly for soliciting a prospective buyer in this state;

(ii) the total dollar amount invested during a period of 12 consecutive months does not exceed \$100,000;

(iii) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

(iv) offers are made without public solicitation or advertisement; and

(v) the issuer files with the administrator a notice specifying the issuer, the security to be sold and the terms of the offer at least two days before any sales are made;

(B) to no more than 25 persons in this state other than those designated in (4) of this subsection during a period of 12 consecutive months whether or not the seller or any of the buyers is then present in this state, if

(i) the sales are made solely in this state;

(ii) before any sale, each prospective buyer is furnished access to the information that would be provided to a prospective buyer in a registration under sec. 100 [basically the disclosure provisions of ASA] of this chapter (which information shall be furnished to the administrator upon his request);

(iii) the total dollar amount invested during a period of 12 consecutive months does not exceed \$500,000;

(iv) commissions or other remuneration meet the requirements of this chapter and are made only to persons registered under sec. 40 of this chapter;

(v) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

(vi) the issuer obtains a signed agreement from the buyer acknowledging that he is buying for investment purposes and that the securities will not be resold without registration under this chapter;

(vii) offers are made without public solicitation or advertisement; and

(viii) the issuer files with the administrator a notice specifying the issuer, the security to be offered, and the terms of the offer at least two days before the offer is made;"

AS 45.55.140(b)(17) Proposed Legislation:

AS 45.55.140(b) is amended by adding a new subparagraph to read:

"(17) offers or sales of certificates of interest or participation in oil, gas, or mining rights, titles or leases, or in payments out of production under such rights, titles or leases, if the purchasers:

(A) are or have been during the preceding two years engaged primarily in the business of drilling for, mining, producing, or refining oil, gas, or minerals; or

(B) have been found by the administrator upon written application to be substantially engaged in the business of drilling for, mining, producing, or refining oil, gas, or minerals so as not to require the protection provided by sec. 070 of this chapter; and

(C) for purposes of this exemption "engaged in the business" means demonstrable expertise and activity by a person in the subject field of endeavor and shall include oil, gas, and mining corporations or principles but shall not include individuals who are employed in the business."

With these considerations in view, I have the following responses to the questions posed in your memorandum.

1. Should an exemption for the sale of fractional interests in oil and gas interests be accompanied by an amendment, if needed, to the definition section of the respective Securities Act to include an interest in an oil and gas lease, fee or title as being a security?

Yes, if there is to be an exemption, it should be related to the definition of a security. Alaska's act already contains such a definition (see excerpt above).

2. Should such definition include "or mining" so as to include coal leases and all other mining offerings?

As stated above, "mining" interests are already included in Alaska's definition, and the phrase should probably be included in the exemption under consideration.

3. Should a limit be placed on the number of offers and/or sales which can be made under the exemption? If the answer is "yes," what number would be an appropriate maximum?

If the exemption is for the sophisticated investor, i.e., deals between oil companies or mining companies, then probably no limits need apply. If aimed at "private offering" small deals, then I suggest 20 offers and 10 sales would probably be adequate.

4. Should the exemption apply to offers and sales, or only to sales?

Refer to 3 above. It should apply to both offers and sales unless the exemption is for sophisticated purchasers, e.g., major oil, gas, mining companies, etc., in which case there probably should be no limit.

5. If a maximum number is set, should it matter where the purchasers are from in counting to the maximum? In other words, would purchasers from all jurisdictions be counted in reaching a maximum or only those from the jurisdiction applying its law?

The staff of the division has a difference of opinion on this question. The staff feels if it is a sophisticated investor exemption, it does not matter where the investors come from to reach the maximum. On a private offering type exemption, I'm inclined to favor a maximum set by each state for sales within its jurisdiction plus a maximum of the total number of offerings nationwide on the theory there might be tighter control. That is, all X numbers in a given jurisdiction Y with a total not to exceed Z for all jurisdictions in order for an offering to be exempt in jurisdiction Y. I hasten to point out, however, that it may be doubtful whether an unscrupulous offeror would even disclose what activity went on in other jurisdictions under this type of exemption.

6. Should there be a dollar limit to regulate the maximum size of the offering? If a maximum should be set, what should it be?

For a "sophisticated" offering probably no dollar restrictions need apply. However, for a "private" offering type exemption, some overall ceiling should be set. The current private offering exemption of ASA sets a ceiling of \$100,000 interstate and \$500,000 intrastate (see AS 45.55.140 (b)(5) above).

7. Should there be a maximum or minimum limit set on the number of wells which could conceivably be drilled on the venture and/or lease?

I am not aware of all the implications of this question, but it seems that for a "sophisticated" offering, no limit need apply. I would be interested in hearing from other states on this question. The question might apply to a "private" type offering assuming that we could apply substantive standards to an exempt offering.

8. Should the number of leases within a single offering under the exemption be limited to one? Should there be any limit?

Refer to 7 above.

9. Should there be a requirement that the lease be in the state in which the offering is being made?

This question connotes a strictly intrastate offering and would probably be all right for a "noncontiguous" state like Alaska. However, the question raises problems for some contiguous states where leaseholds cross state lines. The restriction is probably not necessary for a sophisticated offering exemption, but we would favor it on a private offering exemption.

10. Should the exemption be limited to sales within a maximum period to time, i.e., twelve months? If so, what would be an appropriate period of time?

Yes, but I have two points here: if you mean an issuer or promoter could avail himself of the exemption only once in a set period of time, i.e., twelve months, then we would favor that limitation. The question may be construed another way, i.e., should we restrict the number of days in which the sale may take place? In this case a shorter period probably should apply. Again note the distinction between the two types of exemptions. I would not require a limitation in deals where the purchase is a major oil, gas or mining company.

11. Should the number of times the exemption could be used by a single issuer within a given period of time be restricted? If so, what would be a reasonable restriction? Who or what is the issuer?

(See 10 above.) It is critical that a definition of who or what is the issuer in any oil and gas or mining security be carefully worked out. Several states have attempted to define "issuer" in this context, but there is no consensus. Hopefully this committee can look at the several definitions and draft one that will be acceptable to all.

12. Should there be any requirement that a filing be made with the Securities Administrator either before or after the hearing (sale)? If a pre or post-filing requirement is desirable, what would be an appropriate time for such filing? How extensive should a filing be?

For purpose of notification to the administrator, even an exemption for sophisticated investors should have a pre-filing notice require-

ment, perhaps 10 days. The extensiveness of the filing would be different for the "sophisticated" investor as opposed to a private offering. At a minimum the issuer should furnish a description of himself and an outline of the intended use of proceeds. Conflicts of interest should be disclosed. If the notice to the administrator is in the form of post-filing, the fact that salesmen were receiving commissions or some similar type of remuneration would also have a bearing on the extensiveness of the filing notice. Some consideration could be given to a post effective sales report, e.g., names, addresses, amounts of sale. This report would then close out the State's exemption file.

13. Should the exemption be from the securities registration and dealer licensing requirements, or only an exemption from securities registration requirements?

Both.

14. If the exemption is from both securities registration and dealer licensing provisions, should any standard of exemption be different if sales are made through a registered dealer?

Again, the answer to this question depends on what type of exemption evolves from this questionnaire. Generally I favor no difference in the standard of the exemption whether made through a registered dealer or not. I think sales through registered dealers should, in fact, be encouraged, because of the additional regulatory control that the administrator has with a registered dealer.

15. Should any form of advertising be allowed? If so, what kind?

I would oppose advertising.

16. Should an organized sale effort and/or commissions be allowed?

In my view, the answer here depends on the definition of "organized sale effort." If it were to include newspaper advertising, "educational" seminars, etc., I am opposed. If the program were to include a telephone solicitation program (a rifle approach to a selected class of individuals as opposed to a shotgun approach), I think the sales effort could be allowed. I believe there will have to be some consideration given to commissions to registered broker/dealers, and agents who might sell one of these exempt offerings.

I do not believe we want to be in a position of precluding sales by registered people because we allow no sales commission. Perhaps, commissions or other remuneration should be allowed only to registered broker/dealers or agents to encourage sales through them.

17. Should there be any restriction on the form of contract (contact) (?) made with the prospective investors? i.e., restrictions on the use of the telephone or mail solicitation.

The answer is, yes, for both telephone and mail solicitation. Refer to 16 above.

18. Should the exemption limit the type of person to which an offering can be made? i.e., offers to "sophisticated" investors. If so, what is a "sophisticated" investor?

The sophisticated investor can be considered from two aspects, as noted in the opening paragraphs. If he has a technical expertise in the field, the requirements for the exemption should be very few. If his "sophistication" is limited to the existence of his own personal wealth with the assumption that he can or will obtain expert advice, the restrictions should be much more extensive. We have the rule 146 problem now with offeree-representatives. It would be even more acute in this area because, while people with wealth usually know or have an accountant who can look at the figures, they do not have such ready access to a geologist. I would consider an exemption for deals between oil companies and/or mining companies in the business to be the sophisticated for purpose of this exemption. It is not going to be easy to define "sophisticated."

19. Should public solicitation be prohibited? What is public solicitation?

Public solicitation should be prohibited, assuming "public solicitation" means use of the media, education programs (seminars), mass mailings or mass telephone solicitations.

20. Should a disclosure be required? If a disclosure document is to be required, what type of financing statements should be required?

A disclosure document should be required. The financial statement of any of the offerors (issuers) whose financial situation will have some bearing on the success of the program should be required. If the program seller is acting merely as a broker, it would not seem that his financials would be necessary. In other words, financials of all parties involved in a proposed development aspect should be furnished. Here again one is faced with the basic question of just how many substantive requirements can or should be imposed on an exempt offering. The same applies to 21 below.

21. Should the promoter's contribution to the project and/or the amount of income distribution the promoter may receive in any way be controlled? i.e., should the promoter be required to make some minimum investment or be entitled to benefit in any way from the offering before the investor receives a partial or 100% return?

Again, if the purchaser is "sophisticated" in the sense that he has expertise in the area, I am not concerned about the promoters contribution or the income distribution. If the investors are not sophisticated, I suggest that we look to the Mid-west Oil and Gas Guidelines for standards.

22. Should the exemption for the sale of fractional interest in oil and gas leases tie into any other exemptions existing within the law? i.e., some jurisdictions exempt sales made to registered dealers, financial institutions, etc.

I believe some of these programs would already come under existing Alaska exemptions (AS 45.55.140(b)(5) and AS 45.55.140(b)(4)) and see no problem with an issuer or offeror having an exemption under more than one statute unless, of course, he would attempt to make them cumulative.

23. Should there be any special exemption for sales to persons who are "in the oil business?"

I think there should be and, in fact, through these questions, have had this in mind in commenting on a proposed sophisticated investor

exemption. I am referring here, primarily, to oil, gas, or mining companies doing business with one another or with individuals who are demonstrably and actively in the business. Please refer to the proposed legislation at the beginning of this memorandum. This exemption was not introduced by our division but we are following it with interest and have suggested the language dealing with definition of "engaged in the business."

24. Should the exemption be dovetailed into the existing NASAA guidelines for the sale of oil and gas interests? i.e., would it be desirable to use the existing guidelines, with modifications designed to account for the differences between the sale of fractional interests and the sale of limited partnership interests so that exemption offerings and registered offerings would not be interpreted from different viewpoints.

This may be a good point of discussion, but it does raise the problem of extending substantive requirements into an exempt area.

25. What are the specific characteristics of fractional, undivided, participating working interests in oil and gas leases and/or wells that require special legislation to provide a workable exemption from registration and/or dealer licensing?

I do not know enough about the "specific characteristics" to suggest remedial legislation. We do not want an exemption that will invite the Schedule "D" operators into Alaska.

26. How many inquiries and/or complaints from the oil and gas industry has your agency received in the last three years indicating that the oil and gas industry in general and/or specific offerors of securities were in any way suffering from current law regarding the sale of fractional working interests in oil and gas leases?

March 28, 1978

Perhaps 8 or 10 inquiries from Rule 146 offerors and some Schedule "D" promoters. In each case, because sales commissions were envisioned, registration by qualification has been required under ASA. They do not usually complain — they just go away.

27. What are the specific problems which have been perceived in your jurisdiction with the sale of fractional interest in oil and gas leases? Would the end result of this project, if successful, relieve those current problems, and, if so, how?

We would like to permit the local oil and gas leaseholder who has no intention of developing his lease, to sell to oil companies who are willing to buy up the leases and develop them. We would like to keep control of the Rule 146 offerings and the Schedule "D" offerings. We have not experienced too many complaints in this area. The only security problems we have had with leases are the sales of them by people who did not own them.

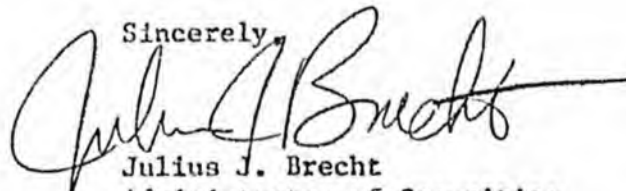
Alaska like every other state, is plagued by the occasional Schedule "D" offering mailed into the state. However, when these come to the division's attention, a C&D is issued. The division has had not success with rescission in these instances.

I hope a uniform exemption can be worked out, and (assuming it is) adopted by a number of jurisdictions. It will probably solve some of the problems. At least I hope we will not create more than we can solve.

Some considerations should be given to the administrator's right to deny or revoke exemptions, particularly, if we are going to impose substantive requirements on this type of an exemption. The Uniform Securities Act permits denial of exemption and provides for a hearing process. It is suggested that this committee consider regulations for standards upon which denial can be based.

I look forward to an interesting meeting in Washington next month.

Sincerely,



Julius J. Brecht
Administrator of Securities

JJB/slp20K1-14

cc: Paul Blatt
Bruce Day
Dwight Keen
Barry Lake
John R. Larson
Arly Richau
A. M. Swarthout

STATE OF ALASKA
Inter-Department Route Slip

TO: MAIL STATION NUMBER Court Bldg. Rm. 628
DEPARTMENT House
ATTENTION Joseph McKinnon

- | | |
|--|--|
| <input type="checkbox"/> Approval | <input type="checkbox"/> Note & Return |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Initial & Return |
| <input type="checkbox"/> Comment | <input type="checkbox"/> Return As Requested |
| <input type="checkbox"/> Contact Me | <input type="checkbox"/> Return For Approval |
| <input type="checkbox"/> Prepare Reply | <input type="checkbox"/> Necessary Action |
| <input type="checkbox"/> For Your File | <input checked="" type="checkbox"/> Your Information |

Remarks:

FROM: MAIL STATION NUMBER 0800
DEPARTMENT Commerce
BY J. Brecht / Air DATE 3-15

02-002 (REV. 10/73)

JAY S. HAMMOND, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

POUCH D - JUNEAU 99811

March 15, 1978

Mr. Lum Lovely
Geologist
P.O. Box 99
Anchorage, Alaska 99510

Dear Mr. Lovely:

I have just received your letter of March 11, 1978 concerning HB 786, a bill which would amend the Alaska Securities Act. This letter is to confirm our telephone conversation of today on this subject.

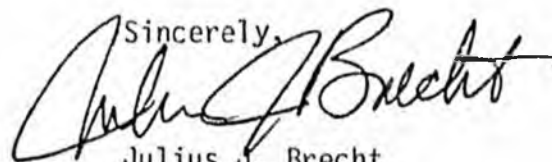
Pursuant to that telephone conversation, please find enclosed a copy of a questionnaire that I have been asked to complete concerning the possibility of North American Securities Administration Association adopting a "uniform exemption for the sale of fractional interests in oil and gas leases." Would you please fill it out and return it to me so that the NASAA Oil and Gas Subcommittee #2 may consider your comments.

Because of the issues that are raised in the questionnaire and because of the potential for abuse of the proposed Sec. 45.55.140(b)(17) exemption from registration by unscrupulous persons dealing in oil and gas leases, I am extremely reluctant to endorse the proposed section 2 of the bill at this time, i.e., providing for Sec. 45.55.140(b)(17). The Alaska Securities Act is based on a uniform act, and I believe that it would be prudent to wait at least until the next legislative session to consider an explicit exemption in the oil and gas area. In the meantime, I shall be working with other members of the NASAA subcommittee to come to a consensus on this issue.

Of course, Sec. 1 of the bill would repeal AS 45.55.130(7)(B) and thereby allow you to take advantage of the private offering exemption found at AS 45.55.140(b)(5).

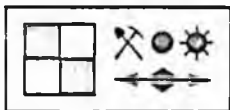
Thank you for your interest in this matter.

Sincerely,



Julius J. Brecht

cc: C. V. Chatterton
Joseph L. Orsini
Joseph McKinnon
Alaska Miners Association
Alaska Oil and Gas Association
Alaska Association of Petroleum Landmen



LUM LOVELY

File HB 786
Geologist

P.O. BOX 99 • ANCHORAGE • ALASKA • 99510

OIL, GAS & MINERAL PROPERTIES

February 27, 1978

Mr. Julius J. Brecht, Director
Division of Banking, Securities and Corporations
Department of Commerce and Economic Development
Fouch D
Juneau, Alaska 99811

Re: Proposed Substitute for House Bill No. 786
Amendments to Alaska Securities Act of 1959

Dear Mr. Brecht:

In reference to the three-way telephone conference of February 22, 1978, in which you, Securities Examiner James L. Thompson and I discussed the merits and demerits of certain proposed amendments to the Alaska Securities Act of 1959, I am in complete agreement with Mr. Thompson's suggestion that the "private offering" exemption, AS 45.55.140(b)(5), can quite readily be expanded to cover both whole and fractional oil, gas, and mineral interests by the simple expedient of dropping AS 45.55.130(7)(B) from the current definition of "issuer". I also agree with you that a "sophisticated purchaser" exemption, similar to the one which the State of California adopted in 1963, would expedite dealings with oil and mining companies (where dollar amounts larger than those specified in the current "private offering" exemption are involved) while at the same time maintaining protection for unsophisticated investors.

A simple repeal of AS 45.55.130(7)(B) is, of course, all that is needed to bring about automatic expansion of the "private offering" exemption to include whole as well as fractional oil and gas interests. In the case of the "sophisticated purchaser" exemption which you proposed in your letter of February 10, 1978, however, a few minor changes in your suggested wording appears necessary in order to conform the exemption more closely to the statutory definition of "security" and to expand it to cover sales of mineral interests as well as oil and gas interests.

I learned from you for the first time during our telephone conversation that your proposed amendment to AS 45.55.130(7)(B), which you sent to Representative "Chat" Chatterton along with your letter of January 26, 1978, has been submitted to the legislature as House Bill No. 786 and that it now resides in the House Commerce Committee where it will be given further consideration in hearings two to three weeks from now. By copy of this letter, I am asking Committee Chairman Joseph H. McKinnon to notify me a few days in advance of such hearings in order that I might have an opportunity to testify. Meanwhile, in light of the foregoing observations, I respectfully suggest that the present wording of HB-786 be deleted in its entirety, and that new wording be substituted in lieu thereof, as follows:

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

* Section 1. AS 45.55.130(7)(B) is repealed.

* Section 2. AS 45.55.140(b) is amended by adding a new subparagraph (17) to read:

(17) offers or sales of certificates of interest or participation in oil, gas, or mining rights, titles or leases, or in payments out of production under such rights, titles or leases, if all of the purchasers:

(A) are and have been during the preceding two years engaged primarily in the business of exploring for, producing, extracting, or refining oil, gas, or minerals, or

(B) are persons described in clause (4) of subdivision (b) of this section, or

(C) have been found by the commissioner upon written application to be substantially engaged in the business of exploring for, producing, extracting, or refining oil, gas, or minerals so as not to require the protection provided by Section 070 of this chapter.

For the sake of uniformity and clarity in drafting the foregoing proposal, I have adopted the syntax and some of the language of California's aforementioned "sophisticated purchaser" amendment of 1963 (see Cal. Corp. Code Ann., §25102(j)). Like the California statute, for example, the foregoing proposal covers both offers and sales, and it conforms to the statutory definition of "security" in both California and Alaska in its coverage of "certificates of interest or participation" in oil, gas, and mining rights, titles, or leases and in "payments out of production" under such rights, titles, or leases (see AS 45.55.130(12) and Cal. Corp. Code Ann., §25019).

By way of comparison, your proposal of February 10, 1978, fails to cover offers, and does not exempt sales of mining interests or production payments. Accordingly, it is neither uniform with the California code nor does it conform with the definition of "security" as used throughout the Alaska Securities Act.


In further comparing our respective proposals, mine substitutes "exploration for" in place of your (and California's) "drilling for", in order to cover geophysical activities which are just as important (and often as costly) as drilling in the overall search for oil, gas, and minerals; it utilizes the word "minerals" instead of your "mining interests" in subparts (A) and (C) for grammatical reasons; it adds the word "extraction" to subparts (A) and (C) to cover mining operations; and, finally, like the California statute, subpart (B) of my proposal covers sophisticated purchasers such as banks, savings institutions, trust companies, insurance companies, etc., whereas subpart (b) of your proposal covers investment companies only.

February 27, 1978

As a result of our aforementioned telephone conversation and your letter of January 26, 1978, to Rep. "Chat" Chatterton, I know how important it is to both you and Mr. Thompson that we "bring our uniform act into uniformity", not only with the laws of other states but to the corpus of Alaska's own Securities Act as well. I believe my foregoing proposal accomplishes this end. Accordingly, by copy of this letter, I am asking House Commerce Committee member "Chat" Chatterton to submit my proposal as a committee substitute for currently pending House Bill 786. A copy of my proposal is herewith enclosed in suggested bill format for the House. By copy of this letter I am also asking that Senator Joe Orsini introduce a similar bill in the Senate.

I wish to take this opportunity to express my thanks to you and Mr. Thompson for the many helpful suggestions which you offered during our aforementioned telephone conversation of February 22, 1978. Hopefully, with your continued cooperation, current conflicts in the Alaska Securities Act can be reconciled to everyone's satisfaction before the end of the current legislative session.

Very truly yours,



L. C. LOVELY, JR.

Encl.

Copies to: Rep. C. V. Chatterton, Sen. Joseph L. Orsini, Alaska Miners Association, Alaska Association of Petroleum Landmen, Alaska Oil and Gas Association, and Alaska Geological Society (please note Alaska Geological Society's mailing address has changed to P. O. Box 1515, Anchorage, Alaska 99510). Also Rep. Joseph H. McKinnon.



Oil, Gas & Mineral Properties

LUM LOVELY, Geologist

P.O. Box 99
Anchorage, Alaska 99510

Offices located at
1016 W. 6th Ave., Suite 440
Anchorage, Alaska 99501
Phone (907) 277-1551

March 21, 1978

The Hon. Joseph H. McKinnon, Chairman
House Commerce Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill 786

Dear Mr. McKinnon:

As an addendum to testimony which I presented to your committee at a hearing held in Juneau on March 20, 1978, I wish to stress here that neither section of my proposed two-section Substitute For House Bill 786 (copy attached) need be considered or enacted jointly with the other, inasmuch as each section stands separately on its own respective merits. Accordingly, I urge you to make every effort possible to enact Section #1 of my proposal, even if you should fail to gain legislative support for my somewhat controversial Section #2.

Section #1, of course, is a simple one-line repealer designed strictly as a housekeeping measure to restore original legislative intent to last year's repeal and re-enactment of AS 45.55.140(b)(5). As you know, this non-controversial section of my proposal is fully endorsed by Mr. Julius J. Brecht, author of the administration's original version of House Bill 786 which now resides in your committee.

I wish to thank you for notifying me of the aforementioned hearing in order that I might have an opportunity to present my views to your committee in person. Your continued cooperation in keeping me informed with respect to the progress of House Bill 786 will of course be greatly appreciated.

Sincerely,

L. C. LOVELY, JR.

Encl.

Copy: Mr. Julius J. Brecht
Rep. C. V. Chatterton
Sen. Joseph L. Orsini
Alaska Miners Association
Alaska Geological Society
Alaska Oil and Gas Association
Alaska Association of Petroleum Landmen



LUM LOVELY, Geologist

P.O. Box 99
Anchorage, Alaska 99510

Offices located at
1016 W. 6th Ave., Suite 440
Anchorage, Alaska 99501
Phone (907) 277-1551

March 21, 1978

The Hon. C. V. Chatterton
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill 786

Dear "Chat":

As you know, groups of oil companies often join together for the purpose of drilling exploratory wells. Sometimes they go the full partnership or joint venture route where all parties have a direct say in all operations. At other times, however, they prefer the limited partnership route which takes operational control away from the investing companies (limited partners), but protects them ^(the limited partners) with limited legal and financial liability. The General Partner in a limited partnership has full and complete operational control but, in exchange therefor, he must assume the burden of unlimited liability.

I'm sure Gene Wiles will confirm for you that limited partnerships are classified as "investment contracts" under most securities laws (including Alaska's) and, as such, they are subject to registration under such laws. If Section #2 of my proposed substitute for House Bill 786 is not enacted, of course, all such ventures involving more than half-a-million dollars here in Alaska must be fully registered under the Alaska Securities Act, even if all of the partners (both general and limited) are oil companies which need no protection under Section 70 of the Act. No wells are being drilled in Alaska these days, of course, for less than \$500 thousand.

The foregoing example is only one of many which could require needless securities registrations by sophisticated oil companies. Such ludicrous registration could become commonplace here in Alaska, of course, if an appropriate exemption is not provided soon. I therefore urge you to "harg in there" in defense of Section #2 of my proposed substitute for House Bill 786.

If my proposal is enacted, of course, you will be doing everyone a favor. You will at the same time be eliminating needless registration by oil companies while eliminating needless administrative work on the part of the State. God knows, the oil companies and the State have enough to do already without taking on the burden of a ludicrous charade of needless securities regis-

March 21, 1978

trations as well.

I leave it in your persuasive good hands, Chat. Your efforts in behalf of my proposed bill will be greatly appreciated.

Sincerely,



L. C. LOVELY, JR.

Copy: Julius J. Brecht
Joseph H. McKinnon
Joseph E. Orsini
Alaska Miners Association
Alaska Geological Society
Alaska Oil and Gas Association
Alaska Association of Petroleum Landmen

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

POUCH D - JUNEAU 99811

March 23, 1978

Honorable Joseph McKinnon, Chairman
House Commerce Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. McKinnon:

Re: HB 786

In yesterday's hearing on HB 786, a number of issues were discussed. I thought it might be helpful to you and members of the House Commerce Committee if I briefly summarized the points that I raised concerning the bill.

As you know, the Legislature enacted SB 48 during the previous session. One provision of that bill amended the private offering exemption found at AS 45.55.140(b)(5) of the Alaska Securities Act (ASA). The amendment changed the exemption by using the terms "sales" by "issuers" rather than "offers" of a security. Under AS 45.55.130(7)(B), transactions involving certificates of interest in oil, gas, or mining titles or leases and related matters do not involve an "issuer." Therefore, the 1977 amendment to Sec. 140(b)(5) precludes a person dealing in oil, gas, or mining leases as defined in Sec. 130(7)(B) from seeking a private offering exemption from registration. This exclusion was not intended by the Administration in introducing SB 48 last year.

The ASA is based in large part on the Uniform Securities Act, which has also been adopted, or is followed, by approximately 43 other states. The bill before you attempts to resolve the problem of defining an issuer by explicitly expanding the language of Sec. 130(7)(B). Twelve

other states have made similar attempts. However, 35 states have remedied the problem by simply deleting the language found at Sec. 130(7)(B). In this way, an "issuer" simply means a person who issues a security as provided by Sec. 130(7)(A). This approach is more streamlined, precludes the need for cumbersome verbage, and relies on the detailed definition of a security found at AS 45.55.130(12).

Mr. Lum Lovely testified before your committee in favor of another amendment to the bill. That amendment provides an explicit exemption from registration for oil, gas, or mining lease offerings involving sophisticated investors. During the course of the past several weeks, I have had several conversations with Mr. Lovely and have corresponded with him during the past weeks on this proposed exemption. The language that he proposed follows the law of California very closely.

However, this past week I received a 27 part questionnaire from the chairman of a North American Securities Administrators Association committee recently formed to study and make recommendations on an exemption for sophisticated investors or perhaps a private offering exemption (similar to Sec. 140(b)(5)) in the area of oil, gas, or mining lease offerings. I am a member of that committee. The recommendations of that committee will amend the Uniform Securities Act on which ASA is based. During the hearing before your committee, I recommended that the committee defer consideration of the exemption until I have had the opportunity to discuss the matter of the questionnaire with my counterparts in other states and, hopefully, after the NASAA committee has made appropriate recommendations for changes to the Uniform Securities Act. I stated that I would certainly be in a position to recommend legislation by no later than the next session of the Alaska Legislature.

I then pointed out that if the committee was disinclined to follow this advice, that I was concerned about the language that is proposed by Mr. Lovely for the exemption. For example, what does the phrase found in the proposed Sec. 140(b)(17)(A), "primarily in the business of" drilling for oil or gas for at least two years mean? Does it include a roughneck working on an oil rig; does it include a corporation formed, but not actively in the business; does it mean at least two years active experience? I stated that I had serious concern about this exemption being used by con-artists to bilk the Alaska investing public of thousands of dollars. Similar problems have occurred and are occurring in Texas and Oklahoma where state law does not presently require registration of certain drilling programs called "schedule D" offerings. Alaska does not have the problem because these programs must be registered under present provisions of ASA. Therefore, any exemption in this area will have to be carefully written to ensure that the primary purpose of ASA, i.e., protection of the Alaskan investing public from fraud and misrepresentation is not circumvented.

Honorable Joseph McKinnon

-2-

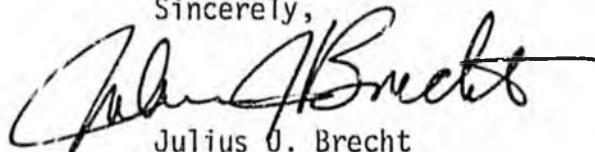
March 23, 1978

The House Commerce Committee can, of course, amend ASA in any manner consistent with the Alaska Constitution. I am sure that some sort of exemption could be devised without the input of NASAA or the experience of other states that are more deeply involved on oil and gas lease offerings. However, to do so would, in my estimation, run the risk of overlooking other effects on the ASA and may lay the Alaskan investor open to fraud and misrepresentation.

The repeal of Sec. 130(7)(B) will satisfy Mr. Lovely's immediate problem, i.e., access to the Sec. 140(b)(5) exemption. In addition, it is likely that he can also enjoy the Sec. 140(b)(4) exemption in transactions where he offers or sells an oil or gas lease to an oil company. That is, the oil company may be an institutional investor, depending on the circumstances of a specific case. Mr. Lovely has submitted a request to me for an interpretation of Sec. 140(b)(4) in this context.

In conclusion, It is my view that the oil and gas lease exemption is not needed to solve Mr. Lovely's immediate problem. I, therefore, recommend that the explicit exemption provision be deferred until next session, at which time detailed and well reasoned testimony may be given on an oil and gas lease offering exemption. In the alternative, I would, of course, be available to the committee at this time to attempt to draft an adequate exemption. Please do not hesitate to contact me if you have any further questions concerning these comments or related matters.

Sincerely,



Julius O. Brecht
Director

JJB:lc2:1

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

POUCH D - JUNEAU 99311

February 10, 1978

Mr. L. C. Lovely, Jr.
P.O. Box 99
Anchorage, Alaska 99510

Dear Mr. Lovely:

Your letter of January 31, 1978 commenting on our proposals to solve the dilemma of oil and gas interests created by AS 45.55.140(b) has been reviewed.

We thank you for concurring that our proposal to change the definition of an "issuer" is a step in the right direction.

Your comments have raised other questions which I will try to answer in the order posed.

The first point raised in your letter was that you would have to go through the full registration process in selling an entire leasehold interest. This is not so either under present statutes or under the proposed changes. At the present time an exemption from registration for whole leasehold interests may be available under AS 45.55.140(b)(9), the exemption for isolated non-issuer exemptions (emphasis added). In our proposed revision up to 25 sales of issues of oil and gas interests may be exempt under AS 45.55.140(b)(5).

You recommend that we change our definition of oil and gas securities to coincide with federal law. At the present time Alaska's Securities Act is not based on the federal acts but on the Uniform Securities Act adopted by the majority of states. It should be noted that no state follows the narrow federal definition of oil and gas interests. The reasons that state "Blue Sky" acts differ from the federal act are 1) that the federal acts are meant to be merely disclosure oriented while state acts speak to substantive standards, and 2) the Securities Act of 1933 applies only to this initial offering of a security while the state acts address themselves to subsequent or secondary transactions. The Federal Government has left the public protection and substantive standards to the states to regulate thus avoiding duplication of efforts.

Mr. L. C. Lovely, Jr.

-2-

February 10, 1978

The drafters of the Uniform Securities Act expanded the oil and gas security definition to "make it clear that so called 'oil payments' are securities whether or not they may be considered as interests in a title or lease." (Official Comment to 401(1) of the Uniform Securities Act, Blue Sky Law, Loss and Cowett (1958) at 350). The official comment further states: "However, it is clear that even entire leasehold interests may be offered under such circumstances that a security is involved in the nature of an 'investment contract'... SEC v. CM Joiner Leasing Corp. 64 S.Ct.120, 320 U.S. 344, 88 L. Ed. 88 (1943)." (Official Comment, supra at 350).

Therefore, it appears that no matter what type of legislation is introduced, whole leasehold interests may be held to be securities as an "investment contract" under both state and federal securities laws.

It is the opinion of the division that the changes that you propose would be unwise and not in the best interest of Alaskan investors as it could result in excluding from regulation those operations where the promoter is promising only future royalties without even the security of an underlying title.

You have also recommended that we make a blanket exemption for all oil and gas securities. This change would create two major problems: discrimination against other forms of securities and increased losses by Alaskan's from unscrupulous promoters.

An exemption of all oil and gas offerings would lead to immediate protests from real estate, manufacturing, chemical, service industries, etc. demanding equal treatment in having all of their securities exempted by statute also.

The second problem raised would be that Alaska would immediately become "open season" for unethical and fraudulent oil and gas operators. This State and others were hit by a rash of these promotions from Oklahoma, Texas, and Louisiana in late 1975 and early 1976. However, prompt action and strong securities laws effectively stopped this fraudulent activity by February of 1976. At the present time we are cooperating with the State of Oklahoma in a current promotion that might involve as much as \$2,000,000 in losses by Alaskan investors from an unregistered oil and gas offering.

It should be noted that last year we had the first two criminal convictions under the Alaska Securities Act since 1964. They both concerned unregistered offerings of either oil and gas or mining securities.

Mr. L. C. Lovely, Jr.

-3-

February 10, 1978

California added an exemption to their act in 1963 as a result of a proposal by the Oil and Gas Committee of the Los Angeles County Bar Association to exempt transactions between oil firms. Adoption of a similar exemption might solve your very real problem in dealing with a sophisticated oil company while at the same time maintaining protection for the Alaskan investor. The exemption that I propose would read as follows:

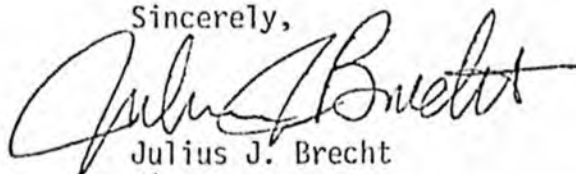
AS 45.55.140(b)(17). sales of oil and gas interests, if all of the purchasers meet any one of the following criteria:

- (a) they are and have been for the preceeding two years primarily engaged in the business of drilling for, producing, or refining oil and gas or mining interests;
- (b) investment companies as defined in the Federal Investment Company Act of 1940; or
- (c) they have been found by the administrator upon written application to be substantially engaged in the business of drilling for, mining, producing or refining oil and gas or mining interests so as not to require the protection afforded by Sec. 070 of this chapter.

I feel that if legislation is enacted relating to the definition of an issuer and the above exemption, it would solve the problem for ethical oil and gas and mining operators while, at the same time, maintaining full and adequate protection from fraudulent and incomplete disclosure that is presently enjoyed by the Alaskan investing public.

If you have any further comments or suggestions, feel free to contact me at any time.

Sincerely,



Julius J. Brecht
Director

JJB/slp5/12

cc: C. V. Chatterton
Joseph L. Orsini
Alaska Miners Association
Alaska Association of Petroleum Landmen
Alaska Geological Society
Alaska Oil & Gas Association

HB

872

Cross-referenced

MEMORANDUM IN SUPPORT OF H.B. 872

This bill would modernize the Standard Valuation and Nonforfeiture Laws (1) to add a new nonforfeiture law for individual deferred annuities, *p. 10-16* (2) to increase statutory interest rate assumptions in the Standard Valuation and Nonforfeiture Laws for newly purchased life insurance and annuities to reflect changes in the level of life insurance company interest earnings that have occurred since the law was last updated and to reflect the uses of particular statutory interest assumptions, (3) to increase the maximum permissible age setback for females in the Standard Valuation and Nonforfeiture Laws for life insurance from three years to six years, *p. 1, 5, 6, 7, 8 and 9* (4) to define the Commissioners Annuity Reserve Valuation Method, (5) to modify the Commissioners Reserve Valuation Method for policies under which the gross premium actually payable is less than the valuation net premium and (6) to replace the mortality tables used for valuing annuities *p. 2, 8* with new tables reflecting changes in annuitant mortality. The bill is part *p. 7-8* of a nationwide program adopted by the National Association of Insurance Commissioners. *p. 5-6* *p. 6-7*

The Standard Nonforfeiture Law for Individual Deferred Annuities

sets forth the minimum nonforfeiture values that must be made available as paid-up annuity or, if applicable, cash surrender benefits to individual deferred annuity contract purchasers who cease paying considerations prior to maturity of their contracts. For many years, only a handful of states have had annuity nonforfeiture laws which approximated these minimum requirements. Recent rises in interest earnings that insurers are able to credit on individual deferred annuities and favorable tax treatment under the Employee Retirement Income Security Act of 1974 have stimulated sales of individual deferred annuities and created a much greater need for standard legislation to establish minimum nonforfeiture values for these products. The bill would enact the NAIC Standard Nonforfeiture Law for Individual Deferred Annuities in the Standard Valuation and Nonforfeiture Laws.

Increase in Statutory Interest Assumptions in the Standard Valuation and Nonforfeiture Laws for Newly Purchased Life Insurance and Annuities

The Standard Valuation Law sets forth the minimum reserves that an insurance company must maintain for a block of business. The need for keeping this law up-to-date is most dramatically illustrated in the case of single premium immediate individual annuities and group annuities. In order to be competitive, companies set the purchase price for such annuities using the current rate of return that they obtain from new investments. The average yield on new fixed-income investments by 60 life

insurance companies accounting for about 65% of life insurance company assets was 9.08% in 1974, 9.87% in 1975, and 9.73% in 1976. The current law, however, requires companies to set up reserves considerably in excess of the funds actually received as premiums for annuities because the valuation law prescribes a 3 1/2% interest rate to be used to compute minimum reserves. Unless this rate is changed, companies will be faced with the alternative of either increasing the premiums charged for annuities or limiting or stopping the sale of annuities.

The effect of requiring reserves to be established on an unrealistically low valuation interest rate can be illustrated by the following example: Suppose a company agrees to guarantee the payment of \$1000 at the end of one year in return for the payment of a specified premium at the beginning of the year. If the company is able to invest the premiums received to yield 9%, it only has to charge $\$1000 + 1.09$ or \$917.43 as the premium. But the current valuation law requires the reserves to be established on the assumption that the investments will yield only 3 1/2%, rather than the 9% at which the funds are actually invested. This requires a reserve in the amount of $\$1000 + 1.035$ or \$966.18, which is \$48.75 more than the actual premium received. This difference can only be taken out of the company's surplus.

Since most annuities continue in force for more than one year after the premium is received, the effect of the difference between the actual

interest rate earned and the statutory interest rate assumption produces an even greater drain on surplus. An example of the surplus drain caused by requiring overly conservative reserve interest assumptions in the face of higher investment yields and competitive pricing can be illustrated by a comparison of net single premiums for a life annuity of \$100 per month to a male aged 65 computed on the basis of the 1971 Group Annuity Mortality Table and an interest rate close to what insurers are currently using to price group annuities with the statutory reserve requirements. The net single premium for such an annuity calculated on the basis of the 1971 GAM and 9% interest, which is representative of interest rates currently used in determining group annuity benefits, is \$9,205. However, the required reserves for this annuity calculated on the basis of the current minimum reserve basis of 3 1/2% interest and the Group Annuity Mortality Table for 1951 is \$12,760 or 39% more than the net premium used in pricing the benefit.

A similar calculation can be made for a life annuity of \$100 per month commencing at age 65 for a male now aged 55, which is a typical weighted average age in the case of annuities sold to fund terminating pension plans. In this case the net premium based on 9% interest and the 71 GAM Table is \$3,409 while the required reserve based on 3 1/2% interest and the Group Annuity Mortality Table for 1951 is \$7,740. Thus, an additional 127% above the net premium used in pricing the benefit must be established as reserves. Similar surplus drains arise from the sale of other life insurance and annuity products but are not as extreme because prices for these products reflect both current and expected future yields on life insurer's investments.

To reduce drains in surplus and to give life insurance companies the flexibility to offer lower priced products with lower nonforfeiture values and reserves, the bill would increase the statutory valuation interest rate assumptions for group annuities and for single premium individual immediate annuities from 3 1/2% to 7 1/2%, for single premium life insurance and for single premium individual deferred annuity contracts from 3 1/2% to 5 1/2% and for all other life insurance policies and all other individual deferred annuity contracts from 3 1/2% to 4 1/2%, and would increase the statutory nonforfeiture interest rate assumptions for single premium life and endowment insurance from 3 1/2% to 6 1/2% and for all life insurance from 3 1/2% to 5 1/2%. The statutory valuation interest rate assumptions vary depending upon the type of product with which they are used so as to reflect the degree of investment risk and hence the need for greater or lesser conservatism in minimum reserve standards. The statutory nonforfeiture interest rate assumptions are higher than the statutory valuation interest rate assumptions since the Standard Nonforfeiture Law is not a solvency test and minimum nonforfeiture standards should be based upon interest assumptions that are closer to those used in product pricing.

(B) p. 6, 7
 (C) p. 1, 6
 (D) p. 1, 6
 (E) p. 8, 9
 (F) p. 8, 9
 (B) (C)
 (D) (E)
 (G) p. 5 and (C), (D), (E) and (F)

Increase in Maximum Permissible Age Setback For Females

The bill would recognize the increase in longevity of women relative to that of men by increasing the maximum permissible age setback used in calculating life insurance minimum nonforfeiture values and reserves from three to six years. As with the increase in statutory interest rate assumptions, such an increase in the maximum permissible age setback would give insurers the flexibility to offer women lower priced life insurance products with lower nonforfeiture values and reserves.

(H) p. 2, 8

Definition of the Commissioners Annuity Reserve Valuation Method

Ⓡ p.7
-8

The Commissioners Reserve Valuation Method is that portion of the Standard Valuation Law which describes the procedure for computing minimum reserve standards using the statutory valuation interest rate and mortality assumptions. The application of this method to annuity contracts has never been clearly defined with the result that some insurers have failed to take into account all promised contractual benefits in calculating minimum reserve standards for some types of individual deferred annuity contracts and have not established adequate reserves for these benefits. The bill adds a definition of the Commissioners Annuity Reserve Valuation Method to the Standard Valuation Law to clarify the procedure to be used in calculating minimum reserve standards for individual deferred annuity contracts.

Modification of the Commissioners Reserve Valuation Method For Policies Under Which the Gross Premium Is Less Than the Valuation Net Premium

Ⓡ p.5-6

The Standard Valuation Law requires an insurer to establish additional reserves called "deficiency reserves" whenever the gross premium actually payable under a policy is less than the valuation net premium used in computing the policy reserve. The effect of this requirement is to force insurers to hold larger deficiency reserves if they choose to strengthen basic policy reserves. The combined increase in both basic policy reserves and deficiency reserves may deter many companies from strengthening reserves when it would be appropriate. The bill would modify the commissioners reserve valuation method to make it possible for companies to strengthen basic policy reserves without having to hold higher deficiency

New Mortality Tables

Ⓚ p.6,7

Concurrently with increasing the interest rates in the Standard Laws, the bill would require companies to use the new 1971 Individual and Group Annuity Mortality Tables in place of the older 1937 Standard Annuity Mortality Table, the Annuity Mortality Table for 1949, and the Group Annuity Mortality Table for 1951.

Nationwide Program

These proposed changes were approved by the National Association of Insurance Commissioners at its meetings in December 1972 and December 1976 for nationwide enactment. All of the states except Maryland have adopted the 1972 changes. Twelve states adopted the 1976 changes in 1977 and it is probable that additional states will act in 1978. If this legislation is not enacted in Alaska, lower cost life insurance policies will not be available in Alaska, and Alaska citizens will not have the protection of the new nonforfeiture law for individual deferred annuities.

12/21/77

HB

876

FAIRBANKS SECURITY SERVICE

POST OFFICE BOX 80846, COLLEGE, AK 99701 • 2406 CUSHMAN ST., FAIRBANKS, AK 99701 • 456-756

March 14, 1978

The Honorable Joseph McKinnon
Chairman, Commerce Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill 876

Dear Representative McKinnon,

The Board of Electrical Examiners would like to take this opportunity to present written testimony in regard to HB 876.

Preface: There are, at this time, 2 individual statutes which regulate the electrical industry in our state. Of these, one statute under Title 8 (AS 08.40) is administered by the Department of Commerce and Economic Development while the other (AS 18.60 Article 6), falls under the Department of Labor.

Coincidentally, the provisions of AS 08.40 grant enforcement authority to the Department of Labor while the structure of our centralized licensing statute (AS 08.01.050.(19)) relieves the Department of Commerce from the requirement to provide investigative services to our Board.

In addition to the foregoing, Article 6 of AS 18.60 provides inspection authority to the Department of Labor and others without delineating any criteria as to the minimum qualifications an electrical inspector should have.

It is the opinion of our Board that a comprehensive review of this situation leading to investiture of a common authority under a single statute is mandatory at this time. We have, to this end, taken the liberty of preparing the following documentation which we offer as a possible committee substitute to HB 876.

CSHB 876

A bill for an Act entitled: "An Act relating to electrical safety"

- * Section 1. AS 18.60.580 through AS 18.60.660 are repealed.
- * Section 2. AS 08.40 "Article" is amended by adding a new section to read:
 - 4. Electrical safety (Sections 08.40.300 - 08.40.390)
 - 5. Electrical inspectors (Sections 08.40.400 - 08.40.410)
- * Section 3. AS 08.40 is amended by adding Article 4.
AS 08.40 Article 4 Electrical safety

Section

- 300 Minimum electrical standards
- 310 State, Borough and City electrical codes
- 320 Powers and duties of the Board
- 330 Powers and duties of the Department
- 340 Delegation of authority
- 350 Inspection fees
- 360 Enforcement of compliance
- 370 Scope of work covered
- 380 Penalty for violations
- 390 Definitions

* Sec 08.40.300 Minimum electrical standards.

The latest published editions of the National Electrical Code and the National Electrical Safety Code, both as approved by the American National Standard Institute (ANSI) constitute the minimum electrical safety standards of the state.

* Sec 08.40.310 State, Borough and City electrical codes.

- (1) The Board of Electrical Examiners may adopt regulations amending the codes adopted by Sec 300 of this chapter, providing such amendments are not less stringent than the standards prescribed by those codes.
- (2) This chapter does not affect the authority of any Borough, Municipality or Utility to adopt by ordinance, rule or order, standards for their respective areas of jurisdiction not less stringent than the standards prescribed by the Board and/or those established under Sec 300 of this chapter.

* Sec 08.40.320 Powers and duties of the Board.

The Board may:

- (1) Adopt regulations necessary to carry out the purpose of Sec 300 and Sec 310 of this chapter.
- (2) Cause to have made inspections of the electrical wiring installed in any structure or facility in this state for the purpose of determining compliance with the minimum standards herein established.

* Sec 08.40.330 Powers and duties of the Department.

(a) The Department may:

- (1) Adopt regulations necessary to carry out the purposes of Sec 330-390 of this chapter.
- (2) Inspect the electrical wiring installed in a structure or facility within this state as directed by the Board or as otherwise authorized by this chapter.

(b) The Department shall maintain records of all electrical inspections conducted.

* Sec 08.40.340 Delegation of authority.

- (a) Upon application to the Department, a Borough, Municipality or Utility may be authorized by the Commissioner to inspect the electrical wiring in any structure or facility within their respective areas of jurisdiction. Authorization by the Commissioner under this section constitutes a full grant of authority to act within the provisions of Sec 330-390 of this chapter with the same immunities and privileges accorded to the State in the performance of these duties.
- (b) Notwithstanding the above delegation of authority, the Department may, upon reasonable cause or direction of the Board, make inspections of electrical wiring within any jurisdictional area of this state.

* Sec 08.40.350 Inspection fees.

- (a) A Borough, Municipality or Utility authorized under Sec 340 of this chapter to provide inspection services may charge a fee for those services.
- (b) The Department shall adopt regulations setting forth a schedule of maximum fees for inspection services rendered under Sec 330-390 of this chapter.

* Sec 08.40.360 Enforcement of compliance.

- (a) An authorized inspector under this chapter shall give written notice to the owner of constructed premises, or the contractor or builder of premises under construction, of each violation of applicable electrical standards discovered.
- (b) An owner, contractor, or builder whose electrical wiring installation is found not to meet the standards prescribed, has the right to appeal to the Commissioner for a new inspection. Such appeal must be made within five (5) working days of the date of notice of violation and when made, the Department shall, within ten (10) working days of the date of appeal make a new inspection by a designee other than the person conducting the original inspection.
- (c) Within fifteen (15) working days after receipt of written notice of violation under this chapter, an owner, contractor or builder served with such notice must correct the discrepancy and request reinspection.
- (d) Should an owner or contractor fail to appeal the notice of violation and/or fail to correct the discrepant condition(s) within the timeframes specified, the Department may (1) Place a stop work order on the building, facility or project involved (2) Provide written notice of non-conformance to the serving utility, whereupon the supplier of electrical energy may discontinue services to the premises where the alleged violation exists.

* Sec 08.40.370 Scope of work covered.

- (a) Sections 300-390 of this chapter apply to electrical wiring installed or being installed in any building, structure or facility within this state.

(b) Exclusion. Electrical installations in single family residential dwellings which are owned by the installer or a member of his immediate family and not intended for sale at the time the installation is made are exempt from the provisions of Sec 320-390 of this chapter.

* Sec 08.4.380 Penalty for violations.

An owner, contractor or builder who installs electrical wiring not in compliance with the minimum standards as defined in this chapter, and/or who fails to correct a discrepancy after having been notified in writing by an authorized inspector, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000.00 or by imprisonment for not more than 90 days, or by both.

* Sec 08.40.390 Definitions.

In Article 4 of this chapter:

- (1) "Board" means the Board of Electrical Examiners.
- (2) "Department" means the Department of Labor.
- (3) "Commissioner" means the Commissioner of the Department of Labor.
- (4) "Electrical Wiring" see Sec 200.(3) of this chapter.

* Section 4. AS 08.40 is ammended by adding Article 5
AS 08.40 Article 5 Electrical inspectors
Section 400 License required
Section 410 Violation of chapter

* Sec 08.40.400 License required.

- (a) No person may act as an electrical inspector in this state without an Electrical Administrator's license issued by the Board.
- (b) A person licensed under this chapter may inspect work only in a category for which he is licensed.

* Sec 08.40.410 Violation of chapter.

A person who knowingly violates Article 5 of this chapter is quilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$300.00, or by imprisonment for not more than 60 days, or by both.

* Section 5. AS 08.40.190 is ammended to read:

Sec 08.40.190 Exclusions

- (a) Articles 1, 2 and 3 of this chapter do (does) not apply to any Utility or Municipality engaged in -----

Sec 08.40.190

- (b) Articles 1, 2 and 3 of this chapter do (does) not apply to any person engaged in -----

* Section 6. AS 08.40.200 is ammended to read:

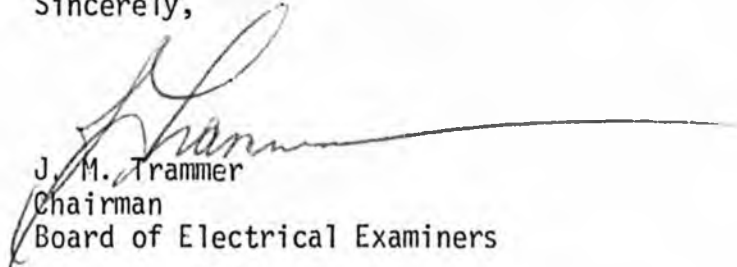
Sec 08.40.200 Definitions.

As used in Articles 1, 2 and 3 of this chapter.

We recognize that the implications of this proposal are somewhat far reaching even though our prime purpose is to codify the authorities into one Act. We would welcome the opportunity to testify before your committee and to hear the testimony of other persons and administrative departments affected.

Please let us know when we can be of assistance to you.

Sincerely,



J. M. Trammer
Chairman
Board of Electrical Examiners

JMT:kkm

cc: The Honorable Fred Brown
The Honorable Bob Bradley
The Honorable Charles Parr
The Honorable Larry Carpenter
The Honorable C. V. Chatterton
The Honorable Joe Hayes
J. Armstrong - NECA
J. Kornfeind - NECA
S. Andrew - Dept of Commerce
Hugh MacCaulay
Ed Schenderline

SB

326

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

May 1, 1978

SUBJECT: Suggestions relating to medicine and hospitals
TO: Representative Joseph H. McKinnon
FROM: Billy G. Berrier, Director *BGB*
Division of Legal Services

To confirm our conversation, it appears a misunderstanding of the Warren suggestions arose. We entered work orders for bill preparation prematurely.

We have examined those areas the committee decreed we check, and have found that the subject matter is covered in existing law, or would have serious constitutional and practical problems except in the area of composition of the State Medical Board. We have therefore prepared a work draft on that subject, which is enclosed, and have cancelled the remainder of the work orders 5415 through 5422,

BGB:hjd

Enclosure

See AS 08, 64.380(3)(G)

PRINCIPLES OF MEDICAL ETHICS

PREAMBLE

These principles are intended to aid physicians individually and collectively in maintaining a high level of ethical conduct. They are not laws but standards by which a physician may determine the propriety of his conduct in his relationship with patients, with colleagues, with members of allied professions, and with the public.

SECTION 1

The principal objective of the medical profession is to render service to humanity with full respect for the dignity of man. Physicians should merit the confidence of patients entrusted to their care, rendering each a full measure of service and devotion.

SECTION 2

Physicians should strive continually to improve medical knowledge and skill, and should make available to their patients and colleagues the benefits of their professional attainments.

SECTION 3

A physician should practice a method of healing founded on a scientific basis; and he should not voluntarily associate professionally with anyone who violates this principle.

SECTION 4

The medical profession should safeguard the public and itself against physicians deficient in moral character or professional competence. Physicians should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed disciplines. They should expose, without hesitation, illegal or unethical conduct of fellow members of the profession.

SECTION 5

A physician may choose whom he will serve. In an emergency, however, he should render service to the best of his ability. Having undertaken the care of a patient, he may not neglect him; and unless he has been discharged he

From Bernard Kelly
of Kelly & Luce

OBJECTIONS TO MALPRACTICE BILL

1. A 90 day freeze issue:

The underlying presumption is that a 90-day freeze will result in some exchange of information between the representatives of the injured party and the physician involved. This presumption is erroneous. Extensive experience in the field of malpractice litigation has shown that in spite of repeated attempts by the attorneys and injured parties involved to discuss the presence or absence of a malpractice action, and a medical records treatment and reasons for same involved therein by physician, instituted by the attorneys and injured parties, have inevitably met with a refusal to discuss the issue, to reveal any medical treatment or in any way to attempt to resolve the question amiably without the necessity of filing a formal malpractice action. It is incredibly naive to presume that the granting of a 90-day freeze would in any way alter this response in the medical community.

2. The medical community's definition of malpractice is not that required under the law. The legal definition of malpractice is nothing more nor less than negligent conduct resulting in the injury to an innocent party. The medical community definition of malpractice is a willful and wanton disregard for the safety of the patient. The standard or test that the medical community applies in defining a doctor's conduct as being either malpractice or not is not the test for negligence (malpractice), but is rather the test for an action which would support punitive damages. It is the reckless indifference or a willful or wanton disregard for the safety of the patient. While it is true that conduct which would meet the medical community's standard would certainly be more than enough to justify successful malpractice action, the true test under the law is much less than that which the medical community views as required to sustain a malpractice action.

This distinction between the two tests will carry over to any medical board, to any doctor's willingness to discuss a malpractice action, to any vehicle which is set up which would remain in the control or under the direction of the medical community. It is clearly the position of the medical community that they are not responsible for negligent conduct. Just why a medical practitioner should not be held responsible for injury inflicted by his negligence, while members of any other profession, occupation or walk of life are required (and rightly so), to pay for injuries inflicted by negligent conduct, is something that has never been justified, nor can I conceive of any possibility of such justification in the future.

3. The medical profession in its campaign for the passage of the initial malpractice bill, including MICA, was perfectly willing to place the safety and well being of their patients in jeopardy; threatened the representatives of the people in this State with a cessation of medical care and a mass exodus from the State. Now, in the guise of seeking some relief from what the doctors view to be a great evil of the required coverage of MICA, the doctors wish to remove those reasonable risks from the insurance pool and leave the State of Alaska in the position of insuring those physicians who are incapable of acquiring privately funded malpractice insurance. The justification for this is that certain forms of medical practice comprise a "high risk" form of practice and that adequate insurance coverage is not available.

4. "High risk" defined.

The high risk forms of medical practice (i.e., heart surgery, thoracic surgery, anesthesiology, etc.) are areas in which a successful malpractice action is an extremely difficult case to prove. If the type of medical treatment carries a high risk of injury to the patient as a direct result of the type of practice involved, it follows that the mere existence of the injury is no evidence of the existence of negligence. To contend that merely because there is a high risk of injury to a given type of medical treatment results in a high incidence of successful malpractice actions is simply not true. The key to malpractice litigation is the presence or absence of the negligent conduct on the part of the treating physician. The mere fact, standing alone, that an injury has resulted from treatment is no proof of the presence of negligent conduct. It is only when a specific surgical procedure or the specific treatment (or absence of same) is established and established through competent medical testimony, that the presence or absence of negligence can be assessed.



ALASKA STATE HOSPITAL ASSOCIATION, INC.

5531 ARCTIC BLVD, SUITE 1
PHONE 277-1633

ANCHORAGE, ALASKA 99502

February 14, 1978

Joseph H. McKinnon, Chairman
Commerce Committee
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Dear Representative McKinnon,

Several bills having to do with medical malpractice, as relates to our MICA regulations, are in your committee as amendments to MICA. These are HB 123 HB 280, HB 292, HB 309, HB 310 and HB 311. Plus SB 326 which is a companion to HB 484 which is now in Judiciary.

We are not going to attempt to pick out the bits and pieces of these various bills, or cut and paste to come up with what we think such a bill should look like. Rather, we would like to submit to you the three main issues we want to see addressed and let your committee and the Legislature do it up in a manner they see fit. Those three main issues are:

Elimination of the mandatory and exclusive provision of the law

A two-year statute of limitations where no claim can be brought against a provider unless the claim is filed within two years from the date of the alleged act (except in the case of a minor).

A 90-day period of notification where no action based on a provider's alleged negligence may be commenced unless the defendant has been given at least 90 days' notice of the intention to commence action.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Marion".

Marion K Lampman
Executive Director

mk1

BERNARD P. KELLY
L. AMES LUCE

LAW OFFICES
KELLY & LUCE
A PROFESSIONAL CORPORATION
1015 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 279-9571

KENAI OFFICE
HIGHLAND BUILDING
P. O. BOX 3762
KENAI, ALASKA 99611

March 23, 1978

Representative Joseph H. McKinnon
Chairman, House Commerce Committee
Pouch V, State Capitol
Juneau, Alaska 99811

RE: Pending Medical Malpractice
Legislation

Dear Representative McKinnon:

It is my understanding that a Senate Bill referred to your committee for house action dealing with the subject of medical malpractice, contains therein a provision which would require notification to a doctor 90 days prior to the time when suit might be initiated against him. While I am certain that there can be argument presented that such a requirement would enable a physician to contact his insurance carrier in order to attempt to resolve the matter prior to litigation, such procedures, if they may be profitably pursued, are now a rather uniform procedure amongst those handling malpractice litigation without mandatory legislation.

In those cases where such a procedure would not prove to be profitable, which I submit would constitute the majority of claims, this 3 month delay would further complicate and extend the period of time when an injured person could expect to receive just compensation.

There is already on the books a provision in our law, passed by our legislature several years ago and applying only to malpractice litigation, where the plaintiff is barred from all discovery pending a report by an expert advisory panel, which is supposed to be appointed immediately by the Court, and is required to submit their finding within 30 days.

In practice, however, in those cases where this procedure has been utilized, it has taken as long as 14 months to find physicians and others willing to serve upon the board, and it has often proven impossible even then, to have an expert recommendation presented. Coupling this delay, which has proved to be unwarranted and unjust, with an additional 3 month delay prior to the time when the plaintiff could even initiate litigation, would tend to so delay the possibility of recovery as to effectively preclude an injured person from seeking prompt

Representative Joseph H. McKinnon
Page 2
March 23, 1978

compensation for injuries which have occurred as a result of medical negligence.

I would request that not only the 3 month provision which is contained in the present bill be eliminated, but further that the existing medical malpractice legislation be amended so as to permit discovery to proceed while the advisory board is being appointed and meeting to make their recommendation.

I apologize for not having before me the Senate Bill dealing with the medical malpractice situation which I understand is presently pending before your committee, but I am certain this should present no problem for your staff to address itself to the problem which I have set forth in this correspondence.

Best regards,

KELLY & LUCE



L. Ames Luce

LAL/ch

CC Representative Fred Brown
Representative Bob Bradley
✓ Representative Charles H. Parr
Representative Larry Carpenter
Representative C. V. Chatterton
Representative Joe L. Hayes

BERNARD P. KELLY
L. AMES LUCE

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