

ALASKA LEGISLATURE COMMITTEE FILES 1905-1900 00/2

3332 HJUD HB 329 - HB 338

208

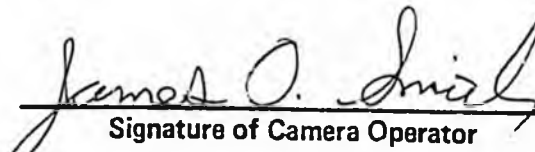


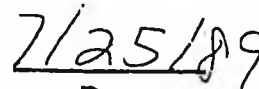
RECORDS



CERTIFICATION

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Signature of Camera Operator


Date

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STATE OF ALASKA THE LEGISLATURE

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JUNEAU, ALASKA 99811
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	4/9/86	1:30 pm	
"	"	4/10/86	8AM
"	"	4/18/86	1:30 PM

ANALYSIS OF HB 329
 Prepared by NATIONAL FEDERATION OF Independent Business
 Prepared 4-18-85

Employer Unemployment Costs

Assume: A business with a total of 8 employees, three of which are high school students. The salaries are as follows:

Manager -	\$ 35000
4 Employees @ an Average Salary of \$18,000	72000
3 Teenagers @ an Average of \$5,000 each	15000
	<u>\$122000</u>

	<u>Current Law</u>	<u>Proposed Law</u>
<u>STATE Unemployment:</u>		
1 emp. @ 21,800	\$ 21,800	\$ 21,800
4 emp. @ 18,000	72,000	72,000
3 emp. @ 5,000	15,000	15,000
	<u>122,000</u>	<u>93,800</u>
Assume UI rate of 3%	X .03	X .03
<u>TOTAL STATE UI PAID</u>	<u>\$ 3,660</u>	<u>\$ 2,814</u>

<u>FUTA:</u>		
5 emp. @ 7,000	\$ 35,000	\$ 35,000
3 emp. @ 5,000	15,000	15,000
	<u>50,000</u>	<u>50,000</u>
FUTA rate - .8%	X .008	FUTA MAX. @ 6.2% X .062
<u>TOTAL FUTA</u>	<u>400</u>	<u>3,100</u>

Less STATE credit
 $93,800 \times .054 = 2,814$
 $5,065 - 2,814 = 2,251$
 $2,251 + 2,814 = 5,065$
 Credit Limited TO
 $5.4\% \text{ of } 50,000 = 2,700$
TOTAL FUTA TAX 400

<u>TOTAL UI T. PAID:</u>		
STATE	\$ 3,660	\$ 2,814
Federal	400	400
<u>TOTAL</u>	<u>\$ 4,060</u>	<u>\$ 3,214</u>

SAVING of \$ 846.00

BACKGROUND OF HB 329

YOUNG PEOPLE CONTRIBUTE TO THE UNEMPLOYMENT COMPENSATION PROGRAM WHEREVER THEY WORK UNLESS THEY ARE WORKING FOR THEIR FOLKS AND ARE UNDER 18.

SOME OF THESE YOUNG PEOPLE PUT THEMSELVES THROUGH SCHOOL BY WORKING PART TIME FOR SOME ONE OTHER THAN THEIR OWN PARENTS. THEY MAKE THEIR CONTRIBUTIONS TO THE UNEMPLOYMENT COMPENSATION PROGRAM BUT THEY DON'T WORK ENOUGH QUARTERS TO BE ABLE TO DRAW ANY BENEFITS. THIS BILL WILL EXEMPT THOSE PEOPLE UP TO THE AGE 19 AND WORKING ON A PART TIME BASIS FROM CONTRIBUTING.

THIS BILL HAS BEEN NEEDED FOR YEARS AND WILL ALLOW MORE TAKE HOME PAY FOR THE PERSON WORKING PART TIME WHO CAN'T DRAW ANY BENEFITS FROM UNEMPLOYMENT COMPENSATION.

Bill No. House Bill 329

Date February 24, 1986

Title "An Act excluding certain service from the definition of employment in the Alaska Employment Security Act; and providing for an effective date."

Contact: Harry Sturrock
465-2712
Eileen Plate
465-2700

The Department of Labor opposes the proposed exclusion from UI coverage of individuals under the age of 19 who are attending school, as proposed in HB 329. The current provision excludes individuals under the age of 18 who are engaged in "family" employment. This exclusion is narrow and specific. The proposed amendment in HB 329, by raising the age limit and including school attendees, rules out a much larger class of workers, many of whom we believe should be compensable under the principles of the Unemployment Insurance program.

Not all of these individuals are full-time students with minimal labor force attachment. Many of them actually reverse the normal pattern of school attendance and work -- attending school only a few hours per day or week and working virtually full-time. The proposed amendment would deny these individuals along with full-time students. In addition, many of these younger workers are (or will be) attempting to enter the labor market for the first time, and they will tend to experience longer periods of unemployment while establishing themselves in an occupation. We believe it is consistent with the purpose of the UI program that wage credits be available to these workers during this period.

While we agree that students who are not in the labor market and not attempting to find work when filing UI claims should be denied benefits, current eligibility criteria in the Act are already sufficient to disqualify these individuals (see AS 23.20.378(c)). Disqualifying ineligible individuals when they file is by far more equitable than simply denying coverage in advance to a whole class of individuals without regard to what their labor market attachment may be at the time they actually file claims.

Of course, one presumed result of the proposed amendment would be a net tax savings to employers in industries with a significant "student" work force. While no precise statistics are available at this time, the effect can be predicted, and we believe the perceived savings may be illusory.

Each employer is required to pay a federal unemployment tax of 6% (plus a .2% surcharge) on the first \$7,000 of wages of each employee. A credit of up to 90% of the basic federal tax (i.e. a credit of 5.4% leaving a net tax plus surcharge of .8%) is available to an employer who pays into an approved state UI trust fund.

The credit is two tiered: the first tier is the amount of state tax the employer actually pays on his covered employees, and the second tier is the amount the employer would have paid on his covered employees if taxed at the highest state rate. Because both federal and state unemployment taxes are aggregated in figuring the credit, the available credit is dependent on the number of employees covered under state law and the amount of wages paid to them. Employers would continue to be liable for the 6.2% federal tax on the first \$7,000 in wages of the affected employees. In order to realize a net

POSITION PAPER/Department of Labor

tax savings the employer must pay sufficient taxable wages to remaining employees to generate enough federal tax credit to make up for the loss of credit on the affected employees and/or realize sufficient state tax savings after excluding the "student" employees to offset the additional federal tax liability on these employees caused by the loss of the credit. Unless the employer pays yearly wages well in excess of the \$7,000 federal tax base on his student employees or has sufficient other highly paid employees to generate "excess" credit, the employer may actually pay an increased total federal/state tax under the proposed exclusion, as described in the example shown on the attached.

During 1984, 1,566 youth, 19 years and younger, were paid \$1,105,049 in unemployment insurance benefits. Although these person were not students when being paid UI, it is assumed a majority of them earned these wages qualifying them for UI while attending school.

There will also be additional administrative and recordkeeping problems associated with the proposed exclusion. Employers would be required to verify the age and school attendance of the excluded employees, and both of these factors would vary over time. This would require employers to keep constant track of the educational status of all employees under age 19 as well as their birthdays in order to begin and end withholdings and contributions at the proper times.

APPROVED:



Jim Robison, Commissioner
Department of Labor

EXAMPLE

Assumptions: Food Service establishment: 10 employees; 2 management and 8 youth.
Managers earn \$30,000 per year and youth earn \$7,000 per year.
Current average state UI rate for food service is 2.4%. State UI wage base is \$21,800.
FUTA charges for employer is 6.2% of \$7,000 (.8% if state law in conformity).

CURRENT LAW

State UI

\$21,800 x 2 =	\$43,600
\$ 7,000 x 8 =	\$56,000
Total Covered	
Wages:	\$99,600
UI Rate:	x .024
Total State UI	
tax pd by employer	\$2,390.40

FUTA

Total FUTA wages

10 x \$7,000 =	\$70,000
FUTA rate (.8%) =	x .008
Total FUTA employer	
pays:	\$ 560.00

State UI Tax	\$ 2,390.40
FUTA Tax	\$ 560.00
Total Tax pd by	
Employer	\$ 2,950.40

PROPOSED LAW

State UI

\$21,800 x 2 =	\$43,600
UI Rate:	x .024
State UI tax	
pd by employer	\$1,046.40

FUTA

Total FUTA wages

10 x \$7,000 =	\$70,000
FUTA max. rate =	x .062
FUTA takes	\$ 4,340.00
minus credit for 2	
covered employees:	
\$21,800 x 5.4% =	\$-2,354.40
Total FUTA for empl.	\$ 1,985.60

State UI Tax	\$ 1,046.40
FUTA Tax	\$ 1,985.60
Total Tax pd by	
Employer	\$ 3,032.00

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 01/31/86

REQUEST

Bill/Resolution No. : HB 329
 Title : "An Act excluding certain service from ... Employment Security Act"

Sponsor : Schultz & Marrou
 Requestor : House Labor & Commerce
 Date of Request : 3-1-85

FISCAL DETAIL

Agency Affected : Labor
 BRU : Employment Security

Components : Unemployment Insurance

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by: AB John W. Shaw, Jr. Director Phone: 465-2712
 Division: Employment Security Date: 02/03/86

Approved by Commissioner: AB Jim Robison Date: 02/03/86
 Agency: Labor

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

**HOUSE
COMMITTEE REPORT**

(7)

Date referred: 2/7/86

FURTHER REFERRALS:

DATE: _____

The JUDICIARY Committee has considered HB 329

"An Act excluding certain service from the definition of employment in the Alaska Employment Security Act; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
 new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

[Signature]
RECEIVED:

SIGNING OTHER RECOMMENDATIONS:

[Signature] NO REC
[Signature]
[Signature] No Rec
[Signature] NO REC

[Signature]
Chairman

1800 Glacier Avenue
Juneau, Alaska 99801
March 18, 1986

The Honorable Mike Miller
Member of The House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mike:

I understand that HB 319 - Exempt Young People in School From
Unemployment Tax is now in the House Judiciary Committee which
you chair. I am writing to you because I would like to see this
bill become law since I employ teenagers during the summer months.

Sincerely,



Constance H. Paddock

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
 Bill/Resolution No.: HB 329
 Title: "An Act excluding certain service from... Employment Sec. Act"
 Sponsor: Schultz and Narrou
 Requestor: House Labor & Commerce
 Date of Request: 04-01-85

FISCAL DETAIL
 Agency Affected: Labor
 Program Category Affected: Social Services
 BRU, Program or Subprogram(s) Affected: Employment Security
Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: ^{4/3} John W. Shay, Jr. Phone: 465-2712
 Division: Employment Security Date: 04-02-85
 Approved by Commissioner: ¹⁰ Jim Robison Date: 04-02-85
 Agency: Labor

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

7/1/84

HB 329 File Contents

April 18, 1985 Meeting

- 1) Bill Summary -- Legislative Reporting Service
- 2) Overview -- Roger Poppe, Committee Aide
- 3) Sectional Analysis -- Rep. Schultz' office
- 4) Background on HB 329 -- Rep. Schultz' office
- 5) Alaska Statutes: AS 23.20.525-2b
- 6) Fiscal Note, analysis, and Position Statement -- Dept. of Labor

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 329
 Title: AN ACT EXCLUDING CERTAIN
SERVICE FROM THE EMPLOYMENT SEC. ACT
 Sponsor: SCHEUER AND HARRON
 Requestor: HOUSE LABOR & COMMERCE
 Date of Request: 01-04-86

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: _____
Social Services
 BRU, program or subprogram(s) Affected:
Employment Security
Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FI 85	FI 86	FI 87	FI 88	FI 89	FI 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: John W. Shay, Jr. Phone: 465-2712
 Division: Employment Security Date: 1/4/86
 Approved by Commissioner: Jim Robison Date: 1/4/86
 Agency: Labor

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/85

INTRODUCTION OF BILLS (House)(cont'd)

HB 328 (cont'd)

Introduced March 27 and referred to Labor & Commerce.

Child
Employment

HOUSE BILL NO. 329, by Reps. Shultz and Marrou. Would exclude from the definition of employment in the Alaska Employment Security Act (AS 23.20) "...service performed by a child under the age of 19 who is either in the employ of the child's father or mother or attending school and employed outside required school hours or during school vacation." Note: the law currently reads: "Exclusions from the definition of 'employment.' (a) In this chapter, unless the context otherwise requires, 'employment' does not include... service performed by a child under the age of 18 in the employ of the child's father or mother." The amendment would apply only to service performed after this law takes effect. Provides Act takes effect immediately.

Introduced March 27 and referred to Labor & Commerce, Judiciary.

Criminally &
Exploited
Children
(spec. Trooper
unit)

HOUSE BILL NO. 330, by Reps. Cotten, Hanley, Szymanski, Phillips, Taylor, Jenkins, Sund & Cotten. See SB 219, page 392, similar topic. Would establish in the Dept. of Public Safety, Division of State Troopers, a special unit for investigating incidents of missing children and the criminal exploitation of children. Would require the Commissioner of Public Safety to submit annually a report to the Legislature concerning the activities of the special unit. Provides Act takes effect July 1, 1985.

Introduced March 27 and referred to State Affairs, Judiciary, Finance.

Commercial
Fishing Gear
(2nd degree
theft)

HOUSE BILL NO. 331, by Reps. Thompson, Sund and Marrou. See Senate Bill 245, page 472, identical.

Introduced March 27 and referred to the House Special Committee on Fisheries, Judiciary, Finance.

Mobile Home
Park Eviction

HOUSE BILL NO. 332, by Reps. Gruenberg, Jenkins, Pourchot and Uehling. See Senate Bill 188, page 336, nearly identical --prohibits the eviction of a mobile home, mobile home park dweller or tenant (Senate version did not include tenant). Remaining language identical.

Introduced March 27 and referred to Judiciary.

Appropriation
(special)
(Small World)

HOUSE BILL NO. 333, by Rep. Thompson. Makes a special appropriation in the amount of \$1,007,975 to the Dept. of Community & Regional Affairs for payment as a grant to Small World, Inc., for construction of a nonprofit developmental daycare and preschool center in Kodiak. Appropriation to be disbursed in accordance with laws governing grants to named recipients. Provides Act takes effect immediately.

Introduced March 27 and referred to Community & Regional Affairs, Finance.

ANALYSIS OF HB 329

Section 1. AS 23.20.526 (a) (4) is amended to include a child under the age 19 and who is either employed by his father or mother or attending school and employed outside required school hours or during school vacation.

Section 2. The amendment to AS 23.20.526 (a) (4) in Sec. 1. of this Act applies to service performed after the effective date of this Act.

Section 3. Act takes effect immediately.

(23) "vocational training or retraining course" means a course of vocational or technical training or retraining in schools or classes, including but not limited to, field or laboratory work and related remedial or academic instruction, which is conducted as a program designed to prepare individuals for employment in trades, skills or crafts; the term "vocational training or retraining course" does not include a program of instruction for an individual, including a transfer credit program of instruction given at a community college, which is intended as credit for a degree from an institution of higher education;

(24) "wages" is defined in AS 23.20.530;

(25) "waiting week" means the first week of unemployment for which an individual files a claim during the individual's benefit year and for which no disqualification is imposed under AS 23.20.378 — 23.20.387;

(26) "week" means the period of seven consecutive days which the department may by regulation prescribe. (§§ 292 — 204 ch 5 ESLA 1955; § 205 ch 5 ESLA 1955; am § 1 ch 169 SLA 1957; §§ 206, 208, 210, 212, 213, 236 — 238, 240, 241, 252, 253 ch 5 ESLA 1955; § 13 ch 64 SLA 1959; am § 1 ch 93 SLA 1960; am §§ 10 — 13 ch 106 SLA 1971; am § 24 ch 208 SLA 1975; am § 2 ch 74 SLA 1976; am §§ 13, 14 ch 122 SLA 1977; am §§ 73, 74, 77, 80 ch 9 SLA 1980; am §§ 28, 29 ch 115 SLA 1982)

Revisor's notes. — For conditional repeal and reenactment of (14) of this section (formerly (12)), see the Revisor's note at AS 23.20.278. For effective date of the 1977 amendment to (22) of this section (formerly (19)), see the Revisor's note at AS 23.20.085. This section was reorganized in 1984 to place the defined terms in alphabetical order.

Effect of amendments. — The 1980 amendment repealed paragraph (18), rewrote paragraphs (21) and (26), and added paragraph (27).

The 1982 amendment substituted "the state in which it is located" for "this state" in subparagraph (24)(B), and in paragraph (23), substituted "vocational training or retraining course" for "training or retraining" in two places and deleted "entry level" preceding "employment in trades."

Section 34, ch. 122, SLA 1977, provides: "Section 33 of this Act takes effect upon the condition and at the time that:

"(1) a decision of a federal court of competent jurisdiction, which decision is not subject to appeal or for which the time in which to appeal has run without an appeal having been taken, that the requirement of 26 U.S.C. 3304(a)(6) is unconstitutional becomes final; or

"(2) Congressional repeal of 26 U.S.C. 3304(a)(6) takes effect in accordance with law."

A review of legislation through P.L. 97-43, 95 Stat. 947, approved August 20, 1981, indicates that 26 U.S.C. 3304(a)(6) has not been repealed.

Collateral references. — Liability of political party or its subdivision for contributions under unemployment compensation acts. 43 ALR3d 1351.

Sec. 23.20.525. "Employment" defined. (a) In this chapter, unless the context otherwise requires, "employment" means

(1) service performed by an individual for wages or by an officer of a corporation, including service in interstate commerce;

(2) service performed by an individual who under (10) of this subsection has the status of an employee;

though remuneration for the services is less than \$250 in a calendar quarter, but only if the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether the individuals were employed at the same moment of time;

(7) service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, after December 31, 1971 in the employ of an American employer, or of this state or of any of its instrumentalities or any of its political subdivisions, other than service which is considered "employment" under the provisions of (11) or (12) of this subsection or the parallel provisions of the law of another state, if

(A) the employer's principal place of business in the United States is located in this state; or

(B) the employer has no place of business in the United States, but

(i) the employer is an individual who is a resident of this state; or

(ii) the employer is a corporation which is organized under the laws of this state; or

(iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(C) none of the criteria in (A) and (B) of this paragraph is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on service described in this paragraph, under the law of this state;

(8) notwithstanding the provisions of (11) of this subsection, all service performed by an officer or member of the crew of an American vessel or in connection with the vessel, if the operating office, from which the operations of vessels operating on navigable waters inside, or inside and outside the United States are ordinarily and regularly supervised, managed, directed and controlled, is inside this state;

(9) notwithstanding any other provisions of this section, service with respect to which tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter;

(10) service performed by an individual whether or not the common-law relationship of master and servant exists, unless and until it is shown to the satisfaction of the department that

(A) the individual has been and will continue to be free from control and direction in connection with the performance of the service, both under the individual's contract for the performance of service and in fact;

(B) employed in agricultural labor 10 or more individuals for some portion of the day in each of at least 20 different calendar weeks in either the current or the preceding calendar year, whether or not the weeks were consecutive, and regardless of whether the individuals were employed at the same moment of time;

(C) for the purposes of this paragraph any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of that crew leader

(i) if that crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, or substantially all the members of that crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by that crew leader; and

(ii) if that individual is not an employee of that other person within the meaning of (10) of this subsection;

(D) for the purposes of this paragraph, in the case of an individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of that crew leader under (C) of this paragraph,

(i) that other person and not the crew leader shall be treated as the employer of that individual; and

(ii) that other person shall be treated as having paid cash remuneration to that individual in an amount equal to the amount of cash remuneration paid to that individual by the crew leader, either on behalf of the crew leader or on behalf of that other person, for the service in agricultural labor performed for that other person;

(E) for the purposes of this paragraph, the term "crew leader" means an individual who

(i) furnishes individuals to perform service in agricultural labor for any other person;

(ii) pays, either on behalf of the crew leader or on behalf of that other person, the individuals furnished by the crew leader for the service in agricultural labor performed by the individuals; and

(iii) has not entered into a written agreement with that farm operator under which the agricultural worker is designated as an employee of that farm operator.

(b) In (a)(7) of this section, "American employer" means a person who is

(1) an individual who is a resident of the United States;

(2) a partnership if two-thirds or more of the partners are residents of the United States;

(3) a trust, if all of the trustees are residents of the United States; or

(4) a corporation organized under the laws of the United States or of any state. (§§ 214—216 ch 5 ESLA 1955; § 217 ch 5 ESLA 1955; am

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

(23) "vocational training or retraining course" means a course of vocational or technical training or retraining in schools or classes, including but not limited to, field or laboratory work and related remedial or academic instruction, which is conducted as a program designed to prepare individuals for employment in trades, skills or crafts; the term "vocational training or retraining course" does not include a program of instruction for an individual, including a transfer credit program of instruction given at a community college, which is intended as credit for a degree from an institution of higher education;

(24) "wages" is defined in AS 23.20.530;

(25) "waiting week" means the first week of unemployment for which an individual files a claim during the individual's benefit year and for which no disqualification is imposed under AS 23.20.378 — 23.20.387;

(26) "week" means the period of seven consecutive days which the department may by regulation prescribe. (§§ 202 — 204 ch 5 ESLA 1955; § 205 ch 5 ESLA 1955; am § 1 ch 169 SLA 1957; §§ 206, 208, 210, 212, 213, 236 — 238, 240, 241, 252, 253 ch 5 ESLA 1955; § 13 ch 64 SLA 1959; am § 1 ch 93 SLA 1960; am §§ 10 — 13 ch 106 SLA 1971; am § 24 ch 208 SLA 1975; am § 2 ch 74 SLA 1976; am §§ 13, 14 ch 122 SLA 1977; am §§ 73, 74, 77, 80 ch 9 SLA 1980; am §§ 28, 29 ch 115 SLA 1982)

Revisor's notes. — For conditional repeal and reenactment of (14) of this section (formerly (12)), see the Revisor's note at AS 23.20.278. For effective date of the 1977 amendment to (22) of this section (formerly (19)), see the Revisor's note at AS 23.20.085. This section was reorganized in 1984 to place the defined terms in alphabetical order.

Effect of amendments. — The 1980 amendment repealed paragraph (18), rewrote paragraphs (21) and (26), and added paragraph (27).

The 1982 amendment substituted "the state in which it is located" for "this state" in subparagraph (24)(B), and in paragraph (23), substituted "vocational training or retraining course" for "training or retraining" in two places and deleted "entry level" preceding "employment in trades."

Section 34, ch. 122, SLA 1977, provides: "Section 33 of this Act takes effect upon the condition and at the time that:

"(1) a decision of a federal court of competent jurisdiction, which decision is not subject to appeal or for which the time in which to appeal has run without an appeal having been taken, that the requirement of 26 U.S.C. 3304(a)(6) is unconstitutional becomes final; or

"(2) Congressional repeal of 26 U.S.C. 3304(a)(6) takes effect in accordance with law."

A review of legislation through P.L. 97-43, 95 Stat. 947, approved August 20, 1981, indicates that 26 U.S.C. 3304(a)(6) has not been repealed.

Collateral references — Liability of political party or its subdivision for contributions under unemployment compensation acts. 43 ALR3d 1351.

Sec. 23.20.525. "Employment" defined. (a) In this chapter, unless the context otherwise requires, "employment" means

(1) service performed by an individual for wages or by an officer of a corporation, including service in interstate commerce;

(2) service performed by an individual who under (10) of this subsection has the status of an employee;

though remuneration for the services is less than \$250 in a calendar quarter, but only if the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether the individuals were employed at the same moment of time;

(7) service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, after December 31, 1971 in the employ of an American employer, or of this state or of any of its instrumentalities or any of its political subdivisions, other than service which is considered "employment" under the provisions of (11) or (12) of this subsection or the parallel provisions of the law of another state, if

(A) the employer's principal place of business in the United States is located in this state; or

(B) the employer has no place of business in the United States, but

(i) the employer is an individual who is a resident of this state; or

(ii) the employer is a corporation which is organized under the laws of this state; or

(iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(C) none of the criteria in (A) and (B) of this paragraph is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on service described in this paragraph, under the law of this state;

(8) notwithstanding the provisions of (11) of this subsection, all service performed by an officer or member of the crew of an American vessel or in connection with the vessel, if the operating office, from which the operations of vessels operating on navigable waters inside, or inside and outside the United States are ordinarily and regularly supervised, managed, directed and controlled, is inside this state;

(9) notwithstanding any other provisions of this section, service with respect to which tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter;

(10) service performed by an individual whether or not the common-law relationship of master and servant exists, unless and until it is shown to the satisfaction of the department that

(A) the individual has been and will continue to be free from control and direction in connection with the performance of the service, both under the individual's contract for the performance of service and in fact;

(B) the service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and

(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed;

(11) an individual's entire service performed inside or both inside and outside this state if the service is localized in this state: service is considered to be localized inside a state or territory if

(A) the service is performed entirely inside the state or territory; or

(B) the service is performed both inside and outside the state or territory but the service performed outside the state or territory is incidental to the individual's service inside the state or territory; for example, where it is temporary or transitory in nature or consists of isolated transactions;

(12) an individual's entire service performed inside or both inside and outside this state if the service is not localized in a state or territory but some of the service is performed in this state and

(A) the individual's base of operations is in this state; or

(B) if there is no base of operations, then the place from which the service is directed or controlled is in this state; or

(C) the individual's base of operations or place from which the service is directed or controlled is not in a state or territory in which some part of the service is performed, but the individual's residence is in this state;

(13) service covered by an election under AS 23.20.325, and service covered by an election approved by the commissioner in accordance with an arrangement under AS 23.20.090(a) during the effective period of the election;

(14) service performed after December 31, 1977 in the employ of this state or any of its instrumentalities or any political subdivision of this state or any of its instrumentalities or any instrumentality of any of the foregoing and one or more other states or political subdivisions, if that service is excluded from "employment" under 26 U.S.C. 3306(c)(7) (Federal Unemployment Tax Act, Internal Revenue Code) and is not excluded from "employment" under AS 23.20.526(d)(8);

(15) domestic services performed after December 31, 1977 for an employer who paid wages of \$1,000 or more in any calendar quarter in the current or preceding calendar year for those services;

(16) service performed after December 31, 1977 by an individual in agricultural labor when that service is performed for a person who

(A) during any calendar quarter in either the current or the preceding year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor; or

(B) employed in a portion of the day either the current week or the preceding weeks were considered to be employed at

(C) for the purpose of furnishing labor for any crew leader

(i) if that crew leader is the Farm Labor Crew leader and all the members of the crew are engaged in harvesting or crop production, which is production of agricultural products;

(ii) if that individual is the meaning of (10)

(D) for the purpose of furnishing labor for any other crew leader under

(i) that other person is the employer of that individual;

(ii) that other person is the employer of that individual in addition to that individual's remuneration paid on behalf of the crew leader for services in agriculture;

(E) for the purpose of furnishing labor for any individual who

(i) furnishes labor for any other person;

(ii) pays, either on behalf of that person, the individual or the individual's agricultural labor partner;

(iii) has not entered into an agreement with the operator under which the individual is an employee of that farm;

(b) In (a)(7) of this section, the individual who is

(1) an individual;

(2) a partnership or other unincorporated firm of the United States;

(3) a trust, if all the beneficiaries are citizens or

(4) a corporation or other legal entity of any state. (§§ 214—

(B) employed in agricultural labor 10 or more individuals for some portion of the day in each of at least 20 different calendar weeks in either the current or the preceding calendar year, whether or not the weeks were consecutive, and regardless of whether the individuals were employed at the same moment of time;

(C) for the purposes of this paragraph any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of that crew leader

(i) if that crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, or substantially all the members of that crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by that crew leader; and

(ii) if that individual is not an employee of that other person within the meaning of (10) of this subsection;

(D) for the purposes of this paragraph, in the case of an individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of that crew leader under (C) of this paragraph,

(i) that other person and not the crew leader shall be treated as the employer of that individual; and

(ii) that other person shall be treated as having paid cash remuneration to that individual in an amount equal to the amount of cash remuneration paid to that individual by the crew leader, either on behalf of the crew leader or on behalf of that other person, for the service in agricultural labor performed for that other person;

(E) for the purposes of this paragraph, the term "crew leader" means an individual who

(i) furnishes individuals to perform service in agricultural labor for any other person;

(ii) pays, either on behalf of the crew leader or on behalf of that other person, the individuals furnished by the crew leader for the service in agricultural labor performed by the individuals; and

(iii) has not entered into a written agreement with that farm operator under which the agricultural worker is designated as an employee of that farm operator.

(b) In (a)(7) of this section, "American employer" means a person who is

(1) an individual who is a resident of the United States;

(2) a partnership if two-thirds or more of the partners are residents of the United States;

(3) a trust, if all of the trustees are residents of the United States; or

(4) a corporation organized under the laws of the United States or of any state. (§§ 214—216 ch 5 ESLA 1955; § 217 ch 5 ESLA 1955; am

§ 1 ch 60 SLA 1960; §§ 218—220 ch 5 ESLA 1955; §§ 220.1, 220.2 ch 5 ESLA 1955, added by §§ 2, 3 ch 169 SLA 1957; § 220.3 ch 5 ESLA 1955, added by § 1 ch 108 SLA 1961; § 221 ch 5 ESLA 1955; § 222 ch 5 ESLA 1955; am § 1 ch 87 SLA 1962; §§ 223, 224 ch 5 ESLA 1955; §§ 226, 227 ch 5 ESLA 1955; § 228 ch 5 ESLA 1955; am § 4 ch 169 SLA 1957; §§ 229—234 ch 5 ESLA 1955; § 234.1 ch 5 ESLA 1955, added by § 1 ch 46 SLA 1959; § 234.2 ch 5 ESLA 1955, added by § 2 ch 60 SLA 1960; am § 1 ch 22 SLA 1967; am § 14 ch 106 SLA 1971; am §§ 15 — 18 ch 122 SLA 1977; am §§ 75, 76 ch 9 SLA 1980)

Revisor's notes. — For effective date of amendments made by sec. 17 of the 1977 Act, see the Revisor's note at AS 23.20.085. For conditional repeal of other 1977 amendments, see the Revisor's note at AS 23.20.278.

Effect of amendments. — The 1980 amendment, in subsection (a), inserted a

comma following "January 1, 1978" at the beginning of paragraph (5), deleted "or AS 23.20.326" at the end of paragraph (5), and substituted "within the meaning of (10) of this subsection" for "within the meaning of (A) of this paragraph" in paragraph (16)(C)(ii).

NOTES TO DECISIONS

Place of business. — Premises leased by a lumber mill operator for the purpose of hiring workers to harvest the timber thereon to be delivered to the mill for processing were considered a place of business for the purpose of unemployment tax liability. Clayton v. State, Sup. Ct. Op. No. 1890 (File No. 4116), 598 P.2d 84 (1979).

Discretion of department of labor under subsection (a)(10). — It is evident from the statutory requirement of a showing "to the satisfaction of the department" under subsection (a)(10) that the Department of Labor is vested with broad discretion in deciding whether an "employment" relationship exists. Clayton v. State, Sup. Ct. Op. No. 1890 (File No. 4116), 598 P.2d 84 (1979).

Collateral references. — Taxicab driver as employee of owner of cab, or independent contractor, within social security and unemployment insurance statutes. 10 ALR2d 369.

Seasonal employees. 24 ALR2d 1400.

Sec. 23.20.526. Exclusions from definition of "employment."

(a) In this chapter, unless the context otherwise requires, "employment" does not include

(1) domestic service in a private home, except as provided in AS 23.20.525(a)(15);

Proof required under subsection (a)(10). — Under subsection (a)(10) of this section, a business proprietor must prove the factors listed in (A), (B) and (C) to win an exemption from the tax. Clayton v. State, Sup. Ct. Op. No. 1890 (File No. 4116), 598 P.2d 84 (1979).

Where an employer could not demonstrate that workers hired for a particular job were customarily entrepreneurs engaged in an independently established business, but that the unavailability of work created unemployment for them, he failed to carry the burden of proof to establish the requirements of subsection (a)(10)(C) of this section. Clayton v. State, Sup. Ct. Op. No. 1890 (File No. 4116), 598 P.2d 84 (1979).

Insurance agents or salesmen as within coverage of social security or unemployment compensation acts. 39 ALR3d 872.

Trucker as employee or independent contractor. 2 ALR4th 1219.

(2) newsboys' street or from home;
(3) service not performed in a remunerated unit to be regularly employed by an employing unit to be regularly employed by an individual performing some 24 days during a quarter;

(4) service performed by a minor's son, daughter or other relative under the age of 18 in the household;

(5) service with a person not eligible under an unexpired term of Congress;

(6) service performed by a person acting as a sole proprietor or representative;

(7) service performed by a person owned by a foreign country or countries by employment in foreign mentalities; and

(B) the department has certified to the foreign government, or is claimed, grants a service performed in the United States government a

(8) service performed by a real estate broker, a person to the extent the person is required to be covered by the act;

(9) notwithstanding the fact that the officer or member of the crew of a vessel operating on the waters of the United States are not directed and controlled by the United States;

(10) service performed by an American vessel by an American citizen on and in connection with

(2) newsboys' services in selling or distributing newspapers on the street or from house to house;

(3) service not in the course of the employing unit's trade or business performed in a calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employing unit to perform the service; an individual is here considered to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if the individual performs the service for some portion of the day on each of some 24 days during the quarter or during the preceding calendar quarter;

(4) service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of 18 in the employ of the child's father or mother;

(5) service with respect to which unemployment insurance is payable under an unemployment insurance program established by an Act of Congress;

(6) service performed in the employ of a foreign government including service as a consular or other officer or employee or a nondiplomatic representative;

(7) service performed in the employ of an instrumentality wholly owned by a foreign government if

(A) the service is of a character similar to that performed in foreign countries by employees of the United States government or its instrumentalities; and

(B) the department finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and its instrumentalities;

(8) service performed by an insurance agent, insurance solicitor, a real estate broker, a real estate salesman or a securities salesman to the extent the person is compensated by commission, unless the service is required to be covered under the Federal Unemployment Tax Act as amended;

(9) notwithstanding AS 23.20.525(a)(11), service performed by an officer or member of the crew of an American vessel on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters inside or inside and outside the United States are ordinarily and regularly supervised, managed, directed and controlled, is outside this state;

(10) service performed on or in connection with a vessel not an American vessel by an individual if the individual performed service on and in connection with the vessel when outside the United States;

operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes:

(D) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than one-half of the commodity with respect to which the service is performed except as stated in (A) of this section;

(E) in the employ of a group of operators of farms, or a cooperative organization of which the operators are members, in the performance of service described in (D) of this paragraph, but only if the operators produced more than one-half of the commodity with respect to which the service is performed;

(F) on a farm operated for profit if the service is not in the course of the employer's trade or business;

(16) *[Repealed, § 25 ch 122 SLA 1977.]*

(17) service performed after December 31, 1971, by nurses, technicians, and other professional employees of hospitals no part of the net earnings of which inures to the benefit of a private shareholder or individual, unless the service is required to be covered under the Federal Unemployment Tax Act;

(18) *[Repealed, § 25 ch 122 SLA 1977.]*

(19) *[Repealed, § 80 ch 9 SLA 1980.]*

(20) service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of that boat under which

(A) that individual does not receive any cash remuneration except as provided in (B) of this paragraph;

(B) that individual receives a share of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of that catch; and

(C) the amount of that individual's share depends on the amount of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life; but only if the operating crew of that boat, or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat, is normally made up of fewer than 10 individuals;

(21) service performed as a prospective or impaneled juror in a court;

(22) service performed for a corporation by an employee of the corporation if

(A) the corporation is incorporated under AS 10.05;

(B) the corporation is not a government corporation; and

(C) the employee is an executive officer of the corporation.

(b) Notwithstanding any other provision of this section, the provisions of (a)(15)(D) and (E) of this section are not applicable to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(c) In (a)(15) of this section, "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(d) For the purposes of AS 23.20.525(a)(4) — (6) and (14), the term "employment" does not apply to service performed

(1) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the person's ministry or by a member of a religious order in the exercise of duties required by the order;

(2) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving the rehabilitation or remunerative work;

(3) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or any agency of a state or political subdivision of the state, by an individual receiving work relief or work training;

(4) for a state hospital by an inmate of a prison or correctional institution;

(5) in the employ of a school, college, or university, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college or university;

(6) by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has so certified to the employer, except that this paragraph does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(7) in the employ of a hospital, if the service is performed by a patient of the hospital, as defined in AS 23.20.520;

(8) in the employ of the service is performed

(A) as a "public elected official";

(B) as a member of the National Guard or

(C) as an employee in the employ of a storm, snow, earth

(9) in the employ of

(A) a church or

(B) an organization

for purposes and which is supported by a church 106 SLA 1971; SLA 1977; am § 8 ch 91 SLA 1982; ar

Revisor's notes. — repeal of 1977 amendment. Revisor's note at AS 23.20.526.

Effect of amendment. — 1980 amendment repeals subsection (a).

The second 1980 amendment repeals paragraph (9) of subsection (a).

The first 1982 amendment repeals paragraph (22) of subsection (a).

The second 1982 amendment repeals paragraph (21) of subsection (a).

The 1984 amendment to subsection (a), added subparagraph (B), deleted the phrase "indirectly owns 25 percent of the voting securities of the corporation" at the end of subparagraph (a) and read "the executive officer of the corporation" services not be "employed by the corporation" paragraph.

Collateral references. — AS 23.20.526 contractor rather than within unemployment compensation act 124 ALR 632.

Sec. 23.20.530. — all remuneration for service is limited to, insurance commissions, bonuses in a medium otherwise customarily received by persons other than the employee wages received from

(8) in the employ of the state or a political subdivision of the state if the service is performed by an individual in the exercise of duties:

(A) as a "public official" as defined in AS 39.50.200(a) or any other elected official;

(B) as a member of the Alaska Army National Guard or Alaska Air National Guard or Alaska Naval Militia; or

(C) as an employee serving on only a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency.

(9) in the employ of

(A) a church or a convention or association of churches; or

(B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or a convention or association of churches. (§ 15 ch 106 SLA 1971; am § 1 ch 55 SLA 1976; am §§ 19 — 23, 25 ch 122 SLA 1977; am § 80 ch 9 SLA 1980; am § 3 ch 145 SLA 1980; am § 1 ch 91 SLA 1982; am § 30 ch 115 SLA 1982; am § 14 ch 106 SLA 1984)

Revisor's notes. — For conditional repeal of 1977 amendments, see the Revisor's note at AS 23.20.278.

Effect of amendments. — The first 1980 amendment repealed paragraph (19) of subsection (a).

The second 1980 amendment added paragraph (9) of subsection (d).

The first 1982 amendment added paragraph (22) to subsection (a).

The second 1982 amendment added paragraph (21) to subsection (a).

The 1984 amendment, in paragraph (22) of subsection (a), added "and" at the end of subparagraph (B), deleted "who directly or indirectly owns 25 percent or more of the voting securities of the corporation; and" at the end of subparagraph (C), and repealed former subparagraph (D), which read "the executive officer agrees that the services not be 'employment' under this paragraph."

Collateral references. Who is independent contractor rather than employee within unemployment compensation act. 124 ALR 632.

Test of independent contractor relationship. 124 ALR 1029; 147 ALR 828.

Who is "member of a crew" within meaning of social security and unemployment compensation acts. 161 ALR 842.

Taxicab driver as employee of owner of cab, or independent contractor, within social security and unemployment insurance statutes. 10 ALR2d 369.

Salesman or commission as within act. 29 ALR2d 751.

What constitutes "agricultural" or "farm" labor within social security or unemployment acts. 56 ALR2d 406.

Own projects or activities, right to unemployment compensation of one working on. 65 ALR2d 1182.

Insurance agents or salesmen as within coverage of social security or unemployment compensation acts. 39 ALR3d 872.

Part-time or intermittent workers as covered by or eligible for benefits under state unemployment compensation act. 95 ALR3d 891.

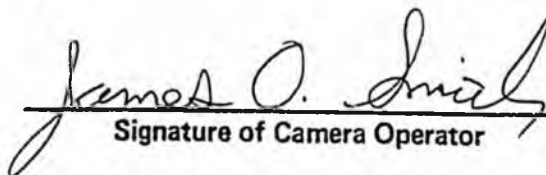
Sec. 23.20.530. Wages defined. (a) In this chapter, "wages" means all remuneration for service from whatever source, including, but not limited to, insured work, noninsured work, or self-employment; commissions, bonuses, back pay and the cash value of all remuneration in a medium other than cash shall be treated as wages; gratuities customarily received by an individual in the course of service from persons other than the individual's employing unit may be treated as wages received from the employing unit only to the extent the individ-

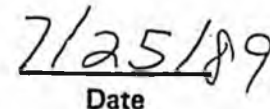


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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	5/6/85	1:30 pm
" "	5/8/85	1:30 pm

COMMITTEE REPORT
HOUSE

(7)

FURTHER: FINANCE

1/24/85

Date: _____

The Committee on JUDICIARY has had HB 331

"An Act relating to the theft of commercial fishing gear."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 331 (JUD) same title
- new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

SUPERIOR FISHERIES OF ALASKA, INC.

705 MULDOON #53 ANCHORAGE ALASKA 99504

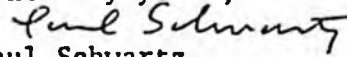
April 4 1985

The Honorable Dave Thompson
Ak State House of Representatives
Pouch V
Juneau, Ak 998]]

Dear Mr. Thompson,

Thank you for introducing HB 33], an act relating to the theft of commercial fishing gear. Could this be amended to include commercial mariculture gear? We grow scallops in cages, and theft of gear is always a problem. Please let me know how we can support you on this.

Sincerely yours,



Paul Schwartz
President, SFA Inc.



BUSINESS • FISHERMEN • PROCESSORS • INDIVIDUALS

ALASKA COASTAL COMMUNITIES ALLIANCE

P.O. Box 382 Kodiak, Alaska 99615 Phone (907) 486-5096

April 17, 1985

Senator Fred Zharoff
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Zharoff:

I am writing on behalf of the Alaska Coastal Communities Alliance. At our most recent board of directors meeting, David Shrader presented us with a work draft of your proposed Senate Bill relating to the theft of commercial fishing gear. An extensive discussion of the bill ensued, the results of which I would like to convey to you.

First, the general intent of the bill was received with overwhelming approval. As you are aware, with the difficult economic times in the fisheries the last several years there has been an increasing gear theft problem in our area. Because thefts most often occur at sea, or with stored gear on land when the gear or equipment is left unattended, apprehension and successful prosecution of offenders is rare and difficult. Therefore, when an individual is caught and successfully prosecuted it is imperative that the offender be appropriately punished if our laws are to have any deterrent value.

We did feel, however, that a \$500 minimum should also be established for theft of commercial fishing gear. We suggest this because we support the mandatory jail term for those convicted of gear theft, yet we do not feel, for example, that a young first offender who might be caught shoplifting, say a box of fish hooks, should be subject to a mandatory one year jail term.

There was also a consensus on the part of our members that the law should define active and lost fishing gear. It is not unusual for a fisherman to find a lost crab pot whose owner is impossible to identify. In such a circumstance it is an accepted practice for the finder to retrieve and keep the pot. A problem could arise if an original owner later identified the pot and claimed that it was in fact not lost. To further illustrate, this sort of problem could arise with beachcombed buoys and gear. If the law precisely defined the appropriate terms this sort of situation could be avoided to the benefit of all. We realize that our suggestion will complicate your worthy effort on our behalf, but we feel that time spent now writing a good and workable law will be well worth the effort.

The Alaska Coastal Communities Alliance would like to thank you for your past and present attentiveness to the needs and welfare of our fishing community. We would like to reaffirm our support for your intent in writing this bill. We hope you are able to bring this effort to a successful conclusion.

Thank you.

Sincerely,

Kevin B. O'Leary
Chairman, A.C.C.A.

cc: Representative Dave Thompson

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 331
 Title: "An Act relating to theft of commercial fishing gear."
 Sponsor: Thompson
 Requestor: Special Comm. on Fisheries
 Date of Request: 4/15/85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: _____
NRMEC
 BRU, Program or Subprogram(s) Affected: Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Marcia Lynn McKenzie Phone: 465-4350
 Division: Administrative Services Date: 4/15/85
 Approved by Commissioner: Robert J. Sundberg Date: 4/15/85
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):
 Legislative Finance
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 Impacted Agency(ies)

stantial, was clearly adequate and measured up to the standards which the court of appeals has laid down in such cases. *Yoho v. United States*, 14 Alaska 174, 202 P.2d 241 (9th Cir. 1953).

Prosecution could waive felony and prosecute for misdemeanor. — If on trial a misdemeanor (e.g., larceny) turned

out to be a felony (e.g., robbery), then the prosecution could in such cases waive the felony, and prosecute only for the constituent misdemeanor, supposing the misdemeanor be proved. *Perkins v. United States*, 16 Alaska 471, 237 F.2d 857 (9th Cir. 1956).

Sec. 11.46.120. Theft in the first degree. (a) A person commits the crime of theft in the first degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is \$25,000 or more.

(b) Theft in the first degree is a class B felony. (§ 4 ch 166 SLA 1978)

NOTES TO DECISIONS

Sentence upheld. — Trial court did not err in sentencing defendant to 10 years' imprisonment with five years suspended and ordering her to pay \$300,000 restitution upon her conviction of embezzlement by an employee for money taken prior to January 1, 1980, and of theft in the first degree for money taken after January 1, 1980, the effective date for the revised criminal code. *Karr v. State*, Ct. App. Op. No. 230 (File No. 7011), 660 P.2d 450 (1983).

While no violence was involved, trial court properly found that appellant's

embezzlement of \$140,000 from her employer over a one-year period was among the most serious conduct prescribed by the statute and served to distinguish it from prior cases in which substantial sentences for embezzlement were disapproved, and eight-year sentence with four years suspended was not excessive. *Brezenoff v. State*, Ct. App. Op. No. 226 (File No. 7117), 658 P.2d 1359 (1983).

Cited in *Po'nam v. State*, Sup. Ct. Op. No. 2251 (File No. 3475), 629 P.2d 35 (1980).

Sec. 11.46.130. Theft in the second degree. (a) A person commits the crime of theft in the second degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$500 or more but less than \$25,000;

(2) the property is a firearm or explosive; or

(3) the property is taken from the person of another.

(b) Theft in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

NOTES TO DECISIONS

Failure to preserve evidence. — Convictions for second-degree theft were reduced to convictions for third-degree theft where the state failed to preserve the scrap copper which was the object of the theft. *Hatfield v. State*, Ct. App. Op. No. 257 (File No. 6371, 6732), 663 P.2d 987 (1983).

Applied in *Null v. State*, Ct. App. Op.

No. 77 (File No. 5565), 642 P.2d 1361 (1982); *Williams v. State*, Ct. App. Op. No. 106 (File No. 5993), 648 P.2d 603 (1982).

Quoted in *Frankson v. State*, Ct. App. Op. No. 92 (File No. 6029), 645 P.2d 225 (1982).

Stated in *Leuch v. State*, Sup. Ct. Op. No. 2419 (File No. 5255), 633 P.2d 1006 (1981).

Cited in *Williams v. State*, Sup. Ct. Op. (File No. 6870), 655 P.2d 1319 (1982); No. 2147 (File No. 3901), 614 P.2d 1384 (1980); *Namen v. State*, Ct. App. Op. No. 264 (File No. 5662), 665 P.2d 557 (1983).

Sec. 11.46.140. Theft in the third degree. (a) A person commits the crime of theft in the third degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$50 or more but less than \$500; or

(2) the property is a credit card.

(b) Theft in the third degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

NOTES TO DECISIONS

Failure to preserve evidence. — Convictions for second-degree theft were reduced to convictions for third-degree theft where the state failed to preserve the scrap copper which was the object of the theft. *Hatfield v. State*, Ct. App. Op. No. 257 (File Nos. 6371, 6732), 663 P.2d 987 (1983).

Remand for vacation of sentence. — Where defendant appealed from convictions and sentences simultaneously entered for the offenses of first-degree robbery and theft by taking in the third degree on the ground that all of the elements involved in his conviction of theft by taking in the third degree were necessarily included in his conviction for the of-

fense of first-degree robbery and thus, the imposition of separate sentences on the theft and robbery charges was precluded by double jeopardy, and on appeal the state confessed error as to this issue and requested that the judgment and commitment entered as to the lesser offense of theft be vacated upon remand to the superior court, the court remanded for that purpose. *Dunn v. State*, Ct. App. Op. No. 158 (File Nos. 5567, 5697), 653 P.2d 1071 (1982).

Cited in *Law v. State*, Sup. Ct. Op. No. 2301 (File No. 4552), 624 P.2d 284 (1981); *Wasson v. State*, Ct. App. Op. No. 141 (File No. 6072), 652 P.2d 117 (1982).

Sec. 11.46.150. Theft in the fourth degree. (a) A person commits the crime of theft in the fourth degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is less than \$50.

(b) Theft in the fourth degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

Sec. 11.46.160. Theft of lost or mislaid property. (a) A person commits theft of lost or mislaid property if the person obtains property of another knowing that the property was lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient and the person fails to take reasonable measures to restore the property to the owner with intent to deprive the owner of the property.

(b) As used in this section "reasonable measures" includes notifying the identified owner or a peace officer. (§ 4 ch 166 SLA 1978)

ciently comports with the requirements of due process. *Noden v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2808 (File No. 6495), P.2d (1984).

Opportunity to submit additional evidence. — When the commission reopens the evidence period to extend to applicants a new opportunity to submit additional evidence, it is required to conform to the mandate of this section and its

hearing requirement. *Forquer v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2784 (File Nos. 5849, 5930, 5931), P.2d (1984).

Quoted in *White v. Alaska Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2793 (File No. 6298), P.2d (1984).

Stated in *Ostman v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2792 (File No. 6199), P.2d (1984).

Sec. 16.43.270. Initial issuance of entry permits.

NOTES TO DECISIONS

"Person" referred to in subsection (a). — The person referred to in the last sentence of subsection (a) must be a qualified applicant referred to in the remainder of the section. *Wickersham v. State, Com. Fisheries Entry Comm'n*, Sup.

Ct. Op. No. 2807 (File No. 5780), P.2d (1984).

Quoted in *Noden v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2808 (File No. 6495), P.2d (1984).

Article 7. General Provisions.

Section

990. Definitions

Sec. 16.43.990. Definitions. In this chapter

(1) "commission" means the Alaska Commercial Fisheries Entry Commission;

(2) "economically healthy fishery" means a fishery that yields a sufficient rate of economic return to the fishermen participating in it to provide for, among other things, the following:

(A) maintenance of vessels and gear in satisfactory and safe operating condition; and

(B) ability and opportunity to improve vessels, gear and fishing techniques, including, when permissible, experimentation with new vessels, new gear, and new techniques;

(3) "fishery" means the commercial taking of a specific fishery resource in a specific administrative area with a specific type of gear; however, the commission may designate a fishery to include more than one specific administrative area, gear type, or fishery resource;

(4) "gear" means the specific apparatus used in the commercial harvest of a species, including but not limited to purse seines, drift gill nets, set gill nets, and troll gear;

(5) "person" means a natural person and does not include a corporation, company, partnership, firm, association, organization, business trust, or society;

(6) "present ability to actively participate" means the person applying for a permit is physically able to harvest fish in the fishery

and has reasonable access to commercial fishing gear of the type utilized in that fishery;

(7) "priority classification" means the allocation of potential permit applicants into reasonable groupings of similarly situated applicants and the priority ranking of those groupings according to the extent to which they satisfy the standards of preference;

(8) "type of gear" means a customary and identifiable classification of gear and shall include:

(A) those classifications for which separate regulations were adopted by the Board of Fisheries and for which separate gear licenses were required by former AS 16.05.550 — 16.05.630; and

(B) distinct subclassifications of gear such as "power" troll gear and "hand" troll gear;

(9) "unit of gear" means the maximum amount of a specific type of gear which can be fished under a single gear license subject to regulations established by the Board of Fisheries defining the legal requirements for that type of gear. (§ 1 ch 79 SLA 1973; am §§ 32, 33 ch 206 SLA 1975; am § 11 ch 47 SLA 1981; am § 70 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment, effective February 14, 1984, made a series of technical changes in subparagraph (A) of paragraph (8).

NOTES TO DECISIONS

Cited in *Ostman v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2792 (File No. 6199), P.2d (1984); *Noden v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2808 (File No. 6495), P.2d (1984); *Wickersham v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2807 (File

ARTICLE IX.

DOCUMENTARY EVIDENCE

Rule 901. Requirement of Authentication or Identification.

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims, except as provided in paragraphs (a) and (b) below:

(a) Whenever the prosecution in a criminal trial offers (1) real evidence which is of such a nature as not to be readily identifiable, or as to be susceptible to adulteration, contamination, modification, tampering, or other changes in form attributable to accident, carelessness, error or fraud, or (2) testimony describing real evidence of the type set forth in (1) if the information on which the description is based was acquired while the evidence was in the custody or control of the prosecution, the prosecution must first demonstrate as a matter of reasonable certainty that the evidence is at the time of trial or was at the time it was observed properly identified and free of the possible taints identified by this paragraph.

(b) In any case in which real evidence of the kind described in paragraph (a) of this rule is offered, the court may require additional proof before deciding whether to admit or exclude evidence under Rule 403. (Added by Supreme Court Order 364 effective August 1, 1979)

EDITOR'S NOTE: Section 44, Chapter 143, Session Laws of Alaska 1982, provides that "AS 12.80.050, added in sec. 40 of this Act [Chapter 143, Session Laws of Alaska 1982], has the effect of amending Rule 901, Alaska Rules of Evidence, by specifying requirements for the authentication of photographic evidence of property unlawfully taken or damaged."

Amendment of indictment or information with respect to name or capacity of person alleged to have been victim of crime as ground for continuance, 85 ALR2d 1204.

Power of court to make or permit amend-

ment of indictment with respect to allegations as to nature of activity, happening, or circumstances, 17 ALR3d 1285.

Use of abbreviation in indictment or information, 92 ALR3d 494.

Sec. 12.80.030. Taxation of costs. No costs may be taxed to the defendant in a criminal action or proceeding begun or prosecuted in any of the courts of the state unless otherwise ordered by supreme court rule. (§ 1 ch 50 SLA 1963)

Sec. 12.80.040. Violations and infractions. Except as provided in AS 11.81.900(b) and AS 28.40.050(d), all laws of the state relating to misdemeanors apply to violations and infractions, including the powers of peace officers, the jurisdiction of courts and the periods for commencing actions and for bringing a case to trial. (§ 42 ch 102 SLA 1980)

Legislative history reports. — For report on ch. 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supple-

ment, No. 44 (May 29, 1980) 1980 House Journal Supplement, No. 44 (May 29, 1980).

Sec. 12.80.050. Photographic evidence of property wrongfully taken or damaged. (a) In a criminal proceeding or a children's court proceeding involving the wrongful taking or damaging of property, photographs of the property are competent evidence of the property and are admissible in the proceeding to the same extent as if the property had been introduced as evidence.

(b) Photographs of property that are to be introduced as evidence under this section shall be accompanied by a written description of the property, the name of the owner of the property, the location where the alleged crime occurred, the name of the investigating peace officer, the date the photograph was taken, and the name and signature of the photographer. The written description shall be signed by the investigating peace officer under penalty of perjury under AS 09.63.020. (§ 40 ch 143 SLA 1982)

Revisor's notes. — To the extent that the provisions of this section conflict with Rule 901 of the Alaska Rules of Evidence,

the rule controls, as sec. 44, ch. 143, SLA 1982 did not receive the required 2/3 vote in the legislature.

NOTES TO DECISIONS

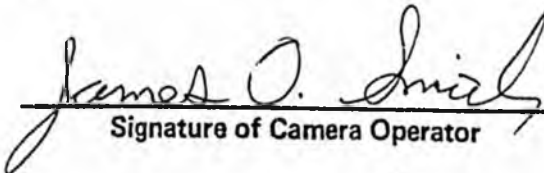
Applied in *Hatfield v. State*, Ct. App. Op. No. 257 (File Nos. 6371, 6732), 663 P.2d 987 (1983).

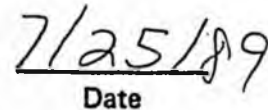


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STATE OF ALASKA THE LEGISLATURE

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary

3/25/86

1:30 pm

4/11/86

1:30 pm

4/14/86

1:30 pm

Original sponsor: Thompson

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 338 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a state lottery; authorizing an
7 advisory vote on the lottery; and providing for an
8 effective date."

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

10 * Section 1. AS 05 is amended by adding a new chapter to read:

11 CHAPTER 18. STATE LOTTERY.

12 ARTICLE 1. ADMINISTRATION.

13 Sec. 05.18.010. CREATION OF CORPORATION. The Alaska State
14 Lottery Corporation is established for the purpose of generating
15 revenue for the state. The corporation is a public corporation and is
16 an instrumentality of the state within the Department of Revenue.

17 Sec. 05.18.020. BOARD OF DIRECTORS. (a) The powers of the
18 corporation are vested in the board of directors. The board consists
19 of five members who qualify under AS 39.05.100. The governor shall
20 appoint each member subject to confirmation by the legislature in
21 joint session under AS 39.05.080. No more than three of the five
22 members may be members of the same political party. The governor
23 shall appoint one member to serve as chairperson of the board.

24 (b) Members serve staggered terms of five years. A vacancy on
25 the board does not impair the authority of the board to exercise the
26 powers and perform the duties of the corporation.

27 (c) A member of the board is entitled to compensation at a rate
28 of \$150 for each day the member is engaged in the actual performance

1 regulation for compensation for partial days during which an appointed
2 member is engaged in actual performance of duties as a member of the
3 board.

4 (d) In addition to compensation under (c) of this section, a
5 member of the board is entitled to per diem and travel allowances
6 authorized for members of boards and commissions under AS 39.20.180.

7 (e) A member of the board may not have a pecuniary interest in a
8 contract or agreement entered into by the corporation.

9 Sec. 05.18.030. MEETINGS. (a) The board shall meet at least
10 quarterly at the call of the chairperson, at the request of a majority
11 of the members, or at a regularly scheduled time set by the board.

12 (b) An action of the board is not binding unless taken at a
13 meeting where three or more of the members are present and vote in
14 favor of the action.

15 Sec. 05.18.040. DUTIES AND POWERS OF BOARD. (a) The board is
16 responsible for the management of the corporation but shall delegate
17 certain powers and duties to the executive director in accordance with
18 AS 05.18.060 - 05.18.070. In managing the corporation the board shall

19 (1) be responsible for the management of the financial and
20 legal obligations of the corporation;

21 (2) generally manage the corporation on a self-sustaining
22 basis for the purpose of revenue generation;

23 (3) determine policy direction for the operation and admin-
24 istration of the lottery;

25 (4) report to the governor and the legislature each quarter
26 on the total lottery revenue, prize disbursement and other expenses
27 for the preceding quarter;

28 (5) report to the governor and the legislature each year,
29 including a full and complete statement of lottery revenue, prize

1 disbursement and other expenses, and recommendations for changes in
2 this chapter;

3 (6) report to the governor and the legislature as frequent-
4 ly as the board determines necessary on conclusions from the analysis
5 of the reaction of state residents to the lottery, and on matters that
6 require changes in the law to prevent violations or evasions of this
7 chapter or to correct undesirable conditions in connection with the
8 operation or administration of the lottery;

9 (7) monitor the operation of the lottery throughout the
10 state; and

11 (8) study and investigate the operation and administration
12 of the lottery laws of other states and of federal laws that affect
13 the lottery.

14 (b) The board may do all things necessary and appropriate to
15 exercise the corporation's duties and powers under this chapter.

16 Sec. 05.18.050. REGULATIONS. The board shall adopt regulations
17 under the Administrative Procedure Act (AS 44.62) to establish

18 (1) the type of lottery to be conducted;
19 (2) the price of lottery products;
20 (3) the numbers and sizes of the prizes for the winning
21 lottery products;

22 (4) the manner of selecting the winning lottery products;
23 (5) the frequency of the drawings or selections of winning
24 lottery products;

25 (6) the type and number of locations where lottery products
26 may be sold;

27 (7) the method to be used in selling lottery products;
28 (8) the manner of payment of prizes to the holders of the
29 winning lottery products;

1 (9) the procedures for contracting with persons to be
2 agents;

3 (10) the manner and amount of compensation to be paid
4 agents;

5 (11) the prizes that an agent or an employee of the agent
6 can award; and

7 (12) other matters necessary or desirable to carry out this
8 chapter, to operate the lottery efficiently and economically, and to
9 make the purchase of lottery products and the distribution of prizes
10 convenient.

11 Sec. 05.18.060. EXECUTIVE DIRECTOR AND EMPLOYEES. (a) The
12 corporation shall be under the immediate supervision and direction of
13 an executive director who is qualified by training and experience to
14 direct the work of the corporation. The governor shall appoint the
15 director. The director may not engage in another profession or occu-
16 pation.

17 (b) Subject to the approval of the board, the director may
18 appoint deputies required to carry out the functions and duties of the
19 corporation. The director may appoint professional, technical, and
20 clerical employees necessary to perform the duties of the corporation.

21 (c) The director and other employees of the corporation are in
22 the exempt service under AS 39.25.110.

23 (d) The corporation may not employ a person who has been con-
24 victed, including conviction based on a guilty plea or plea of nolo
25 contendere, of a felony or other crime if the felony or other crime is
26 substantially related to the qualifications, functions, or duties of
27 the employee.

28 Sec. 05.18.070. DUTIES OF DIRECTOR. The director shall

29 (1) supervise the operation and administration of the

lottery;

(2) act as secretary to the board;

(3) contract with agents to sell lottery products;

(4) meet at least quarterly with the board on the operation and administration of the lottery;

(5) make available for inspection by the board, upon request, all books, records, files, and other information and documents of the corporation;

(6) advise the board and make recommendations to improve the operation and administration of the lottery;

(7) suspend or revoke a contract issued under this chapter for a violation of this chapter or the regulations adopted under this chapter;

(8) subject to the approval of the board enter into contracts for the operation and administration of the lottery, except that agent contracts are not subject to the approval of the board; and

(9) provide each month to the board a full and complete statement of the lottery revenue, prize disbursements and other expenses for the preceding month.

Sec. 05.18.080. SUBPOENAS. (a) The director or the board may subpoena witnesses and documents in a matter over which the corporation has jurisdiction, control or supervision. The director or the board may administer oaths and affirmations to persons whose testimony is required.

(b) If a person fails to obey a subpoena, or if a person refuses to answer a relevant question or to exhibit a document when ordered to do so by the director or the board, the director or the board may apply to the superior court for an order directing the person to comply with the subpoena or the order. The court may order the person

to comply.

ARTICLE 2. LOTTERY RETAIL SALES AGENTS.

Sec. 05.18.100. LOTTERY RETAIL SALES AGENTS. (a) The director may contract with persons on behalf of the corporation to be lottery retail sales agents.

(b) A lottery retail sales agent may

(1) sell lottery products;

(2) award prizes as allowed under regulations of the board;

and

(3) hire employees to perform the services under (1) and (2) of this subsection.

(c) An agent shall supervise each employee of the agent: in the employee's performance of the services under (b)(1) and (2) of this section.

Sec. 05.18.105. QUALIFICATIONS FOR AGENT CONTRACTS. (a) A person who wishes to contract with the corporation to be an agent shall apply on a form provided by the corporation. The director may charge the applicant a fee to cover the costs of processing the application and checking the background of the applicant.

(b) Before contracting with an applicant to be an agent, the director shall consider

(1) the financial responsibility and security of the applicant and the applicant's business or activity;

(2) the accessibility of the applicant's place of business or activity to the public;

(3) the ability of the applicant to promote the retail sale of lottery products;

(4) the sufficiency of existing agent contracts to serve the public convenience;

(5) the volume of expected sales; and

(6) other factors the director determines are relevant.

(c) The director may not contract with an applicant to be an agent if the applicant

(1) would be engaged in business exclusively as an agent;

(2) is an individual under the age of 18; or

(3) has been convicted of a felony or gambling misdemeanor, including conviction based on a guilty plea or plea of nolo contendere.

Sec. 05.18.110. DURATION OF AGENT CONTRACTS. The director may contract with an agent for a term of not more than two years, but may renew the contract.

Sec. 05.18.120. REVOCATION OR SUSPENSION OF AGENT CONTRACTS.

(a) The director shall suspend or cancel the contract of an agent who violates AS 05.18.320.

(b) The director may suspend or cancel the contract of an agent who violates a regulation adopted under this chapter or a provision of this chapter other than AS 05.18.320.

(c) The director shall conduct proceedings to suspend or cancel an agent contract under the Administrative Procedure Act (AS 44.62).

Sec. 05.18.130. COMPENSATION OF AGENTS. (a) The director shall establish the levels of compensation for agents. The director may establish bonus or incentive awards.

(b) When establishing the compensation for agents the director shall consider

(1) the time and the cost of overhead necessary to make the lottery products available at convenient times and for sufficient hours to accommodate the public;

(2) the time necessary for an agent to keep adequate

records of the sales of lottery products and to prepare the deposits and reports required under AS 05.18.140;

(3) other criteria the director considers relevant.

Sec. 05.18.140. DEPOSIT OF RECEIPTS AND REPORTS. (a) Each agent shall deposit to the credit of the state in a bank designated by the director all money received by the agent from the sale of lottery products.

(b) Each agent shall file with the director on a form provided by the corporation weekly reports of the receipts and transactions in the sale of lottery products.

(c) The director may impose a service charge on an agent if the payor bank dishonors

(1) a check that is deposited to the credit of the state by the agent; or

(2) an electronic transfer of funds to the state lottery account from the account of the agent for money received from the sale of lottery products.

(d) The director may charge an agent with interest on money that is not paid to the state within 10 days after the due date and may impose an additional service charge in an amount to cover administrative costs if the debt is referred for collection.

(e) The amount, including any interest or service charge, owed to the corporation by an agent is a lien on the property of the agent at the time that the corporation files a claim of lien in the recorder's office of the recording district of the principal place of business of the agent.

Sec. 05.18.150. BOND. (a) Each applicant for an agent contract shall, at the time of application under AS 05.18.105, file with the corporation and maintain during the term of an agent contract a bond

running to the state with a corporate surety qualified to do business in the state. The amount of the bond shall be determined by the board.

(b) The bond required by this section remains in effect until cancelled by action of the surety, the principal, or the corporation.

(c) The state or another person may not bring an action on the bond more than three years after its cancellation.

ARTICLE 3. PRIZES.

Sec. 05.18.200. ASSIGNMENT OF PRIZES. A person may not assign a right to a prize. However, a prize may be paid to a person other than the prize winner under a court order or to the estate of a deceased prize winner. The state is discharged of all further liability when a prize has been paid under this section.

Sec. 05.18.210. PAYMENT OF PRIZES TO PERSONS UNDER 18 YEARS.

(a) If a person entitled to a prize is under the age of 18 years, and if the prize is \$5,000 or less, the director may deliver the prize to an adult member of the minor's family, or to a guardian of the minor, in the form of a check or draft payable to the order of the minor. If the prize is more than \$5,000, the director may deliver the prize by depositing the amount of the prize in a bank to the credit of an adult member of the minor's family, or a guardian of the minor, as custodian for the minor. The person named as custodian shall have the same duties and powers as a person designated as a custodian under AS 45.60.

(b) The state is discharged of all further liability after payment of a prize to a minor under this section.

(c) In this section, the terms "bank", "guardian" and "member" of a "minor's family" have the meanings given in AS 45.60.091.

Sec. 05.18.220. UNCLAIMED PRIZE MONEY. The director shall

retain unclaimed prize money for the person entitled to it for one year after the prize is awarded. If the winner does not claim the prize money within the year, the corporation shall return the money and accrued interest to the state lottery fund.

ARTICLE 4. MISCELLANEOUS PROVISIONS.

Sec. 05.18.300. STATE LOTTERY FUND AND APPROPRIATIONS. There is created in the general fund the state lottery fund. The state lottery fund consists of all revenue received from the sale of lottery products and all other money credited or transferred to the fund from another fund or source. The commissioner of administration shall separately account for money that the corporation deposited in the fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the corporation to carry out the purposes of this chapter.

Sec. 05.18.310. AUDIT. The board shall have an audit of the books and accounts of the corporation performed at least once in each year by certified public accountants. The board may have special audits performed at any time on its own motion or at the request of the director. The board shall file a copy of each audit with the commissioner of revenue and the legislature.

Sec. 05.18.320. PROHIBITED ACTS. (a) A person may not

(1) act as an agent or sell a lottery product unless the person has a contract with the corporation to be an agent, or is an employee of an agent and sells lottery products or awards lottery prizes under the supervision of the agent;

(2) sell a lottery product at a price greater than that fixed by the corporation;

(3) sell or offer to sell a lottery product to a person under the age of 18;

(4) knowingly present a counterfeit or altered lottery product for payment or transfer a counterfeit or altered lottery product to another person to present for payment;

(5) with intent to defraud, falsely make, alter, forge, utter, pass or counterfeit a lottery product; or

(6) impersonate a lottery representative.

(b) An agent, the governor, or an officer, employee, or contractor of the corporation or of the governor, may not purchase a lottery product or receive a lottery prize.

(c) An agent may not wilfully withhold funds owed to the lottery.

(d) This section does not prohibit a person from giving a lottery product to another person of any age.

Sec. 05.18.330. ASSIGNMENT OF CONTRACTS. A person that enters into a contract under this chapter may not assign the contract without the approval of the board.

Sec. 05.18.340. PENALTY. A person that violates AS 05.18.140 - 05.18.200, 05.18.320 or 05.18.330 is guilty of a class C felony.

Sec. 05.18.350. STATEMENT OF ODDS. Each lottery product must indicate the odds of winning a prize in the particular lottery game represented by the lottery product.

Sec. 05.18.360. APPLICABILITY OF OTHER LAWS. No other law regarding the sale of lottery products or the administration of a lottery applies to the sale of lottery products under this chapter.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 05.18.900. DEFINITIONS. In this chapter, unless the context requires otherwise,

(1) "agent" means a person who has contracted with the corporation to be a lottery retail sales agent under this chapter;

(2) "agent contract" means a contract under AS 08.18.100 between the state and a person for the person to be an agent;

(3) "board" means the board of directors of the corporation;

(4) "corporation" means the Alaska State Lottery Corporation;

(5) "director" means the executive director of the corporation;

(6) "lottery" or "state lottery" means the lottery established and operated under this chapter;

(7) "lottery product" means a ticket, receipt, card, or other item, except a lottery prize, received by a person from an agent or an employee of an agent as evidence of participation in the lottery;

(8) "operation and administration" includes accounting, sales, promotion, and security;

(9) "person" has the meaning given in AS 01.10.060 and also includes an estate, receiver, trustee, assignee, referee, or other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and a department, commission, agency or instrumentality of the state, including municipalities and the agencies and instrumentalities of them.

* Sec. 2. AS 39.25.110(11) is amended by adding a new subparagraph to read:

(G) Alaska State Lottery Corporation;

* Sec. 3. AS 39.50.200(b) is amended by adding a new paragraph to read:

(48) Alaska State Lottery Corporation (AS 05.18).

* Sec. 4. The lieutenant governor shall place before the qualified voters of the state at the next general election the following question,
CSSSHB 338(Jud)

advisory to the legislature. The question shall appear on the ballot substantially the following form:

Q U E S T I O N

The legislature has passed a law to establish a state lottery in 1987. Should the state operate a lottery?

Yes [] No []

* Sec. 5. Sections 1 - 3 of this Act take effect March 15, 1987.

* Sec. 6. Section 4 of this Act takes effect immediately in accordance with AS 01.10.070(c).

1

**HOUSE
COMMITTEE REPORT**

(7)

Date referred: 2/5/86

FURTHER REFERRALS: FINANCE

DATE: _____

The JUDICIARY Committee has considered SSHB 338

"An Act establishing a state lottery; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS SSHB 338 (JUD) same title
 new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

~~W. H. Wood~~

Robin L. Taylor

SIGNING OTHER RECOMMENDATIONS:

W. H. Miller - DO NOT PASS

ROBERT PHILLIPS - Do Not Pass

John Smith - Do Not Pass

John Clockman - NO REC

W. H. Miller

1 IN THE HOUSE

BY THOMPSON

2 2d SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 338

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a state lottery; authorizing an
7 advisory vote on the lottery; and providing for an
8 effective date."

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

10 * Section 1. AS 05 is amended by adding a new chapter to read:

11 CHAPTER 18. STATE LOTTERY.

12 ARTICLE 1. ADMINISTRATION.

13 Sec. 05.18.010. CREATION OF CORPORATION. The Alaska State
14 Lottery Corporation is established for the purpose of generating
15 revenue for the state. The corporation is a public corporation and is
16 an instrumentality of the state within the Department of Revenue.

17 Sec. 05.18.020. BOARD OF DIRECTORS. (a) The powers of the
18 corporation are vested in the board of directors. The board consists
19 of five members who qualify under AS 39.05.100. The governor shall
20 appoint each member subject to confirmation by the legislature in
21 joint session under AS 39.05.080. No more than three of the five
22 members may be members of the same political party. The governor
23 shall appoint one member to serve as chairperson of the board.

24 (b) Members serve staggered terms of five years. A vacancy on
25 the board does not impair the authority of the board to exercise the
26 powers and perform the duties of the corporation.

27 (c) A member of the board is entitled to compensation at a rate
28 of \$150 for each day the member is engaged in the actual performance
29 of duties as a member of the board. The board may provide by

1 regulation for compensation for partial days during which an appointed
2 member is engaged in actual performance of duties as a member of the
3 board.

4 (d) In addition to compensation under (c) of this section, a
5 member of the board is entitled to per diem and travel allowances
6 authorized for members of boards and commissions under AS 39.20.180.

7 (e) A member of the board may not have a pecuniary interest in a
8 contract or agreement entered into by the corporation.

9 Sec. 05.18.030. MEETINGS. (a) The board shall meet at least
10 quarterly at the call of the chairperson, at the request of a majority
11 of the members, or at a regularly scheduled time set by the board.

12 (b) An action of the board is not binding unless taken at a
13 meeting where three or more of the members are present and vote in
14 favor of the action.

15 Sec. 05.18.040. DUTIES AND POWERS OF BOARD. (a) The board is
16 responsible for the management of the corporation but shall delegate
17 certain powers and duties to the executive director in accordance with
18 AS 05.18.060 - 05.18.080. In managing the corporation the board shall

19 (1) be responsible for the management of the financial and
20 legal obligations of the corporation;

21 (2) generally manage the corporation on a self-sustaining
22 basis for the purpose of revenue generation;

23 (3) determine policy direction for the operation and admin-
24 istration of the lottery;

25 (4) report to the governor and the legislature each quarter
26 on the total lottery revenue, prize disbursement and other expenses
27 for the preceding quarter;

28 (5) report to the governor and the legislature each year,
29 including a full and complete statement of lottery revenue, prize

1 disbursement and other expenses, and recommendations for changes in
2 this chapter;

3 (6) report to the governor and the legislature as frequent-
4 ly as the board determines necessary on conclusions from the analysis
5 of the reaction of state residents to the lottery, and on matters that
6 require changes in the law to prevent violations or evasions of this
7 chapter or to correct undesirable conditions in connection with the
8 operation or administration of the lottery;

9 (7) monitor the operation of the lottery throughout the
10 state; and

11 (8) study and investigate the operation and administration
12 of the lottery laws of other states and of federal laws that affect
13 the lottery.

14 (b) The board may do all things necessary and appropriate to
15 exercise the corporation's duties and powers under this chapter.

16 Sec. 05.18.050. REGULATIONS BY THE BOARD. The board shall adopt
17 regulations under the Administrative Procedure Act (AS 44.62) to
18 establish

19 (1) the manner of payment of prizes to the holders of the
20 winning lottery products;

21 (2) the prizes that an agent or an employee of the agent
22 can award;

23 (3) other matters necessary or desirable to carry out this
24 chapter, to operate the lottery efficiently and economically, and to
25 make the purchase of lottery products and the distribution of prizes
26 convenient.

27 Sec. 05.18.060. EXECUTIVE DIRECTOR AND EMPLOYEES. (a) The
28 corporation shall be under the immediate supervision and direction of
29 an executive director who is qualified by training and experience to

1 direct the work of the corporation. The governor shall appoint the
2 director. The director may not engage in another profession or occu-
3 pation.

4 (b) Subject to the approval of the board, the director may
5 appoint deputies required to carry out the functions and duties of the
6 corporation. The director may appoint professional, technical, and
7 clerical employees necessary to perform the duties of the corporation.

8 (c) The director and other employees of the corporation are in
9 the exempt service under AS 39.25.110.

10 (d) The corporation may not employ a person who has been con-
11 victed, including conviction based on a guilty plea or plea of nolo
12 contendere, of a felony or other crime if the felony or other crime is
13 substantially related to the qualifications, functions, or duties of
14 the employee.

15 Sec. 05.18.070. DUTIES OF DIRECTOR. The director shall

16 (1) supervise the operation and administration of the lot-
17 tery;

18 (2) act as secretary to the board;

19 (3) contract with agents to sell lottery products;

20 (4) meet at least quarterly with the board on the operation
21 and administration of the lottery;

22 (5) make available for inspection by the board, upon re-
23 quest, all books, records, files, and other information and documents
24 of the corporation;

25 (6) advise the board and make recommendations to improve
26 the operation and administration of the lottery;

27 (7) suspend or revoke a contract issued under this chapter
28 for a violation of this chapter or the regulations adopted under this
29 chapter;

1 (8) subject to the approval of the board enter into con-
2 tracts for the operation and promotion of the lottery, except that
3 agent contracts are not subject to the approval of the board; and

4 (9) provide each month to the board a full and complete
5 statement of the lottery revenue, prize disbursements and other ex-
6 penses for the preceding month.

7 Sec. 05.18.080. REGULATIONS BY DIRECTOR. The director shall
8 adopt regulations under the Administrative Procedure Act (AS 44.62) to
9 establish the

- 10 (1) type of lottery to be conducted;
11 (2) price of lottery products;
12 (3) numbers and sizes of the prizes for the winning lottery
13 products;
14 (4) manner of selecting the winning lottery products;
15 (5) frequency of the drawings or selections of winning
16 lottery products;
17 (6) type and number of locations where lottery products may
18 be sold;
19 (7) method to be used in selling lottery products;
20 (8) procedures for contracting with persons to be agents;
21 and
22 (9) manner and amount of compensation to be paid agents.

23 Sec. 05.18.090. SUBPOENAS. (a) The director or the board may
24 subpoena witnesses and documents in a matter over which the corpo-
25 ration has jurisdiction, control or supervision. The director or the
26 board may administer oaths and affirmations to persons whose testimony
27 is required.

28 (b) If a person fails to obey a subpoena, or if a person refuses
29 to answer a relevant question or to exhibit a document when ordered to

1 do so by the director or the board, the director or the board may
2 apply to the superior court for an order directing the person to
3 comply with the subpoena or the order. The court may order the person
4 to comply.

5 ARTICLE 2. LOTTERY RETAIL SALES AGENTS.

6 Sec. 05.18.100. LOTTERY RETAIL SALES AGENTS. (a) The director
7 may contract with persons on behalf of the corporation to be lottery
8 retail sales agents.

9 (b) A lottery retail sales agent may

10 (1) sell lottery products;

11 (2) award prizes as allowed under regulations of the board;

12 and

13 (3) hire employees to perform the services under (1) and
14 (2) of this subsection.

15 (c) An agent shall supervise each employee of the agent in the
16 employee's performance of the services under (b)(1) and (2) of this
17 section.

18 Sec. 05.18.105. QUALIFICATIONS FOR AGENT CONTRACTS. (a) A
19 person who wishes to contract with the corporation to be an agent
20 shall apply on a form provided by the corporation.

21 (b) Before contracting with an applicant to be an agent, the
22 director shall consider

23 (1) the financial responsibility and security of the appli-
24 cant and the applicant's business or activity;

25 (2) the accessibility of the applicant's place of business
26 or activity to the public;

27 (3) the ability of the applicant to promote the retail sale
28 of lottery products;

29 (4) the sufficiency of existing agent contracts to serve

1 the public convenience;

2 (5) the volume of expected sales; and

3 (6) other factors the director determines are relevant.

4 (c) The director may not contract with an applicant to be an
5 agent if the applicant

6 (1) would be engaged in business exclusively as an agent;
7 or

8 (2) is an individual under the age of 18.

9 Sec. 05.18.110. TERMS OF AGENT CONTRACTS. The director may
10 contract with an agent for a term of not more than two years, but may
11 renew the contract. The director may not charge a fee for entering
12 into an agent contract.

13 Sec. 05.18.120. REVOCATION OR SUSPENSION OF AGENT CONTRACTS.

14 (a) The director shall suspend or cancel the contract of an agent who
15 violates AS 05.18.320.

16 (b) The director may suspend or cancel the contract of an agent
17 who violates a regulation adopted under this chapter or a provision of
18 this chapter other than AS 05.18.320.

19 (c) The director shall conduct proceedings to suspend or cancel
20 an agent contract under the Administrative Procedure Act (AS 44.62).

21 Sec. 05.18.130. COMPENSATION OF LOTTERY SALES AGENT. (a) The
22 director shall establish the levels of compensation for agents. The
23 director may establish bonus or incentive awards.

24 (b) When establishing the compensation for agents the director
25 shall consider

26 (1) the time and the cost of overhead necessary to make the
27 lottery products available at convenient times and for sufficient
28 hours to accommodate the public;

29 (2) the time necessary for an agent to keep adequate

1 records of the sales of lottery products and to prepare the deposits
2 and reports required under AS 05.18.140;

3 (3) other criteria the director considers relevant.

4 Sec. 05.18.140. DEPOSIT OF RECEIPTS AND REPORTS. (a) Each
5 agent shall deposit to the credit of the state in a bank designated by
6 the director all money received by the agent from the sale of lottery
7 products.

8 (b) Each agent shall file with the director on a form provided
9 by the corporation weekly reports of the receipts and transactions in
10 the sale of lottery products.

11 (c) The director may impose a service charge on an agent if the
12 payor bank dishonors

13 (1) a check that is deposited to the credit of the state by
14 the agent; or

15 (2) an electronic transfer of funds to the state lottery
16 account from the account of the agent for money received from the sale
17 of lottery products.

18 (d) The director may charge an agent with interest on money that
19 is not paid to the state within 10 days after the due date and may
20 impose an additional service charge in an amount to cover adminis-
21 trative costs if the debt is referred for collection.

22 (e) The amount, including any interest or service charge, owed
23 to the corporation by an agent is a lien on the property of the agent
24 at the time that the corporation files a claim of lien in the record-
25 er's office of the recording district of the principal place of busi-
26 ness of the agent.

27 Sec. 05.18.150. BOND. (a) Each applicant for an agent contract
28 shall, at the time of application under AS 05.18.105, file with the
29 corporation and maintain during the term of an agent contract a bond

1 running to the state with a corporate surety qualified to do business
2 in the state in an amount to be determined by the board. The bond
3 shall be conditioned upon the applicant's promise to pay

4 (1) all sales receipts due the state under this chapter;

5 (2) all amounts that may be adjudged against the applicant
6 by reason of the applicant's negligence as an agent or the applicant's
7 violation of this chapter or the regulations adopted under this chap-
8 ter.

9 (b) The bond required by this section remains in effect until
10 cancelled by action of the surety, the principal, or the corporation.

11 (c) The state or another person may not bring an action on the
12 bond more than three years after its cancellation.

13 ARTICLE 3. PRIZES.

14 Sec. 05.18.200. ASSIGNMENT OF PRIZES. A person may not assign a
15 right to a prize. However, a prize may be paid to a person other than
16 the prize winner under a court order or to the estate of a deceased
17 prize winner. The state is discharged of all further liability when a
18 prize has been paid under this section.

19 Sec. 05.18.210. PAYMENT OF PRIZES TO PERSONS UNDER 18 YEARS.

20 (a) If a person entitled to a prize is under the age of 18 years, and
21 if the prize is \$5,000 or less, the director may deliver the prize to
22 an adult member of the minor's family, or to a guardian of the minor,
23 in the form of a check or draft payable to the order of the minor. If
24 the prize is more than \$5,000, the director may deliver the prize by
25 depositing the amount of the prize in a bank to the credit of an adult
26 member of the minor's family, or a guardian of the minor, as custodian
27 for the minor. The person named as custodian shall have the same
28 duties and powers as a person designated as a custodian under
29 AS 45.60.

1 (b) The state is discharged of all further liability after
2 payment of a prize to a minor under this section.

3 (c) In this section, the terms "bank", "guardian" and "member"
4 of a "minor's family" have the meanings given in AS 45.60.091.

5 Sec. 05.18.220. UNCLAIMED PRIZE MONEY. The director shall
6 retain unclaimed prize money for the person entitled to it for one
7 year after the prize is awarded. If the winner does not claim the
8 prize money within the year, the corporation shall return the money
9 and accrued interest to the state lottery fund.

10 ARTICLE 4. MISCELLANEOUS PROVISIONS.

11 Sec. 05.18.300. STATE LOTTERY FUND AND APPROPRIATIONS. There is
12 created in the general fund the state lottery fund. The state lottery
13 fund consists of all revenue received from the sale of lottery
14 products and all other money credited or transferred to the fund from
15 another fund or source. The commissioner of administration shall
16 separately account for money that the corporation deposited in the
17 fund. The annual estimated balance in the account may be used by the
18 legislature to make appropriations to the corporation to carry out the
19 purposes of this chapter.

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21 books and accounts of the corporation performed at least once in each
22 year by certified public accountants. The board may have special
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24 the director. The board shall file a copy of each audit with the
25 commissioner of revenue and the legislature.

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29 employee of an agent and sells lottery products or awards lottery

1 prizes under the supervision of the agent;

2 (2) sell a lottery product at a price greater than that
3 fixed by the corporation;

4 (3) sell or offer to sell a lottery product to a person
5 under the age of 18;

6 (4) knowingly present a counterfeit or altered lottery
7 product for payment or transfer a counterfeit or altered lottery
8 product to another person to present for payment;

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10 utter, pass or counterfeit a lottery product; or

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29 lottery applies to the sale of lottery products under this chapter.

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6 advisory to the legislature. The question shall appear on the ballot in
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8 Q U E S T I O N

9 The legislature has passed a law to establish a state
10 lottery in 1987. Should the state operate a lottery?

11 Yes [] No []

12 * Sec. 5. Sections 1 - 3 of this Act take effect March 15, 1987.

13 * Sec. 6. Section 4 of this Act takes effect immediately in accordance
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1 IN THE HOUSE

BY THOMPSON

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 338
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a state lottery; and providing
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18 joint session under AS 39.05.080. No more than three of the five
19 members may be members of the same political party. The governor
20 shall appoint one member to serve as chairperson of the board.

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22 the board does not impair the authority of the board to exercise all
23 the powers and perform all the duties of the corporation.

24 (c) A member of the board is entitled to compensation at a rate
25 of \$150 for each day the member is engaged in the actual performance
26 of duties as a member of the board. The board may provide by regu-
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28 member is engaged in actual performance of duties as a member of the
29 board.

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17 legal obligations of the corporation;

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19 basis;

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21 the operation and administration of the lottery;

22 (4) report to the governor and the legislature each quarter
23 on the total lottery revenue, prize disbursement and other expenses
24 for the preceding quarter;

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26 including a full and complete statement of lottery revenue, prize
27 disbursement and other expenses, and recommendations for changes in
28 this chapter;

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1 frequently as the board determines necessary on conclusions from the
2 analysis of the reaction of state residents to the lottery, and on
3 matters that require changes in the law to prevent violations or
4 evasions of this chapter or to correct undesirable conditions in
5 connection with the administration or operation of the lottery;

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7 state; and

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12 exercise the corporation's duties and powers under this chapter.

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14 regulations under the Administrative Procedure Act (AS 44.62) to
15 establish

16 (1) the manner of payment of prizes to the holders of the
17 winning tickets or shares;

18 (2) apportionment of the total revenue accruing from the
19 sale of lottery tickets or shares and from all other sources among

20 (A) the payment of prizes to the holders of winning
21 tickets or shares;

22 (B) the payment of costs incurred in the operation and
23 administration of the lottery, including the expenses of the
24 corporation and any costs resulting from contracts entered into
25 for promotional, advertising, or operational services or for the
26 purchase or lease of lottery equipment and materials;

27 (C) transfer to the general fund; and

28 (3) other matters necessary or desirable to carry out this
29 chapter, to operate the lottery efficiently and economically, and to

1 make the purchase of tickets or shares and the distribution of prizes
2 convenient.

3 Sec. 05. 60. EXECUTIVE DIRECTOR AND EMPLOYEES. (a) The
4 corporation shall be under the immediate supervision and direction of
5 an executive director who is qualified by training and experience to
6 direct the work of the corporation. The governor shall appoint the
7 director. The director may not engage in another profession or
8 occupation.

9 (b) Subject to the approval of the board, the director shall
10 appoint deputies required to carry out the functions and duties of the
11 corporation. The director shall appoint professional, technical, and
12 clerical employees necessary to perform the duties of the corporation.

13 (c) The director and other employees of the corporation are in
14 the exempt service under AS 39.25.110.

15 (d) The corporation may not employ a person who has been
16 convicted, including conviction based on a guilty plea or plea of nolo
17 contendere, of a felony or other crime if the felony or other crime is
18 substantially related to the qualifications, functions, or duties of
19 the employee.

20 Sec. 05.18.070. DUTIES OF DIRECTOR. The director shall

21 (1) supervise and administer the operation of the lottery;

22 (2) act as secretary to the board;

23 (3) license agents to sell lottery tickets;

24 (4) meet at least quarterly with the board on the operation
25 and administration of the lottery;

26 (5) make available for inspection by the board, upon
27 request, all books, records, files, and other information and docu-
28 ments of the corporation;

29 (6) advise the board and make recommendations to improve.

1 the operation and administration of the lottery;

2 (7) suspend or revoke a license issued under this chapter
3 for a violation of this chapter or the regulations adopted under this
4 chapter;

5 (8) subject to the approval of the board enter into
6 contracts for the operation and promotion of the lottery; and

7 (9) provide each month to the board a full and complete
8 statement of the lottery revenue, prize disbursements and other ex-
9 penses for the preceding month.

10 Sec. 05.18.080. REGULATIONS BY DIRECTOR. The director shall
11 adopt regulations under the Administrative Procedure Act (AS 44.62) to
12 establish the

13 (1) type of lottery to be conducted;

14 (2) price of tickets or shares in the lottery;

15 (3) numbers and sizes of the prizes for the winning tickets
16 or shares;

17 (4) manner of selecting the winning tickets or shares;

18 (5) frequency of the drawings or selections of winning
19 tickets or shares;

20 (6) type and number of locations where tickets or shares
21 may be sold;

22 (7) method to be used in selling tickets or shares;

23 (8) licensing of agents to sell tickets or shares; and

24 (9) manner and amount of compensation to be paid licensed
25 sales agents.

26 - Sec. 05.18.090. SUBPOENAS. (a) The director or the board may
27 subpoena witnesses and documents in a matter over which the
28 corporation has jurisdiction, control or supervision. The director or
29 the board may administer oaths and affirmations to persons whose

1 testimony is required.

2 (b) If a person fails to obey a subpoena, or if a person refuses
3 to answer a relevant question or to exhibit a document when ordered to
4 do so by the director or the board, the director or the board may
5 apply to the superior court for an order directing the person to
6 comply with the subpoena or the order. The court may order the person
7 to comply.

8 ARTICLE 2. SALES AGENTS.

9 Sec. 05.18.100. LICENSING OF LOTTERY SALES AGENTS. (a) A
10 person who wishes to be licensed as a lottery sales agent shall apply
11 on a form provided by the corporation.

12 (b) Before issuing a lottery sales agent license the director
13 shall consider

14 (1) the financial responsibility and security of the
15 applicant and the applicant's business or activity;

16 (2) the accessibility of the applicant's place of business
17 or activity to the public;

18 (3) the ability of the applicant to promote the sale of
19 lottery tickets or shares;

20 (4) the sufficiency of existing licenses to serve the
21 public convenience;

22 (5) the volume of expected sales; and

23 (6) other factors the director determines are relevant.

24 (c) The director may not issue a license to a person who

25 (1) would be engaged in business exclusively as a lottery
26 sales agent; or

27 (2) is under the age of 18.

28 Sec. 05.18.110. LICENSE. A lottery sales agent license is valid
29 for one year and may be renewed. The director may not charge a fee

1 for licensing or license renewal.

2 Sec. 05.18.120. REVOCATION OF LICENSES. (a) The director shall
3 suspend or revoke the license of a lottery sales agent who violates
4 AS 05.18.310.

5 (b) The director may suspend or revoke the license of a lottery
6 sales agent who violates a provision of this chapter other than
7 AS 05.18.310 or a regulation adopted under this chapter.

8 (c) The director shall conduct proceedings to suspend or revoke
9 a lottery sales agent license issued under this chapter under the
10 Administrative Procedure Act (AS 44.62).

11 Sec. 05.18.130. COMPENSATION OF LOTTERY SALES AGENT. (a) The
12 director shall establish commissions for selling lottery tickets and
13 for cashing winning lottery tickets. The director may establish bonus
14 or incentive awards.

15 (b) When establishing the compensation to be paid lottery sales
16 agents the director shall consider

17 (1) the time and the cost of overhead necessary to make the
18 tickets or shares available at convenient times and for sufficient
19 hours to accommodate the public;

20 (2) the time necessary for a lottery sales agent to keep
21 adequate records of ticket sales and to prepare the deposits and
22 reports required under AS 05.18.140;

23 (3) other criteria the director considers relevant.

24 Sec. 05.18.140. DEPOSIT OF RECEIPTS AND REPORTS. (a) Each
25 lottery sales agent shall deposit to the credit of the state in a bank
26 designated by the director all money received by the agent from the
27 sale of lottery tickets or shares, less the amount retained as compen-
28 sation for the sale of the tickets or shares.

29 (b) Each lottery sales agent shall file with the director on a