Survey of Use of Social Security Account Numbers on State Forms

EXTENT OF USE

At present the State of Alaska uses approximately 6,500 forms (excluding University of Alaska) to administer its many programs and its personnel and fiscal operations. Of those forms, 13% or 832 request social security account number from persons applying for services or assistance. The University of Alaska utilizes an additional 43 forms, which ask for an individual's social security account number. Only 15% of all the forms requesting social security account numbers are computerized at this time.

The Department of Labor, Military Affairs, and Administration use 60% of all forms requesting social security account numbers. The Department of Labor utilizes social security numbers as its primary identifier on its Unemployment Compensation forms and Workmen's Compensation files. The military serial number was recently changed to be the same as the individual's social security account number, and the Department of Military Affairs utilizes the military serial number on many of its forms. The Department of Administration's statewide personnel, payroll, and retirement systems use social security account numbers as a key identifier.

IMPACT ON PUBLIC

The 13% of state forms which request social security account numbers are generally those in heavy use by the general public. They range in scope from application for a driver's license to an application for a hairdresser's license. At any given time, the average citizen probably has at least 3 cards on his possession for which he was requested to release his social security account number. They may include:

(1) Driver's License
(2) Voter Registration Card
(3) Hunting and Fishing License
(4) State Employee Identification Card
(5) University of Alaska Student Identification Card

LEGAL REQUIREMENTS

In response to a questionnaire forwarded to the agencies that requested social security account numbers on some of their forms, the agencies cited laws and regulations to justify their request. Most of these citations were related in some way to federal government requirements. For example, income tax, social security retirement, and certain public assistance laws were often cited. Only rarely were state laws or regulations cited and those were with regard to contractor's licensing and labor assistance programs.

JUSTIFICATION FOR USE

Although most agencies could not cite a specific law or regulation requiring the use of social security account numbers, many stressed the

importance of the number as a positive method of verifying identification. The Department of Revenue's reply, for example, noted "the use of numbers has a greater degree of accuracy as handwriting or printing often leads to misspelled names." The Office of Elections stated that it requests social security account numbers "in order that we may identify the various people with the same name or initials." A few departments stressed that they would not deny a person services or assistance if he refused to supply his social security number.

Some agencies requested social security account numbers from their clients in order to comply with a request from another department, agency, or office. For example, the Department of Health and Social Services uses the social security account number on its public assistance fraud form in order to request information from Department of Labor, whose system uses social security account numbers as identifiers. Other departments, such as Public Safety which have unique personnel or payroll forms, use social security account numbers quite frequently so that their personnel information is comparable with data collected by Department of Administration.

OTHER ISSUES

Recently the Office of the Ombudsman has become involved in several complaints concerning the requirement that a social security account number be supplied when applying for certain state services, such as a driver's license or University of Alaska library card. The Department of Public Safety, in particular, has responded to these complaints by posting signs in their offices stating that an applicant may refuse to release his number and will not be denied a license because of this action.

Also, a bill has been introduced in the Senate on this topic--SB 283. That bill states that no person shall be required to release his social security account number in order to obtain state services or assistance. An exemption is provided for programs that are required to ask for the number as a condition of their federal-state plan. The bill is currently in Senate Judiciary Committee.

SURVEY OF FORMS EMPLOYING SOCIAL SECURITY ACCOUNT NUMBERS
CURRENTLY IN USE IN ALASKA PROGRAMS

Department or Office	Total Number of Forms Using SSN	Number of Forms Computerized	Reasons for Use of Social Security Account Number: Positive Verification of ID	Required By Other Agency	Other	Law/Regulation Cited	Number of Forms Under Cite	Types of Forms Using Social Security Account Number
OFFICE OF GOVERNOR	22	13	20	2	0	None	1	See separate division detail.
Governor's Office	1	0	1	0	0	None	0	Personnel/payroll
Commercial Fisheries Entry Commission	14	13	14	0	0	None	0	Application and program forms.
Human Rights Commission	3	0	2	1	0	None	0	Complaint forms; (Note: These forms are under revision and social security numbers will be removed.)
Alaska Police Standards Council[1]	3	0	3	0	0	None	0	Personnel/payroll; program forms
Alaska Historical Commission	1	0	0	1	0	Grant: IRS Reg.	1	Grant application including personal services.
OFFICE OF LT. GOVERNOR	3	1	3	0	0	None	0	Election forms.
DEPARTMENT OF ADMINISTRATION	95	28	90	4	1	IRS Reg.; FICA Reg.; Treasury Dept. Reg.	16	Personnel/payroll; retirement (teachers', PERS, Social Security); pioneer benefits; insurance; finance; deferred compensation; data processing; housing.
DEPARTMENT OF LAW	3	0	2	1	0	Payroll: 26 USC §6109(d) Child Support Enforcement: Title IV-D; Social Security Act	2	Payroll; testimony form; directions for service form.

Department or Office	Total Number of Forms Using SSN	Number of Forms Computerized	Reasons for Use of Social Security Account Number: Positive Verification of ID	Required By Other Agency	Other	Law/Regulation Cited	Number of Forms Under Cite	Types of Forms Using Social Security Account Number
DEPARTMENT OF REVENUE[2]	57	17	50	4	3	Tax forms: 26 USC §6109(d)	31	Personnel/payroll; individual and corporate tax forms; fishing, hunt trapping license; fur dealer licen taxidermy license; business licens liquor license; coin operated equi ment distributor's patent; cannery license, contractor's license.
DEPARTMENT OF EDUCATION	22	12	21	1	0	Personnel/Payroll: Social Security Act	1	Student loan; teacher certificatic vocational rehabilitation.
DEPARTMENT OF HEALTH & SOCIAL SERVICES 3	61	7	18	39	4	Title IV-A; Title IV-D; 45 CFR 206(a)(v)(A) 45 CFR 232.10 45 CFR 250.71 45 CFR 302.70 45 CFR 302.71	11	Personnel/payroll; catastrophic illness form; public assistance forms; fraud complaint form; API forms; alcoholism forms; child support enforcement; state medical ID card; corrections booking and parole form; Harborview personnel forms; mental health referral form nursing family folder; social services forms; violent crimes compensation form.
DEPARTMENT OF LABOR[4]	257	26	241	1	15	8 AAC 85.020 8 AAC 85.040 8 AAC 85.030	16	Employment service forms; unemployment insurance forms; wage and hou forms; workmen's compensation form personnel/payroll; fisherman's fun forms; occupational safety and health forms.
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT 5	39	0	37	2	0	AS 08.18.021(1) (contractor)	2	Occupational licensing; AK Transportation Commission; uniform form for securities; broker dealer.

Department or Office	Total Number of Forms Using SSN	Number of Forms Computerized	Reasons for Use of Social Security Account Number: Positive Verification of ID	Required By Other Agency	Other	Law/Regulation Cited	Number of Forms Under Cite	Types of Forms Using Social Security Account Number
DEPARTMENT OF MILITARY AFFAIRS	157	0	157	0	0	Army Reg. 600-2; Air Forces Reg. Disaster Office Reg.	157	Army now requires use of social security number as military serial number. Serial number is requested on most program forms.
DEPARTMENT OF NATURAL RESOURCES	4	0	0	3	1	Veteran's preference: AS 38.05.067 AS 38.05.035(A)(4) 11 AAC 54.250(B)	1	Personnel/payroll; employee insurance; veteran's preference for land (Note: Veteran's military serial number is now social security number. See Department of Military Affairs for law citation.)
DEPARTMENT OF FISH & GAME	6	1	3	2	1	None	0	Personnel; cannery ticket; hunting, trapping, sport fish ID card; pilot house/trip ticket book; commercial fishing gear and/or vessel license transfer form.
DEPARTMENT OF PUBLIC SAFETY	53	10	28	26	4	For payroll functions: IRS Reg. Social Security Reg.	3	Personnel/payroll; security guard licensing; background investigation state trooper forms, wanted persons report, press reports; service requests; motor vehicle form; driver's record and licensing; pilot training; state ID card; fish and game protection forms; aircraft form.
DEPARTMENT OF PUBLIC WORKS	18	1	14	4	0	None	0	Personnel/payroll; marine transportation; aviation.
DEPARTMENT OF HIGHWAYS	8	3	8	0	0	None	0	Personnel/payroll
DEPARTMENT OF ENVIRONMENTAL CONSERVATION	0	0	0	0	0	Not applicable	0	None

Department of Office	Total Number of Forms Using SSN	Number of Forms Computerized	Reasons for Use of Social Security Account Number: Positive Verification of ID	Required By Other Agency	Other	Law/Regulation Cited	Number of Forms Under Cite	Types of Forms Using Social Security Account Number
DEPARTMENT OF COMMUNITY REGIONAL AFFAIRS 6	15	1	0	11	4	None	0	Payroll/personnel; senior citizen's tax exemption program; day care program; farm use program; expense reports; manpower (CETA) (Note: Five forms used by the department contain social security number at request of Research Division, Legislative Affairs Agency. The request was made in conjunction with data matrix project.)
LEGISLATURE	2	0	1	1	0	Personnel/payroll: Social Security Act	1	Personnel/payroll
COURT SYSTEM	5	0	1	3	1	None	0	Personnel; child support application form; cash appearance bond form; report of coroner call form; inability to afford counsel form.
UNIVERSITY OF ALASKA	43	16	7	6	30	Personnel/payroll: IRS REG; Cooperative Extension: Federal Civil Service Req	7	Admissions; accounts services; general ledger; business office; correspondence stuoy; personnel/payroll; rural education; travel reimbursement; physical plant; cooperative extension activity report; housing forms; ID card.
TOTAL	875	136	701	110	64		249	

Revised 5/31

FOOTNOTES

1. The Alaska Police Standards Council notes that its regulations (6 AAC 70.010(d)) permit the council to request necessary information to evaluate merits of applications.

2. The Department of Revenue cited AS 16.05.360 as justification for requiring social security number on its fish and game license forms. That statute permits the commissioner to request any reasonable information, but does not specifically itemize the requirement of social security numbers.

3. The Department of Health and Social Services cited statutes that require them to cooperate with federal government in public assistance programs (AS 47.05.010(11), AS 47.25.330(3)). These statutes do not specifically require the use of social security numbers on public assistance forms. Many federal programs, though, require the use of social security numbers for ID and tracking purposes. "Cooperating" with the federal government therefore might be seen as a requirement for requesting social security numbers from clients.

   The Department of Health and Social Services also cited statutory mandate (AS 47.37.040(9)) to "make available relevant statistical information including number of persons treated" in alcoholism programs. The department cited this reference as documentation of allowing them to collect information including social security number, but not a strict requirement of the inclusion of that data item.

   The Department of Health and Social Services cited AS 47.10.010, AS 47.10.030, and Children's Rules, Rule 10, as documentation that the Division of Social Services is responsible for certain child custody matters that require the use of social security numbers in order to locate missing parents.

4. The Department of Labor has also cited laws (AS 23.30.100, AS 23.30.155, AS 23.35.050) which permit, but do not require, the use of social security numbers for certain Workmen's Compensation and Fisherman's Fund forms.

5. The Department of Commerce and Economic Development has cited AS 08.64.190 to support use of social security numbers in licensing physicians. That statute gives the licensing board the authority to require "other information" on its application which the board considers "necessary" in order to evaluate the candidate.

6. The Department of Community and Regional Affairs cited AS 29.53.035 to support its use of social security numbers in its form use assessment application. That statute gives the state assessor the authority to prescribe forms which include such information which may be reasonably required to determine the entitlement of the application.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM April 5, 1977

SUBJECT: Survey of Use of Social Security Account Number in State Forms (W.O. #3499)

TO : The Honorable Charlie Parr
Chairman, House HESS

FROM : Deborah Behr
Research Analyst

Earlier this session, you requested a survey on the use of social security account numbers on state forms. The enclosed report is the result of that survey. The survey was done in two major stages: (1) collection of forms and (2) requesting of information on use of social security account number. Forms were collected from the Department of Administration, Division of General Services and Supply, which controls state form production. Also, specific agencies, departments, and offices were contacted to obtain information. After the forms were collected, questionnaires were forwarded to each agency asking specific questions with regard to use of social security account number, such as the reasons for including it and the legal citations requiring that agency to request the number.

The Department of Administration estimates that there are over 6,500 forms in use statewide, excluding the University of Alaska. Forms, such as the personnel application form, which are used throughout the state, were included only in the counts relating to the department that originated the form. If an agency, such as University of Alaska, had its own personnel form, that form was counted and included with that particular agency total.

As of this date, all agencies, except for the University of Alaska, have responded to my questionnaire. The University returned its forms later than other agencies. My questionnaire therefore was mailed later to the University than to other agencies. The University was requested to respond to the questionnaire by April 6, 1977.

In addition to the report, I have also included notebooks containing the forms and agencies' responses. These forms are grouped by agency in which the form is used. Also, I have included a brown notebook containing the laws cited by Departments which require them to request social security account numbers.

If you have any questions regarding this study, please do not hesitate to contact me at 465-4917.

DB:cm

Survey of Use of Social Security Account Numbers on State Forms

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The Privacy Report
HB 491

Issued by Project on Privacy and Data Collection / American Civil Liberties Union Foundation
22 East 40 Street New York, New York 10016 (212) 725-1

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WHO ARE YOU?: IDENTIFIERS AND IDENTITY DOCUMENTS

Although no one actually seems to want it, the national identity document may be close to becoming a reality.

The Administration and members of the Congress are sifting through proposals intended to cope with the problem of illegal immigration, in particular, the employment of aliens who are in the country illegally. Among the measures before them are the issuance of counterfeit-proof Social Security cards, coded to show the bearer's legal entitlement to work in the United States, and a legislative ban on the employment of persons who do not possess such proof of entitlement. If adopted, this program would bring together two essential elements of a national identity document: the universal identifier (in the Social Security number), and the identity document as a legal precondition to participation in the life of the community. But in fact, we already have the major elements of a national identity document, for the Social Security number has become,

for all practical purposes, the American universal identifier, and the manipulation of personal information as a means of controlling the participation of individuals in the activities of the community is already far advanced in our society.

THE UNIVERSAL IDENTIFIER

Originating in 1936 as an identifier for Social Security accounts, and extended a year later to state unemployment insurance programs, the Social Security number was not otherwise commonly used in public or private record systems for the next twenty-five years. It is interesting now to recall that misgivings had been expressed about the implications of the SSN as a universal identifier from the very start, requiring repeated official assurances that the government's uses of the number would be strictly limited to administration of the Social Security system. Yet the federal government itself initiated the move toward a universal identifier when, in 1961, the Internal Revenue Service adopted the SSN as a taxpayer identification number. Over the last sixteen years the SSN has become the standard identifier for federal employees, patients at V.A. hospitals, aliens, military personnel, holders of Treasury bonds, securities, and bank accounts, and recipients of all kinds of federal benefits. It is used by the states and localities for public assistance programs, school records, civil service employment, motor vehicle registration and drivers' licenses, voter registration, fishing and game licenses, even library cards, and on records sent by state and local law enforcement agencies to the FBI's National Crime Information Center. In the private sector, the number frequently appears on student and employee ID cards, hospital records, insurance policies, department store charge applications, and telephone and electricity accounts -- to name only a sampling.

A few years ago, Congress finally responded to emerging public anxiety over the proliferation of uses of the SSN. By 1974, the American people clearly had come to perceive the incessant demands for disclosure of the SSN not only as an intrusion on the right of privacy in itself, but also as a symbol of all that is threatening in modern data collection practices -- the use of information as a mechanism for social control. The spectre of the "one big dossier" keyed to the Social Security number was no longer just a literary fantasy; the public knew enough about the uses and abuses of personal records, and about the capabilities of computer technology, to have developed quite a sophisticated understanding of the potential of the SSN as a universal identifier.

Congress' first efforts were only palliative. The Privacy Act of 1974 placed a moratorium on any new uses of the SSN by federal, state, and local government agencies after January 1, 1975, except for uses thereafter specifically enacted by federal statute. It restricted existing uses to those formally authorized by statute or regulation. It required the Privacy Protection Study Commission to examine the need for further legislative or regulatory controls.

From this modest beginning, it seemed for a time as if the move toward a universal identifier might have been checked. The media picked up on the subject. Public consciousness became more acute. Increasing numbers of people registered their objections about the ubiquity of demands for the SSN -- to legislators, to the press,

to ACLU, to anyone willing to listen. Some government agencies abandoned uses of the SSN that did not meet the conditions set down by the Privacy Act.* Lawsuits were filed when other means of challenge failed. There was talk of stronger legislation to come, in particular, a proposed federal statute, numbered (fortuitously, its sponsors claimed!) H.R.1984, which would forbid any private business or organization to use the SSN without the express authorization of Congress. Expectations focused on the long-awaited studies and recommendations of the Privacy Commission, due for publication in the summer of 1977. Some optimistic souls even began to speculate on the amount of time and money it might take for various governmental and private record-keepers to convert their existing Social-Security-numbered systems to other kinds of identifiers.

The optimism was unfounded. Just weeks after passage of the Privacy Act, federal and state agencies began preparations to operate the Child Support Enforcement Program by means of the Parent Locator Service, a federal-state record-tracing system authorized by Congress in January of 1975, for the purpose of locating parents (invariably fathers) who had "disappeared" to avoid paying child support to their families. The PLS was to use the Social Security number as the principal identifier for following personal information from one record system to another.

The Child Support Enforcement Program makes a search for the missing father mandatory when the mother and children are on welfare, optional for other families to locate fathers who have defaulted on court-ordered child support payments. The search is conducted by combing records, first locally, then in other states, and finally on the federal level. Eventually, any governmental records, and even many private records, could be encompassed in the search. The task becomes easier, of course, if a common identifier is available to serve as a bridge from one record system to another, and so the Parent Locator Service logically gives impetus to broader usage of the SSN.

The November 1976 issue of the Privacy Report discussed the Parent Locator Service at some length. Conceding "that children have the right to be supported by their parents, and that it is proper for the state to take steps to enforce that right," it went on to explore the larger privacy implications of the PLS:

> ...The PLS exemplifies a danger whose realization privacy advocates have predicted for some years. Its key is the Social Security number. The Parent Locator Service uses the SSN as an identifier to trace the absent parent from one record system to another. This is precisely the kind of record tracking and record linkage facilitated — almost invited — by the development of the SSN as a universal identifier, and precisely the reason for arguing that uses of the SSN should not be allowed to proliferate.

* The word "abandoned" may suggest voluntary action. This was not often the case. [illegible], agencies capitulated only under pressure. Many ACLU affiliates carried on long negotiations with state and local agencies which were illegally using the SSN, and by confronting them with [illegible] evidence of their violations of the Act, were eventually able to effect changes of policy. Among the most frequent transgressors were state universities and motor vehicle administrations.

Less than two years after the Parent Locator Service was enacted came the next major step in the transformation of the SSN into a universal identifier. By Section 1211 of the Tax Reform Act of 1976, Congress, capitulating to rhetorical attacks on the "millions" guilty of "welfare chiseling and cheating," extended to state and local government agencies the right to use the SSN to administer their tax laws, motor vehicle registration and driver's license systems, and general public assistance laws. The purpose was twofold: to facilitate the use of motor vehicle registration and driver's license records for PLS searches, and to facilitate the comparison of public assistance program records within or between states to uncover cases of welfare fraud.[4]

With the passage of the Tax Reform Act, the battle to hold the line on the SSN was effectively lost, at least with respect to governmental record systems. Indeed, it will now be difficult for any important governmental record system to be maintained without the SSN, so strong are the pressures for the exchange of information keyed to a common identifier. The Parent Locator Service is surely only the first of many such record-tracking operations to come. If this prediction seems unduly gloomy, it should be remembered that just as the SSN stands as a symbol of what people most fear about the misuse of personal record systems, it also can be invoked as a symbol of what people most desire — efficiency, productivity, delivery of services, "law and order."

It would be foolish to argue that a common identifier is not useful. Of course it is. The real questions are whether the common identifier is essential in accomplishing what we wish to accomplish by the use of personal records, and what effects such an identifier has on the values we wish to preserve, most particularly, the right of privacy. Privacy advocates in the debate on the Tax Reform Act pointed out that state and federal Parent Locator Services were already authorized to use the SSN, and were already able to get just about any records they needed, with or without the SSN. They pointed out that none of the Parent Locator Service agencies had asked Congress to expand use of the SSN into state and local record systems, or shown any evidence that a single identifier was essential to their work. They also pointed out that the SSN is itself vulnerable to fraud, duplication, and error.[5]

[4] The final version of Section 1211 is actually counted a victory by some privacy advocates, in view of its legislative history. The amendment began as a response to the plight of state tax agencies not to be allowed to use the SSN in order to coordinate their functions with federal tax authorities. It emerged on the floor of the Senate as a virtual repeal of all Privacy Act restrictions on state and local uses of the SSN. A long debate, with Senators Goldwater and Percy arguing the case for privacy, ended in a compromise giving authority to state and local agencies for the four enumerated purposes, plus a saving clause because of the SSN in exchanges of information with a state or federal Parent Locator Service.

[5] The [illegible] report [illegible], and the Rights of Citizens describes the problems of duplication, [illegible] through the [illegible] "pocketbook numbers" — sample numbers on facsimile Social Security cards [illegible] by the manufacturers in new wallets and purses), multiple numbers (over 4 million [illegible] are believed to have more than one number), and [illegible] (the absence of [illegible] to allow the [illegible] of "made up" [illegible]). The 1976 report of the [illegible] Advisory Committee [illegible] followed in the [illegible] ([illegible]), [illegible] in 1971, [illegible] of [illegible].

But the mystique of the universal identifier as a panacea for society's ills, disorders, and crimes proved too strong. Here is a sampling of the rhetoric that carried the day, from a speech by Russell Long on the floor of the Senate:

> ...Now, when we are trying to catch a bunch of chiselers, cheaters, liars, fakers, and frauds, here we see an amendment to stop us. Every honest man is carrying credit cards and other identification trying to prove who he is. But if you happen to be some runaway father, trying to avoid doing your duty to your own children, or trying to cheat on welfare by living on there under 18 different names, you do not have to identify yourself....You do not have to identify yourself when you start chiseling and cheating on Uncle Sam....
>
> My feeling about it is if you want your privacy protected, all you have to do is set out on foot, and between now and sundown, you can be in the beautiful George Washington National Forest and nobody is going to come there looking for you. You can stay there as long as you want to stay in there, you can come out anytime you feel like it, or not come out if you feel like that. Nobody is going to bother you.

In a context of "welfare reform," the right of privacy was cast as a cloak for evil deeds, and the true significance of the common identifier for the millions of people who don't desert their children or bilk the government was completely lost. The balancing of issues and values in this debate suggests that any future attempts to resist claims of administrative need and social utility will not be successful, and that the SSN will in time become officially, as it is now for all practical purposes, the common identifier in all of the personal records which describe the life of each individual.

We must reiterate here the symbolic importance of the SSN as a universal identifier, to combat a tendency either to minimize or to overemphasize its real significance. While it is correct to say that the SSN is not in the technical sense a true universal identifier,* the fact that it is perceived as such by so many people -- both enthusiasts and opponents -- means that it must be regarded as a universal identifier for purposes of developing public policy. To deflect objections to its use by reassuring references to the failures of the system is to miss the point. Whatever its technical deficiencies now, with time and "improvements" the SSN will become a true universal identifier because that is the way it is being used.

On the other hand, one should not be stilled into thinking that personal records would not be searched, linked, and pooled if only the SSN or some other common identifier were unavailable. Basic principles of information policy are established by daily decisions to restrict the collection and uses of personal records, and to set up existing legal barriers against their determination. The universal identifier may cloud the issue -- its very existence seems almost to invite the pooling of information (as the debate on the Tax Reform Act clearly showed) -- but the search

* A true universal identifier would be unique to each person, permanent and unalterable through life, and supported by a mechanism for verifying the identity of its bearers.

for a meaningful right of information privacy must go far deeper than the question of the universal identifier.

In recognition of the basic validity of the public's perceptions, we must acknowledge the acceptance of the SSN as a universal identifier, and go on to examine the long-range implications of that development.

TOWARD A NATIONAL IDENTITY DOCUMENT

The next logical step after a universal identifier is a national identity document. The HEW Advisory Committee on Automated Personal Data Systems clearly drew the connection in its 73 report Records, Computers, and the Rights of Citizens.

> To realize all the supposed benefits of /a universal identifier/, mandatory personal identity cards would have to be presented whenever called for. Loss or theft of an /identity/ card would cause serious inconvenience, and the mere threat of official confiscation would be a powerful weapon of intimidation.

Further, the Committee envisioned a national population register as an implicit outgrowth of a universal identifier, serving "as the skeleton for a national dossier system to maintain information on every citizen from cradle to grave." For this reason, the Committee opposed further steps toward the development of a universal identifier.

That was in 1973. We know now that the Committee's recommendation was not heeded. It seems, too, as if the Committee's predictions about the identity document are about to be realized.

Just as Section 1211 of the Tax Reform Act was adopted in a frenzy of rhetoric about "welfare chiseling," the national identity document may come into being in the present ado over illegal immigration. Like welfare, immigration is a vexing and emotionally charged subject, and the problem of illegal immigration, particularly from Mexico, has proved as intractable to straightforward "solutions" as the problem of welfare fraud.

Among the major proposals being studied by the Administration and the Congress for combatting illegal immigration, and especially the employment of illegal aliens, are the development of counterfeit-proof, coded Social Security cards, and legislation forbidding employers to hire persons not possessing the properly coded cards. Social Security cards would be designed to prevent physical alteration, duplication, or forgery, and marked to show whether the bearer is legally entitled to work in the United States (by virtue of citizenship or status as a legal resident alien). An employer would be required to inspect the card before hiring any worker, and to ascertain both the bearer's legal right to work and his or her identity as the rightful holder of the card. An employer who knowingly hires a person not legally entitled to work would be subject to criminal penalties.*

* ACLU has long opposed criminal penalties upon employers hiring illegal aliens. Such penalties could only exacerbate existing patterns of racial and ethnic discrimination in employment, by creating greater risks for employers hiring applicants who appear to be foreign-born. Employers' reluctance to hire such persons, even if they are in fact legal residents or citizens, will increase the discrimination now widely practiced against black and hispanic workers.

The transformation of the Social Security card into an official identity document and prerequisite for employment would bring this country perilously close to the adoption of an internal passport. Despite disclaimers by its proponents of any such intention, a document of personal identification whose disclosure is required before any employment can legally be obtained would be in fact, if not in name, a domestic passport. To thwart attempts at fraud or forgery, the card will have to carry such unique personal identifiers as photograph, signature, and fingerprints. It will also carry codings to show the status of the bearer as an "authorized" worker. It will thus become an "employment passport." Employers will be forced to serve as agents of the government for the purpose of determining each applicant's identity and legal right to work.

In time, such an "employment passport" would unquestionably become a national identity document. For a start, the need to verify the identity of the cardholder would require -- as the HEW Advisory Committee foresaw -- the development of a national population register. The signatures, photos, fingerprints, and other identifying information imprinted on the card would have to be compared to something else for verification, and that "something else" could only be a register containing matching signatures, photos, fingerprints, and other personal data. A national register is not encompassed in the current proposals, but is the only logical way to make the system work.

The new Social Security identity card would be the one common document possessed by the majority of the adult population. Once established as a reliable proof of identity, the card would lend itself to many uses flowing quite naturally from its availability. For example:

-- The police would be able to stop people on the street or in their automobiles and demand to see their identity cards. Proponents of the current proposals stoutly deny that this is their intention, and one need not question their sincerity. But such an eventual usage would be terribly difficult to prevent. The legal groundwork has already been laid, in the Supreme Court ruling permitting police officers to conduct a full search of both motorist and vehicle without a warrant when the motorist has been arrested for a traffic violation. U.S. v. Robinson, 414 U.S. 218 (1973). The technological groundwork has also been laid, in the increasing use of squad car computer terminals giving instant access by the police officer in the field to centralized state, regional, and national wanted persons, stolen vehicle, and criminal history files. The broad police power to stop, question, and search, added to the technological capability for the instant retrieval of criminal justice information, creates the perfect context for the development of a police identity document. Perhaps we would never go so far as to require by law that people carry their identity documents at all times, but it would become very "convenient" always to have it on hand -- especially if one is black, hispanic, poor, long haired, young, a frequenter of "questionable" gathering places, or given to walking on deserted streets in the dark of the night.

-- A population registry, especially one containing photographs and fingerprints, would inevitably have other compelling uses in addition to the enforcement of the immigration laws. The detection of welfare fraud and the apprehension of criminal fugitives are the two most obvious examples to come to mind. It would be most difficult to forbid the use of such a registry in law enforcement situations hinging on the verification of identity; that would be asking too much of human nature.

-- Both public agencies and private organizations which now employ the SSN as an identifier would naturally find the national identity document a great convenience, and would incorporate it into their information systems. So too would those agencies -- and especially private businesses -- which now require some sort of proof of identity, such as a driver's license. Could one really blame a local merchant for asking to see a customer's identity card before accepting his personal check? Once more, the presumed reliability of the document would lead to its widespread use by the simple process of logic.

-- Although initially encompassing only adults, the system would eventually be applied to children as well. There have already been serious proposals to give children Social Security numbers when they enter school, or even at birth, as a way of preventing illegal aliens from sending their children to public schools and clinics, and, again, as a means of combatting welfare fraud through the collection of benefits for fictitious children. Despite the repugnance of the thought to most people right now, a good case could be made for issuing identity documents to children, and ultimately to newborn infants, once the system has become an accepted fact of life in the adult world.

-- If an identity card can be marked to indicate the bearer's entitlement to work, it can also be marked to show other entitlements, or disabilities. Arguments would certainly be made for indicating criminal convictions or status as a welfare recipient on the document. Employers are always eager to investigate the criminal histories of job applicants, and a coded identity document would save a lot of trouble getting access to criminal justice records. If the documents of welfare recipients were coded, employers could be forbidden to hire them just as they would be forbidden to hire illegal aliens* -- and conversely, the working poor or the occasionally employed could be prevented from collecting public benefits open only to "certified" welfare recipients. If these speculations sound extreme, they are only adaptations of present practices enhanced by the availability of a national document of entitlement.

-- What more formidable method of social control could be devised than the removal of the identity card on which one's livelihood, or even freedom to walk the streets, may depend, or the coding of the card to make the bearer ineligible for certain privileges, benefits, or basic civil rights and civil liberties?

None of these eventualities is intended or even desired by most of those who view an identity verification system as the answer to the illegal alien problem. But we have learned -- or should have learned -- from past experience that information systems are almost invariably perverted from their original purposes, and we must be extremely cautious in establishing a new one which has such obvious implications for the right of privacy.

It may well turn out that the identity card scheme is a politically unacceptable solution to the illegal alien dilemma just at present, but we can be sure that the idea will not be completely abandoned. The universal identifier and the national identity document will always be attractive -- and dangerous -- because they are

* Or, employers might be legally required to report the hiring of any such applicant to the welfare agency, so that the person would automatically be removed from the welfare rolls.

effective techniques for controlling people. When frustrations run high over difficult social problems, it is all too easy to turn to "benign" solutions of information control without thought of what those solutions really portend for the quality of our lives./TRH

STATUTE LAW ON THE SOCIAL SECURITY NUMBER

To counteract the prevailing note of pessimism in these pages, it may be useful to remind readers of the Privacy Report that there are still some statutory restrictions on uses of the Social Security number under the Privacy Act of 1974 and the Tax Reform Act of 1976. Here is a summary:

1. It is unlawful for any federal, state, or local government agency to deny a person any right, benefit, or privilege provided by law because the individual refuses to disclose his or her Social Security number, except in the following circumstances:

   A. To an agency maintaining a system of records operating before January 1, 1975, which required the disclosure, under a statute or regulation adopted before January 1, 1975, to verify the person's identity.

   B. Additionally, as required by federal statute. At present, this exception covers uses by state and local government agencies for the administration of tax, motor vehicle registration, driver's license, and general public assistance laws, and for responses to requests for information by a Parent Locator Service agency.

2. In requesting disclosure of an individual's Social Security number, an agency must inform the individual:

   A. Whether disclosure is mandatory or voluntary.

   B. By what statute or regulation its request is authorized.

   C. What uses will be made of the number.

3. It is a misdemeanor for a person to disclose, or use or compel the disclosure of the SSN of an individual in violation of any U.S. law. It is also a misdemeanor for a person to make any "willful, knowing, and deceitful" use of his or her own SSN for any purpose.

4. Private organizations and businesses are neither empowered nor forbidden by law to use the SSN. Thus they have no legal right to require disclosure of the SSN, but one's only ultimate remedy, after argument fails, is to take one's business elsewhere. Obviously, this is not always an option.

HB
549

For your info

KIINUK, INC.
FAIRBANKS DRUG TREATMENT CENTER

1221 Coppet
Fairbanks, Alaska 99701
(907) 456-5715

Frank L. Gold, EdD
Program Director

David M. Cammack, MD
Medical Director

November 3, 1977

Avrum Gross, Attorney General
Department of Law
Pouch K
Juneau, Alaska 99811

Dear Av,

In response to a letter received from the State Office o Alcoholism & Drug Abuse, I (with help) have reviewed House Bill #549, "An Act revising the laws relating to drug abuse in accordance with the Uniform Controlled Substances Act."

On the whole, the bill is not bad. It appears to be patterned after the federal act with various categories of drugs based on their relative physical and psychological dependence. Having an advisory committee which passes recommendations along to the Commissioner of Health and Social Services (who then promulgates regulations) is probably desirable as it allows for flexibility.

Now the perceived problem area: the committee has a good mix of members, but why are there no individuals who are involved with the rehabilitation of drug abusers? Why are there no attorneys (particularly those that deal with such drug cases)? Maybe even someone from law enforcement?

The act classifies amphetamines and cocaine as Schedule drugs; this is an attempt by the law enforcement folks to still make the use of cocaine a very serious drug offence. It also attempts to include hashish and hashish oil under Schedule II. The other substances I might agree with being under Schedule II, but not hashish, hashish oil, and cocaine. It would seem that the determinations were made on the basis of cost in order to include these three substances under Schedule II (especially since marijuana is under Schedule V).

I have some concern about the penalities as outlined under Section 17.17.250. While on the surface it would appear to be more lenient than the present penalties, with presumptive sentencing being given serious consideration by the State the reverse may be true (and might seriously affect treatment options). I am not opposed to putting a non-addicted "pusher" in jail for a lengthy period of time, but I am opposed to doing so if the individual is also addicted and it can be shown he/she was selling in order to support their own habit. The presumptive sentence

plan may mean no treatment can be provided until after the prison term is completed.

Section 17.17.280 is a throwback to present law; the "intent to deliver" language should be stricken from this section if the former section is to have any real meaning.

Under Schedule II, the financial penalty for possession of cocaine has increased substantially over present law (although the prison time is decreased). That might be okay, except that it would appear to be the result of higher income folks getting caught--and allowing them a substantial fine rather than the embarrassment of a prison term of substance. The only problem I see is that if some poor guy gets caught, the burden of a $2000 fine might be prohibitive. Again, cocaine does not belong under this Schedule category.

I am pleased to see the section dealing with required treatment for addicts (Section 17.17.220 D). My only concern here is that judges be given the option of treatment facilities (not only lock-ups and therapeutic communities). We have been dealing with heroin addicts, have them on methadone, and maintain strict control. The point is there are many alternatives possible--and I am concerned that therapeutic communities (most of which cannot produce the results desired) would be seen as the only treatment placement...AND PAROLE OFFICERS CANNOT BE GIVEN THE RESPONSIBILITY TO MAKE THE ACCEPTED RECOMMENDATION.

Proposed Section 17.17.300 says a penalty imposed for violation of this chapter is in addition to, not in place of, a civil or administrative penalty or sanction otherwise authorized by law. This would apparently keep in the civil penalty for the possession of marijuana because it is authorized by present statute, 17.12.110. This is a real anomoly in that it would permit one to be civilly handled for possession of marijuana, but not subject to any prosecution for sale of marijuana. This section must exclude marijuana if the previously mentioned reduced penalties are to make any sense.

This bill is probably more positive than negative. It certainly is positive in its treatment of heroin addicts, and youth who possess small quantities of cocaine and marijuana. There are some ambiguities that will need to be cleaned up to make this a workable bill, but all in all if the proper folks get on the advisory committee and if the commissioner uses their advice wisely, we should end up with better laws controlling the possession and sale of prohibited substances than at the present time.

Sincerely,

Frank J. Gold

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. 443 549
Title An Act revising the laws relating to drug abuse in accordance with the Uniform Controlled Substances Act.
Requested by Office of the Governor Date 5-25-77

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected Administration of Justice
Budget Request Unit(s) Affected Prosecution

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

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

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
The proposed bill is designed to implement a comprehensive, revised statutory scheme to regulate the possession, use, sale and distribution of all abusable drugs. Certain provisions of the bill will result in an increase in prosecutorial activity such as the provisions pertaining to forfeitures, while others are expected to result in a concomitant decrease. Changes may occur in the number of offenses charged and in the number of trials. However, it is expecte that any such changes will require the redirection of present resources, rather than an increase.

Without some experience under the bill, it is impossible to accurately project either cost increases or cost savings under the bill. Other criminal justice agencies that will potentially be affected by the bill include the Alaska Court System, the Department of Public Safety, the Division of Corrections, Department of Health and Social Services, and the Public Defender Agency.

Daniel W. Hickey

IV. DATE 5-25-77 PREPARED BY DANIEL W. HICKEY, CHIEF PROSECUTOR
AGENCY Department of Law - Criminal Division
PHONE 465-3428

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

HB 549

May 25, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill designed to implement a comprehensive and more rational statutory scheme to control the possession, use, sale and distribution of illicit drugs in Alaska through a logical classification and penalty system.

The bill is a modified version of the Uniform Controlled Substances Act, promulgated by the National Conference of Commissioners on Uniform State Laws. It is designed to provide for a high degree of uniformity among the laws of the several states and the federal government thereby creating a network of federal and state law enabling government at all levels to develop a coordinated and effective approach to the enforcement of drug laws. To date, the Uniform Act has been adopted in at least 42 other jurisdictions.

Alaska's present statutes relating to drug offenses are confusing and often inconsistent with each other, particularly in terms of the range of penalties provided. In general, they constitute a hodgepodge of individual statutory provisions of varying age that have been adopted in response to individual problems as they became apparent. This situation has been compounded in recent years and months by judicial decisions such as those in Ravin v. State, 537 P.2d 494 (Alaska 1975), pertaining to marijuana and, more recently, in State v. Erickson, Anchorage Superior Court No. 76-5772 Cr. (December 22, 1976), pertaining to the classification of cocaine as a narcotic.

Immediately after the Erickson decision, I asked the attorney general and the commissioner of public safety to make a comprehensive review of our drug laws and try to arrive at a coordinated realistic state policy toward the classification of drugs and the enforcement of drug laws. That has not been easy. As I am sure everyone recognizes, attitudes about drugs in society vary widely, and trying to reach a position which can be supported by all elements of the law enforcement community takes a great deal of time. We have spent that time. Extensive conferences have been held between members of the Metro Unit, other members of the Department of Public Safety, and the state prosecutor's office. Each section of this proposed bill has been discussed and debated at length. I am sorry to be so late in introducing this bill, but in my mind it was critical that the bill represent a combined law enforcement perspective and I felt that it was worthwhile to take the time to reach that consensus.

The time at which this bill is introduced will make it difficult, if not impossible, to consider it in depth this session. There is, however, a perfect vehicle for its analysis between sessions. The Criminal Code Revision Subcommission, chaired by Representative Gardiner, will be completing their work on the entire criminal code before the legislature convenes next January, and hopefully this bill can be handled in an orderly fashion as a part of that total revision effort.

While the bill is primarily the product of a series of working sessions between the Department of Public Safety and the Criminal Division of the Department of Law, representatives from several disciplines and interest groups have been consulted extensively and to some extent have participated in the drafting of this bill. These include law enforcement personnel, defense attorneys, pharmacists, scientists, social workers, and members and staff of the Criminal Code Revision Subcommission. Although each of the various interests who have been consulted and involved in the drafting of the bill may not agree with each provision in the bill, there is general consensus that overall the bill constitutes a badly needed and significant improvement over present statutes.

The main objective and advantage of the Uniform Controlled Substances Act and of this bill is that it creates a single coordinated statutory system of drug control similar to that now in effect at the federal level and in at least forty-two other states through classification of all abusable drugs into five schedules. Each schedule has its own criteria in relation to the others for inclusion of a drug based upon the degree of danger to the public health and safety which is to be assessed in accordance with a series of specific classification criteria set out in the bill. An additional mechanism is provided for in the bill to administratively add, delete, or move drugs from one schedule to another by regulation adopted in accordance with the Administrative Procedure Act.

There are two distinct advantages to such a regulatory system. First, persons within the legitimate drug industry are subjected to essentially the same standards and requirements at both the state and federal levels. Second, the statutory scheme proposed will permit the state to respond quickly and efficiently to changes in the use and abuse of drugs without repeatedly seeking legislation when more stringent or even less stringent controls are found necessary and appropriate. The classification system established in the bill will allow, subject to legislative nullification and in accordance with prescribed standards, for the administrative inclusion or rescheduling of substances based upon new scientific findings and the abuse pattern and potential of a substance after public hearings.

Another objective of the bill is to establish a closed regulatory system for legitimate handlers of controlled substances in order to curtail drug diversion into illegitimate channels. This system requires, for example, registration with a designated state agency, maintenance of records and the use of uniform order forms in conformity with federal law.

While the bill does not directly provide for specific drug treatment, rehabilitation and research programs, it does provide for registration of such programs and individuals involved in the handling of drugs for research, treatment and rehabilitative purposes. Thus, the bill explicitly makes education and research an integral part of the total law enforcement effort with respect to drugs through creation of a viable research environment.

From a law enforcement perspective, the bill constitutes a substantial improvement over present statutes in terms of the classification and penalty structure, the linkage it will provide with federal and other state enforcement systems, its forfeiture provisions, and its provisions dealing with a number of miscellaneous subjects such as forged prescriptions.

Additionally, the penalty structure of the bill includes a comprehensive presumptive sentencing schema largely patterned after legislation which I submitted to you earlier this session. This particular feature, along with a penalty distinction between casual sales of illicit drugs and those which occur in a commercial context, make the bill somewhat unique among jurisdictions which have adopted the Uniform Controlled Substances Act. The presumptive sentencing provisions are designed to further rationalize the penalty structure for drug offenses and to eliminate as much room for disparity as possible in sentences imposed for similar offenses committed under similar circumstances. They are also intended to provide emphasis on the more serious offenses under the bill such as sales of controlled substances to minors and "commercial" sales of heroin, cocaine, and amphetamines.

I believe that this bill represents a carefully thought through focal point for a comprehensive examination of Alaska's drug statutes which, as I have indicated, are badly in need of revision. I urge your serious consideration of the bill during the interim and, more importantly, the subject it addresses, and I trust that the bill will be of assistance to the Criminal Code Revision Subcommission in their consideration of the subject. Attached is a sectional analysis which explains individual provisions of the bill in more detail.

Sincerely,

Jay S. Hammond
Governor

HB549

SECTIONAL ANALYSIS

* Section 1. Adds Chapter 17 to Title 17 entitled the Uniform Controlled Substances Act.

Article 1. Standards and Schedules.

Sec. 17.17.010. Authority to Schedule Controlled Substances. Establishes the commissioner of the Department of Health and Social Services as the administrator of the Act; the commissioner, upon the advice of the Controlled Substances Advisory Committee, may add, delete or reschedule substances according to their degree of danger; provides standards for the committee to use in determining the degree of danger of a substance, including for example, the abuse pattern and the biomedical hazard of the substance.

Sec. 17.17.020. Controlled Substances Advisory Committee. Establishes the Controlled Substances Advisory Committee, provides for its composition, the terms of its members and their compensation; sets out the procedures for adding, deleting, or rescheduling (reclassifying) substances in the schedules.

Sec. 17.17.030. Nomenclature. Provides that a substance is not to be excluded from the schedules if, for example, its trade name differs from the chemical designation in the schedules.

Sec. 17.17.040. Schedule I. Establishes Schedule I substances as those having the highest degree of danger; Schedule I presently includes, among others, opium, codeine, hercin, morphine, methadone, and their derivatives.

Sec. 17.17.050. Schedule II. Provides that Schedule II substances are those less dangerous than the substances in Schedule I and more dangerous than those in the other schedules; Schedule II presently includes amphetamines, coca leaves, and their derivatives.

Sec. 17.17.060. Schedule III. Establishes Schedule III substances as those more dangerous than those in Schedule II but not as dangerous as the substances in Schedule IV; Schedule III presently includes barbituates, hallucinogenics and their derivatives, barbitol and phenobarbitol, and small amounts of codeine, morphine, and opium combined with other ingredients in recognized therapeutic amounts, and hashish and hashish oil.

Sec. 17.17.070. Schedule IV. Provides that Schedule IV substances are less dangerous than Schedule III substances but more dangerous than substances in Schedule V; Schedule IV presently includes very small amounts of codeine, morphine, sulfate, and opium combined with other ingredients in recognized therapeutic amounts; for example, many of the cough syrups available in the drug store.

Sec. 17.17.080. Schedule V. Establishes Schedule V as the least dangerous of the controlled substances and provides that marijuana is a Schedule V substance.

Article 2. Regulation of Manufacture, Distribution, Dispensing, and Research with Controlled Substances.

Sec. 17.17.150. Regulations. Requires the commissioner of health and social services to adopt regulations for the administration of the Act and allows the commissioner to charge reasonable fees for registration.

Sec. 17.17.160. Registration Requirements. Requires persons who manufacture, distribute, dispense, or conduct research with controlled substances to be registered under the Act to do so; exempts from registration employees and agents of registered persons acting in the normal course of business, exempts warehousemen and ultimate users in lawful possession from registration; allows the commissioner to waive registration requirements if the waiver is in the public interest; and allows the commissioner to inspect the premises of a registrant or applicant for registration.

Sec. 17.17.170. Registration. Requires the commissioner to register applicants when it is in the public interest to do so, and establishes the standards the commissioner must use in determining whether issuance of a registration to manufacture, distribute or dispense is in the public interest; requires the commissioner to register researchers who are registered as researchers under federal law; and provides that compliance by manufacturers and distributors with federal regulations provisions entitles them to registration in the state.

Sec. 17.17.180. Revocation and Suspension of Registration. Provides the standards under which a registration may be revoked or suspended and the procedures for disposition of the registrant's controlled substances during revocation or suspension proceedings.

Sec. 17.17.190. Order To Show Cause. Establishes procedures the commissioner must follow before denying, suspending, revoking or refusing to renew a registration; provides that the commissioner may suspend a registration without complying with these procedures if imminent danger to the public health or safety warrants immediate suspension.

Sec. 17.17.200. Records of Registrants. Sets out the requirements for record keeping by registrants.

Sec. 17.17.210. Order Forms and Prescriptions. Adopts federal law dealing with order forms and prescriptions.

Article 3. Offenses and Penalties.

Sec. 17.17.250. Prohibited Acts A; Penalties. Prohibits the unauthorized delivery of controlled substances to minors; provides maximum penalties and presumptive sentences for violation of this section according to the schedule of the drug with respect to which the violation occurred.

Sec. 17.17.260. Prohibited Acts B; Penalties. Prohibits the unauthorized manufacture of controlled substances; provides maximum penalties and presumptive sentences for violation of this section according to the schedule of the substance with respect to which the violation occurred.

Sec. 17.17.270. Prohibited Acts C; Penalties. Prohibits the unauthorized delivery and possession for delivery of controlled substances under circumstances manifesting an intent to deliver controlled substances as part of an ongoing commercial enterprise or to deliver controlled substances to ten or more persons; provides maximum penalties and presumptive sentences for violation of the section according to the schedule of the substance with respect to which the violation occurred.

Sec. 17.17.280. Prohibited Acts D; Penalties. Prohibits the unauthorized delivery of controlled substances and possession with the intent of delivery; provides maximum penalties and presumptive sentences for violation of the section according to the schedule of the substance with respect to which the violation occurred.

Sec. 17.17.290. Prohibited Acts E; Penalties. Prohibits possession of controlled substances except where authorized by the Act; provides maximum penalties and presumptive sentences for violation of the section according to the schedule of the substance with respect to which the violation occurred.

Sec. 17.17.300. Prohibited Acts F; Penalties. Prohibits knowingly keeping a structure used by persons in violating this chapter; fraudulent use of a registration number, obtaining controlled substances fraudulently, furnishing false information in a document required by the Act, refusing entry for an inspection authorized by the Act, and recordkeeping violations; provides penalties for these violations.

Sec. 17.17.310. Prohibited Acts G; Penalties. Prohibits public use and display of marijuana and use of marijuana while driving; provides penalties for these violations; provides that possession of marijuana for individual use is not unlawful, nor is distribution to persons 19 years of age and over of less than one ounce of marijuana for no remuneration.

Sec. 17.17.320. Sentencing. Sets out sentencing procedures for persons convicted of a violation of the Act including the circumstances where the presumptive sentence should be imposed; provides factors which may aggravate or mitigate the presumptive sentence and the procedures for establishing aggravating and mitigating factors; and provides that a person convicted of possession of a controlled substance who is addicted to a controlled substance may be sentenced to undergo treatment in addition to or instead of a fine or imprisonment.

Sec. 17.17.330. Subsequent Offenses. Provides that the presumptive sentences for repeat offenders under the chapter are higher than for first offenders.

Sec. 17.17.340. Penalties Under Other Laws. Specifies that the penalties under this Act are in addition to any civil or administrative penalties imposed by law.

Sec. 17.17.350. Bar to Prosecution. Provides that if a person is prosecuted by another state or the federal government for an act which also violates this Act, acquittal or conviction in the other jurisdiction bars prosecution in Alaska.

Article 4. Enforcement and Administrative Provisions.

Sec. 17.17.380. Cooperative Arrangements and Confidentiality. Allows the commissioner of health and social services to cooperate with other state and federal agencies in data collection, information exchange, and training.

Sec. 17.17.390. Forfeitures. Sets out the property which may be forfeited and the conditions and procedures for seizure of property subject to forfeiture under the Act; sets out the procedures for disposing of forfeited property.

Sec. 17.17.400. Burden of Proof; Liabilities. Provides that the state need not negate an exemption or exception under the Act in any pleading or proceeding under the Act; provides that no liability is imposed by the chapter on an officer carrying out his or her duties.

Sec. 17.17.410. Judicial Review. Provides for review by the superior court of administrative decisions made under the Act.

Sec. 17.17.420. Education and Research. Requires the commissioner of health and social services to encourage education and research in the field of drug abuse, and empowers the commissioner to establish research projects and educational programs.

Article 5. General Provisions.

Sec. 17.17.900. Definitions. This section defines terms used in the chapter.

* Sec. 2. Amends the definition of "unprofessional or dishonorable conduct" in the licensing provisions for physicians to conform with the provisions of the Act.

* Sec. 3. Amends AS 08.80.470, regarding licensing of pharmacists, to conform with the provisions of the Act.

* Sec. 4. Adds the duty to administer the Act to the duties of the Department of Health and Social Services under AS 44.29.020.

* Sec. 5. Provides that offenses committed before the effective date of the Act do not abate as a result of passage of the Act but that penalties in the Act which are less severe than those under prior law will apply to these offenses; provides that forfeiture and administrative proceedings begun before passage of the Act are not affected by the Act; requires the commissioner of health and social services to initially register under the Act persons licensed under present state law.

* Sec. 6. Provides that all administrative orders issued and regulations adopted under a law affected by the Act and not in conflict with the Act shall continue in affect until modified, superseded, or repealed.

* Sec. 7. Repealer.

HB
582

Committee on Judiciary

MEMORANDUM

SUBJECT: Legislation on Fishermen's Fund

TO: Avrum M. Gross, Attorney General

FROM: Representative Terry Gardiner, Chairman
House Judiciary Committee

As you know, acting on advice from your office, the legislature amended AS 23.35.060 last year to provide, in effect, that holders of commercial fisheries entry permits need not purchase commercial fishing licenses and to provide as well that an amount equal to what would have been dedicated from those revenues to the Fishermen's Fund would be derived instead from the permit fees. §§8, 15, and 16, ch. 105, SLA 1977.

This year, we have been considering ways in which to have the income, i.e., interest, from the fund deposited in the fund. This has never been done, but Assistant Attorney General Pegues has advised us informally that, as a general rule, income from a dedicated fund is the same as income from a trust fund, and it should either be spent on the fund's purpose or deposited into the fund.

Mr. Pegues has also advised that our attempt to substitute a dedication of a portion of the fees for entry permits for the amount of the dedication eliminated from license fees is probably invalid under the constitution. Alaska Const., art. IX, §7. There was certainly no intention to eliminate the amount of the dedication. All that was intended was to eliminate what was, in effect, a double fee for holders of entry permits and still retain the amount of the dedication.

Mr. Pegues has suggested that legislation is probably the cure to both problems. This is to request that a bill be drafted for the committee which would accomplish that result.

FISHERMEN'S FUND

COMPARISON OF FUND BALANCES, RECEIPTS AND DISBURSEMENTS

Fiscal Year	July 1 Starting Balances	Receipts	Disbursements	June 30 Ending Balances
1963-64	$ 242,585.96	$ 114,213.00	$ 118,081.79	$ 238,717.17
1964-65	238,717.17	126,938.15	96,695.36	268,959.96
1965-66	268,959.96	139,767.00	93,165.05	315,561.91
1966-67	315,561.91	160,317.00	144,486.97	331,391.94
1967-68	331,391.94	193,290.00	160,043.40	364,638.54
1968-69	364,638.54	195,672.00	164,072.39	396,238.15
1969-70	396,238.15	219,141.00	142,871.10	472,508.05
1970-71	472,508.05	205,254.00	202,078.02	475,684.03
1971-72	475,684.00	184,000.00	179,654.00	480,030.00
1972-73	480,030.00	243,294.00	184,945.00	538,379.00
1973-74	538,379.00	210,198.00	172,862.00	575,715.00
1974-75	575,715.00	185,016.00	167,974.00	592,757.00
1975-76	592,757.00	214,950.00	189,909.00	617.798.00
1976-77	617.798.00	246,253.00	210,246.00	653,310.00

I. REQUEST

Bill/Resolution No. HOUSE BILL NO. 582

Title Bill relating to Fishermen's Fund File J-77-009-78

Requested by Governor Date 11-10-77

II. FISCAL DETAIL

Agency Affected Labor

Program Category Affected Worker Protection

Budget Request Unit(s) Affected Fishermen's Fund

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES			- 0 -	- 0 -	- 0 -	- 0 -
200 TRAVEL *			3.0	3.5	4.0	4.5
300 CONTRACTUAL			- 0 -	- 0 -	- 0 -	- 0 -
400 COMMODITIES *			.6	1.1	1.6	2.1
500 EQUIPMENT			- 0 -	- 0 -	- 0 -	- 0 -
600 LAND & STRUCTURES			- 0 -	- 0 -	- 0 -	- 0 -
700 GRANTS, CLAIMS, ETC. *			21.4	25.4	29.4	33.4
TOTAL			25.0	30.0	35.0	40.0

*Program Costs Only - Travel for transporting injured fishermen. Commodities - for prescrip

FUNDING (Thousands of Dollars) tions. Grants & Claims - Medical costs & Convalescence.

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify) - Sick & Disabled - Fishermen's Fund			25,000	30,000	35,000	40,000

POSITIONS

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

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

Two years ago the Attorney General's Office ruled that the "territorial waters" of the state is limited to three miles seaward. In the two years experience approximately $10,000,of claims have been denied by Fishermen's fund. However, we do not believe this is an accurate history because knowledge of the law has stopped many claims from being filed.

It is our experience that the additional area will bring more large claims as those occurring on the high seas tend to be more serious in nature. Therefore, we are estimating that the program costs could rise as much as $25,000, in FY 79 and $5,000,each succeeding year. Travel indicated above is to transport the injured fishermen to medical facilities and return to his boat or home, which ever meets his needs.

IV. DATE 12-5-77 PREPARED BY Grace H. Wilson

AGENCY Labor - Fishermen's Fund

PHONE 466-2792

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33 (01 (Rev. 10/76)

January 10, 1978

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to the fisherman's fund. Under the benefit provisions of the fisherman's fund as they currently exist, AS 23.35.010 - 23.35.150, an injured or disabled fisherman is only entitled to receive benefits if the fishing-related accident leading to his injury or disability occurred ashore in Alaska or within "the territorial waters of the state", which extend only to the three-mile limit. In recognition of the facts that many Alaska-licensed fishermen fish offshore from Alaska but beyond the three-mile limit and that the federal government has now extended its fisheries jurisdiction to 200 miles offshore, I am proposing that AS 23.35.070 be amended to extend benefits to cover fishing-related accidents that occur inside the 200-mile fisheries conservation zone established under the Fishery Conservation and Management Act of 1976, P.L. 94-265.

Sincerely,

S/JSH

Jay S. Hammond
Governor

HB
592

Sylvia Porter

Your money's worth

Plain English used in New York laws

"(1) What does the bill do? The bill requires all consumer contracts to be: (a) written in plain English; (b) appropriately divided; (c) properly captioned.

"(2) What is a consumer contract? A consumer contract is an agreement about money, goods or services valued at less than $50,000.

"When does the bill take effect? The bill takes effect on June 1, 1978."

"I approve the bill. (Signed) Hugh L. Carey, State of New York Executive Chamber, etc..."

Miracle of miracles in the world of financial bafflegab, New York state now has on its books a pioneering law requiring that contracts from now on should not be ukases issued by one party which the other can't even understand, but be in understandable English. Marvel of marvels in the world of state politics, this bill, introduced by an upstate New York Republican, Assemblyman Peter Sullivan, was recently approved by the Democratic State Assembly, the Republican State Senate and signed by Democratic Gov. Carey.

It's a victory over enormous opposition that represents one of the few times the tactics of the opposing lobbyists boomeranged by enhancing the fight's dramatic value. The issue: a single assemblyman battling organized forces defending incomprehensible contracts designed primarily to protect the sellers and their lawyers while intimidating you, the buyer.

Now there seems no doubt that New York's historic simplification law will be copied the nation over. For the first time ever, you'll be able to understand the contracts you are signing, the bargains to which you are agreeing.

A contract is supposed to be a bargain struck between two sides, each of whom knows what they are doing and each of whom is trying to work out the best deal they can. But does this described what happens when you buy most major big-ticket products or services? Obviously not. The terms of the agreement are pre-printed, often in type too small to be read without a magnifier. You have no choice about these agreed-upon terms if you want to buy the item at all.

Worse, you probably can't understand most of this mass of verbiage even if you attempt to read it, because it is written in "lawyerese," or legal bafflebag.

As for the provisions, often they are written by a form company and included in a standard form written with the goal of appealing to the wishes of the buyer of the forms.

(New York's law, as Carey's own historically simple document of approval stated, will not become effective until mid-1978.)

What makes this tale of exceptional interest is that when Sullivan's bill got hot, suddenly prestigious lawyers and powerful trade associations protested vigorously, declaring that their old unreadable contracts would have to be reprinted, and the delay until June of next year wasn't sufficient for that. Moreover, they insisted that some of the contract terms were impossible to write in terms you and I could comprehend!

This argument actually was the admission that boomeranged. For if consumers are signing agreements every day which couldn't be understood even if they were able to read them, how could these documents be labeled as agreements to begin with? Is it not unfair and deceptive to coax consumers into signing documents that are actually beyond the comprehension of anybody but the lawyers?

The unsuccessful, intensive, behind-the-scenes scramble to stop Sullivan and his Plain English bill attracted far more attention than would have mere passage of the proposal. Thus, the result is certain to be more and more similar laws in states across the land.

This time, the federal government might look to New york for leadership in a battle it is fighting with little, if any, success. President Carter has stated frequently that he wants government regulations to be written in plain English. But so far, with enormous luck and perserverance, all you have is a picayune chance to grasp the meaning of anyone—and I'm not even including the tax laws!

The editors of the Federal Register also are having a fascinating time trying to translate some of the tortuous writing they receive from the bureaucratic agencies. Same tale.

But in this area, we, the consumers of New York, have won—and with Sullivan's law, we are pointing the way.

SERVING THE BENCH AND BAR SINCE 1888

NEW YORK, THURSDAY, AUGUST 18, 1977

Consumer Law

By Richard A. Givens

This column, which is contributed by members of the Special Committee of The Association of the Bar of the City of New York, is a regular feature of the Law Journal. Richard A. Givens, a member of the New York Bar, recently resigned as the regional director in New York of the Federal Trade Commission.

The 'Plain English' Law

The 1977 amendment to General Obligations Law Sec. 5-701, popularly known as the "plain English" law, was sponsored by Assemblyman Peter Sullivan as A. 4535-A, and introduced in the Senate by Senator Joseph Pisani (S. 2902-B) and signed by Governor Carey on Aug. 5 as L. 1977, ch. 747. Assemblyman Harvey Strelzin, Chairman of the Assembly Consumer Protection Committee, and the staff of Senate Majority Leader Warren Anderson were instrumental in the revision of the bill. For background see Safire, "Legalesey Does It," *N.Y. Times*, 7/28/77, p. A19; Cerra, "Controversial State Bill Mandates A Curb on Legalese In Contracts," *N.Y. Times*, 8/8/77, p. 27.

Provisions of the Act

The amendment adds new subdivisions b and c to Sec. 5-701 requiring that each written agreement entered into after June 1, 1978, for residential leases or for sales of

Continued on page 4, column 1

Continued from page 1, column 1

goods or services for personal, family or household purposes must be:

"1. Written in non-technical language and in a clear and coherent manner using words with common and everyday meanings;

"2. Appropriately divided and captioned by its various sections."

A creditor, seller or lessor who fails to comply is made liable to the consumer for actual damages plus $50; the total class action "penalty" (which would appear to refer to the aggregate liability for the statutory $50 damages) is limited to $10,000.

'Fail-Safe' Clauses

The penalty is not enforceable where both parties have fully performed their obligation under the contract or against a party who "attempts in good faith to comply with this section." The section does not apply to agreements involving amounts in excess of $50,000.

As an additional safeguard against abuse, a violation of this provision does not render any agreement void or voidable, or constitute a defense to an action to enforce the agreement or for breach thereof. Sec. 5-701(c). The Sullivan proposal grew out of concern over consumer credit contracts couched in unintelligible language, understandable only by an attorney versed in the arcane subtleties of creditor remedies, or in what Sylvia Porter has called (Sylvia Porter's *Money Book*, 1976) "Bafflegab". The "plain English" movement in regard to governmental documents undoubtedly also contributed to similar concern as to private documents to be governmentally enforced in the courts.

Many fears of harmful impact on legitimate business have been expressed in regard to the bill. Proper construction in light of the objectives of the bill can avoid or mitigate many of the anticipated problems. Peter Sullivan, the sponsor, has also expressed willingness to meet with members of the business community to work out clarifying amendments which would avoid problems without diluting the objectives of the bill.

Common Law Principle

The basic principle underlying the Sullivan law is the common law doctrine that a party cannot be held to contract provisions not likely to have been comprehended (and thus agreed to) by the party. *Cf. Sandler v. Commonwealth Station Co.*, 307 Mass. 470, 30 NE 2d 389 (1940); *Henningsen v. Bloomfield Motors, Inc.*, 32 N.J. 358, 161 A. 2d 69 (1960) and authorities cited. Compare also *Jones v. Great No. Ry.*, 65 Mont. 231, 217 Pac. 673 (1923); *Lambert v. California*, 355 U.S. 225, 228-29 (1957).

The Sullivan statute should be interpreted in light of this common law principle. Experience has demonstrated that consumer contracts can in fact be drafted so as to be understandable to the lay public. See Siegel, "To Lift the Curse of Legalese — Simplify, Simplify", 14 Across the Board: The Conference Board Magazine No. 6, p. 61 (June 1977).

Background Relevant

Also relevant as background to the Sullivan Act is the concept that documents drafted by one side are to be most strongly considered against that party. E.g. *Rentaways, Inc. v. O'Neill Milk & Cream Co.*, 308 N.Y. 342, 345, 126 NE 2d 271, 273 (1955); *Taylor v. United States Casualty Co.*, 269 N.Y. 360, 364, 199 N.E. 232, 233 (1936); *Bay State Smelting Co. v. Ferric Indus., Inc.*, 292 F. 2d 96 (1st Cir. 1961); *Matter of Davis*, 14 Misc. 96, 98 203 N.Y. Supp. 482, 484 (Surr. Ct. 1933); Restatement, Contracts Sec. 236(d) & Comment (d) (1932); 3 Corbin, Contracts Sec. 559, p. 302 (rev. ed. 1960); Patterson, "The Interpretation and Construction of Contracts," 64 Colum. L. Rev. 833, 854 (1964). This is done in part because of an imbalance in bargaining power where a "contract of adhesion" is a "take it or leave it proposition." See Patterson, "The Interpretation and Construction of Contracts," 64 Colum. L. Rev. 833, 855-862 (1964); Ehrenzweig, "Adhesion Contracts in the Conflict of Laws," Colum. L. Rev. 1072 (1953); Kessler, "Contracts of Adhesion — Some Thoughts About Freedom of Contract," 43 Colum. L. Rev. 629 (1943); Llewellyn, "Book Review," 52 Harv. L. Rev. 700 (1939); cf. *Siegelman v. Cunard White Star, Ltd.*, 221 F. 2d 189, 204-06 (2d Cir. 1955) (Frank, J. dissenting). Furthermore, the drafting party is responsible for any ambiguity in the document. *Rentaways, Inc. v. O'Neill Milk Cream Co.*, 308 N.Y. 342, 126 NE 2d 271 (1955); *Bay State Smelting Co. v. Ferric Indus., Inc.*, 292 F. 2d 96 (1st Cir. 1961) discussed in Patterson, "The Interpretation and Construction of Contracts," 64 Colum. L. Rev. 833, 854 & n. 83 (1964). ". . . If there is any doubt as to the meaning of the terms employed, the (party presenting the language) is responsible for it as the language is wholly (his) own . . ." *Gillet v. Bank of America*, 169 N.Y. 549, 554, 55 N.E. 292, 293 (1899).

Where one party has counsel and the other does not, special care is also exercised by the courts to protect the latter party. See *Ryon v. John Wanamaker, New York, Inc.*, 116 Misc. 91, 190 N.Y. Supp. 260 (Sup. Ct. 1921), aff'd, 212 App. Div. 548, 194 N.Y. Supp. 977 (2d Dep't 1922), aff'd, 236 N.Y. 515, 139 N.E. 728 (1923); *In re Vaupel's Estate*, 37 N.Y. Supp. 2d 853, 856 (Surr. Ct. 1942), aff'd, 266

ambiguous to some degree. Cf. Dickerson, "Statutory Interpretation: Core Meaning and Marginal Uncertainty," 29 Mo. L. Rev. 1 (1964).

Few documents are absolutely clear in their application to particular facts not yet in existence when the document was drawn. Cf. Curtis, "A Better Theory of Legal Interpretation," in Jurisprudence in Action 131-170 (N.Y.C.B.A. 1953); Jones, "Statutory Doubts and Legislative Intention," 40 Colum. L. Rev. 957 (1940). Further, "The same words, in different settings, may not mean the same thing." *Shelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 678 (1950); cf. *R.H. Johnson & Co. v. SEC*, 198 F. 2d 690, 696 (2d Cir.), cert. denied, 344 U.S. 855 (1952).

The Sullivan Act (General Obligations Law Sec. 5-701[b]) is, of course, relevant to consideration of the common law principle which it recognizes even where the statute in terms does not apply. E.g., *Comm'r v. LeBue*, 351 U.S. 243, 249 (1956); *United States v. Hutcheson*, 312 U.S. 219, 234, 35 (1941); *Electrolux Corp. v. Val-Worth, Inc.*, 6 NY 2d 555, 563, 161 NE 2d 197, 204, 190 N.Y. Supp. 2d 977, 987 (1959); *Schuster v. City of New York*, 5 NY 2d 75, 85-86, 154 NE 2d 534, 540, 180 N.Y. Supp. 2d 265, 273-74 (1958); Stone, "The Common Law in the United States," 50 Harv. L. Rev. 4, 12-18 (1936); Farnsworth, "Implied Warranties of Quality in Non-Sales Cases," 57 Colum. L. Rev. 653, 654 (1957); Comment, 59 Colum. L. Rev. 487, 494 (1959); cf. *Parker v. Brown*, 317 U.S. 341, 367 (1943); *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 773 (1945). Compare also Fuld, J. in *Zendman v. Harry Winston, Inc.*, 305 N.Y. 180, 185 n. 3, 111 NE 2d 871 (1953) (persuasiveness of UCC prior to adoption as reflecting modern thinking on commercial transactions). There is also an overlap between Sec. 5-701(b), and the concept of unconscionability (which, unlike Sec. 5-701(b) may be a defense).

Uniform Commercial Code Sec. 2-302. On Sec. 2-302 generally see *American Home Improvement, Inc. v. MacIver*, 201 A. 2d 886 (N.H. 1964), 78 Harv. L. Rev. 865 (1965). The official comment to this section states that ". . . the principle is one of the prevention of oppression and unfair surprise . . . " Cf. Patterson, "The Interpretation and Construction of Contracts," 64 Colum. L. Rev. 833, 854 & n. 83 (1964) and cases cited. Compare also *Williams v. Walker-Thomas Furn. Co.*, 350 F. 2d 445 (D.C. Cir. 1965).

create large unforeseen liabilities or losses to legitimate business. It should be noted that the "good faith" defense applies only to "penalties" (i.e. $50 statutory damages in any class action based thereon) and not to "actual damages sustained . . ." In order to show good faith, proof that a party had instructed its attorneys to simplify its documents and that changes were made where needed, or that an outside firm specializing in simplification of documents would be relevant. Cf. Siegel, supra. Dr. Rudolf Flesch has also developed a scale for establishing the readability of documents.

The burden of going forward with evidence of good faith would, of course, be on the party asserting the defense as the one having relevant information. Compare *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 225-26 (1939); *United States v. Costello*, 275 F. 2d 335, 358 (2d Cir. 1960), aff'd, 365 U.S. 265 (1961); 3 Wigmore, Evidence Sec. 1042 at p. 733 (3d ed. 1940). See also *Caminetti v. United States*, 242 U.S. 470, 485 (1917); *United States v. Sahadi*, 292 F. 2d 565, 565 (2d Cir. 1961); *Dyson v. United States*, 253 F. 2d 635, 637 (9th Cir. 1959); *United States v. Walker Co.*, 152 F. 2d 612, 613-14 (3d Cir. 1945); *Haggerty v. United States*, 5 F. 2d 224, 225 (7th Cir. 1925).

Statute Not Exclusive

The statute in not making a violation a defense to an action to enforce or for breach of an agreement, does not, of course, affect the fact that violation of the underlying common law principle might constitute such a defense.

Where a statute creates a remedy, in addition to a common law remedy, for the protection of a right, but contains no language barring the common law remedy, it is not construed to have removed the common law remedy. See *Odom v. East Avenue Corp.*, 178 Misc. 363, 34 NYS 2d 312, 317 (Sup. Ct. 1942); aff'd, 264 App. Div. 955, 37 NYS 2d 491 (4th Dept. 1942); *Brewster v. J. and J. Rogers Co.*, 169 N.Y. 73, 80, 62 N.E. 161 (1901). In *Schuster v. City of New York* the court stated:

"The existence of section 1848 of the Penal Law does not defeat plaintiff's common law cause of action. On the contrary, it reflects a public policy that municipalities shall respond in damages to private citizens or their estates who have been injured and killed as a result of aiding in law enforcement. This statute contains no language barring plaintiff's common law remedy. The rule is that '[a] statute in the affirmative, without any negative expressed or additional remedy, for the enforcement of a right . . .' (McKinney's Cons. Laws of N.Y., Book 1, Statutes, Sec. 34).

"In other words, where a remedy existed at common law for the wrong or injury against which a remedial statute is directed, if such statute provides a more enlarged or a summary or more efficient remedy for the party aggrieved, but does not in terms or by necessary implication deprive him of the remedy which existed at common law, the statutory remedy is considered as merely cumulative, and the party injured may resort to either at his election."

5 NY 2d 75, 180 NYS 2d 265, 273, 154 NE 2d 534 (1958). See also *Norton v. the State of New York*, 53 Misc. 2d 495, 279 NYS 2d 309, 313 (Ct. of Claims, 1967); *Taylor v. Mayor, etc., of City of New York*, 82 N.Y. 11 (1880); *Seligman v. Friedlander*, 199 N.Y. 373, 92 N.E. 1047 (1910); *Lobell v. Galpin*, 225 App. Div. 65, 229 N.Y.S. 76, 79 (4th Dept. 1930); Pound, "Common Law and Legislation", 21 Harv. L. Rev. 383, 385-387 (1908); Stone, "The Common Law in the United States," 50 Harv. L. Rev. 4, 13 (1936).

Counterclaim Provision

Furthermore, a claim for actual damages because one was subjected to adverse consequences by a contract that they did not comply with Sec. 5-701(b) can be asserted as a counterclaim in an action to enforce the contract or for its breach. This would not contravene the purpose of Sec. 5-701(c), which was to avoid the disproportionate result of cancelling an entire debt because certain provisions in the agreement were not written in plain English.

Persistent, deliberate and blatant violation of Sec. 5-701(b) might also constitute illegality justifying injunctive relief at the suit of the Attorney General under Executive Law Sec. 63(12), and subject to contempt penalties as set forth in Judiciary Law Sec. 751(4), added by L. 1975, ch. 410. Compare *State v. ITM*, 52 Misc. 2d 39, 275 NYS 2d 303 (1966); *People v. MacDonald*, 69 Misc. 2d 455, 330 NYS 2d 85 (1972).

One of the arguments raised in opposition to the Sullivan law was that certain provisions cannot be translated into ordinary English. Although non-understandable provisions can no longer be properly utilized in consumer contracts after June 1, 1978, a similar result can nevertheless be obtained by a creditor by substitute provisions, such as giving a consumer a pro rata refund, less a specific cancellation fee or cancellation percentage (compare General Business Law Sec. 412-a as amended by L. 1977 ch. 345).

thinking up unhappy contingencies and sets about the careful legal covering of himself against each of them, he has embarked upon a course which ends only with the incorporation of a fifteen volume encyclopedia of law and procedure, or else with plain exhaustion." Llewelyn, "Meet Negotiable Instruments," 44 Colum. L. Rev. 299, 312 (1944).

In many cases, the courts or statutes can or will supply answers to contingencies which cannot practicably be covered in contract language suitable for comprehension by the general public. Thus, a bank check does not contain a description of all legal consequences which apply to various situations contemplated by the Negotiable Instruments Law or the Uniform Commercial Code. Instead, use of certain language automatically triggers legal provisions deemed by the courts or the Legislature to be fair to all parties. Compare the triggering of various consequences by the use of the term "full" or "limited" warranty under the Magnuson-Moss Warranty Act, Public Law 93-637 (1975), 88 Stat. 2187, Section 101, 15 U.S.C. Sec. 2304. Cf. New York State Bar Association, Banking, Corporation and Business Law Section, Address from Fall Meeting, Oct. 9-12, 1975, Saratoga Springs, p. 11-14.

The section should not be considered to obliterate the common law principle out of which it grew, nor to limit that principle or its enforcement; it should be regarded as a supplemental remedy for certain types of disregard of that principle. The chief reason for the need for such a law, of course, is the absence of provable damages for many instances where non-understandable contracts are used. Section 5-701(b) sets up mechanisms for individual or class actions with a penalty of up to $50 per consumer and up to $10,000 in total as a mechanism for enforcement, subject to the "fail safe" principles discussed above. These "fail safe" provisions provide that no statutory minimum damages ("penalty") will be imposed except where good faith is lacking, and that a technical violation of Sec. 5-701(b) will not make an entire debt or contract unenforceable.

Of course, if the language of the "contract" was so obtuse that it was never agreed to in the true sense in the first place thus, as distinct from merely violating the statute as written would be a defense. Cf. *Sandler v. Commonwealth Station Co.*, 307 Mass. 470, 30 NE 2d 389 (1940); *Jones v. Great No. Ry.*, 68 Mont. 231, 217 Pac. 673 (1932); compare also

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Although the subjects discussed in this article reflect the activities of the Special Committee on Consumer Affairs, the views expressed are

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similar consumer transactions, such as purely financial contracts subject to separate regulatory schemes like securities brokerage agreements or insurance contracts. See N.Y. Insurance Law, Art. VII, Sec. 140-160-b; General Business Law Art. 23, 23-A, 23-B, 23-C, Sec. 350-359-W; 15 U.S.C. ch. 2A, 2B, 2b-1, 2D, Sec. 77a-78aaa, 80a-1. While the separate regulation of these types of agreements obviously would not in and of itself negative the applicability of the Sullivan law, it should do do when combined with the traditional separateness of these areas from what are normally considered consumer transactions. Compare generally *Silver v. New York Stock Exchange*, 373 U.S. 341 (1963); Note, 58 Colum. L. Rev. 673 (1958). On the other hand, consumer-type loans such as small loans or loans to buy consumer goods are obviously covered. As to the latter, compare Federal Trade Commission Trade Regulation Rule, Preservation of Buyer's Claims and Defenses, 16 C.F.R. Part 433, Federal Register May 14, 1976.

The law prohibits use of "technical" language in consumer contracts; the intention is obviously to prohibit technical language of a type understandable only to specialists. If language is technical and has the same ordinary meaning as its technical meaning, the law would obviously not prohibit its use. This is evident from the other terms with which the term "non-technical" is grouped. See *Third National Bank v. Impac Limited, Inc.*, 97 S. Ct. 2307, 2314 (6/17/77) citing *United States v. Feola*, 420 U.S. 671, 705 (Stewart, J. dissenting).

Mandated Language Permissible

Similarly where technical language is specifically mandated by state or Federal law, its use is obviously permissible because use of terms required by any other applicable binding state or Federal law or regulation would be a good defense to a charge of violation of the Sullivan law. In the case of a state requirement this would be because of the general principle that the more specific provision overrides the more general absent a contrary expression of intention. Compare *Silver v. New York Stock Exchange*, supra; Note, 58 Colum. L. Rev. 673 (1958). In the case of a Federal requirement, this would be so by virtue of the Supremacy Clause of the Federal Constitution. Specifically, in the case of the Truth in Lending Act and Regulation Z issued by the Federal Reserve Board, the purpose of the provisions involved is disclosure to the consumer — the objective which underlies the Sullivan law.

Consequently, compliance with disclosure requirements mandated by Truth in Lending or similar Federal laws is in accordance with the purpose of the Sullivan law and would not produce a violation of it, even apart from the Supremacy Clause. Of course, the purpose of the Sullivan law is not to regulate the disclosures required by the Truth in Lending Act, but other applicable provisions in consumer contracts.

fice.

It has been feared that the Sullivan law would cause chaos by applying to all sorts of situations where its objectives are not relevant. See Tyler, Letter to the Editor, "Sullivan Bill: A Sledgehammer Blow for Clarity," *N.Y. Times*, 5/5/77, p. A20. This will not be the case if the law is interpreted in accordance with its objectives, as it should be. The courts do not normally interpret statutes to reach absurd results contrary to the purpose of the legislation, nor should they here. The original version of the bill, A. 4538-A (2/23/77) covered only contracts subject to the disclosure provisions of the Truth in Lending Act (15 U.S.C. Section 1601); the amended version dropped that provision to avoid problems raised by incorporating by reference specific statutes subject to amendment by other legislative bodies, a matter raising state constitutional as well as practical problems.

The intent of the change was not to broaden coverage but to avoid such problems. The purpose of the bill was to avoid consumer entry into obligations not understood. Consequently where there is no future obligation placed on the consumer, the law should not apply. This is confirmed by the express provision barring recovery of statutory damages where the contract is fully performed by both sides (General Obligations Law Sec. 5-701(b), final unnumbered paragraph, as added).

Standard Forms

Similarly, the intent of the law is to apply to standard-form printed or reproduced contracts, not individually negotiated handwritten or similar agreements. Only the former normally contain sections to be captioned, as referred to by Sec. 5-701(b)(2) as added.

Likewise, warranty disclosure governed by Title I of the Magnuson-Moss Warranty — Federal Trade Commission Improvements Act, P.L. 93-637 (1975) and regulations thereunder would not seem to be affected or covered by Section 5-701(b).

To the extent that the Sullivan law is successful in improving the readability of consumer contracts, it will benefit both legitimate business and consumers, because businesses will be subjected to public irritation by the problem which the Sullivan law will help to eliminate. It will be up to the Bar and the business community to see that these forward-looking reforms are successful, and that any necessary clarifying amendments are agreed upon.

The approach of seeking an accommodation under which both consumers and business can benefit from a synthesis of interests can be discerned in other recent legislative action, such as the additional notice requirement in debt collection suits added by L. 1977, ch. 344, amending CPLR 308, effective Jan. 1, 1978, discussed in the July 28 Consumer Column in the *Law Journal*. This reform was supported by the collection Bar as well as consumer groups and law enforcement agencies. The same has been true of other major reforms such as the new state criminal antifraud statute, Penal Law 190.65 added in 1976 and the

January 10, 1978

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to the use of plain language in residential leases and consumer agreements. For too long people have been unnecessarily subjected to technical jargon and convoluted sentences often making the documents virtually incomprehensible.

This bill would require the use of clearly written, non-technical language and a clear sequence and labeling of the sections of those leases and agreements. The bill would not apply to leases and agreements involving amounts in excess of $50,000.

The bill does not conflict with existing substantive law. It addresses form only, and its purpose is to render consumer agreements more easily understandable. This bill is based on ch. 747 of the Laws of New York 1977. As in the New York law, the enforcement mechanism is written to avoid disruption of commerce but to provide double damages plus $50 when a party to such an agreement is in fact injured and the agreement was written in violation of these requirements.

The effective date of this bill is January 1, 1979 so that persons affected by these new requirements will have time to revise their leases and agreements.

Sincerely,

S/JSH

Jay S. Hammond
Governor

IV. DATE December 7, 1977 PREPARED BY Richard T. Pegues, Admin. Officer
Department of Law

Installment Purchase

Introduced: 1/10/78
Referred: Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 592

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the use of plain language in contracts and leases; and providing for an effective date."

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

* Section 1. AS 45.45 is amended by adding a new section to read:

ARTICLE 6. CONSUMER AGREEMENTS.

Sec. 45.45.250. FORM. (a) Subject to (b) of this section, every written agreement entered into after January 1, 1979 for the lease of space to be occupied for residential purposes, and every written agreement to which a consumer is a party and the money, property, or service which is the subject of the transaction is primarily for personal, family, or household purposes, must be:

(1) written in non-technical language and in a clear and coherent manner using words with common and everyday meanings;

(2) appropriately divided and captioned by its various sections.

(b) This section does not apply to agreements involving amounts in excess of $50,000. or to agreements the forms of which are regulated by other provisions of Alaska Law.

(c) A creditor, seller, or lessor who fails to comply with (a) of this section is liable to a consumer who is a party to a written agreement governed by (a) in an amount equal to the sum of any actual damages sustained plus $50. The total class action penalty against any such creditor, seller, or lessor may not exceed $10,000. These penalties may be enforced only in a court of competent jurisdiction,

but not after both parties to the agreement have fully performed their obligation under the agreement, nor against any creditor, seller, or lessor who attempts in good faith to comply with this section.

(d) A violation of (a) of this section does not render an agreement void or voidable nor does it constitute:

(1) a defense to any action or proceeding to enforce the agreement; or

(2) a defense to any action or proceeding for breach of the agreement.

* Sec. 2. This Act takes effect on January 1, 1979. (1 year)

Amend 21.~~##~~42.130

(5) – ~~should be readable~~ does not meet the standards for readability established by the director

Mike Thomas

STATE OF ALASKA

Inter-Department Route Slip

Rm 124

TO:
MAIL STATION NUMBER_____

~~DEPARTMENT~~ House Judiciary Com.

ATTENTION Terry Gardiner

- ☐ Approval
- ☐ Signature
- ☐ Comment
- ☐ Contact Me
- ☐ Prepare Reply
- ☐ For Your File
- ☐ Note & Return
- ☐ Initial & Return
- ☐ Return As Requested
- ☐ Return For Approval
- ☐ Necessary Action
- ☒ Your Information

Remarks:

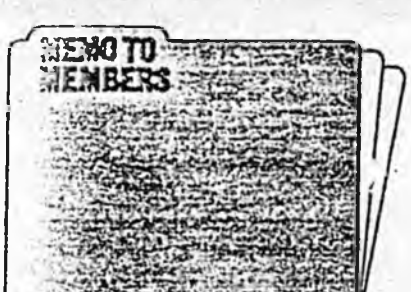
Re HB 592.

FROM:
MAIL STATION NUMBER_____

DEPARTMENT Law

BY Art Peterson DATE 5/9/78

02-002 (REV.10/73)



READ A CONTRACT BEFORE YOU SIGN IT. No bit of advice is more basic than that—and, often, no advice is more futile. For the standard language of contracts is not standard English. It's frequently a legal gobbledygook handed down from one generation of lawyers to the next. Puzzling or confusing jargon leaves consumers unsure about their rights and obligations under a contract.

But help is on the way.

In New York last year, a bill passed by the Legislature requires residential leases and certain consumer contracts to be written in words of common and everyday meaning. Other states appear to be in no hurry to follow New York, and there's a move afoot in New York to delay or repeal the law. (Or, as a New York Times headline-writer put it, tongue firmly in cheek: "Plain-Language Law Facing Amendatory Relegislative Proceeding.")

But even without state laws, the lot of the contract-signer has been improving. Years ago Herbert Denenberg, then Pennsylvania's Commissioner of Insurance, pioneered in requiring understandable insurance forms. Now Citibank, one of the largest banks in the country, has begun to replace legal jargon with plain English in its consumer loan agreements.

Other organizations are returning to the mother tongue. The Blue Cross Association has announced that South Carolina Blue Cross and Blue Shield has rewritten all 33 of its standard nongroup policies and group booklets into nontechnical language; that Virginia "blue" plans have rewritten some policies in plain English; and that other plans are reviewing their contracts for possible rewriting. The National Bank of Washington, D.C., has put out a consumer loan form in everyday English—and even pretested it for comprehension. Chemical Bank in New York has rewritten its Master Charge Card agreement in simple English.

The Insurance Services Organization, an industry group with about 1600 affiliated companies, has developed a plain-English homeowners policy for insurance companies. These are now available in several states. So is a simplified auto-insurance form.

Other insurance companies are making similar changes in their forms.

The Federal Government is helping, too. President Carter has issued an order requiring that executive department regulations be written simply and clearly. The Employee Retirement Income Security Act (ERISA) requires that covered plans be described "in a manner calculated to be understood by the average plan participant." The Magnuson-Moss Warranty Act requires that consumer warranties be written in "simple and readily understood language."

Consumers surely have a right to understand what they're asked to sign. But don't confuse an *understandable* contract with a *fair* contract. While it's fine to understand the terms of leases, insurance policies, and loan agreements, it would be better still if consumers had an opportunity to negotiate those terms as well. If simplified contract language helps consumers see how one-sided some form contracts are, they can press for changes in meaning as well as in language.

—Rhoda H. Karpatkin, *Executive Director*

DOES A FRUIT-RIPENING BOWL REALLY DO IT BETTER?

Most fruit is picked before it is ripe, so it will survive the rigors of shipment. Much of it is still unripe when you get it home. What's the best way to ripen the fruit? One way is to simply put it in an open bowl. Another way is to store it in a perforated plastic bag (you can punch the holes with a fork).

Still another way is to keep the fruit in one of the clear plastic fruit-ripening bowls that recently came on the market. These vented, pear-shaped affairs (see photo) are supposed to ripen fruit quickly yet preserve its juiciness and flavor. Do they do the trick better than the plastic bag or the ordinary bowl?

To find out, we bought samples of two fruit-ripening bowls—the *California Summer Fruits Ripening Bowl* (California Tree Fruit Agreement, Sacramento), which sells in supermarkets for about $5, and the *RipenRight Fruit Bowl* (Blue Anchor Inc., Sacramento), which, at the time CU purchased samples, was available by mail for $10. Despite the sizable price difference, the two bowls are almost identical.

The fruit-ripening bowls are supposed to provide a special environment to aid the ripening. After fruit is picked, it continues to "breathe," taking in oxygen and giving off carbon dioxide, water vapor, and ethylene gas. The fruit-ripening bowls retain some of the water vapor and ethylene gas the fruit needs to ripen, and allow some of the carbon dioxide to escape through their vents. (A perforated plastic bag provides a similar semiclosed environment.)

We tested the new bowls against an open bowl and against perforated plastic bags, using a variety of unripe fruits. All the tests were conducted at room

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

April 6, 1978

TO: Rep. Terry Gardiner, chairman

FROM: Bob Speed, A.A.

RE: "Son of Sam" statute, CS SB 488
An act requiring money received by criminals as a result of the commission of a crime to be available to victims of that crime

Sen. Ziegler briefed me on CSSB 488, which passed the Senate this date by a vote of 18-0. It is patterned after New York's "Son of Sam" statute.

The bill is intended to keep perpetrators of crimes from profiting financially by selling accounts of their lives or their criminal activities to news media, movies or for other uses.

Proceeds and royalties from publication rights or other money accruing to the perpetrator from similar sources would go to the Violent Crimes Compensation Board for deposit in an escrow account. The board would make as much money available to the defendant as needed for legal expenses, including appeals. Any remaining money would go to the victim of the crime or the victim's family.

The CS transfers the Violent Crimes Compensation Board from the Department of Health and Social Services to the Department of Public Safety. Sen. Ziegler said this was done because the board did not have access to confidential DPS files and information, to which they will have access as an arm of Public Safety. Commissioners Beirne and Burton have endorsed this transfer.

The CS also deletes a section of the original bill which would have required publication in newspapers of general circulation that money from this source is available to victims of violent crimes. Sen. Ziegler said it was felt that this requirement is not needed in Alaska because the state is not burdened with the large population which would be affected in New York or other states.

HB 594

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 274-2525

GEORGE M. SULLIVAN, MAYOR

MUNICIPAL HEALTH COMMISSION

April 28, 1978

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

Dear Mr. McKinnon:

The Municipal Health Commission has reviewed and made a recommendation on HB 594 that is presently in your committee.

The Municipal Health Commission is a 33 member, community based group of concerned citizens. The Commissic - iews community health issues, grants, problems, and legislation and makes , mmendations to the Municipal, State and Federal governments and legislative bodies, the general public, and the Regional Health Systems Agency. The Commission membership must meet rigid legal requirements that assure broad demographic and occupational representation as well as a consumer majority.

Attached is the review and recommendation on HB 594 as approved by the Municipal Health Commission on April 26, 1978. We hope that your committee will consider our review and recommendation before making a decision on this bill.

Thank you very much.

Sincerely,

Charles Rigden

Charles Rigden, Chairman
Municipal Health Commission

Attachment

LEGISLATIVE REVIEW & RECOMMENDATIONS
OF THE MUNICIPAL HEALTH COMMISSION

1. BILL NUMBER AND TOPIC: House Bill 594 - No Fault Motor Vehicle Insurance.

2. WHAT IS THE CURRENT STATUS OF THE BILL? Presently in House Commerce with an additional referral to House Judiciary.
WHAT IS THE TIME FRAME FOR INFLUENCING THE BILL'S OUTCOME BY THIS COMMITTEE OR COMMISSION? This legislative session.

3. WHAT DOES THE BILL DO? Provides for personal protection insurance benefits without regard to fault in a motor vehicle accident and requires personal protection coverage for those operating a motor vehicle in Alaska.

4. WHO DOES IT AFFECT? People operating a motor vehicle in the State of Alaska.

5. HOW MUCH DOES IT COST? Unknown.

6. IS IT DIRECTED TO A SPECIFIC GEOGRAPHIC AREA? No.

7. IT IS DIRECTED TO A SPECIFIC GROUP? Yes.
WHO? People operating a motor vehicle in the State of Alaska.

8. WHAT ARE ITS STRENGTHS? 1) Reduces court hearing costs by reduction in number of litigations, 2) May reduce cost of motor vehicle insurance, 3) Is a more efficient way of dealing with insurance.

9. WHAT ARE ITS DRAWBACKS, WEAKNESSES? Enforcement - need monitoring devices to assure compliance with the required personal protection insurance coverage i.e. require proof of insurance when registering a motor vehicle and police checking insurance status when other violation citations are written.

10. IS THE IDEA NEW? No.
ARE THERE PRECEDENTS? No.

11. HOW WOULD THIS BILL AFFECT THE ANCHORAGE HEALTH SERVICES PLAN? Would strengthen the plan by resulting in fewer people receiving medical care from public funds due to injuries incurred in a motor vehicle accident.

12. WHAT IS THE COMMITTEE'S RECOMMENDATION? That HB 594 become law with the condition that the Motor Vehicle Division develop mechanisms for enforcement of the required personal protection insurance coverage.

HB
615

(1) What will happen when you clamp down on profits?

20% Surplus lines - can't regulate rates
of total fire Ins in state

10% (2) Are we dependent on the agressiveness of Direct?
Why are rates to high

SOUTHEASTERN ALASKA

COMMUNITY

ACTION PROGRAM

JUNEAU CENTER
P.O. BOX 449
JUNEAU, ALASKA 99801
PHONE 907 586-1990

Where is the bill
(H) Commerce's-amended Commerce
Are they aware of this problem?
in H-Judiciary

March 14, 1978

Honorable Terry Gardiner
House of Representive
Pouch V.
Juneau, Alaska 99811

Dear Representive Gardiner:

Last week I became aware of the Committee Substitute for House Bill 615 that proposes the arrangement of an "insurance pool" in order to reduce the cost of property insurance for communities in Alaska. This sounds like it could have a very significant impact in Southeastern Alaska, especially in the smaller communities

The quality of fire protection and the high rate of fire insurance have been perennial concerns among our Board of Directors. SEACAP has passed numerous resolutions dealing with fire fighting training, organizing Volunteer Fire Departments and the need for specialized equipment. Local municipalities have been using their revenue sharing funds to upgrade their fire fighting abilities. Tlingit and Haida Central Council assists villages in submitting Community Block Grants for major fire fighting Structures. These measures not only raise the degree of fire safety present in the rural areas but will tend to lower the fire insurance rates.

The problem with CSHB 615 is that its "area of operation" is essentially areas "west of the 141st meridian." This summarily excludes all of Southeast Alaska!

did change that - "pool operates statewide"
* Div of Insurance - determine availability problem.

During the last two days SEACAP has tried to reach our Board Members representing 19 communities in this Region. The Mayors of Klawock, Kake, Craig, Hydaburg, and Hoonah - all reconfirmed that fire insurance there is difficult to get. Petersburg and Klukwan also reported high rates.

I recall that Yakutat had a hard time trying to renovate the fire-damaged ANB Hall because no insurance benefits were available - the Hall was not insured.

In checking with Tlingit and Haida Central Council's Division of Economic and Social Development, they confirmed the lack of adequate fire protection and high cost of insurance in Southeastern communities. They added that according to their latest OEDP Reports that Kasaan has no fire protection or insurance and Angoon like many of the other communities, has the costliest rating (10) on insurance scales.

In summary, let me say that providing for sufficient Fire protection in Southeastern Alaska is something that the local governments are continually striving for and as fire departments are upgraded, hopefully rates of insurance will decrease. At present, that is not the case and therefore any Legislative Act designed to equitably apportion the net loss of operating an insurance pool to reduce the cost of fire insurance receives our whole-hearted endorsement as long as it realistically covers all regions of the State.

With this in mind, SEACAP strongly urges that an Amendment be made to CSHB 615, Section 21.61.025, which would delete the exclusionary clause and provide for the specific inclusion of Southeastern Alaska.

Sincerely,

James A. Wilson

James Axel Wilson
Acting Executive Director

Rural Property Insurance

Prepared By The Interim Insurance Committee
For The Legislative Council

January, 1978

RURAL PROPERTY INSURANCE IN ALASKA

A Report prepared by the

Interim Insurance Committee

for the Legislative Council

January 1978

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I. SUMMARY OF THE PROBLEM

This report examines the apparent non-availability of rural dwelling insurance in the normal market. From conversation with the Director of Insurance, company representatives, and agents and brokers, it has been determined that the majority of rural dwelling insurance is written by surplus line companies. These surplus line companies are unregulated, and primarily provide insurance to high risk exposures who cannot be placed with a licensed insurer. The surplus line carriers routinely surcharge rural dwelling policies 175% to 300% of standard bureau rates.[1] Evidence indicates that the majority of these are surcharged at 300% and that this is excessive.

The standard companies major complaint against writing bush dwelling insurance is that the rate is inadequate due to:

1) High Replacement Costs
2) High Cost of Adjusting Claims
3) Lack of Uniform Building Codes
4) Lack of Adequate Fire Protection

These complaints are legitimate to the extent that the cost of insuring rural dwellings may be higher than the cost of insuring urban dwellings. However, there are indications that

the overall rate level of standard companies is excessive and that the surcharge levied by the surplus line carriers is also excessive.

Table 1 shows the total premium volume for admitted and surplus carriers operating within Alaska. The data indicates that over the past five years the surplus line companies have been writing an increasing share of the Alaska fire insurance market. Between 1972 and 1976 there has been a 450% increase in the volume written by the surplus line carriers. In fact, by 1976 the surplus carriers enjoyed nearly one-third of the total fire insurance market. This increase indicates a tightening of the market and the increasing non-availability of fire insurance from admitted carriers.

TABLE 1.[2]

Alaska Fire Insurance Written Premiums

	Total (Admitted & Surplus)	Surplus	Surplus as % of Total
1972	$ 8,817,563	$ 976,882	11.1
1973	8,521,343	648,959	7.6
1974	9,523,474	965,537	10.1
1975	10,639,320	2,865,449	26.9
1976	13,796,608	4,522,476	32.8
Totals	$51,298,308	$9,979,306	19.5

Insurance Report 1972-76, 1/21/77, R. Rainery.

Table 2 summarizes dwelling fire insurance premiums for companies reporting to the Insurance Services Office (I.S.O.). The I.S.O. is the main statistical rating bureau for property

and casualty lines in Alaska. Table 2 represents over 90% of the total market as most companies subscribe to I.S.O. fire rates. For the five years shown, dwelling fire insurance has been very profitable. The balance point loss ratio for fire insurance is 56%.[3] This means that a company can have a loss ratio of 56% and still maintain an underwriting profit. Table 2 shows that for policies written in areas with some fire protection (protection class 1-8), companies have maintained a 21.6% profit margin, and a 36.5% profit margin in areas with no fire protection (protection class 9 and 10). Normally, companies calculate rates based on a 6% profit margin.

TABLE 2.[4]

ISO Dwelling Experience Compilation - Protection
Standard Fire Policy

	Protected (Classes 1-8)			Unprotected (Classes 9&10)		
	Earned Premiums	Incurred Losses	Loss Ratio	Earned Premiums	Incurred Losses	Loss Ratio
1971	474,991	289,125	60.9	508,446	168,957	33.2
1972	456,014	205,009	45.0	526,474	170,967	32.5
1973	448,655	166,816	37.2	506,598	96,752	19.1
1974	510,136	197,089	38.6	587,118	84,009	14.3
1975	667,871	175,513	26.3	647,324	186,553	28.8
	2,557,667	1,033,552	40.4	2,775,960	707,238	25.5

ISO 1976 Statistical Report, Personal Lines

Table 3 shows the relativities for different protection classes. Relativities adjust the premium either up or down in relation to a base premium. Here the base premium is figured for protection class five. The current relativities, that is those

currently being charged, show that an insured with a dwelling in protection class 3 pays approximately 77% of what a person with a dwelling in an area of protection class 5 pays. For a person in protection class 10, the price for insurance is approximately 265% of that for protection class 5. The indicated relativities are the relativities based on the actual experience. This means that the rates for protection class 3 should be 7.9% higher than for protection class 5. The rates for protection class 10 should be 34.8% higher, rather than 165% higher than the base rate for protection class 5.

TABLE 3.[5]

ISO Premium Relativities - Dwelling Fire - Frame Bldg

Protection Class	Statewide Current Relativities	Statewide Indicated Relativities
3	.773	1.079
4	.884	1.000
5	1.000	1.000
6	1.155	1.000
7	1.542	.836
8	1.956	.836
9	2.447	1.195
10	2.654	1.348

ISO Fire filing of June 7, 1977

It is difficult to draw any concrete conclusions from this data, but the evidence indicates:

* There is an increasing problem of fire insurance availability within the normal market.
* The standard rates currently being charged are excessive.
* The surcharges levied by the surplus line companies are excessive.

II. INTRODUCTION TO THE PROPOSALS

The Interim Committee on Insurance has developed three possible solutions to this problem. These are:

* Open Competitive Rating
* Establishment of a Rural Rating Territory
* FAIR Plans and the Development of a Rural Property Insurance Pool

The first proposal, open competitive rating, allows for prompt adjustment of the rate by the insurance companies. The concept of open rating is tied to insurance regulation, and the fact that Alaska is a prior approval state. Prior approval means that the insurer must submit an annual rate filing for each line of insurance, and that filing must be approved by the Director of Insurance. The insurance industry argues that prior approval has introduced rigidities into the market and increased the availability problems for certain lines of insurance. The industry further maintains that if they were allowed to adjust their rates to reflect underwriting results as they occurred, this would increase their willingness to write policies for marginal risks. This report briefly summarizes the affect that open competition has had on price and

availability for auto and property insurance in New York. The conclusions were:

* Competitive rating did not substantially influence the price of insurance, as price remains a function of underwriting results and company operating expense.

* Competitive rating did have a favorable impact on the population of New York's FAIR plan, and resulted in more of those risks being insured in the standard market.

* Competitive rating allowed a greater range of rates by lessening the adherence to bureau rates of most the companies writing insurance in the state.[6]

The second proposal calls for the establishment of a rural rating territory. Currently the Insurance Services Office has divided the state into two rating territories. These are Southeast Alaska and the rest of the state.[7] The committee has proposed that the ISO create a third rating territory, rural unprotected Alaska. The present situation results in the same rate being charged for property insurance in Dillingham as in Anchorage. The effect is that standard insurers will not write property insurance in Dillingham or any of rural Alaska. The creation of a third rating territory would allow for the eventual development of a non-discriminatory adequate bush rate and avoid the problem of creating a subsidy between urban and rural Alaska.

The third proposal is the development of a rural property insurance pool. The pool has been based on the concept of a FAIR plan. FAIR plans are a type of residual market mechanism

which operate in much the same fashion as an assigned risk pool. If a homeowner is unable to obtain insurance from a standard insurer he may apply to the pool. If the dwelling meets the underwriting criteria set forth by regulation, the dwelling would be insured by the pool. There is one basic difference between FAIR plans and assigned risk pools. In an assigned risk pool, each risk is assigned to a particular insurer. With the FAIR plan, the total experience of the pool is distributed between all the insurers operating within the state, based on the percentage of the market which they write for that particular lien. Although the rural property insurance pool is similar to a FAIR plan, the committee has made some significant changes. These are:

* The pool will not be associated with the Urban Property Protection and Reinsurance Act of 1968, an act which all FAIR plans are subject to.
* The pool will be self-rating.
* The pool will only operate in a specific geographic area namely the rural rating territory.

A fourth alternative is being considered by the committee and this is the formation of a bush mutual, however it has not been included in the body of this report. A bush mutual would involve incorporation of groups or entities for the purpose of writing insurance policies. The mutual would have to be allowed to begin writing insurance policies with an amount of surplus which is below that normally required of an authorized mutual insurer. Initial capitalization would be provided by payment

on the policies and a fee assessed based on the amount of the policy. The fee would be refunded or credited to a policy after the mutual achieved financial stability.

Legislation has been drafted, or is being drafted for the open competitive rating law, the rural property insurance pool, and the bush mutual. A Resolution was drafted directing the Director of Insurance to disapprove any rate filing which did not incorporate a rural rating territory which provided for a non-excessive bush rate.

A. Open Competitive Rating Law

Introduction

Rate regulation has been the focus of increased attention by both insurers and regulators. The issue dates back to the McCarran Fergurson Act which essentially exempted the insurance industry from the Federal anti-trust laws. After passage of the McCarran Fergurson Act, virtually all states began to regulate insurance rates. The laws varied from state to state, but many were based on a model bill drafted by the NAIC. This bill allowed the use of rating bureaus, and said rates were to be regulated so that they are neither, "Excessive, inadequate, or unfairly discriminatory."[8] However, the bill also said that membership in a rate bureau is not mandatory, and those companies that are bureau members may even apply for deviations from bureau rates.

At the time of passage of the McCarran Fergurson Act, the insurance industry was strongly in favor of exemption from the anti-trust laws. In fact, this exemption was absolutely necessary if the industry was to continue the operation of assigned risk pools, and other pooling arrangements where it is necessary to fix a rate. The correlary to exemption from the Federal anti-trust was rigid state regulation. The industry maintains

this has caused certain irregularities and rigidities in the market, and increased the availability problems with certain types of insurance.[9] According to the insurance industry, the end result has been a situation where a risk which is slightly worse than average often receives a much worse rate through a residual market plan such as an assigned risk pool.[10]

Alaska is a "prior approval" state. This means that companies writing in the state must submit annual rate filings to the Division of Insurance, and must then be approved by the Director. If the Director deems a rate filing excessive, the company must re-submit the filing. It must be approved before the company implements the proposed rate change. Companies may file separately or subscribe to a rating bureau.

Prior approval is the most stringent type of state regulation. Industry maintains that prior approval has hampered their efforts to effectively market insurance by not allowing the companies to promptly adjust their rates. Generally, a company will reevaluate rates being charged for a particular line and find that it is either too high or too low. In either case, under prior approval, the company must wait until the end of the rate filing period to adjust the rate. The affect is that if the rate is excessive the company may be undercut by another company who has filed for a lesser rate. If the rate is too low the company will restrict its underwriting to curb losses, thus aggravating the problem of availability.

The issue becomes a problem for rural Alaska in that most standard companies have simply excluded this particular segment of the market. Companies feel the rate is inadequate. As pointed out in the introduction, this may not be the case. With open competition allowing companies to more promptly adjust rates, it is possible that the availability problem may be eased in the standard market. However, underwriting considerations such as the lack of fire protection and uniform building codes, also are key factors in the reluctance of insurers to write rural dwelling insurance. These factors may be of such significance that rural dwellings may be excluded no matter what type of rating law is used.

Open Rating in New York

In 1970, New York, at the recommendation of the Insurance Department, passed a competitive rating law. The law replaced the prior approval law which previously had been in affect. The competitive law:

* Required that insurance rates shall not be excessive, inadequate, or unfairly discriminatory, continuing the statutory price standards that existed under prior approval;

* Made it illegal for insurance companies to set rates in concert and prohibited other forms of anti-competitive behavior with prohibitions and penalties paralleling the Federal anti-trust laws;

* Eliminated the need for the Insurance Department to approve rates in advance of their use in the marketplace;

* Provided for continuous monitoring of competition and for the reimposition of prior approval where competition was deemed inadequate to restrain excessive prices, or where

destructive competition resulted in price wars and insolvencies.[11]

Open competition was expected to influence both the price and availability of insurance. Price is basically a function of underwriting losses, company expenses, and profit. Although open competition was not expected to affect underwriting losses a long term beneficial impact on price was anticipated through the encouragement of independent pricing, thereby providing market incentives to hold down the expenses and profits. In the short run it was expected that open competition would allow for more responsiveness in adjusting rates and a wider range of rates thus increasing the availability.

Price:

Figure 2.1 shows the percentage change in the cost of automobile liability coverage during the period of prior approval, open competition, and the return to prior approval with the enactment of no-fault. The changes are compared with the changes in the New York consumer price index, the change in weekly wage for New York production workers and New York medical cost index.

The figures shown in Figure 2.1 superficially suggest that open competition has kept the price of auto liability coverage down as there was an annual increase of only 2.1% during the four

years of open competition. This is far below the 18% recorded with the return to prior approval and the passage of no-fault. What the figures do not show is that the return to prior approval coincided with a drastic deterioration in underwriting results, and a temporary rate freeze. The rate freeze produced a price backlash which further escalated cost. When the rate increase under the four years of open competition (1970-1973) are averaged with the three years of the transitional prior approval (1974-1976), the average annual rate increase is 8.3%. During the same period, the period the Consumer Price Index rose 7.1%, the average weekly earnings rose 8.4%, and the medical costs rose 8.7%. These are all comparable to the 8.3% recorded for auto insurance. It can be concluded that in the long run the major effect on costs was primarily due to inflation and underwriting results, and not on the type of rating law which happened to be in effect.

FIGURE 2.1
PERCENT CHANGES IN AUTOMOBILE LIABILITY (BI & PD) [12]
INSURANCE RATE LEVELS AND OTHER INDEXES
1967-1976

	Automobile Liability (BI & PD) Rate Level	N.Y. Metropolitan Area Consumer Price Index[a]	Average Weekly Earnings of Production Workers in Mfg. N.Y. State[a]	N.Y. Metropolitan Area Medical Costs Index[b]
Prior Approval Jan. 1967-Dec.1969 (3 years)	+6.7%	+5.5%	+5.6%	+7.7%
Competitive Pricing Jan. 1970-Dec.1973 (4 years).....	+1.1	+6.9	+7.5	+6.1
Transitional Prior Approval Feb. 1974-Dec. 1976 (3 years).....	+18.0	+7.4	+9.7	+12.1

FIGURE 2.2
PERCENT CHANGES IN HOMEOWNERS INSURANCE[13]
RATE LEVELS AND OTHER INDEXES
1967-1976

Year	Homeowners Insurance Rate Level	N.Y. Metropolitan Consumer Price Index[a]	Residential Construction Cost Index[b]
Prior Approval Jan. 1967-Dec. 1969 (3 years).....	+9.7%	+5.5%	+7.8%
Open Competition Jan. 1970-Dec. 1976 (7 years).....	+1.2	+8.0	+10.7

Figure 2.2 shows the average annual rate increases for homeowners insurance, both under open competition and prior approval. Under prior approval, the annual rate increase averaged 9.7%. With open competition the average annual rate increase was 1.2%, well below that recorded during prior approval. However, as in the case with automobile liability insurance, the moderate rate changes during the seven years of competitive pricing can be attributed to favorable underwriting results for this line and not to the type of rating law which was in effect.

Availability:

As mentioned, open competition was expected to increase availability by allowing for prompter adjustment of the rate and a wider range of rates. To some degree, availability can be gauged by changes of population in the residual market. Residual markets are groups of sub-standard risks which cannot

find insurance from standard insurers. In most states insurers have formed pools which set a rate for these risks to insure the availability of insurance. Often times these pools were the result of legislative action. The most common examples are the assigned risk auto plans, and FAIR plans. This is a particularly pertinent point, as the rural housing market in Alaska is basically a residual market. This particular market segment falls outside of the rates filed by the majority of the standard insurers operating within the state.

Figure 2.3 shows populations trends of the assigned risk auto plan in New York. The plan shows an increase up to 1972 and then begins to decrease both during the period of competitive rating and the return to prior approval. It is difficult to draw any conclusions from this data because of two events which occurred during this time period. First, in 1969, coverage was expanded under the assigned risk auto plan, making the purchase of insurance from the plan more attractive. Second, these events affected the population of the assigned risk pool so it was difficult to ascertain the affect of open competition.

FIGURE 2.3
AUTOMOBILE ASSIGNED RISK PREMIUMS AS PERCENT[14]
OF TOTAL AUTOMOBILE PREMIUMS WRITTEN IN
NEW YORK STATE[a]

(in thousands)

Year	Total Automobile Premiums	Voluntary Market Premiums[b]	Assigned Risks Premiums[c]	Assigned Risks As Percent of Total
1970	$,474,242	$1,337,853	$136,389	9.25
1971	1,666,849	1,451,877	214,972	12.90
1972	1,693,905	1,471,672	222,233	13.12
1973	1,700,542	1,520,200	180,342	10.60
1974	1,592,806	1,471,242	121,564	7.63
1975	1,708,757	1,570,948	137,809	8.06

a Includes Liability (BI and PD) and Physical Damage.
b Includes voluntary private passenger and commercial coverages.
c Includes private passenger business only.

A clearer indication of the affect of open competition on availability can be gained from analyzing the affect on fire insurance. As figure 2.4 shows, the fire insurance pool shows a clear depopulation trend, declining 62% in premiums written between 1971 and 1975. This is a positive indication that open competition in New York has increased the willingness of insurers to write insurance for risks which had previously been included in the residual market. The favorable trend in homeowner and fire insurance took place during a period of moderate increases in loss ratios for these lines. Although there was a slight decrease in profitability for these lines, this did not increase the selectivity of underwriting.

FIGURE 2.4
NEW YORK PROPERTY INSURANCE UNDERWRITING ASSOCIATION[15]
1970-May 1976

Fiscal Year Ended November 30	Policies Written	Premiums Written[a] (in thousands
1970	154,125	$114,233
1971	182,937	119,313
1972	203,214	91,301
1973	147,882	60,263
1974	124,529	49,300
1975	117,357	45,455
12/1/74-5/31/75	-	25,361
12/1/75-5/31/76	-	24,403

[a] Adjusted on the basis of rates effective September 1, 1975.

One final effect of an open competition rating law is to decrease the adherence of insurance companies to bureau rates. In the case of fire insurance in Alaska, over 90% of the market is written at bureau rates with no deviations. What this does is narrow the range of rates, and may exacerbate the availability problem. If a company feels this rate is inadequate for a particular market segment, they will simply not write it.

Figure 2.5 shows the effect of open competition on companies' dependence on bureau rates. As the figures show, rating bureau dominance in the insurance industry has all but ended.