

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

3485 HLAB HB 294 - HB 305

Budget Justification

A.	SALARIES	
1.	<u>Principal Investigator</u>	
	(1) Economist (Alaska state level II) 6 months	\$18,000
2.	<u>Trained Survey Technicians</u>	
	(2) 3 months @ \$10/hr	\$ 9,200
B.	TRAVEL	\$ 2,000
	1. (1) round trip airfare to Juneau	
	2. Road mileage in Fairbanks	
C.	SUPPLIES	\$ 600
	Survey instruments, office supplies, postage, etc.	
D.	SERVICES	
	1. Computer time	\$ 500
	2. Statistical sampling consultation	\$ 1,000
	3. Secretarial support (part-time, need basis)	\$ 2,000
	4. Xerox	\$ 500
	5. Telephone budget	\$ 1,000
E.	OVERHEAD	\$ 4,800
	6 months @ \$800/mo	
	TOTAL COST	\$38,200

Selected Bibliography

Carbaugh, R.J., International Economics, Second Edition,
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the Fairbanks Area, The Arctic Dispatch, January 31, 1985.

Fairbanks North Star Borough Assembly, Policy Statement on Local
Hire, March, 1985.

Weddleton, J., "An Input-Output Model for the Alaska Economy," a
master's degree in progress, University of Alaska,
Fairbanks, expected completion date--summer 1985.

Zobel, R., "Local Hire Self-Defeating Ineffective and
Illegal," The Arctic Dispatch, February 28, 1985.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

2450

MEMORANDUM

February 14, 1985

SUBJECT: Alaska Hire (Work Order No. 14-0485)
TO: Senator Victor Fischer
FROM: Teresa B. Cramer *Teresa Cramer*
Legislative Counsel

You have asked for a bill providing for the strongest Alaska resident hire permissible under the constitution, and to apply that law to public and, if possible, private employees. Given the present state of the law, it is not possible to draft a bill that would withstand constitutional scrutiny without specific information about the particular harm that out-of-state employees create for Alaska residents and a close connection between the demonstrated harm and the remedy created in the bill.

Alaska currently has a strong local preference law for state funded construction projects. AS 36.10.010 provides in part

(a) In the performance of contracts let by a municipality for construction . . . 95 percent residents shall be employed where they are available and qualified. If 10 or fewer persons are employed under the contract, then 90 percent residents shall be employed where they are available and qualified. In all cases of public works projects, preference shall be given to residents.

(b) When a construction project is partly or wholly funded by state money and the state . . . is a signatory to the construction contract, the contract shall require that the worker hours on a craft-by-craft basis shall be performed at least 95 percent by bona fide state residents. If 10 or fewer persons are employed under the contract, then 90 percent residents shall be employed where they are available and qualified.

The statute as it now reads could be subject to constitutional challenge under the Privileges and Immunities clause and a strong showing would be required to support it.

Two recent cases of the United States Supreme Court have examined local hire laws. In White v. Massachusetts Council of Construction Employees, 460 U.S. 204, 75 L.Ed. 2d 1 (1983), the Court held that the City of Boston's resident work force preference (requiring employment of at least 50 percent bona fide residents of Boston on construction projects funded in whole or in part by the city) did not violate the Commerce Clause of the U.S. Constitution. The court reasoned that Boston was a market participant rather than a market regulator, entitled to favor its own citizens over others while acting in a proprietary manner. The court noted that the record did not support a finding that the preference would have a "significant impact" on firms employing out-of-state residents.

Under White, Alaska can favor its own citizens while acting as a market participant without violating the Commerce Clause. Measures that required others to favor Alaskans over out-of-state residents would be subject to Commerce Clause and Privileges and Immunities prohibitions. White and Hicklin v. Orbeck, 437 U.S. 518 (1978).

However, in a later case, United Building and Construction Trades Council v. Camden, 104 S.Ct. 1020, 79 L.Ed. 2d 249 (1984), the Court examined a similar ordinance and found that the ordinance appeared to violate the Privileges and Immunities clause of the U.S. Constitution. The distinction between market participant and market regulator that the court relied on in White did not dispose of the Privileges and Immunities issue. The clause imposes a direct restraint on state action in the interests of interstate harmony. The Court noted that a state may discriminate

against citizens of other states where there is a "substantial reason" for the difference in treatment. "The inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them." As part of any justification offered for the discriminatory law, nonresidents must be somehow shown to "constitute a peculiar source of the evil at which the statute is aimed."

Senator Victor Fischer
February 14, 1985
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United Bldg & Construction, 52 LW at 4191, citations omitted. The record in the case was insufficient to determine whether there was justification for the discrimination, since the case was heard initially by the New Jersey supreme court without a trial. The Court remanded the case to the state court to permit Camden to attempt to justify the discrimination against citizens of other states.

The Seventh Circuit Court of Appeals considered both White and United Bldg & Construction when it overturned an Illinois preference law as violating the Privileges and Immunities clause. W.C.M. Window v. Bernardi, 730 F.2d 486 (1984). The court noted that Illinois had offered no evidence of the benefits of a residents-preference law in dealing with a problem created by nonresidents and suggested the kind of evidence needed to meet a challenge under the Privileges and Immunities clause.

We are not told the unemployment rate in Illinois' construction industry, what such unemployment costs the state, whether it would be significantly increased by throwing open public construction projects to nonresidents (which might just cause a reshuffling of jobs between public and private projects), and whether the costs -- if any -- to Illinois of allowing nonresident labor on such projects, costs in higher unemployment or welfare benefits paid unemployed construction workers or their families, are likely to exceed any cost savings in public construction from hiring nonresident workers.

If I may be of further assistance, please advise.

TBC:ejb
J11/85

tion of the questionnaire system), we should opt for the interpretation that effectuates the plain Congressional intent. And there are clear expressions of Congressional commitment to random selection. We should thus decide that constitutes a substantial failure to comply with the Act in light of the overall Congressional purpose of randomness. The majority ignores that purpose, sweeping it under the rug by characterizing any attention to questionnaire return as "conscription." Congress may not have intended a generally applicable system of "conscription." But given the repeated references in the legislative history to the goal of "random selection" there is no doubt that Congress intended some reaction by the clerk to a response rate as extremely low as that alleged in this case.

The majority's references to Gometz' sixth amendment rights are mystifying and lead away from the central problem of Congressional intent. This court has acknowledged that the Act may require a more perfect cross section than the constitution. See *United States v. Dellinger*, 472 F.2d 310, 365 (7th Cir.1972), cert. denied, 410 U.S. 970, 93 S.Ct. 1413, 35 L.Ed.2d 706 (1974). Whatever the relationship between the sixth amendment and the Act, Gometz has not made a sixth amendment claim and the majority's discussion of the amendment serves merely to confuse.³ Certainly the majority does not believe that Congress lacks power to prescribe jury selection standards more rigorous than the minimum intended by the framers.

In summary, I do not think that any level of nonresponse constitutes a *per se* violation of the Act, but a 70% nonresponse coupled with a showing of substantial unrepresentativeness of the jury panel would so far depart from the principles of the Jury Selection and Service Act that a violation would be shown. The only thing that is before us now is whether a hearing should be provided in which the defendant

3. In his reply brief, Gometz specifically disavowed any sixth amendment basis in his challenge to the jury pool and criticized the govern-

would have the burden of showing the second prong of the requirements for a violation—substantial unrepresentativeness of the resulting panel in a cognizable category. This seems to me to be a minimalist view of our obligations to enforce the Jury Selection and Service Act.

For these reasons, I respectfully dissent with respect to the claim based on nonresponse to questionnaires.



W.C.M. WINDOW CO., INC., et al.
Plaintiffs-Appellees,

v.

E. Allen BERNARDI, Director of the
Department of Labor, State of
Illinois, Defendant-Appellant.

No. 83-1984.

United States Court of Appeals,
Seventh Circuit.

Argued Jan. 10, 1984.

Decided March 16, 1984.

As Amended on Denial of Rehearing and
Rehearing En Banc May 11, 1984.

Director of Illinois Department of Labor appealed from a decision of the United States District Court for the Central District of Illinois, Michael M. Mihm, J., enjoining him from enforcing Illinois' preference law. The Court of Appeals, Posner, Circuit Judge, held that: (1) District Court was not required to abstain in favor of state court; (2) Illinois preference law violated commerce clause; (3) law was prima facie unlawful under privileges and immunities clause; and (4) state failed to satisfy burden of justifying law's discrimination

ment for citing constitutional cases in response to his statutory arguments.

against nonresidents under privileges and immunities clause.

Affirmed.

1. Courts ⇨508(7)

Under *Younger*, federal district court may not enjoin state criminal prosecution in civil rights suit, provided that plaintiff in suit can raise his federal claims in state court by way of defense to prosecution. 42 U.S.C.A. § 1983.

2. Courts ⇨508(2)

Younger doctrine includes cases in which state civil proceeding sought to be enjoined in civil rights suit involves important state interests. 42 U.S.C.A. § 1983.

3. Injunction ⇨1, 85(1)

Injunction is extraordinary remedy, rarely available as matter of right and never more extraordinary than when, if granted, it would prevent government officials from proceeding under statute founded on important state interests against violator of statute.

4. Courts ⇨508(1)

Federal court injunction which, if granted, would prevent government officials from proceeding under statute founded on important state interests against violator of statute would offend comity and federalism.

5. Injunction ⇨16

Injunction will not be issued when plaintiff has adequate remedy at law.

6. Injunction ⇨16

Plaintiff has "adequate remedy at law," precluding issuance of injunction, when plaintiff can assert ground on which he seeks injunction as defense to very proceeding to which injunction would put a stop.

See publication Words and Phrases for other judicial constructions and definitions.

7. Courts ⇨508(1)

Younger doctrine is inapplicable when state tribunal is deemed to have prejudged

federal claim because tribunal has pecuniary interest in outcome.

8. Administrative Law and Procedure ⇨229

Habeas Corpus ⇨3

Exhaustion of remedies requirements in administrative and habeas corpus cases are satisfied when adverse precedent makes remedies futile as practical matter to pursue.

9. Constitutional Law ⇨207(1)

Privileges and immunities clause of Federal Constitution does not protect corporations. U.S.C.A. Const. Art. 4, § 2, cl. 1.

10. Constitutional Law ⇨207(1)

Unincorporated association is not "citizen" within meaning of privileges and immunities clause. U.S.C.A. Const. Art. 4, § 2, cl. 1; Ill.S.H.A. ch. 30, § 185; ch. 38, § 2-15; ch. 120, § 15-1501(a)(1).

11. Constitutional Law ⇨12,3(1)

Under Illinois law, association may bring equity suit on basis that law violates its member's rights under privileges and immunities clause, even though association has no rights under clause. U.S.C.A. Const. Art. 4, § 2, cl. 1; Ill.S.H.A. ch. 30, § 185; ch. 38, § 2-15; ch. 120, § 15-1501(a)(1).

12. Federal Courts ⇨18

Equities did not require district court to abstain in favor of state court, in which suit was filed on same day as federal civil rights action, on challenge to Illinois preference law where state was not sufficiently exercised about contractors' apparent violations of preference law to bring criminal or quasi-criminal proceeding against them, policy underlying preference law was less central to goals of state government than protecting health, safety and morals of its population, contractors would have no practical remedy in state courts if state courts adhered to prior decision upholding preference law against identical challenge, and individual federal plaintiffs might have no state court remedy at all for violation of privileges and immunities clause. U.S.C.A.

Const. Art. 4, § 2, cl. 1; Ill.S.H.A. ch. 48, §§ 269-274.

13. Constitutional Law ⇨32

Commerce clause contains implicit prohibition, enforceable by courts without congressional action, of state's discriminating against or unduly burdening interstate commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.

11. Commerce ⇨51

State may not erect a tariff wall protecting its industries from competition of industries in other states and in foreign countries merely to promote economic welfare of its own citizens. U.S.C.A. Const. Art. 1, § 8, cl. 3.

15. Commerce ⇨51

Fact that state's tariff might have only a small effect on interstate trade would not save it from invalidation under commerce clause. U.S.C.A. Const. Art. 1, § 8, cl. 3.

16. Commerce ⇨82.25

If Illinois limited preference law to construction project financed in whole or in part or administered by state, law would not violate commerce clause. U.S.C.A. Const. Art. 1, § 8, cl. 3.

17. Commerce ⇨82.25

Where school board's window-replacement project was not even partially financed by state or being administered by state, school board was "market participant" and state was "regulator" for purpose of evaluating Illinois' preference law under commerce clause. Ill.S.H.A. ch. 122, §§ 17-11 to 17-13; U.S.C.A. Const. Art. 1, § 8, cl. 3.

18. Commerce ⇨56

For purpose of evaluating state law under commerce clause, any consideration of impact on interstate commerce is precluded until state is found to be regulator of rather than participant in market. U.S.C.A. Const. Art. 1, § 8, cl. 3.

19. Federal Courts ⇨930

Summary affirmance does not commit Supreme Court to details of lower court's opinion.

20. Commerce ⇨51

Preferring welfare of residents to that of nonresidents is not a good defense under commerce clause. U.S.C.A. Const. Art. 1, § 8, cl. 3.

21. Commerce ⇨82.25

Illinois preference law, requiring that contractor on any public works project or improvement for state or any political subdivision or other governmental unit employ only Illinois laborers unless contractor certifies that Illinois laborers either are not available or are incapable of performing particular type of work involved, violated commerce clause. Ill.S.H.A. ch. 38, §§ 1005-8-3(a)(3), 1005-9-1(a)(3); ch. 48, §§ 269-274; 42 U.S.C.A. § 1983; U.S.C.A. Const. Art. 1, § 8, cl. 3.

22. Constitutional Law ⇨46(1)

Court should not decide constitutional question unnecessarily.

23. Federal Courts ⇨753

Although judgment would be the same whether Illinois preference law violated commerce clause, as found, or privileges and immunities clause, where ruling on privileges and immunities issue might avoid necessity of remand should review of decision be sought and granted and Supreme Court disagree with Court of Appeals' interpretation of commerce clause, ruling might also help Supreme Court to decide whether case merited further review, and commerce clause and privileges and immunities clause were closely related in action, Court of Appeals would address privileges and immunities issue. Ill.S.H.A. ch. 38, §§ 1005-8-3(a)(3), 1005-9-1(a)(3); ch. 48, § 274; 42 U.S.C.A. § 1983; U.S.C.A. Const. Art. 1, § 8, cl. 3; Art. 4, § 2, cl. 1.

24. Constitutional Law ⇨207(2)

Public Contracts ⇨2

Illinois preference law, requiring that contractor on any public works project or improvement for state, political subdivision or other governmental unit employ only Illinois laborers unless contractor certifies that Illinois laborers either are not availa-

ble or are incapable of performing particular type of work involved, was prima facie unlawful under privileges and immunities clause. Ill.S.H.A. ch. 38, §§ 1005-8-3(a)(3), 1005-9-1(a)(3); ch. 48, § 274; 42 U.S.C.A. § 1983; U.S.C.A. Const. Art. 4, § 2, cl. 1.

25. Constitutional Law ⇨207(1)

Unqualified language of privileges and immunities clause permitting states to keep out nonresidents if they constitute a "peculiar source of evil" permits state to keep out nonresidents who have been exposed to some communicable disease of which state is still substantially free. U.S.C.A. Const. Art. 4, § 2, cl. 1.

26. Constitutional Law ⇨207(1)

Under privileges and immunities clause, there must be some evidence of benefits of residents-preference law in dealing with problem created by nonresidents. U.S.C.A. Const. Art. 4, § 2, cl. 1.

27. Statutes ⇨282

"Evidence" in the technical legal sense is not essential when issue is not application but validity of statute.

28. Constitutional Law ⇨207(1)

Where Illinois, although having full opportunity in preliminary injunction proceeding to put into evidence facts justifying preference law, and although having access to data that might illuminate costs and benefits of law, failed to present any information, statistical or otherwise, concerning benefit of law, state failed to satisfy burden of justifying law's discrimination against nonresidents under privileges and immunities clause. Ill.S.H.A. ch. 38, §§ 1005-8-3(a)(3), 1005-9-1(a)(3); ch. 48, § 274; 42 U.S.C.A. § 1983; U.S.C.A. Const. Art. 4, § 2, cl. 1.

29. Constitutional Law ⇨48(6)

Although burden of proving that state statute violates privileges and immunities clause is on plaintiff, once he shows that statute discriminates exclusively against nonresidents in the pursuit of common callings, state has burden of justifying discrimination or, at the very least, of producing

some evidence in justification of it. U.S.C.A. Const. Art. 4, § 2, cl. 1.

Patricia Rosen, Asst. Atty. Gen., Chicago, Ill., for defendant-appellant.

M. Barry Forman, St. Louis, Mo., for plaintiffs-appellees.

Before PELL, CUDAHY and POSNER, Circuit Judges.

POSNER, Circuit Judge.

E. Allen Bernadi, the director of the Illinois Department of Labor, appeals from a decision enjoining him from enforcing Illinois' Preference to Citizens on Public Works Projects Act, Ill Rev.Stat.1981, ch. 48, §§ 269-274. The Act (in paragraph 271) provides that the contractor on "any public works project or improvement for the State of Illinois or any political subdivision, municipal corporation or other governmental unit thereof shall employ only Illinois laborers on such project or improvement," unless the contractor certifies, and the contracting officer finds, that Illinois laborers either "are not available, or are incapable of performing the particular type of work involved . . ." Violation of the preference law (as it is called) is a misdemeanor punishable by a maximum jail sentence of 30 days and a maximum fine of \$500. See Ill Rev.Stat.1981, ch. 48, § 274; ch. 38, §§ 1005-8-3(a)(3), 1005-9-1(a)(3). The district court held that the law violates both the privileges and immunities clause of Article IV, section 2 of the Constitution ("The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States"), and the commerce clause of Article I, section 8 ("The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes").

The public school board of Decatur, Illinois hired the W.C.M. Window Company, an Illinois corporation, to replace some windows. W.C.M. subcontracted the work to Custom Contracting Company, an unincorporated association of Missouri residents.

On April 12, 1983, Bernardi brought suit in state court against W.C.M. and Custom, asking that they be enjoined from violating the preference law. On the same day, W.C.M., its president, and three individuals who are members of Custom Contracting brought this suit (under 42 U.S.C. § 1983) against Bernardi, and asked the district court to issue a temporary restraining order to prevent Bernardi from proceeding with his state court action. The district court issued the order and later converted it into a permanent injunction.

[1, 2] The first question we consider is whether the district court should have abstained, under the doctrine of *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), in favor of the state court in which Bernardi had filed his action. (The other grounds for abstention urged by the state clearly have no merit.) *Younger* held that a federal district court may not enjoin a state criminal prosecution in a civil rights suit, provided that the plaintiff in that suit can raise his federal claims in state court by way of defense to the prosecution. Its doctrine has since been expanded to cases where a state civil proceeding sought to be enjoined involved "important state interests." See, e.g., *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432, 102 S.Ct. 2515, 2521-22, 73 L.Ed.2d 116 (1982) (state proceeding to discipline a lawyer for unethical conduct); see also *Ciotti v. County of Cook*, 712 F.2d 312, 313 (7th Cir.1983); *Cate v. Oldham*, 707 F.2d 1176, 1183 (11th Cir.1983); *Coruzzi v. State of New Jersey*, 705 F.2d 688, 696-91 (3d Cir.1983). We must consider whether "important state interests" are involved here, and also the significance of the facts that (1) the plaintiffs in the federal court action and the defendants in the state court action are not identical and (2) the Illinois Supreme Court in *People ex rel. Holland v. Bleigh Construction Co.*, 61 Ill.2d 258, 335 N.E.2d 469 (1975), upheld the preference law against a challenge based on the same grounds urged by these plaintiffs.

[3-6] The *Younger* doctrine is based on, and its contours established by, two principles of equity jurisprudence. The first is that an injunction is an extraordinary remedy, rarely available as a matter of right and never more extraordinary than when, if granted, it would prevent government officials from proceeding under a statute founded on important state interests against a violator of the statute; such an injunction would offend comity and federalism. The second principle is that an injunction will not be issued when the plaintiff has an adequate remedy at law, which he does if he can assert the ground on which he seeks an injunction as a defense to the very proceeding that the injunction would put a stop to.

Although the plaintiffs apparently did violate the Illinois preference law, the state was not sufficiently exercised about the violation to bring a criminal proceeding, or even a quasi-criminal proceeding as in *Middlesex*. It was content to seek an injunction against continuing the violation. This is some evidence that an injunction against Bernardi's state court action would not impair "important state interests," though not much evidence; the state may simply have believed that, in the circumstances, an injunctive remedy would be cheaper, swifter, and more efficacious. An additional point, however, is that the policy underlying the preference law is less central to the goals of state government than protecting the health, safety, and morals of its population—the types of interest involved in cases where abstention under the *Younger* doctrine has been ordered. Thus, both the nature of the remedy sought by, and more important the underlying right asserted by, the state in its suit make the remedy that these plaintiffs are seeking less invasive of state sovereignty than in the usual *Younger* case.

[7, 8] Moreover, the plaintiffs may not have "an adequate opportunity in the state proceedings to raise [their] constitutional challenges." *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, *supra*, 457 U.S. at 432, 102 S.Ct. at 2521-22. Al-

though this quotation could be taken to refer just to procedural obstacles to raising a federal claim in state court, rather than also to any substantive obstacle created by adverse precedent, we know from *Gibson v. Berryhill*, 411 U.S. 564, 577-79, 93 S.Ct. 1689, 1697-98, 36 L.Ed.2d 488 (1973) (cited approvingly in *Middlesex*), that the *Younger* doctrine is inapplicable when the state tribunal is deemed to have prejudged the federal claim because the tribunal has a pecuniary interest in the outcome (see also *United Church of the Medical Center v. Medical Center Comm'n*, 689 F.2d 693, 699-700 (7th Cir.1982)); and maybe other types of prejudgment also make the doctrine inapplicable. The analogous requirements of exhaustion of remedies in administrative and in habeas corpus cases are satisfied when adverse precedent makes the remedies futile as a practical matter to pursue. See *Layton v. Carson*, 479 F.2d 1275, 1276-77 (5th Cir.1973) (*per curiam*); see also *Carter v. Estelle*, 677 F.2d 427, 446 (5th Cir.1982); *West v. Berglund*, 611 F.2d 710, 717 (8th Cir.1979).

If the Illinois courts were certain to adhere to *Bleigh* in Bernardi's suit against the contractors, the contractors would have no practical remedy in the state courts, so that their only federal remedy (if we abstained) would be to ask the United States Supreme Court to review the inevitable judgment against them in the state courts. The Supreme Court's heavy workload, which prevents it from accepting more than a tiny fraction of the requests for review that it gets, would make this route a chancy one. And we doubt that the Court would want us to add to its workload by expanding the *Younger* doctrine. But the Illinois Supreme Court might be willing to reexamine *Bleigh* in light of the U.S. Supreme Court's subsequent decisions in *Hicklin v. Orbeck*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978), and *United Bldg. & Construction Trades Council v. Mayor & Council of Camden*, — U.S. —, 104 S.Ct. 1020, 79 L.Ed.2d 249 (1984) the latter decided after argument in this case. The discussion of the privileges and immunities issue in *Bleigh* has been termed

"cursory" in a decision which states that *Hicklin* "presumptively overruled" *Bleigh*. *Neshaming Constructors, Inc. v. Krause*, 181 N.J.Super. 376, 384 n. 6, 437 A.2d 733, 737 n. 6 (Ch.1981), modified (on unrelated grounds) and affirmed, 187 N.J.Super. 174, 453 A.2d 1359 (App.Div.1982) (*per curiam*). And we are told that the Illinois Supreme Court has recently heard argument in a case in which it is being asked to overrule *Bleigh*.

Hicklin invalidated under the privileges and immunities clause an Alaska statute that required all employment, whether public or private, that was connected with oil and gas leases to which the state was a party to be offered first to Alaska residents. The Supreme Court's opinion is narrowly written, however, and emphasizes facts that have no exact counterparts in the present case. One such fact is that "the major cause of Alaska's high unemployment was not the influx of nonresidents seeking employment, but rather the fact that a substantial number of Alaska's jobless residents—especially the unemployed Eskimo and Indian residents—were unable to secure employment either because of their lack of education and job training or because of their geographical remoteness from job opportunities." 437 U.S. at 526-27, 98 S.Ct. at 2487-88. Another is that "a highly skilled and educated resident who has never been unemployed is entitled to precisely the same preferential treatment as the unskilled, habitually unemployed Arctic Eskimo enrolled in a job-training program." *Id.* at 527, 98 S.Ct. at 2488. And another is that "Alaska has little or no proprietary interest in much of the activity swept within the ambit of Alaska Hire [the name of the statute]." *Id.* at 529, 98 S.Ct. at 2489. See also *United Bldg. & Construction Trades Council v. Mayor & Council of Camden*, *supra*, — U.S. at —, 104 S.Ct. at 1028-29. As an original matter, the absence of these particular facts from the record of the present case may not save Illinois' preference law, as we shall see. But we doubt that a court committed, as all courts are, to *stare decisis*,

albeit in its flexible American form, would think that the *Hicklin* decision required the overruling of *Bleigh*—especially when, in a case decided after *Hicklin*, the Supreme Court cited *Bleigh* with approval, though apparently with reference only to its commerce clause holding. See *Reeves, Inc. v. Stake*, 447 U.S. 429, 437 n. 9, 100 S.Ct. 2271, 2277 n. 9, 65 L.Ed.2d 244 (1980).

United Bldg. & Construction Trades Council v. Mayor & Council of Camden involved a challenge under the privileges and immunities clause to an ordinance of the city of Camden, New Jersey that required that at least 40 percent of the employees of contractors and subcontractors working on city construction projects be Camden residents. Although the Supreme Court did not invalidate the ordinance, it did hold that it "discriminates against a protected privilege," — U.S. at —, 104 S.Ct. at 1029, and could be upheld only if the city justified the discrimination by showing (in the language of an earlier case) that nonresidents "constitute a peculiar source of the evil at which the statute is aimed." *Toomer v. Witsell*, 334 U.S. 385, 398, 68 S.Ct. 1156, 1163, 92 L.Ed. 1460 (1948), quoted at — U.S. —, 104 S.Ct. 1029-30. Since there had been no trial in *United*, the Court remanded the case to the trial court to give the city a chance to try to justify the ordinance.

It is quite possible that *United Bldg. & Construction* would induce the Supreme Court of Illinois to reexamine *Bleigh* at least to the extent of insisting that the state produce some concrete justification for the preference law. But it is not certain; the court might be willing to take judicial notice of conditions in Illinois justifying the law. Even if we could state with confidence that *United Bldg. & Construction* would induce the Illinois court to overrule *Bleigh* to the extent of requiring the state to make a greater effort at justification than was attempted in that case (or for that matter in this one), there would still be a serious question whether we should order abstention on the basis of a decision that was handed down after the proceedings in the district court were completed. One of

the standard criticisms of abstention—that it delays litigation, sometimes inordinately—would gain additional force if abstention were ordered on the basis of events that first came into existence while the case was on appeal.

In any event, the three individual plaintiffs who are members of Custom Contracting Company may have no state court remedy at all for a violation of the privileges and immunities clause, because they were not named as defendants in that action. The omission would not be important if Custom Contracting or W.C.M., which were named, could represent those individuals' interests in that action. *Hicks v. Miranda*, 422 U.S. 332, 348-49, 95 S.Ct. 2281, 2291, 45 L.Ed.2d 223 (1975); *Women's Community Health Center v. Texas Health Facilities Comm'n*, 685 F.2d 974, 981-82 (5th Cir.1982). But neither may have standing to challenge the preference law on privileges and immunities grounds. (Although Bernardi has not raised this point in the present action, his silence is not a commitment not to raise it in the state court action if we order abstention and that action is therefore allowed to proceed to judgment.)

[9,10] The Supreme Court held long ago that the privileges and immunities clause of Article IV does not protect corporations, *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 177, 181, 19 L.Ed. 357 (1869); and this holding, though criticized, see *Eule, Laying the Dormant Commerce Clause to Rest*, 91 Yale L.J. 425, 450-54 (1982), is too firmly established to be reexamined by a lower court, especially after its recent (if laconic) reaffirmance by the Supreme Court in *Western & Southern Life Ins. Co. v. State Bd. of Equalization*, 451 U.S. 648, 665, 101 S.Ct. 2070, 2081, 68 L.Ed.2d 514 (1981). On the basis of a dictum in *Paul* that confines "citizens" in the privileges and immunities clause to "natural persons," 75 U.S. at 177, 19 L.Ed. 357 the only court to consider whether an unincorporated association is a citizen within the meaning of the clause has held that it is not. *American Trucking Ass'n, Inc. v. Larson*, 683 F.2d 787,

790 (3d Cir.1982). Given *Paul*—even without the dictum—this conclusion seems inescapable. An unincorporated association is not a natural person, and for most purposes not a citizen. Any legal protection it enjoys is, as with corporations, a matter of the state's grace. And in Illinois at least, that protection is much less extensive than what corporations enjoy. See Ill.Rev.Stat. 1981, ch. 30, § 185; ch. 38, § 2-15; ch. 120, § 15-1501(a)(4).

[11] If Custom Contracting is not a citizen under the privileges and immunities clause, it might seem to follow ineluctably that its individual members who are plaintiffs in this suit could not hope for a favorable interpretation of that clause in the state court action, because any attempt by Custom Contracting to challenge the Illinois preference law on privileges and immunities grounds would be summarily rejected on the authority of *Paul* and *Larson*. This may well be the correct conclusion, but against it can be set the modern view that an association has standing to complain of injuries to its members. See, e.g., *NAACP v. Alabama*, 357 U.S. 449, 459, 78 S.Ct. 1163, 1170, 2 L.Ed.2d 1488 (1958); *South East Lake View Neighbors v. HUD*, 685 F.2d 1027, 1032 (7th Cir.1982); 6 Wright & Miller, Federal Practice and Procedure § 1552, at pp. 693-94 (1971). This view fuses the legal identity of an association with that of its members, and if applicable here would allow Custom Contracting to complain in Bernardi's state court action that the preference law violates its members' rights under the privileges and immunities clause, even though the law could not violate the association's own rights under the clause, because it has none. There is Illinois authority for allowing an association to bring an equity suit on this basis, see *DeWitt Cty. Taxpayers' Ass'n v. County Bd.*, 112 Ill.App.3d 332, 334-35, 68 Ill.Dec. 63, 63, 445 N.E.2d 509, 511 (1983); equally should an association be able to defend itself against a suit on this basis.

Although this is a powerful argument, it cannot, after *Larson*, completely still our

doubts that the state court action provides an adequate remedy for all of the plaintiffs in the present action. Another point is that Custom Contracting might not assert all the rights of its members in that action. All of these doubts are augmented by the vagueness of the state's references in this suit to the state court action. (At oral argument, for example, counsel for the state was unable to tell us what relief Bernardi had requested in that action.) While asking us to abstain, the state has given us no information on whether the state court action provides these plaintiffs with a usable vehicle for asserting their federal constitutional claims. As a further example, we are not told why Bernardi asked only for an injunction.

[12-14] For all of these reasons, we conclude that the equities did not require the district judge to abstain; we need not decide whether they would have permitted him to do so. So we come to the merits, and begin with the commerce clause. Although in words simply an authorization to Congress to regulate commerce among the states or with foreign nations, the commerce clause has long been interpreted to contain an implicit prohibition (the "negative" or "dormant" commerce clause), enforceable by the courts without congressional action, against a state's discriminating against or unduly burdening interstate commerce. See, e.g., *Cooley v. Board of Wardens*, 53 U.S. (12 How.) 299, 13 L.Ed. 996 (1851); *Southern Pac. Co. v. Arizona*, 325 U.S. 761, 769, 65 S.Ct. 1515, 1520, 89 L.Ed. 1915 (1945). In an age when all parts of the nation's economy are interconnected, so that a state can do hardly anything in the way of regulation or taxation without in a sense burdening interstate commerce, the application of this standard to particular cases is often problematic. But one thing is clear: a state may not erect a tariff wall protecting its industries from the competition of industries in other states and in foreign countries merely to promote the economic welfare of its own citizens. *Baldwin v. G.A.F. Seelig, Inc.*, 291 U.S. 511, 522, 55 S.Ct. 497, 500, 79

L.Ed. 1032 (1935); see *Boston Stock Exchange v. State Tax Comm'n.* 429 U.S. 318, 335-37, 97 S.Ct. 599, 609-10, 50 L.Ed.2d 514 (1977).

[15] The Illinois preference law erects a nearly prohibitive tariff—saved from being completely prohibitive only by the exception for cases where the requisite labor is not obtainable from Illinoisians—against the use on any public project in Illinois of labor imported from another state or from a foreign country. The law has the same general effect on the flow into Illinois of labor services supplied by individuals unwilling to change their residence to Illinois as an Illinois tariff on imports of coal would have on the flow of coal into the state. The preference law may confer benefits on the state in reduced unemployment among Illinois residents and hence reduced employment insurance costs to employers in the state, though we shall see later that this is far from certain, and maybe not even likely. But a tariff on imported coal would confer the same benefit, since it would tend to increase the demand for coal mined in Illinois and thus increase employment in the coal mines in the state. True, if Illinois were an exporter as well as importer of coal, the tariff's only effects might be to cause Illinois mines to divert output from their export markets to the Illinois market and to cause out-of-state mines that formerly sold coal in Illinois to replace the Illinois mines in serving those out-of-state markets. But of course the same thing might happen as a result of the preference law (the record contains nothing about the law's effects): Illinois residents who now work either on private construction projects in the state or on public construction projects across the state line might replace, on Illinois public projects, nonresidents who in turn would take the places on private and out-of-state projects of the Illinoisians who had replaced them on Illinois public projects. But the fact that a state's tariff might have only a small effect on interstate trade would not save it from

invalidation under the commerce clause; the cumulative effects of many states' modest tariffs could be staggering.

However, serious doubt is cast on the legal validity of our tariff analogy by a series of Supreme Court decisions, culminating in *White v. Massachusetts Council of Construction Employers, Inc.*, 460 U.S. 204, 103 S.Ct. 1042, 75 L.Ed.2d 1 (1983), which distinguish between the state's role as a participant in, and as the regulator of, a market. *White*, the Mayor of Boston, had issued an executive order requiring that at least half the workers on every construction project financed, in whole or part, or administered, by the City of Boston be Boston residents. The Court upheld the order. "If the city is a market participant, then the Commerce Clause establishes no barrier to conditions such as these which the city demands for its participation. Impact on out-of-state residents figures in the equation only after it is decided that the city is regulating the market rather than participating in it, for only in the former case need it be determined whether any burden on interstate commerce is permitted by the Commerce Clause." 460 U.S. at —, *Id.* at 1046. So if in our coal hypothetical the State of Illinois subsidized the electrical generating plants in Illinois that buy coal, it could, without violating the commerce clause, forbid them to buy coal produced out of state.

At first glance the "market participant" concept may seem inappropriately to equate public agencies with private firms; for the state, in its proprietary or market-participant capacity, may be influenced by the same protectionist motives that but for the negative commerce clause might lead it to erect explicit tariff barriers to goods or labor from out of state. But a more realistic explanation of the concept emphasizes the freedom that states have under the Constitution to provide, often, selectively, for the welfare of their residents. There are a thousand devices by which the State of Illinois could if it wanted subsidize the

state's coal miners; many would have the same effects on both residents and nonresidents as a subsidy for purchasers of coal who limit their purchases to Illinois; yet the courts could not prevent all of them.

[16-18] In any event, if the State of Illinois had limited the preference law to construction projects financed (in whole or part) or administered by the state, it would be clear after *White* that the law did not violate the commerce clause. But the state has gone further. The preference law applies to every public construction contract in Illinois, even if the purchaser is a local school board, or for that matter the local dog catcher. Of course for many purposes, including many federal purposes such as those behind the due process and equal protection clauses of the Fourteenth Amendment, every local government unit in Illinois is a part of the state government; but maybe not for the purpose of evaluating Illinois' preference law under the commerce clause. Government in Illinois as in all states is decentralized, and local school boards such as that of Decatur which let the contract in issue in this case have substantial autonomy, including authority to levy taxes to support the schools. See Ill.Rev.Stat.1981, ch. 122, §§ 17-11 to 17-13; *Quality Education for All Children, Inc. v. School Bd.*, 385 F.Supp. 803, 820 (N.D.Ill.1974). True, the order upheld in *White* embraced projects that the City of Boston financed in part as well as those that it financed 100 percent or administered. But according to the school superintendent's uncontradicted affidavit in this case, the window-replacement project is not even partially financed by the state; neither is it being administered by the state. The "market participant" is the school board, just as the market participant in *White* was the City of Boston. The state is a regulator, telling thousands of local government units that they must not give construction contracts to employers of nonresidents. It is particularly important to insist on the distinction because *White* prevents any consideration of impact on interstate commerce until the state is found to

be a regulator of rather than a participant in the market.

[19] Against the validity of the distinction, however, may be cited the Supreme Court's summary affirmation of *American Yearbook Co. v. Askew*, 339 F.Supp. 719, 723-25 (M.D.Fla.) (three-judge district court), *aff'd mem.*, 409 U.S. 904, 93 S.Ct. 230, 34 L.Ed.2d 168 (1972), which held that a state statute requiring all public printing to be done within the state did not violate the commerce clause. Although the district court did not discuss local government (the only public agencies involved in the case were state universities), it assumed that the statute would apply to a printing contract let by a school board or other local government agency, and was untroubled by this. See 339 F.Supp. at 724. But summary affirmance does not commit the Supreme Court to the details of the lower court's opinion. *Zobel v. Williams*, 457 U.S. 55, 61 n. 13, 102 S.Ct. 2309, 21 L.Ed.2d 672 (1982). And although the Supreme Court cited *Askew* with approval in a recent "market participant" case, *Reeves, Inc. v. Stake*, *supra*, 417 U.S. at 437 n. 9, 100 S.Ct. at 2277 n. 9, that case did not involve a state's attempting to impose home-state preference on a local government entity either; nor was this aspect of *Askew* even mentioned. The Court in the same footnote cited with approval two state cases upholding statutes requiring home-state preference by county as well as state agencies, *State ex rel. Collins v. Senatobia Blank Book & Stationery Co.*, 115 Miss. 254, 76 So. 258 (1917), and *Denver v. Bossie*, 83 Colo. 329, 331, 266 Pac. 214, 217 (1928), as well as the pages in *Bleigh* in which the Illinois preference law was held valid under the commerce clause. See also Note, *Home-State Preferences in Public Contracting: A Study in Economic Balkanization*, 58 La.L.Rev. 576 (1973). But in none of the cited cases was the difference between the state's own purchasing and that of its local governmental units discussed. It would be unrealistic to suppose that merely citing a case commits the Supreme Court to everything in the cited opinion, and impertinent to suppose

that citation is a deliberate technique for resolving—*sub rosa*—difficult and important questions not raised or argued in the case actually before the Court.

The difference between the state's preferring state residents in its own dealings and forcing local agencies to do so in theirs is both analytical and quantitative. When the project on which the state impresses a home-state preference is undertaken by a unit of local government without any state financial support or supervision, the state is not a participant in the project but a regulator. And since more public contracting in the states is done at the local level, by cities, school districts, park districts, counties, etc., than at the state level, extending *Reeves* and *White* to cases where the state's relationship to its local agencies is purely regulatory could do great damage to the principles of free trade on which the negative commerce clause is based.

[20, 21] Even if a law interferes with free trade, however, the state may be able to justify it on one ground or another. It can keep out diseased cattle, see *Ashell v. Kansas*, 209 U.S. 251, 28 S.Ct. 485, 52 L.Ed. 778 (1908); *Illinois v. General Elec. Co.*, 683 F.2d 206, 214 (7th Cir.1982)—so why not nonresidents who impose a cost on the state by taking jobs away from residents and thereby forcing them onto the unemployment or welfare rolls, which the state finances in part? And even if the state had no financial stake, would it not have a legitimate interest in protecting its residents from such adversity? But if preferring the welfare of residents (more precisely, of some residents—others, notably consumers, invariably suffer from import restrictions) to that of nonresidents were a good defense under the commerce clause, explicit tariffs would be permissible. *Baldwin v. G.A.F. Seelig, Inc.*, *supra*, 294 U.S. at 522, 55 S.Ct. at 500, held that it is not a good defense. *City of Philadelphia v. New Jersey*, 437 U.S. 617, 98 S.Ct. 2531, 57 L.Ed.2d 475 (1978), held that a state could not confine the use of its landfill waste dumps to its residents. Change "landfill waste dumps" to "public construc-

tion projects" and you have this case. In any event, more than assertion would be necessary to create a persuasive analogy from the quarantine cases; and as we shall see when we discuss the privileges and immunities clause Illinois has presented no facts relating to actual or probable as opposed to purely conjectural harms from allowing nonresidents to work on public construction projects in Illinois. We conclude that the Illinois preference law violates the commerce clause.

[22, 23] We shall now consider whether it also violates the privileges and immunities clause of Article IV. Normally it would be otiose, or worse, for a court to decide a constitutional question unnecessarily; and the judgment in this case must be the same whether the preference law violates one constitutional provision or many. But it may avoid the necessity of a remand should review of our decision be sought and granted and the Supreme Court disagree with our interpretation of the commerce clause for us to rule on the district court's alternative ground for invalidating the preference law; this may also help the Supreme Court decide whether the case merits further review (technically, since the state has a right of appeal under 28 U.S.C. § 1254(2), whether it raises a substantial federal question). Cf. *Illinois v. General Electric Co.*, *supra*, 683 F.2d at 214. Moreover, the commerce clause and the privileges and immunities clause are so closely related in a case of this kind (see *Hicklin v. Orbeck*, *supra*, 437 U.S. at 531-32, 98 S.Ct. at 2190-91) that it would be artificial to ignore one of them. Indeed, there is a respectable argument that the framers of the Constitution intended the privileges and immunities clause to play the role that has come to be played instead by the negative commerce clause. See Ed' *supra*, 91 Yale L.J. at 447-48. We could not be sure that the preference law does not pass constitutional muster under either clause without considering cases under both, as the Supreme Court did in *Hicklin*, 437 U.S. at 532-34, 98 S.Ct. at 2190-92.

[24] The privileges and immunities question was not addressed in *White*, the Court merely remarking that since the preference was for residents of a city rather than of the state the victims were not limited to out-of-state residents. See 460 U.S. at — n. 12, 103 S.Ct. at 1048 n. 12. We add: almost certainly the principal victims of the mayor's executive order were workers living in the Boston suburbs, which are in Massachusetts, and these workers had political remedies against the order that nonresidents of the state did not have. Nevertheless, the Supreme Court held in *United Bldg. & Construction Trades Council v. Mayor & Council of Camden*, *supra*, that an ordinance similar to that in *White* was prima facie unlawful under the privileges and immunities clause. We think the Illinois preference law must equally (or more, as we shall see presently) be deemed prima facie unlawful under the clause. Although *Hicklin* (the "Alaska Hire" case) is, as we noted earlier, factually distinguishable from the present case, it too suggests the prima facie invalidity of the Illinois preference law. There are no figures in the very sparse record of this case; but public construction projects in the State of Illinois, like projects related to state oil and gas leases in Alaska, must constitute in the aggregate a substantial employment opportunity that at least some nonresidents (besides the three individual Missourians who are plaintiffs in the case) are able, willing, and maybe even eager to take advantage of, since major centers of economic activity in the state, notably Chicago and East St. Louis, are adjacent to large population centers in other states. And the consequences for nonresidents must be much greater than those of the Camden ordinance at issue in the *United Bldg. & Construction* case.

[25] It is true despite the unqualified language of the privileges and immunities clause that states may keep out nonresidents if they constitute a "peculiar source of evil." *United Bldg. & Construction Trades Council v. Mayor & Council of*

Camden, *supra*, — U.S. at —, 104 S.Ct. at 1029, quoting *Toomer v. Witsell*, *sup* 334 U.S. at 398, 68 S.Ct. at 1163. On that ground a state could keep out nonresidents who had been exposed to some communicable disease of which the state was substantially free. It could even deal with "free riding" nonresidents, for example charging higher tuition to nonresidents attending the state university than to residents. See *Martinez v. Bynum*, 461 U.S. 321, — and n. 6, 103 S.Ct. 1838, 18 and n. 6, 75 L.Ed.2d 879 (1983), and cases cited there. In both of these examples justification for the state's discrimination against nonresidents is obvious. But the benefits of Illinois' home-preference law enacted in 1939 and not amended since cannot be assumed. Otherwise both the "Alaska Hire" law and the Camden residents-preference ordinance would have been upheld.

[26-28] True, the intimation in *Hicklin* 437 U.S. at 526, 98 S.Ct. at 2187, based on strong language in *Ward v. Maryland*, 7 U.S. (12 Wall.) 418, 430, 20 L.Ed. 41 (1871), that unemployment may never be a valid ground for discriminating against nonresidents can no longer be considered authoritative. The Court in *United Bldg. & Construction* not only allowed the City of Camden to attempt to justify the discrimination but quoted from *Toomer* the statement that "the states should have considerable leeway in analyzing local evils and in prescribing appropriate cures." 334 U.S. at 396, 68 S.Ct. at 1162, quoted at — U.S. —, 104 S.Ct. 1029. Still, *Hicklin* and *United Bldg. & Construction* make clear that there must be some evidence of the benefits of a residents-preference law in dealing with a problem created by nonresidents, and Illinois has presented none. We do not just mean that it has failed to put in "evidence" in the technical legal sense, though it has failed; such evidence is not essential when the issue is not the application but the validity of a statute. Illinois has presented no information—statistical or otherwise, evidentiary or subject

to judicial notice, at trial or on appeal—concerning the benefits of the preference law. We are not told the unemployment rate in Illinois' construction industry, what such unemployment costs the state, whether it would be significantly increased by throwing open public construction projects to nonresidents (which might just cause a re-buffing of jobs between public and private projects), and whether the costs—if any—to Illinois of allowing nonresident labor on such projects, costs in higher unemployment or welfare benefits paid unemployed construction workers or their families, are likely to exceed any cost savings in public construction from hiring nonresident workers.

Our insistence on data may seem niggling, and would be if the effects of allowing nonresidents to work on public construction projects were as clear as those of allowing carriers of Bubonic plague to enter the state without quarantine or nonresident students to attend the University of Illinois free of charge. But they are not as clear. The preference law might have no effect on the unemployment rate in Illinois. Worse, it could boomerang, and actually increase unemployment in the construction industry. Suppose for example that a public construction project would cost \$1 million if it employed both Illinois residents and nonresidents and \$1.2 million if it employed only Illinois residents. If the higher price were more than the school district or other public agency was willing to pay, the project would not be authorized and the Illinois residents who would have worked on it would have to seek work elsewhere.

[29] Although the burden of proving that a state statute violates the privileges and immunities clause is on the plaintiff, once he shows that the statute discriminates explicitly against nonresidents in the pursuit of common callings," *Baldwin v. Montana Fish & Game Comm'n*, 436 U.S. 371, 387, 98 S.Ct. 1852, 1862, 56 L.Ed.2d 351 (1978), the state has the burden of justifying the discrimination, see *id.* 402, 98 S.Ct. 1870 (dissenting opinion); *United Bldg. & Construction Trades*

Council v. Mayor & Council of Camden, supra, — U.S. —, 104 S.Ct. 1029; *Hicklin v. Orbeck, supra*, 437 U.S. at 526-27, 98 S.Ct. at 2487-88. Tribe, *American Constitutional Law* 411 (1978), or, at the very least, of producing some evidence in justification of it (the burden of persuasion may remain on the plaintiff). After *Hicklin*, and the recent spate of state court cases invalidating, or the authority of *Hicklin*, preference laws, much like Illinois', see *Laborers Local Union No. 374 v. Felton Construction Co.*, 98 Wash.2d 121, 654 P.2d 67 (1982); *Neshaminy Constructors, Inc. v. Krause, supra*, and *Salla v. County of Monroe*, 48 N.Y.2d 514, 423 N.Y.S.2d 878, 399 N.E.2d 909 (1979), Illinois must have known that it could not justify the exclusion of nonresidents from employment on all public construction projects without making a better showing of justification than the State of Alaska had been able to make for the "Alaska Hire" law. In fact Alaska made a manful effort at justification, though it fell short. Illinois has made none in this proceeding, though the director of its own Labor Department, who had access to the data that might illuminate the costs and benefits of the law, was the defendant.

The remand in *United Bldg. & Construction* does not warrant a similar remand here. The City of Camden had had no opportunity to make a case for justifying the ordinance. The ordinance had been submitted for approval to a New Jersey affirmative action officer, and after "brief administrative proceedings" had been designated as a state-approved affirmative action construction program. An association of labor organizations filed a notice of appeal to a New Jersey appellate court which in turn certified the question of the ordinance's legality to the New Jersey Supreme Court. — U.S. —, 104 S.Ct. at 1023-24. In the present case the state had a full opportunity in the preliminary-injunction proceeding in the district court to put into evidence (or ask the court to take judicial notice of) facts justifying the preference law. It did nothing.

The judgment of the district court is **3. Habeas Corpus** \Rightarrow 25.1(1)
 AFFIRMED.



Raymond W. WEBER,
 Petitioner-Appellant.

v.

Thomas ISRAEL, Respondent-Appellee.

No. 82-2470.

United States Court of Appeals,
 Seventh Circuit.

Argued Nov. 8, 1983.

Decided March 22, 1984.

As Amended March 23, 1984.

Petition for writ of habeas corpus was brought by state prisoner. The United States District Court for the Eastern District of Wisconsin, Myron L. Gordon, J., denied relief, 537 F.Supp. 1182, and prisoner appealed. The Court of Appeals, Coffey, Circuit Judge, held that prisoner waived right to relief on claim that he was deprived of jury trial on his insanity plea by his failure to raise objection in the state trial court.

Affirmed.

1. Habeas Corpus \Rightarrow 25.1(1)

Doctrine of waiver, in context of federal habeas corpus action, provides that if state withholds right of appellate review of issues not raised at trial, federal courts will not undermine state's interest in orderly procedure by allowing defendant to litigate issue in federal habeas proceeding.

2. Habeas Corpus \Rightarrow 25.1(1)

When procedural default bars state litigation of constitutional claim, state prisoner may not obtain federal habeas relief absent showing of cause and actual prejudice.

3. Habeas Corpus \Rightarrow 25.1(1)
 Doctrine of waiver barred state prisoner from obtaining federal habeas corpus relief from state conviction on ground that he had not been provided with jury trial on insanity plea where that claim had not been presented to the state trial court and where prisoner failed to show cause for or actual prejudice from his failure to raise issue at state trial court level.

4. Habeas Corpus \Rightarrow 113(12)

When Court of Appeals reviews district court's findings of fact in habeas corpus action, it may set aside such findings only if they are clearly erroneous and, unless it is left with definite and firm conviction that mistake has been committed, it must accept trial court's findings.

5. Habeas Corpus \Rightarrow 113(12)

In state prisoner's habeas corpus proceeding, district court's finding that prisoner was not entitled to relief on his claim that he had been denied jury trial on insanity plea because he had withdrawn the plea before trial commenced was supported by evidence that his attorney had informed the state trial judge that the defense would not be pursued even though the withdrawal was not made part of the trial court record.

6. Attorney and Client \Rightarrow 88

Defense counsel's withdrawal of insanity plea was not ineffective despite defendant's contention that it was not intelligently and voluntarily agreed to by him where defendant was present in the courtroom when the plea was withdrawn and gave no indication that he disagreed with withdrawal of the plea or later allege that defense counsel was ineffective in withdrawing the plea.

Allen E. Shoenberger, Prof., Loyola University, Pamela Menaker, law student, Chicago, Ill., for petitioner-appellant.

Pamela Magee-Heilprin, Asst. Atty. Gen., Wis. Dept. of Justice, Madison, Wis., for respondent-appellee.

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ATTORNEY FOR
U.A. LOCAL 375
PLUMBERS & PIPEFITTERS
AND ITS MEMBERS

February 13, 1985

To: Each Member of the Alaska Legislature

Lenny Arsenault found, through a national magazine, that the State of Wyoming was able to make a resident hire law stick. I had the Wyoming Supreme Court air mail me a copy of the opinion. Lenny is at a national meeting and wanted me to forward it to each of you as quickly as possible.

For use in drafting potential Alaska legislation, I note that the interest which a resident of Wyoming has in a Wyoming public funds contract can be equated to the same thing in Alaska and probably we can add the interest which Alaska residents have in any facilities producing royalty petroleum or royalty gas which belongs to the State; especially since the majority of the State's income comes from such production and it directly influences all matters of expenditure in the State.

The findings of fact or "whereas clauses" should be carefully drafted.

Good luck with this.

Sincerely,



ARTHUR LYLE ROBSON, Attorney for
U.A. Local 375 and Its Members

ALR:CLM

Enclosure: State of Wyoming Opinion

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1984

January 10, 1985

STATE OF WYOMING,)
)
 Plaintiff,)
)
 v.) No. 84-35
)
 ROGER ANTONICH,)
)
 Defendant.)

Bill of exceptions from the County Court of Converse County, the Honorable John Allan Holtz, Judge.

A. G. McClintock, Attorney General, Gerald A. Stack, Deputy Attorney General, John W. Renneisen, Senior Assistant Attorney General, and Michael A. Blonigen, Assistant Attorney General, for plaintiff.

Daniel E. White, Cheyenne, for defendant.

Before *THOMAS, C.J., and ROSE, **ROONEY, BROWN, and CARDINE, JJ.

ROSE, J., delivered the opinion of the Court; THOMAS, C.J., filed a specially concurring opinion.

NOTICE: This opinion is subject to formal revision before publication in Pacific Reporter Second. Readers are requested to notify the Clerk of the Supreme Court, Supreme Court Building, Cheyenne, Wyoming 82001 of any typographical or other formal errors, in order that corrections may be made before final publication in the permanent volume.

*Became Chief Justice January 1, 1985.
**Chief Justice at time of oral argument.

ROSE, Justice.

We granted the State of Wyoming's application to file a bill of exceptions in order to address a single issue:

"Does the Wyoming Preference for State Laborers Act, Section 16-6-201, et seq., W.S. 1977, violate the privileges and immunities clause of the United States Constitution?"

We will hold that the challenged Act is narrowly tailored to fit a particular problem identified by the State and, therefore, does not impermissibly infringe the privileges and immunities of the citizens of states other than Wyoming.^{1/} Accordingly, we sustain the bill of exceptions filed by the State.

WYOMING PREFERENCE ACT OF 1971

In 1971, the legislature adopted the "Wyoming Preference Act," §§ 16-6-201 through 16-6-206, W.S. 1977, which requires contractors to employ available qualified Wyoming laborers for public-works projects in preference to nonresident laborers. Section 16-6-203, W.S. 1977, contains the key provision of the Act:

"Every person who is charged with the duty of construction, reconstructing, improving, enlarging, altering or repairing any public works project or improvement for the state or any political subdivision, municipal corporation, or other governmental unit, shall employ only Wyoming laborers on the project or improvement. Every contract let by any person shall contain a provision requiring that Wyoming labor be used except other laborers may be used when Wyoming laborers are not available for the employment from within the state or are not qualified to perform the work involved. The state employment office nearest the proposed contract or construction site shall maintain a list of laborers, classified by skills, who are residents and are available for employment. When the nearest state employment office is unable to provide the requested number of laborers from its own list, it shall immediately contact other state em-

^{1/} The United States Constitution, Art. IV, § 2, provides:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

ployment offices and request the names of other available laborers. Every person required to employ Wyoming laborers shall inform the nearest state employment office of his employment needs. If the state employment office certifies that the person's need for laborers cannot be filled from those listed as of the date the information is filed, then the person may employ other than Wyoming laborers."

On September 22, 1983, the Converse County prosecuting attorney charged Roger Antonich, general superintendent of Westates Construction Company, with violating § 16-6-203, supra. The information alleged that Antonich fired a Wyoming worker from a public-school construction project in order to hire out-of-state workers. The county court judge dismissed the charge on the ground that § 16-6-203, supra, violates the privileges and immunities clause of the federal constitution. The court relied on Hicklin v. Orbeck, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978), and recent cases from other jurisdictions in which the courts have invalidated statutory preferences for local workers. After examining these and similar opinions, we conclude that certain distinguishing features in Wyoming's Preference Act sufficiently limit its scope so as to satisfy the demands of the privileges-and-immunities clause.

PRIVILEGES-AND-IMMUNITIES CLAUSE ANALYSIS

An examination of a state enactment to determine its validity under the privileges-and-immunities clause involves a two-step analysis. First, the reviewing court must determine whether the statute burdens a fundamental right or activity, since only those "privileges" and "immunities" which bear upon the concept of interstate harmony fall within the scope and purpose of the clause. United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden, ___ U.S. ___, ___ S.Ct. ___, 79 L.Ed.2d 249, 258-259 (1984); Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371, 383-388, 98 S.Ct. 1852, 56 L.Ed.2d 354 (1978); Toomer v. Witsell, 334 U.S. 385, 395-396, 68 S.Ct. 1156, 92 L.Ed. 1460 (1948). Second, the court must examine the reasons for the discriminatory treatment to determine their validity and their relation to the degree of discrimination imposed by the statute. This portion of the test was developed by the United States Supreme Court in Toomer v. Witsell, supra:

"Like many other constitutional provisions, the privileges and immunities clause is not an absolute. It does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of

other States. But it does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus the inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them. The inquiry must also, of course, be conducted with due regard for the principle that the States should have consideration leeway in analyzing local evils and in prescribing appropriate cures." (Emphasis added.) 334 U.S. at 396.

The Toomer court established that classifications based on non-citizenship cannot stand

"* * * unless there is something to indicate that non-citizens constitute a peculiar source of the evil at which the statute is aimed." 334 U.S. at 398.

The State concedes that the discrimination against nonresidents under the Wyoming Preference Act burdens a fundamental right. In an early case, the United States Supreme Court held that the privileges-and-immunities clause protects the right of a citizen of one state to travel to another state for purposes of employment. *Ward v. Maryland*, 12 Wall 418, 430 (1870). The Supreme Court reaffirmed this principle in *Hicklin v. Orbeck*, supra, 437 U.S. at 525. Even more pertinent to the instant case, the Supreme Court recently held that an enactment preferring local workers for public construction projects burdens a fundamental right and, therefore, falls within the purview of the privileges-and-immunities clause. *United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden*, supra, 79 L.Ed.2d at 258-261. Clearly, Wyoming's Preference Act offends the privileges-and-immunities clause unless a close link exists between valid reasons for the Act and the discrimination practiced.

The State, in its brief, identifies the purpose of the Act as the reduction in unemployment among the labor force which makes possible government projects through contributions to the public treasury. Stated conversely, the evil which the Wyoming Preference Act combats is

"* * * a resident remaining unemployed while a nonresident takes a job on a Wyoming public works project." (State's brief.)

Thus, the Wyoming Preference Act attempts to insure that government-created jobs benefit the State's citizens.

Without question, reduction in unemployment among Wyoming citizens constitutes a valid state goal. See *United Building and*

Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden, supra; Hicklin v. Orbeck, supra. We turn, therefore, to an examination of the relationship between this legitimate reason underlying the Wyoming Preference Act and the discrimination mandated against nonresidents.

Enactments to alleviate high unemployment levels through the hiring of residents in preference to nonresidents generally have swept too broadly to survive challenges brought under the privileges-and-immunities clause. The prime example of such legislation is the "Alaska Hire" Act at issue in Hicklin v. Orbeck, supra. That Act required the employment of qualified Alaska residents in preference to nonresidents for positions associated with

"* * * all oil and gas leases, easements or right-of-way permits for oil or gas pipeline purposes, unitization agreements, or any re-negotiation of any of the preceding to which the state is a party * * *." 437 U.S. at 520, n.2.

The United States Supreme Court cited three bases for holding that the discrimination imposed by this statute failed to bear a close relation to the problem of high unemployment in Alaska. First, the state had made no showing that nonresidents were a peculiar source of widespread unemployment. Rather than the influx of nonresidents looking for work, the major cause of unemployment appeared to be the inadequate education and training and the geographical remoteness of many jobless residents--particularly the Eskimo and Indian residents. 437 U.S. at 526-527. Secondly, the Court determined that Alaska Hire did not narrowly address the problem of unemployment, since the Act simply preferred all residents, regardless of their employment status, education or training. 437 U.S. at 527. Finally, the Supreme Court observed that the discriminatory effect of Alaska Hire extended well beyond those activities in which the state held a substantial proprietary interest:

"* * * In sum, the Act is an attempt to force virtually all businesses that benefit in some way from the economic ripple effect of Alaska's decision to develop its oil and gas resources to bias their employment practices in favor of the State's residents. We believe that Alaska's ownership of the oil and gas that is the subject matter of Alaska Hire simply constitutes insufficient justification for the pervasive discrimination against nonresidents that the Act mandates." 437 U.S. at 531.

A number of state courts have adopted the foregoing rationale in invalidating enactments which grant an employment preference to local workers. Laborers Local Union No. 374 v. Felton Construc-

tion Company, 98 Wash.2d 121, 654 P.2d 67 (1982); Massachusetts Council of Construction Employers, Incorporated v. Mayor of Boston, 384 Mass. 466, 425 N.E.2d 346 (1981), rev'd under the commerce clause, 460 U.S. 204, 103 S.Ct. 1042, 75 L.Ed.2d 1 (1983); Salla v. County of Monroe, 48 N.Y.2d 514, 399 N.E.2d 909, 423 So.2d 878, cert. denied 446 U.S. 909 (1979). We find, however, that Wyoming's Preference Act, unlike the enactments at issue in these cases and Alaska Hire, precisely fits the particular evil identified by the State.

As noted above, the act seeks to prevent a qualified Wyoming worker's remaining unemployed while a nonresident goes to work on a government-funded construction project. The statute makes no attempt to eradicate the general unemployment in this state which may be due to factors unrelated to nonresidents. Accordingly, the Act directs its discriminatory treatment toward the nonresident applicants for jobs on public-works projects--those individuals who constitute the peculiar source of the evil identified by the State.

Secondly, the Wyoming Preference Act specifically addresses the problem of unemployment among Wyoming construction workers. Section 16-6-203, *in praesentia*, requires contractors to contact the local employment office to determine whether qualified resident workers are available. If the number of qualified residents listed with state employment offices is insufficient to meet employment needs, contractors are free to hire nonresident workers. An employer need not attempt to hire residents away from other jobs or to dismiss nonresidents and hire residents as they become available. Under the Act, an employer must deny nonresidents employment only when the state employment office provides a sufficient number of residents who are qualified and available to go to work.

Finally, we attach significance to the fact that the Wyoming Preference Act confines its discriminatory effects to projects constructed from public funds. The government's proprietary interest in the subject matter of the discriminatory statute constitutes a crucial factor in support of the statute's validity:

"* * * The fact that [the city] is expending its own funds or funds it administers in accordance with the terms of a grant is certainly a factor--perhaps the crucial factor--to be considered in evaluating whether the statute's discrimination violates the Privileges and Immunities Clause. But it does not remove the [city] ordinance completely from the purview of the Clause." *United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden*, *supra*, 79 L.Ed.2d at 260.

The Court elaborated in that case:

"Every inquiry under the Privileges and Immunities Clause 'must . . . be conducted with due regard for the principle that the states should have considerable leeway in analyzing local evils and in prescribing appropriate cures.' *Toomer v. Witsell*, 334 U.S. 385, 396, 92 L.Ed. 1460, 58 S.Ct. 1156 (1948). This caution is particularly appropriate when a government body is merely setting conditions on the expenditure of funds it controls." 79 L.Ed.2d at 261.

The Wyoming statute at issue in the present case requires merely that governmental funds, allocated to public-works projects, be used to hire qualified, available residents in preference to nonresidents. The statute does not effect the sort of wide-ranging discriminatory treatment fatal to *Alaska Hire* in *Hicklin v. Orbeck*, *supra*. Since the Wyoming Preference Act limits its discriminatory effect to government-created jobs, it presents minimal affront to the privileges and immunities of noncitizens. *United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden*, *supra*.

We hold that the Wyoming Preference Act does not violate the privileges-and-immunities clause of the federal constitution, notwithstanding the Act's infringement upon a recognized fundamental right. The Act narrowly addresses the goal of reduced unemployment among the state's taxpayers by preferring available, qualified residents for government-funded positions. Since the degree of discrimination bears a close relation to the state's valid reasons for discriminatory treatment, we affirm the Act's validity under the test established in *Toomer v. Witsell*, *supra*, and refined in subsequent cases.

Although not determinative of our decision here, we recently held in *Galesburg Construction Company, Inc. of Wyoming v. Board of Trustees of Memorial Hospital of Converse County, Wyo.*, 641 P.2d 745 (1982), that Wyoming's preference for resident bidders on public-works contracts, § 9-8-302, W.S.1977, does not violate the equal-protection provisions of the state and federal constitutions. Our result in the instant case, upholding Wyoming's preference for resident workers on public-works projects, harmonizes with our decision in *Galesburg Construction Company, Inc. of Wyoming v. Board of Trustees of Memorial Hospital of Converse County*, *supra*.

The bill of exceptions is sustained.

THOMAS, Chief Justice, specially concurring.

I am in complete accord with the result reached by the majority in this case, but I have a concern about the adequacy of the record to support the nexus between the evil of "a qualified Wyoming worker's remaining unemployed while a nonresident goes to work on a government-funded construction project" and the statute in question. I agree that that is a possibility, but the record does not demonstrate it. The statutory language simply makes the state employment offices a repository of information, and does not limit the "list of laborers, classified by skills, who are residents" to the unemployed. It simply requires that they be "available for employment."

I am satisfied that on the basis of existing precedent the role of the State in connection with "constructing, reconstructing, improving, enlarging, altering or repairing any public works project or improvement for the state or any political subdivision, municipal corporation or other governmental unit" is that of a market participant pursuing essentially a proprietary function. It is inappropriate to invoke the Privileges and Immunities Clause to inhibit the State in that regard. Both *Hicklin v. Orbeck*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978), and *United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden*, _____ U.S. _____, S.Ct. _____, 79 L.Ed.2d 249 (1984), recognize that while the proprietary interest of the State in the property with which the statute deals is often a crucial factor in determining whether a discriminatory statute against non-citizens violates the Privileges and Immunities Clause. I perceive that, without articulating such a concept, the Supreme Court of the United States has preserved a delicate balance between the Reservation of Powers Clause found in Amendment X to the Constitution of the United States of America and the Privileges and Immunities Clause. The line that is drawn is that between the governmental function of the State and the right of the State to participate in the marketplace, satisfy its proprietary functions, and contract freely with those with whom it chooses to contract.

In *Hicklin v. Orbeck*, supra, at 437 U.S. 531, the Supreme Court recognized what it described as a mutually reinforcing relationship between the Privileges and Immunities Clause of Art. IV, § 2, and the Commerce Clause, which it said stems from their origin in the Fourth Article of the Articles of Confederation. In *Reeves, Inc. v. Stake*, 447 U.S. 429, 65 L.Ed.2d 244, 100 S.Ct. 2271 (1980), the Court said:

" * * * The State's refusal to sell to buyers other than South Dakotans is 'protectionist'

only in the sense that it limits benefits generated by a state program to those who fund the state treasury and whom the State was created to serve. * * * Such policies, while perhaps 'protectionist' in a loose sense, reflect the essential and patently unobjectionable purpose of state government--to serve the citizens of the State."

Conceding that the Court there was dealing with the application of the Commerce Clause, because of the mutually reinforcing relationship between the two clauses, I find that concept applicable in this instance with respect to the Privileges and Immunities Clause.

It cannot be held objectionable for a sovereign state to adopt legislation which provides in essence that to the extent possible public works contracts benefit the citizens of the state whose contributions to the public treasury fund those projects. A state should not be foreclosed by the invocation of the Constitution of the United States of America from loyalty to interests of its own citizens. So long as a statute is narrowly drawn to protect only the right of the state to contract as it sees fit with respect to expenditures for public works projects which it owns and which it funds, I am satisfied that as a matter of law such a statute does not offend the Privileges and Immunities Clause found in Art. IV, § 2 of the Constitution of the United States of America. This, of course, makes it unnecessary for the court to pursue the remand technique invoked in *United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden*, supra.

I would agree that the bill of exceptions should be sustained for the foregoing reasons.



Alaska Public
Employees Association **APEA**

State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

TO: Representative Mike Navarre, Chairman
House Labor and Commerce Committee

FROM: Cherie Shelley
Executive Director

SUBJECT: House Bill 294 and House Bill 295
Preferential Hire of Alaskans

DATE: March 26, 1985

Alaska's traditionally high unemployment rate and short construction season have necessitated the preferential hiring of state residents on public works projects. Alaskan residents should benefit from the construction jobs funded by state or local governments. The adoption of House Bill 294 will strengthen the current Alaska hire law (AS 36.10.010) and make it less susceptible to constitutional challenges.

The courts have held such preferential treatment of residents to be constitutional under certain circumstances. House Bill 294 adds legislative findings of fact and purpose to the Alaska hire law in response to recent court decisions.

House Bill 295 will enable the Alaska Department of Labor to conduct a comprehensive study of the effect of non-resident employment on unemployment of Alaska residents. This study will provide the statistical information necessary to defend Alaska's preferential hire law.

The Alaska Public Employees Association supports both bills. We believe publicly financed construction projects should benefit Alaskan workers who have contributed so much to the development of this State.

CS/kg

Fairbanks Field Office
825-D College Road
Fairbanks, AK 99701
Telephone: (907) 456-5412

Anchorage Field Office
833 Gambell Street, Suite A
Anchorage, AK 99501
Telephones: (907) 274-1688

Juneau Field Office
227 4th Street
Juneau, AK 99801
Telephone: (907) 586-6305



UNITED BROTHERHOOD OF
Carpenters and Joiners of America

LOCAL UNION NO. 1281

407 DENALI

PHONE 276-3533

ANCHORAGE ALASKA 99501



*file
HB 294*

March 21, 1985

Labor & Commerce
Pouch V
Room 102, Capitol
Juneau, Alaska 99811


Attn: Mike Navarre, Chairman

Dear Mr. Navarre:

As an Alaskan of many years and a person active in the States labor movement, I would hope that you and your committee would give special attention and "fast track" through HB 294 and HB 295. All blue collar Alaskans thank you....

Sincerely,

CARPENTERS LOCAL 1281


Bill Mattheys
Business Representative

BM/rm

cc: Mike Davis, H. A. "Red" Boucher, Virginia M. Collins,
Alyce Hanley, Niilo Koponen, Drue Pearce



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

9/5/89
Date

HPB

205

Introduced: 3/15/85
Referred: Labor & Commerce
and Finance

Funding Information

General Fund \$100,000
Other Funds - 0 -
\$100,000

BY BOUCHER, DAVIS, HURLEY, SUND, KOPONEN,
CATO, COTTEN, DUNCAN, FRANK, GRUSSENDORF,
HANLEY, JENKINS, LARSON, M.M. MILLER,
NAVARRE, POURCHOT, SHULTZ, SZYMANSKI,
TAYLOR, THOMPSON, UEHLING AND PHILLIPS

1 IN THE HOUSE

2

HOUSE BILL NO. 295

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act making a special appropriation to the Depart-
7 ment of Labor for study of unemployment in Alaska and
8 other issues related to Alaska hire; and providing
9 for an effective date."

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

11 * Section 1. The sum of \$100,000 is appropriated from the general fund
12 to the Department of Labor for a study of the effect of the employment of
13 nonresidents on unemployment among residents of Alaska and other issues
14 related to Alaska hire.

15 * Sec. 2. The unexpended and unobligated portion of the appropriation
16 made by this Act lapses into the general fund June 30, 1986.

17 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
18 10.070(c).

HB 295 File Contents

- 1) Bill Summary -- Legislative Reporting Service
- 2) Overview -- Roger Poppe, Committee Staff
- 3) Position Statement -- Department of Labor--March 26, 85

Bill No. House Bill 295

Date March 26, 1985

Title "An Act making a special appropriation to the Department of Labor for Study of Unemployment in Alaska and other issues related to Alaska hire; and providing for an effective date."

Contact: Robert Landau
465-2700
Eileen Plate
465-2700

House Bill 295 makes an appropriation to the Department of Labor for a special study of unemployment and resident hire in Alaska.

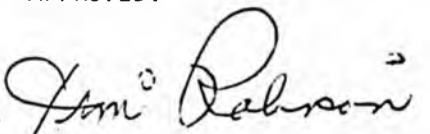
Specifically, under this appropriation measure, the Department would collect and analyze a variety of information on the impact of nonresidents on employment in Alaska. Currently, such information is not available in a form that will withstand legal scrutiny. Although the State's counsel in the pending resident hire lawsuit wove together different kinds of information to show the impact of nonresidents on employment, the Superior Court concluded that there was insufficient evidence to show that the influx of nonresident workers was a "peculiar source" of unemployment in the construction industry in Alaska against which the resident hire law was directed.

The study which this bill provides for was also recommended by a recent legal analysis prepared by Attorney Robert Goldberg. This analysis, "Legislative Remedies for Rural Unemployment," specifically recommends that the State collect a substantial body of specific, reliable data on unemployment, income, population trends, etc. and that specific legislative and/or administrative findings be made on the basis of the data.

The Department expects that the study will support the State's contention that nonresidents are a primary cause of high unemployment in Alaska, and that it will also show that the resident hire law is necessary to remedy the problem.

The Department strongly supports this proposal to fund a study of unemployment and resident hire in Alaska.

APPROVED:



Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor



UNITED BROTHERHOOD OF
Carpenters and Joiners of America

LOCAL UNION NO. 1281

407 DENALI

PHONE 276-3533

ANCHORAGE, ALASKA 99501



March 21, 1985

Labor & Commerce
Pouch V
Room 102, Capitol
Juneau, Alaska 99811


Attn: Mike Navarre, Chairman

Dear Mr. Navarre:

As an Alaskan of many years and a person active in the States labor movement, I would hope that you and your committee would give special attention and "fast track" through HB 294 and HB 295. All blue collar Alaskans thank you....

Sincerely,

CARPENTERS LOCAL 1281


Bill Matthews
Business Representative

BM/rm

cc: Mike Davis, H. A. "Red" Boucher, Virginia M. Collins,
Alyce Hanley, Niilo Koponen, Drue Pearce



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

9/5/89
Date

H B

3 0 5

COMMITTEE REPORT

HOUSE

5/2

(7)

FURTHER: FINANCE

3/20/85

Date: May 2 1985

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 305

"An Act relating to barbers, cosmetologists, and estheticians; and providing for an effective date."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 305 (9/10) same title
 new title
- and recommends it do pass
- AND attaches a "Letter of Intent" New Fiscal Note Sup 63
- reports it back without recommendation
- referred to the _____ Committee

**MEMBERS SIGNING
DO PASS**

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

**MEMBERS HAVING
OTHER RECOMMENDATIONS:**

[Signature]

CHAIRMAN

MEMORANDUM

DATE: April 2, 1985

TO: Rep. Mike Navarre, Chair
House Labor and Commerce Committee

FKOM: Rep. John Sund

RE: Sectional Analysis of HB 305 (Board of Barbers and Hairdressers)

Sections 1, 3, 4, 12, 23, and 24 change only the terminology for hairdressers and cosmetologists. The bill changes the name for hairdressers to cosmetologists, and the name for those currently practicing as cosmetologists to estheticians. The Board's name is therefore changed from "Board of Barbers and Hairdressers" to "Board of Barbers and Cosmetologists."

Section 2 extends the termination date for the board to June 30, 1989. The board authorization expired June 30, 1984.

Section 5 requires the board to offer examinations four times a year in Anchorage instead of the current requirement of twice a year. It also requires the board to offer examinations in cities other than Anchorage if there are at least five applicants in the city.

Section 6 assigns to the Department of Commerce and Economic Development the responsibility for keeping the records of the board's proceedings. The board is currently responsible by statute for this task.

Section 7 makes several changes to the licensing requirements. A person may no longer practice outside a shop or school, except in communities with fewer than 1,000 people. An instructor must be licensed as an instructor to teach in a school, and a practitioner who wishes to supervise an apprentice must also obtain an instructor's license. Currently, the shop in which an apprentice serves must be approved by the board but the supervisor need only be a licensed practitioner.

Section 8 requires license applicants to apply on a form and provide a photograph to the board. Paragraph (5) outlines the qualifications for an instructor's permit.

Section 9 increases the hours required for an apprenticeship in barbering and changes the period in which the apprenticeship must be completed. The section deletes the requirement that apprenticeships be served in a shop approved by the board. Section (c) changes the period within which an esthetician apprenticeship must be served. Subsection (d) requires that the first 1000 hours of an apprenticeship in barbering or cosmetology be served in a school and that the second 1000 hours be served under the supervision of a licensed instructor.

Section 10 permits the board to delegate examination power to a proctor.

Section 11 permits the board to regulate the practice of manicure and pedicure. Subsection (d) clarifies that an out-of-state applicant who has passed an examination in another licensing jurisdiction is not required to take the state test.

Section 13 clarifies the requirements for display of licenses.

Section 14 deletes reference to a shampoo person since the bill repeals the definition of shampoo person. It also specifies that the chapter does not apply to a licensed health care professional. This amendment may be unnecessary since the definitions of barber, cosmetologist and esthetician apply only to those performing services for cosmetic purposes.

Section 15 requires a temporary instructor (for example, a person from out-of-state who is giving a workshop) to obtain a temporary instructor's permit.

Section 16 amends the section on student permits to reflect changes to the apprenticeship system. Apprentices are required to be supervised by licensed instructors, but the shop in which they practice does not have to be approved by the board.

Section 17 requires that applicants for student permits must be at least 16 years old and have graduated from high school or hold a G.E.D. equivalency.

Section 18 amends the fee section to conform to the system in HB 78. The department sets fees with the concurrence of the board in amounts that reflect the cost of the regulated activity.

Section 19 contains an amendment for style that unnecessarily adds and deletes the same subsection.

Section 20 adds a provision for civil penalties for violation of the chapter.

Section 22, (1) amends the definition of apprentice to permit apprentices to receive wages or commissions. Paragraph (2) amends the definition of barbering to include many (if not all) of the activities that cosmetologists are permitted to perform. If barbers and cosmetologists are intended to be able to perform the same services, then the language should be the same. If there are differences, perhaps they should be more clearly identified. (Note that the one clear difference is that only cosmetologists are permitted to give manicures or pedicures.) It might be more appropriate to provide that a person could choose whether to use the title "barber" or "cosmetologist", but would be otherwise subject to the same restrictions. Paragraph (6) defines instructor.

Section 25 provides for an immediate effective date.

HB 305 File Contents
(Board of Barbers and Hairdressers)

April 3, 1985 Thursday

- 1) Bill Summary -- Legislative Reporting Service
- 2) Bill Overview -- Memo, Rep. Sund's Office
- 3) Sectional Analysis -- Rep. Sund's Office
- 4) Fiscal Note -- Dept. of Commerce
- 5) Position Statement -- Dept. of Commerce
- 6) Alaska Statutes and Regulations Relating to Barbers & Hairdressers
- 7) Letter from Marse Kueber to Senator Rodey,
(with attached 1984 Annual Report)
- 8) 1983 Legislative Budget and Audit Report

April 18, 1985 Thursday Meeting

- 9) Overview -- Roger Poppe, Committee Staff
- 10) Senate Letter of Intent on SB 435
- 11) Governor's veto letter to Kerttula -- May 25, 1984
- 12) Proposed Amendments -- Division of Occupational Licensing
- 13) Letter from Victoria Perdon, with proposed amendments --April
16,85
- 14) Personal Letters and POMs sent to the Committee on this issue
(located in your folder in the center of the table)

April 19, 1985 Friday Meeting

- 15) Detailed response of Marse Kueber to amendments proposed
by the Department and by Ward-Pedron (at top, it says page
1 of 3, April 18, 1985)
- 16) Working Document from Poppe to Committee dated April 19 "
Combining Marse Kueber's response with the Dept. and with
Ward-Pedron Amendments
- 17) Supplemental memo -- Poppe to Committee

May 1, 1985 Wednesday Meeting

- 18) Proposed CS HB 305 (L & C) --- Drafted by Terry Cramer April 30, 85

Original sponsors: Sund, Taylor
and Jenkins

1
2 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

3 CS FOR HOUSE BILL NO. 305 (L&C)
4 IN THE LEGISLATURE OF THE STATE OF ALASKA
5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

7 For an Act entitled: "An Act relating to barbers, cosmetologists, and
8 estheticians; and providing for an effective date."

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

10 * Section 1. AS 08.01.010(24) is amended to read:

11 (24) Board of Barbers and Cosmetologists [HAIRDRESSERS]
12 (AS 08.13.010).

13 * Sec. 2. AS 08.03.010(c)(16) is amended to read:

14 (16) Board of Barbers and Cosmetologists [HAIRDRESSERS]
15 (AS 08.13.010) -- June 30, 1989 [1984].

16 * Sec. 3. AS 08.13.010 is amended to read:

17 Sec. 08.13.010. CREATION AND MEMBERSHIP OF BOARD. (a) There is
18 created the Board of Barbers and Cosmetologists [HAIRDRESSERS] con-
19 sisting of five members appointed by the governor.

20 (b) The board consists of

21 (1) two persons licensed as barbers under this chapter;

22 (2) two persons licensed as cosmetologists [HAIRDRESSERS]
23 under this chapter; and

24 (3) one public member.

25 * Sec. 4. AS 08.13.030 is amended to read:

26 Sec. 08.13.030. POWERS AND DUTIES OF THE BOARD. (a) The board
27 shall exercise general control over the vocations of barbering, cosme-
28 tology, esthetics, and manicure and pedicure [HAIRDRESSING, AND COSME-
29 TOLOGY].

(b) The board shall

1 (1) examine applicants and approve the issuance of licenses
2 and permits to practice;

3 (2) authorize the issuance of licenses for schools of
4 barbering, cosmetology, and esthetics [HAIRDRESSING, AND COSMETOLOGY].

5 (c) The board may

6 (1) suspend or revoke a license or permit;

7 (2) on its own motion or upon receipt of a written com-
8 plaint, conduct hearings and request the Department of Commerce and
9 Economic Development to investigate the practices of a person, shop,
10 or school involved in the practice or teaching of barbering, cosme-
11 tology, esthetics, or manicure and pedicure [HAIRDRESSING, OR COSME-
12 TOLOGY];

13 (3) adopt regulations or do any act necessary to carry out
14 the provisions of this chapter.

15 * Sec. 5. AS 08.13.040 is amended to read:

16 Sec. 08.13.040. MEETINGS AND EXAMINATIONS. The board shall meet
17 as often as necessary to conduct its business. It shall conduct
18 separate examinations covering each field of practice: barbering,
19 cosmetology, esthetics, and manicure and pedicure [HAIRDRESSING, AND
20 COSMETOLOGY]. Examinations shall be given at least once each calendar
21 quarter [TWICE IN EVERY YEAR] for each field of practice for which
22 applications for licensure are pending. An applicant may take an
23 examination in more than one field during the same testing session.

24 * Sec. 6. AS 08.13.050 is amended to read:

25 Sec. 08.13.050. RECORDS OF THE BOARD. The Department of Com-
26 merce and Economic Development [BOARD] shall keep a record of the
27 board's [ITS] proceedings related to the issuance, refusal, suspen-
28 sion, and revocation of each license and permit. The record shall
29 contain the name of the person to whom a license or permit is issued,

1 the person's place of business, the date of issuance for each license
2 and permit, and whether it is currently valid. The record shall be
3 open to inspection by the public at all reasonable times. The board
4 shall submit an annual report on its operations to the governor.

5 * Sec. 7. AS 08.13.070 is amended to read:

6 Sec. 08.13.070. LICENSE REQUIRED. A person may not

7 (1) practice barbering, cosmetology, esthetics, or mani-
8 curing and pedicuring [HAIRDRESSING, OR COSMETOLOGY] without a li-
9 cense, [TEMPORARY PERMIT,] or student permit unless exempted under
10 AS 08.13.160(d);

11 (2) practice barbering, cosmetology, esthetics, or manicure
12 and pedicure except in a shop or school licensed under this chapter
13 unless exempted under AS 08.13.160(d);

14 (3) open or conduct a school of barbering, cosmetology, or
15 esthetics [HAIRDRESSING, OR COSMETOLOGY] without a license;

16 (4) teach in a school of barbering, cosmetology, or esthet-
17 ics or supervise an apprentice without an instructor's license;

18 (5) [(2)] operate a shop in violation of AS 08.13.120;

19 (6) [(4)] permit an employee or other person being super-
20 vised who is not exempted under AS 08.13.160(d) to practice barbering,
21 cosmetology, esthetics, or manicure and pedicure [HAIRDRESSING, OR
22 COSMETOLCGY] without a license [,TEMPORARY PERMIT,] or student permit;

23 (7) [(5)] permit the use of the person's license [,TEMPO-
24 RARY PERMIT,] or student permit by another person;

25 (8) [(6)] obtain or attempt to obtain a license [,TEMPO-
26 RARY PERMIT,] or student permit by fraudulent means.

27 * Sec. 8. AS 08.13.080 is amended to read:

28 Sec. 08.13.080. QUALIFICATIONS OF APPLICANTS. An applicant for
29 examination must apply on a form provided by the board, submit a

1 recent unmounted, autographed photograph of the applicant, and must

2 (1) have successfully completed all courses that a school
3 with a curriculum [PROGRAM] in barbering approved by the board is
4 required to teach in order to be licensed under AS 08.13.110 if apply-
5 ing for a license to practice barbering;

6 (2) have successfully completed all courses that a school
7 with a curriculum [PROGRAM] in cosmetology approved by the board
8 [HAIRDRESSING] is required to teach to be licensed under AS 08.13.110
9 if applying for a license to practice cosmetology [HAIRDRESSING];

10 (3) have successfully completed all courses that a school
11 with a curriculum [PROGRAM] in esthetics approved by the board [COSME-
12 TOLOGY] is required to teach in order to be licensed under AS 08.13.-
13 110 if applying for a license to practice esthetics [COSMETOLOGY];
14 [OR]

15 (4) have served an apprenticeship under AS 08.13.082;

16 (5) have successfully completed all the courses that a
17 school with a curriculum in manicure and pedicure approved by the
18 board is required to teach in order to be licensed under AS 08.13.110
19 if applying for a license to practice manicure and pedicure; or

20 (6) specify the field of practice in which the applicant
21 intends to teach and have held a license to practice in the field for
22 three years or have held a license in the field for one year and have
23 completed 600 hours of student training as an instructor in the field
24 of practice from a licensed school with a curriculum approved by the
25 board.

26 * Sec. 9. AS 08.13.082 is amended to read:

27 Sec. 08.13.082. APPRENTICESHIP. (a) The period of apprentice-
28 ship required to qualify an applicant for a license to practice bar-
29 bering is 2,000 [1,500] hours. [THE APPRENTICESHIP MUST BE SERVED IN

1 A SHOP APPROVED BY THE BOARD.] The apprenticeship may not be com-
2 pleted in less than 12 [NINE] months from the date of its commencement
3 and must be completed in not more than two years from the date of its
4 commencement.

5 (b) The period of apprenticeship required to qualify an appli-
6 cant for a license to practice cosmetology [HAIRDRESSING] is 2,000
7 hours. [THE APPRENTICESHIP MUST BE SERVED IN A SHOP APPROVED BY THE
8 BOARD.] The apprenticeship may not be completed in less than one year
9 from the date of its commencement and must be completed in not more
10 than two years from the date of its commencement.

11 (c) The period of apprenticeship required to qualify an appli-
12 cant for a license to practice esthetics [COSMETOLOGY] is 350 hours.
13 The apprenticeship must be served in a shop approved by the board.
14 The apprenticeship may not be completed in less than three [SIX]
15 months from the date of its commencement and must be completed in not
16 more than nine months [ONE YEAR] from the date of its commencement.

17 (d) The board shall adopt regulations to establish the require-
18 ments for an apprenticeship to qualify an applicant for a license to
19 practice manicure and pedicure.

20
21 * Sec. 10. AS 08.13.100 is amended to read:

22 Sec. 08.13.100. LICENSE. (a) The board shall authorize the
23 issuance of a license to each qualified applicant who has passed each
24 part of the [AN] examination under AS 08.13.090. The license is valid
25 for two years and subject to renewal.

26 (b) A license must [SHALL] state the areas of practice (barber-
27 ing, cosmetology, esthetics, or manicure and pedicure [HAIRDRESSING,
28 COSMETOLOGY], or any combination) that [WHICH] the practitioner is
29 qualified to perform.

(c) The board may by regulation create areas of limited

1 professional licensing in the field of esthetics, including regulating
2 [COSMETOLOGY, EXCEPT THAT THE BOARD MAY NOT RESTRICT OR OTHERWISE
3 REGULATE] the practice of manicure and [OR] pedicure. Any limitation
4 must be stated on the license.

5 (d) A person holding a current valid license from a board of
6 barbering, cosmetology, or esthetics [HAIRDRESSING, OR COSMETOLOGY] in
7 another state [OR COUNTRY] is entitled to a license under this chapter
8 without examination in this state. An application must [SHALL] in-
9 clude:

10 (1) proof of a valid license issued by another licensing
11 jurisdiction;

12 (2) proof of completed training, testing and working exper-
13 ience that [WHICH] the board finds to meet the minimum requirements of
14 the state and;

15 (3) payment of a credential investigation fee.

16 * Sec. 11. AS 08.13.110 is amended to read:

17 Sec. 08.13.110. SCHOOL LICENSE. The board shall adopt regula-
18 tions for the licensing of schools of barbering, cosmetology, and
19 esthetics [HAIRDRESSING, AND COSMETOLOGY]. The regulations shall
20 include details of the curriculum, minimum hours of instruction,
21 physical condition of the facilities, and financial responsibility of
22 the owner.

23 * Sec. 12. AS 08.13.130 is amended to read:

24 Sec. 08.13.130. DISPLAY OF LICENSE OR PERMIT. A practitioner
25 [PRACTITIONERS] shall display the practitioner's [THEIR] license in a
26 conspicuous location in the practitioner's [THEIR] place of business.
27 Each shop owner is responsible for the display of the licenses of
28 employees. [PRACTITIONERS WHO PRACTICE OUTSIDE OF A PLACE OF BUSINESS
29 SHALL CARRY THEIR LICENSE WITH THEM TO BE SHOWN TO PERSONS UPON WHOM

(remark)

A person holding a temporary instructor's permit shall

1 WORK IS PERFORMED.] A person holding a student permit [OR TEMPORARY
2 PERMIT] shall display the permit in a conspicuous location in the
3 school in which the person is enrolled or the shop in which the ap-
4 prentice works. The school or shop owner is responsible for the
5 display of a permit for each enrolled student or apprentice [HAVE THAT
6 PERMIT AVAILABLE FOR INSPECTION WHEN ENGAGED IN PRACTICE].

7 * Sec. 13. AS 08.13.150 is amended to read:

8 Sec. 08.13.150. ~~REASONS~~ REASONS FOR REFUSAL, SUSPENSION OR REVOCATION OF
9 A LICENSE OR PERMIT. The board may refuse, suspend, or revoke a
10 license or [,] student permit [, OR TEMPORARY PERMIT] for a failure to
11 comply with this chapter, with a regulation adopted under this chap-
12 ter, or with an order of the board.

13 * Sec. 14. AS 08.13.160(d) is amended to read:

14 (d) The licensing and permit provisions of this chapter do not
15 apply to:

16 (1) a person practicing barbering, cosmetology, esthetics,
17 or manicure and pedicure [HAIRDRESSING, OR COSMETOLOGY] in a community
18 having a population of less than 1,000 people that [WHICH] is not
19 within 25 miles of a community of more than 1,000 people [AND WHO USES
20 ONLY CHEMICALS AVAILABLE TO THE GENERAL PUBLIC];

21 (2) a shampoo person;

22 (3) a licensed health care professional;

23 (4) a person licensed by another licensing jurisdiction in
24 a field of practice licensed by this chapter while demonstrating
25 techniques or products to persons holding licenses or permits under
26 this chapter.

27 * Sec. 15. AS 08.13.180 is amended to read:

28 Sec. 08.13.180. STUDENT PERMITS. A person attending a licensed
29 school of barbering, cosmetology, or esthetics [HAIRDRESSING, OR

1 COSMETOLOGY], and a person apprenticed by [TO] a licensed instructor
2 [PRACTITIONER] in a shop [APPROVED BY THE BOARD] shall obtain a stu-
3 dent permit. A student permit to practice barbering or cosmetology
4 [HAIRDRESSING] is valid for two years. A student permit to practice
5 esthetics [COSMETOLOGY] is valid for nine months [ONE YEAR]. The
6 board shall establish by regulation the term of a student permit to
7 practice manicure and pedicure. A student permit may not be renewed,
8 but, upon application, the board may issue a new permit to the same
9 person, or extend an expired permit to the date of the next scheduled
10 examination. Credit earned under an expired student permit may be
11 transferred to a new permit as determined by the board.

- 12 * Sec. 16. AS 08.13.180 is amended by adding a new subsection to read:
13 (b) A person is eligible for a student permit if the person
14 (1) is at least 16 years of age; and
15 (2) has graduated from high school or holds a G.E.D. equiv-
16 alency.

- 17 * Sec. 17. AS 08.13.185 is repealed and reenacted to read:
18 Sec. 08.13.185. FEES. (a) The department shall adopt regula-
19 tions under AS 08.01.080 that establish the amount and manner of
20 payment of fees for examination and investigation, and for initial
21 licenses and renewals for the following:
22 (1) schools;
23 (2) school owners;
24 (3) instructor;
25 (4) shop owner;
26 (5) practitioner of barbering;
27 (6) practitioner of cosmetology;
28 (7) practitioner of esthetics;
29 (8) practitioner of manicure and pedicure;

(8) temporary permit removed

1 (9) student permit.

2 (b) The department may not adopt a regulation under (a) of this
3 section unless the board concurs.

4 (c) A fee established under this section shall, to the extent
5 possible, be based on the actual costs to the department of the activ-
6 ity for which the fee is charged.

7 * Sec. 18. AS 08.13.190 is amended to read:

8 Sec. 08.13.190. FAILURE TO POSSESS A LICENSE OR PERMIT. A
9 person who practices barbering, cosmetology, esthetics, or manicure
10 and pedicure [HAIRDRESSING, OR COSMETOLOGY], or operates a shop, or
11 operates a school of barbering, cosmetology, or esthetics [HAIR-
12 DRESSING, OR COSMETOLOGY], or teaches in a school of barbering, cosme-
13 tology, or esthetics [HAIRDRESSING, OR COSMETOLOGY], without a license
14 [, TEMPORARY PERMIT,] or student permit and who is not exempt under
15 AS 08.13.120 or 08.13.160(d) [UNDER AS 08.13.160(d)] is guilty of a
16 class B misdemeanor.

17 * Sec. 19. AS 08.13.210 is amended to read:

18 Sec. 08.13.210. HEALTH AND SANITARY CONDITIONS. Health and
19 sanitary conditions in shops and schools of barbering, cosmetology,
20 and esthetics [HAIRDRESSING, AND COSMETOLOGY] shall be supervised by
21 the Department of Environmental Conservation [HEALTH AND SOCIAL SER-
22 VICES].

23 * Sec. 20. AS 08.13.220 is amended to read:

24 Sec. 08.13.220. DEFINITIONS. As used in this chapter,

25 (1) "apprentice" means a person who receives on-the-job
26 training under [THE] direct supervision [OF A PRACTITIONER, WHO DOES
27 NOT RECEIVE A WAGE OR COMMISSION BEFORE COMPLETING 350 HOURS OF TRAIN-
28 ING, AND FOR WHOSE WORK NO CHARGE IS MADE BEFORE COMPLETING 350 HOURS
29 OF TRAINING];

1 (2) "barbering" means shaving, ~~TRIMMING~~, OR] cutting,
2 styling, curling, permanent waving, bleaching, coloring, cleansing, or
3 chemically straightening the beard or hair of a living person for a
4 fee and for cosmetic purposes;

5 (3) "board" means the Board of Barbers and Cosmeto s
6 [HAIRDRESSERS];

7 (4) "esthetics" ["COSMETOLOGY"] means the use of the hands,
8 [MECHANICAL OR ELECTRIC APPARATUS OR] appliances, cosmetic prepara-
9 tions, antiseptics, or lotions in massaging, cleansing, stimulating,
10 or similar work on the scalp, face or neck, including skin care,
11 make-up, and temporary removal of superfluous hair, [HUMAN BODY] for
12 cosmetic purposes for a fee;

13 (5) "cosmetology" ["HAIRDRESSING"] means performing, for a
14 fee, the following services for cosmetic purposes:

15 (A) shaving, trimming, or cutting the beard of a
16 living person; [AND]

17 (B) arranging, styling, dressing, curling, temporary
18 waving, permanent waving, cutting, singeing, bleaching, coloring,
19 cleansing, conditioning, or similar work on the hair of a living
20 person;

21 (C) esthetics; and

22 (D) manicure or pedicure;

23 (6) "instructor" means a person who teaches barbering,
24 cosmetology, or esthetics in a school or who supervises an apprentice;

25 (7) "practitioner" means a person licensed to practice
26 barbering, cosmetology, esthetics, or manicure and pedicure [HAIR-
27 DRESSING, OR COSMETOLOGY] under this chapter;

28 (8) [(7)] "shampoo person" means a person who, for a fee
29 and under the supervision of a practitioner of barbering or

1
2 cosmetology [HAIRDRESSING], cleanses or conditions the hair of the
3 human head with products that [WHICH] have no effect other than clean-
4 ing or conditioning the hair;

5 (9) [(8)] "shop" means [IS] an establishment operated for
6 the purpose of engaging in barbering, cosmetology, or esthetics [HAIR-
7 DRESSING, OR COSMETOLOGY].

8 * Sec. 21. AS 44.46.020 is amended to read:

9 Sec. 44.46.020. DUTIES OF DEPARTMENT. The Department of En-
10 vironmental Conservation shall

11 (1) have primary responsibility for coordination and devel-
12 opment of policies, programs and planning related to the environment
13 of the state and of the various regions of the state;

14 (2) have primary responsibility for the adoption and en-
15 forcement of regulations setting standards for the prevention and
16 abatement of all water, land, subsurface land and air pollution, and
17 other sources or potential sources of pollution of the environment,
18 including by way of example only, petroleum and natural gas pipelines;

19 (3) promote and develop programs for the protection and
20 control of the environment of the state;

21 (4) take actions that are necessary and proper to further
22 the policy declared in AS 46.03.010;

23 (5) adopt regulations for

24 (A) the prevention and control of public health nui-
25 sances;

26 (B) the regulation of sanitation and sanitary prac-
27 tices in the interest of public health;

28 (C) standards of cleanliness and sanitation in con-
29 nection with the construction, operation, and maintenance of a
camp, cannery, food handling establishment, food manufacturing

1 plant, mattress manufacturing establishment, industrial plant,
2 school, barbershop, cosmetology or esthetics [HAIRDRESSING OR
3 COSMETOLOGY] establishment, soft drink establishment, beer and
4 wine dispensaries, and for other similar establishments in which
5 lack of sanitation may create a condition that [WHICH] causes
6 disease;

7 (D) the regulation of quality and purity of commer-
8 cially compressed air sold for human respiration.

9 * Sec. 22. AS 44.62.330(a)(51) is amended to read:

10 (51) Board of Barbers and Cosmetologists [HAIRDRESSERS]
11 (AS 08.13.010)

12 * Sec. 23. (a) A person who, on the effective date of this Act, holds
13 a valid license issued by the Board of Barbers and Hairdressers may con-
14 tinue to practice as permitted by the license until the license expires and
15 may renew the license in the appropriate field of practice without meeting
16 the new requirements for licensure.

17 (b) Notwithstanding AS 08.13.090, the Board of Barbers and
18 Cosmetologists shall issue a license to practice manicure and pedicure
19 to a person who is a practitioner of manicure and pedicure in the
20 state on the effective date of this Act without examination.

21 * Sec. 24. AS 08.13.170 is repealed.

22 * Sec. 25. This Act takes effect immediately in accordance with AS 01.-
23 10.070(c).
24
25
26
27
28
29

To: Mike
From: Roger

April 24 Meeting

HB 305 Here is the latest update on this mess. I have fairly firm word from Senator Rodey's aide that they are going to amend the SB 218 version of this to simply extend the Board for one year or possibly two and then they can go with HB 305 as the vehicle next year to get into the details that they should have worked out this year. For this reason, I think we ought to just give this bill one quick run-through today, spend 15 minutes on it, and move it out. That way, House Finance can just sit on it, or move it over to the Senate either one, but that way it is out of our Committee, otherwise, if we keep it and hold it over, we will have to go thru more of this bullshit next year.

Thus, it could probably move out any old way, since it will go thru further changes next year, but if we want to move it out so it is at least relatively clean, we might as well finish up what work we did. Some of Terry Cramers changes are substantive, but they also flow out of the logic and decisions made at our Friday night meeting. The two major changes that are involved are changing the rest of the bill are 1) to include manicurists and pedicurists in all the other appropriate sections so that they also have apprentice programs and licensing and regulation procedures to follow as well, and 2) to remove the temporary permit concept from the rest of the bill. As it currently stands, we have a bill right now that has created a half of a beast as far as these two issues are concerned, so we should either go the whole way with them or drop them out all together. After talking with Terry about 6 times yesterday, I had her put everything in, so that the Committee could see what those additional changes are. The new changes Terry proposed will be in your Committee file underlined in yellow.

Marse Keuber has a copy of it in hand and in preliminary discussion with him this morning he seemed agreeable at least in principle to the changes made, and in fact said he was trying to point out some of them to the Committee the other night. He is also interested in getting back into the misdemeanor stuff again, and trying to put some of his other objections from the other night back in again. I suggest you cut this short to save time, accept Terry's changes, and move the bill out with the understanding that Marse and Julie Ward and the rest of the universe should get another shot at it in the following committees either this year or next year.

Procedurally, I checked with Rules and we are in a grey area here after checking with Billy Berrier. Since we have not yet passed the Committee vote on to the Chief Clerk, we can rescind our previous action as a committee, thus bringing this bill back on the table--especially since you indicated that you wanted Marse to see the amended product of the other night. You would then have the Committee vote again and sign up on a whole new sign up sheet, since the old vote would be cancelled. Or, if things bog down, you can say to hell with it, and simply pass out the version Terry has changed, and not mess with it at all, and really save time. It looks like a lot of changes, but it isn't as bad as it first appeared.

STATE OF ALASKA



BOARD OF BARBERS AND HAIRDRESSERS

Barber and Hairdresser Statutes 08.01.010 - 08.13.220

Barber and Hairdresser Regulations 12 AAC 02.010 - 12 AAC 02.030 and
12 AAC 09.005 - 12 AAC 09.915

PRINTED: March 1983

CENTRALIZED LICENSING ACT, AS 08 01

MISCELLANEOUS PROVISIONS, AS 08 02

TERMINATION, CONTINUATION AND REESTABLISHMENT
OF REGULATORY BOARDS, AS 08 03

**CHAPTER 01
CENTRALIZED LICENSING**

Section

- 10. Applicability of chapter
- 20. Board organization
- 25. Public members
- 30. Quorum
- 40. Transportation and per diem
- 50. Administrative duties of department
- 60. Application for license
- 70. Administrative duties of boards
- 80. Department regulations
- 87. Powers and duties of department
- 90. Applicability of the Administrative Procedure Act
- 100. License renewal, lapse and reinstatement
- 105. Penalty for improper payment
- 110. Definitions

Sec. 08.01.010. Applicability of chapter. This chapter applies to the

- (1) Board of Public Accountancy;
- (2) Board of Barbers and Hairdressers;
- (3) Repealed by Sec. 6 ch 32 SLA 1971.
- (4) Board of Chiropractic Examiners;
- (5) Board of Dental Examiners;
- (6) Board of Electrical Examiners;
- (7) State Board of Registration for Architects, Engineers and Land Surveyors;
- (8) State Medical Board;
- (9) Board of Nursing;
- (10) Board of Examiners in Optometry;
- (11) Board of Pharmacy;
- (12) Real Estate Commission;
- (13) Board of Veterinary Examiners;
- (14) Board of Psychologist and Psychological Associate Examiners;
- (15) Collection Agency Board;
- (16) Board of Welding Examiners;
- (17) Board of Marine Pilots;
- (18) Board of Dispensing Opticians;
- (19) Guide Licensing and Control Board;
- (20) State Physical Therapy Board. (Sec. 1 ch 69 SLA 1966; am Sec. 2 ch 136 SLA 1967; am Sec 2 ch 101 SLA 1968; am Sec 6 ch 143 SLA 1968; am Sec 2 ch 151 SLA 1968; am Sec 1 ch 106 SLA 1970; am Sec 6 ch 32 SLA 1971; am Sec 4 ch 179 SLA 1972; am Sec 2 ch 46 SLA 1973; am Sec 14 ch 85 SLA 1973; am Sec 1 ch 43 SLA 1975; am Sec 1 ch 43 SLA 1977; am ch 159 SLA 1980)

Effect of amendments.-- The first 1973 amendment added paragraph (18).

The second 1973 amendment inserted "and Psychological Associate" in paragraph (14).

The 1975 amendment added paragraph (19).

The 1977 amendment added paragraph (20).

The 1980 amendment created the Board of Barbers and Hairdressers.

Sec. 08.01.020. Board organization. Unless otherwise provided, all board members are appointed by the governor and serve at his pleasure. Unless otherwise provided, the governor shall designate the chairman of the board, and all other officers shall be elected by the board members. (Sec 1 ch 59 SLA 1966)

Sec. 08.01.025. Public members. No public member of a board may:

- (1) be engaged in the occupation which the board regulates;
- (2) be associated by legal contract with a member of the occupation which the board regulates except as a contractor of the services provided by a practitioner of the occupation; or
- (3) have a direct financial interest in the occupation which the board regulates. (Sec 1 ch 268 SLA 1976)

Sec. 08.01.030. Quorum. A majority of the membership of a board constitutes a quorum unless otherwise provided. (Sec 1 ch 59 SLA 1966)

Sec. 08.01.040. Transportation and per diem. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.100. (Sec 1 ch 69 SLA 1966)

Sec. 08.01.050. Administrative duties of department. (a) The department shall provide the following administrative and budgetary services when appropriate:

- (1) collect fees and issue receipts;
- (2) maintain records and files;
- (3) issue and receive application forms;
- (4) notify applicants of acceptance or rejection of applicants as determined by the board;
- (5) designate dates examinations are to be held and notify applicants;
- (6) public notice of examination;
- (7) arrange space for holding examinations;
- (8) notify applicants of results of examinations;
- (9) issue licenses and certificates or temporary licenses or certificates as authorized by the board;
- (10) except as otherwise provided in this title, issue duplicate licenses or certificates upon proof by the licensee of loss of the original and payment by the licensee of a fee of \$2;
- (11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;
- (12) compile and maintain current a register of licenses;
- (13) answer routine inquiries;

- (14) maintain files relating to individual licensees;
- (15) arrange for printing and advertising;
- (16) purchase supplies;
- (17) employ secretarial help when needed;
- (18) perform other services which may be requested by the board;
- (19) provide investigative services to the boards established under (AS 08.13) AS 08.70, AS 08.36, AS 08.64, AS 08.68, AS 08.71, AS 08.72, AS 08.80, AS 08.84, and AS 08.86, for the purpose of assisting those boards in matters of professional discipline.

(i) The form and content of a license, authorized by a board listed in Sec. 10 of this chapter, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned. (Sec 1 ch 59 SLA 1966; am Sec 1 ch 102 SLA 1976; am Sec 39 ch 218 SLA 1976; am Sec 2 ch 258 SLA 1976; am ch 49 SLA 1980)

Sec. 08.01.060. Application for license. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department. (Sec 1 ch 59 SLA 1966)

Sec. 08.01.070. Administrative duties of boards. Each board shall perform the following duties in addition to those provided in its respective law.

- (1) keep minutes and records of all proceedings;
- (2) hold a minimum of one meeting each year;
- (3) hold at least one examination each year;
- (4) request, through the department, investigation of violations of its laws and regulations;
- (5) prepare and grade examinations;
- (6) pass on qualifications of applicants for examination and license;
- (7) forward minutes of meetings to the department within 20 days;
- (8) forward results of examinations to the department;
- (9) notify the department of meeting dates at least 15 days before meeting. (Sec 1 ch 59 SLA 1966)

Sec. 08.01.080. Department regulations. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

- (1) how an examination is to be conducted;
- (2) what is contained in application forms;

- (3) how a person applies for an examination or license. (Sec 1 ch 59 SLA 1966)

Sec. 08.01.087. Powers and duties of department. (a) The department may, upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a charter in this title dealing with one of the boards listed in Sec. 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted by the boards listed in Sec. 10 of this chapter, he may, if he considers it in the public interest, and after notification to all board members by telephone or telegraph of a proposed order or action unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or his designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, or an order issued under it, or any of the laws pertaining to or regulations adopted by the boards listed in Sec. 10 of this chapter;

(3) examine or have examined the books and records of any person whose business activities require licensure by a board listed in Sec. 10 of this chapter and he may require that person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents. (Sec 3 ch 258 SLA 1976)

Sec. 08.01.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 14.62) applies to regulations adopted and proceedings held under this chapter, except those under AS 08.01.087(b). (Sec 1 ch 59 SLA 1966; am Sec 4 ch 258 SLA 1976)

Sec. 08.01.100. License renewal, lapse and reinstatement. (a) Except as otherwise provided in this title, licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license, permit or certificate requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of \$10 shall be charged in addition to all delinquent renewal fees for reinstatement for a registration, license, permit or certificate which remains lapsed for more than 70 days. (Sec 1 ch SLA 1966; am Sec 2 ch 94 SLA 1988)

Sec. 08.01.105. Penalty for improper payment. An applicant shall pay a penalty of \$10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor. (Sec 3 ch 268 SLA 1976)

Sec. 08.01.110. Definitions. In this chapter

- (1) "board" includes the boards and commissions listed in Sec. 10 of this chapter;
- (2) "department" means the Department of Commerce and Economic Development;
- (3) "commissioner" means the commissioner of commerce and economic development;
- (4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in Sec. 10 of this chapter;
- (5) "licensee" means any person who holds a license;
- (6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in Sec. 10 of this chapter. (Sec 1 ch 59 SLA 1966; am Sec 40 ch 218 SLA 1976; am Sec 6 ch 258 SLA 1976)

**CHAPTER 02
MISCELLANEOUS PROVISIONS**

Section

10. Professional designation requirements
20. Limitation of liability for members of licensing boards

Sec. 08.02.010. Professional designation requirements. (a) A person licensed in the state as a chiropractor as defined in AS 08.20.220, a dentist as defined in AS 08.36.360, a medical practitioner or osteopath as defined in AS 08.64.380, a professional nurse as defined in AS 08.68.410, an optometrist as defined in AS 08.72.300(3), a registered pharmacist under AS 08.80, a registered physical therapist under AS 08.84, or a psychologist under AS 08.06, shall professionally identify himself by the use of appropriate letters or a title after his name which represents his specific field of practice. The letters or title shall appear on all signs, stationery or other advertising in which the person offers or displays his professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy under AS 08.64.380(2), or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and identifies himself by using the letters "M.D." or the title "doctor" or "physician" or any other title which tends to show that the person is wholly or qualified to diagnose, treat, test or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist," "radiologist," "audiologist," "naturopath," or the like.

(b) A person subject to (a) of this section who fails to comply with the requirements of (a) of this section shall be given notice of his noncompliance by his appropriate licensing board. If, after a reasonable time, with opportunity for a hearing, his noncompliance continues, the board may suspend or revoke his license or registration, or administer other disciplinary action which in its determination is appropriate. (Sec 1 ch 8 SLA 1973)

Sec. 08.02.020. Limitation of liability for members of licensing boards. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made. (Sec 45 ch 102 SLA 1976)

**CHAPTER 03
TERMINATION, CONTINUATION AND REESTABLISHMENT
OF REGULATORY BOARDS**

Under Sec. 08.03.010, the following boards have the following termination dates:

Guide Licensing and Control Board	June 30, 1980
Collection Agencies	June 30, 1980
Board of Welding Examiners	June 30, 1981
Board of Psychologist and Psychological Associate Examiners	June 30, 1982
Board of Electrical Examiners	June 30, 1982
Board of Dental Examiners	June 30, 1982
Real Estate Commission	June 30, 1982
Board of Marine Pilots	June 30, 1983
State Medical Board	June 30, 1983
Board of Nursing	June 30, 1983
Architects, Engineers and Land Surveyors	June 30, 1984
Board of Pharmacy	June 30, 1984
Board of Optometry	June 30, 1984
Board of Public Accountancy	June 30, 1984
Board of Barbers and Hairdressers	June 30, 1984
Board of Chiropractic Examiners	June 30, 1984
Board of Dispensing Opticians	June 30, 1985
Board of Veterinary Examiners	June 30, 1985
Board of Nursing Home Administrators	June 30, 1986
Physical Therapy Board	June 30, 1986

Section 08.03.020. Procedures governing termination, transition and continuation. (a) Upon termination, each board listed in AS 08.03.010 shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(b) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(c) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years unless the board is continued or reestablished for a longer period under AS 08.03.010. (Sec 2 ch 74 SLA 1979; am ch 42 SLA 1980)

BARBER AND HAI, DRESSER STATUTES, AS 08 13

CHAPTER 13
BARBERS AND HAIRDRESSERS

Article

1. Board of Barbers and Hairdressers
2. Examination and Licensing
3. General Provisions

ARTICLE 1
BOARD OF BARBERS AND HAIRDRESSERS

Section

10. Creation and membership of board
20. Term of office and removal of members
30. Powers and duties of the board
40. Meetings and examinations
50. Records of the board

Sec. 08.13.010. Creation and membership of board. (a) There is created the Board of Barbers and Hairdressers consisting of five members appointed by the governor.

(b) The board consists of

- (1) two persons licensed as barbers under this chapter;
- (2) two persons licensed as hairdressers under this chapter; and
- (3) one public member.

Sec. 08.13.020. Term of office and removal of members. Members serve staggered terms of three years at the pleasure of the governor. Members of the board may be appointed to serve no more than two consecutive full terms.

Sec. 08.13.030. Powers and duties of the board. (a) The board shall exercise general control over the vocations of barbering, hairdressing, and cosmetology.

(b) The board shall

- (1) examine applicants and approve the issuance of licenses and permits to practice;
- (2) authorize the issuance of licenses for schools of barbering, hairdressing and cosmetology.

(c) The board may

- (1) suspend or revoke a license or permit;
- (2) on its own motion or upon receipt of a written complaint, conduct hearings and request the Department of Commerce and Economic Development to investigate the practices of a person, shop, or school involved in the practice or teaching of barbering, hairdressing, or cosmetology;

(3) adopt regulations or do any act necessary to carry out the provisions of this chapter.

Sec. 08.13.040. Meetings and examinations. The board shall meet as often as necessary to conduct its business. It shall conduct separate examinations covering each field of practice: barbering, hairdressing, and cosmetology. Examinations shall be given at least twice in every year for each field of practice for which applications for licensure are pending. An applicant may take an examination in more than one field during the same testing session.

Sec. 08.13.050. Records of the board. The board shall keep a record of its proceedings related to the issuance, refusal, suspension, and revocation of each license and permit. The record shall contain the name of the person to whom a license or permit is issued, his place of business, the date of issuance for each license and permit, and whether it is currently valid. The record shall be open to inspection by the public at all reasonable times. The board shall submit an annual report on its operations to the governor.

ARTICLE 2
EXAMINATION AND LICENSING

Section

70. License required
80. Qualifications of applicants
82. Apprenticeship
90. Examinations and other requirements
100. License
110. School license
120. Shop license
130. Display of license or permit
140. Lapsed license
150. Grounds for refusal, suspension or revocation of a license or permit
160. Application of license requirements
170. Temporary permits
180. Student permits
185. Fees
190. Failure to possess a license or permit

Sec. 08.13.070. License required. A person may not

- (1) practice barbering, hairdressing, or cosmetology without a license, temporary permit, or student permit unless exempted under AS 08.13.160(d);
- (2) open or conduct a school of barbering, hairdressing, or cosmetology without a license;
- (3) operate a shop in violation of AS 08.13.120;
- (4) permit a person in his employ or under his supervision who is not exempted under AS 08.13.160(d) to practice barbering, hairdressing, or cosmetology without a license, temporary permit, or student permit;
- (5) permit the use of his license, temporary permit, or student permit by another person;
- (6) obtain or attempt to obtain a license, temporary permit, or student permit by fraudulent means.

Sec. 08.13.080. Qualifications of applicants. An applicant for examination must

- (1) have successfully completed all courses that a school with a program in barbering is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice barbering;
- (2) have successfully completed all courses that a school with a program in hairdressing is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice hairdressing;
- (3) have successfully completed all courses that a school with a program in cosmetology is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice cosmetology; or
- (4) have served an apprenticeship under AS 08.13.082.

Sec. 08.13.082. Apprenticeship. (a) The period of apprenticeship required to qualify an applicant for a license to practice barbering is 1,500 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than nine months from the date of its commencement and must be completed in not more than two years from the date of its commencement.

(b) The period of apprenticeship required to qualify an applicant for a license to practice hairdressing is 2,000 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than one year from the date of its commencement and must be completed in not more than two years from the date of its commencement.

(c) The period of apprenticeship required to qualify an applicant for a license to practice cosmetology is 350 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than six months from the date of its commencement and must be completed in not more than one year from the date of its commencement.

Sec. 08.13.090. Examinations and other requirements. (a) A written examination shall be given to each applicant for examination at a time and place determined by the board. The board may delegate the power of examination to a committee of the board or a board member.

(b) The written examination shall cover subjects designated by the board and shall test the applicant's knowledge of sanitary practices, safety of all procedures, and use of instruments, equipment and chemicals permitted within the field of practice for which the applicant is seeking a license.

(c) The board may by regulation establish requirements for a practical examination for licensure.

Sec. 08.13.100. License. (a) The board shall authorize the issuance of a license to each qualified applicant who has passed an examination under AS 08.13.090. The license is valid for two years and subject to renewal.

(b) A license shall state the areas of practice (barbering, hairdressing, cosmetology, or any combination) which the practitioner is qualified to perform.

(c) The board may by regulation create areas of limited professional licensing in the field of cosmetology, except that the board may not restrict or otherwise regulate the practice of manicure or pedicure. Any limitations must be stated on the license.

(d) A person holding a current valid license from a board of barbering, hairdressing, or cosmetology in another state or country is entitled to a license under this chapter without examination. An application shall include:

(1) proof of a valid license issued by another licensing jurisdiction;

(2) proof of completed training and working experience which the board finds to meet the minimum requirements of the state;

(3) payment of a credential investigation fee.

Sec. 08.13.110. School license. The board shall adopt regulations for the licensing of schools of barbering, hairdressing, and cosmetology. The regulations shall include details of the curriculum, minimum hours of instruction, physical condition of the facilities, and financial responsibility of the owner.

Sec. 08.13.120. Shop license. The board shall adopt regulations for the licensing of shops. A shop owner will be licensed to operate a shop without examination, but unless he is a practitioner he may not conduct business without employing a manager who is a practitioner. This section does not apply to a shop located in a community having a population of less than 1,000 people which is not within 25 miles of a community of more than 1,000 people.

Sec. 08.13.130. Display of license or permit. A practitioner shall display his license in a conspicuous location in his place of business. Each shop owner is responsible for the display of the licenses of employees. A practitioner who practices outside of a place of business shall carry his license with him to be shown to persons upon whom work is performed. A person holding a student permit or temporary permit shall have his permit available for inspection when engaged in practice.

Sec. 08.13.140. Lapsed license. A lapsed license may be reinstated if the license has not been lapsed for a period of more than three years, and all renewal and delinquent fees for the period during which the license has been lapsed are paid.

Sec. 08.13.150. Grounds for refusal, suspension or revocation of a license or permit. The board may refuse, suspend, or revoke a license, student permit, or temporary permit for failure to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board.

Sec. 08.13.160. Application of license requirements. (a) A person holding a valid license to practice barbering under AS 08.12 is licensed under this chapter, and may continue to practice barbering under the conditions imposed by AS 08.12 and the regulations issued under AS 08.12 until the license expires.

(b) A person holding a valid license under AS 08.28 may continue to practice under the conditions imposed under AS 08.28 and the regulations issued under AS 08.28 until the license expires.

(c) A person holding a valid license issued under AS 08.12 or AS 08.26 shall be entitled upon its expiration to a license to practice under this chapter in the field of practice for which he was originally licensed, without meeting requirements for new licensure.

(d) The licensing and permit provisions of this chapter do not apply to

(1) a person practicing barbering, hairdressing, or cosmetology in a community having a population of less than 1,000 people which is not within 25 miles of a community of more than 1,000 people and who uses only chemicals available to the general public;

(2) a shampoo person.

Sec. 08.13.170. Temporary permits. (a) A person not licensed under this chapter who wishes to practice and teach barbering, hairdressing or cosmetology temporarily and primarily for educational purposes who is otherwise qualified to practice barbering, hairdressing, or cosmetology as determined by the board shall first obtain a temporary permit.

(b) The temporary permit shall specify

- (1) the purpose for which it is granted;
- (2) the period during which the holder of the temporary permit may practice;
- (3) the place or places the holder of the temporary permit may practice.

Sec. 08.13.180. Student permits. A person attending a licensed school of barbering, hairdressing, or cosmetology, and a person apprenticed to a practitioner in a shop approved by the board shall obtain a student permit. A student permit to practice barbering or hairdressing is valid for two years. A student permit to practice cosmetology is valid for one year. A student permit may not be renewed, but, upon application, the board may issue a new permit to the same person, or extend an expired permit to the date of the next scheduled examination. Credit earned under an expired student permit may be transferred to a new permit as determined by the board.

Sec. 08.13.185. Fees. The following fees are imposed under this chapter:

(1) schools:	
initial two year license fee.....	\$700
biennial renewal	400
(2) school owner:	
initial two year license fee.....	\$ 70
biennial renewal	60
(3) instructor:	
initial two year license fee.....	\$ 70
biennial renewal	60
(4) shop owner:	
initial two year license fee.....	45
biennial renewal	40
(5) practitioner of barbering:	
initial two year license fee.....	\$ 65
biennial renewal	40
(6) practitioner of hairdressing:	
initial two year license fee.....	\$ 65
biennial renewal	40
(7) practitioner of cosmetology:	
initial two year license fee.....	\$ 45
biennial renewal	30
(8) temporary permit	\$ 30
(9) student permit.....	\$ 20
(10) examination fee	\$ 25
(11) investigation fee	\$ 25
(12) delinquent fee for late renewal	\$ 20

Sec. 08.13.190. Failure to possess a license or permit. A person who practices barbering, hairdressing, or cosmetology, or operates a shop, or operates a school of barbering, hairdressing, or cosmetology, or teaches in a school of barbering, hairdressing, or cosmetology, without a license, temporary permit, or student permit and who is not exempt under AS 08.13.120 or under 08.13.160(d) is guilty of a class B misdemeanor.

ARTICLE 3 GENERAL PROVISIONS

Section

200. Deposit of receipts
210. Health and sanitary conditions
220. Definitions

Sec. 08.13.200. Deposit of receipts. Money received by the board from the payment of fees shall be paid into the general fund of the state.

Sec. 08.13.210. Health and sanitary conditions. Health and sanitary conditions in shops and schools of barbering, hairdressing, and cosmetology shall be supervised by the Department of Health and Social Services.

Sec. 08.13.220. Definitions. As used in this chapter,

- (1) "apprentice" means a person who receives on the job training under the direct supervision of a practitioner, who does not receive a wage or commission before he has completed 350 hours of training, and for whose work no charge is made before he has completed 350 hours of training;
- (2) "barbering" means shaving, trimming, or cutting the beard or hair of a living person for a fee and for cosmetic purposes;
- (3) "board" means the Board of Barbers and Hairdressers;
- (4) "cosmetology" means the use of the hands, mechanical or electric apparatus or appliances, cosmetic preparations, antiseptics, or lotions in massaging, cleansing, stimulating, or similar work on the human body for cosmetic purposes for a fee;
- (5) "hairdressing" means performing, for a fee, the following services for cosmetic purposes:
 - (A) shaving, trimming, or cutting the beard of a living person; and
 - (B) arranging, styling, dressing, curling, temporary waving, permanent waving, cutting, singeing, bleaching, coloring, cleansing, conditioning, or similar work on the hair of a living person.
- (6) "practitioner" means a person licensed to practice barbering, hairdressing, or cosmetology under this chapter;
- (7) "shampoo person" means a person who, for a fee and under the supervision of a practitioner of barbering or hairdressing, cleanses or conditions the hair of the human head with products which have no effect other than cleansing or conditioning the hair;
- (8) "shop" is an establishment operated for the purpose of engaging in barbering, hairdressing, or cosmetology.

VOCATIONAL REGULATIONS 12 AAC 09.
BOARD OF BARBERS AND HAIRDRESSERS

CHAPTER 2
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING

Article

1. Collection of Fees

ARTICLE 1
COLLECTION OF FEES

Section

10. Licensing and renewal fees
20. Prorating renewal fees
30. Prorating licensing fees

12 AAC 02.010. LICENSING AND RENEWAL FEES. (a) The department will collect fees and issue receipts for licensing and for license renewal for the boards listed in AS 08.01.010.

(b) The department will not issue a license or re-issue a license unless the applicable fees established in AS 08 dealing with one of the boards listed in AS 08.01.010 have been collected and a receipt has been prepared. (Eff. 10/2/81, Reg. 80)

Authority: AS 08.01.080
AS 08.01.050

12 AAC 02.020. PRORATING RENEWAL FEES. (a) The department will prorate initial licensing renewal fees for boards listed in AS 08.01.010 which require payment of the renewal fee at the time a license is issued, in the following manner; if the department issues an initial license

(1) within 30 days before the date by which the license must be renewed, the licensee is not required to pay a renewal fee until the next and subsequent renewal dates;

(2) within six months before but more than 30 days before the date by which the license must be renewed, the licensee shall pay one fourth of the prescribed renewal fee;

(3) within 12 months before but more than six months before the date by which the license must be renewed, the licensee shall pay one half of the prescribed renewal fee;

(4) within 18 months before but more than 12 months before the date by which the license must be renewed, the licensee shall pay three fourths of the prescribed renewal fee; or

(5) more than 18 months before the date by which the license must be renewed, the licensee shall pay the entire prescribed renewal fee.

(b) The department shall prorate quadrennial licensing renewal fees for boards listed in AS 08.01.010 which require payment of the renewal fee at the time a license is issued in the following manner; if the department issues an initial license

(1) within 60 days before the date by which the license must be renewed, the licensee is not required to pay a renewal fee until the next and subsequent renewal dates;

(2) within 12 months before but more than 60 days before the date by which the license must be renewed, the licensee shall pay one fourth of the prescribed renewal fee;

(3) within 24 months before but more than 12 months before the date by which the license must be renewed, the licensee shall pay one half of the prescribed renewal fee;

(4) within 36 months before but more than 24 months before the date by which the license must be renewed, the licensee shall pay three fourths of the prescribed renewal fee; or

(5) more than 36 months before the date by which the license must be renewed, the licensee shall pay the entire prescribed renewal fee. (Eff. 10/2/81, Reg. 80)

Authority: AS 08.01.050
AS 08.01.080
AS 08.01.100

12 AAC 02.030. PRORATING LICENSING FEES. (a) The department will prorate initial license fees which specifically state that the initial license fee is for two years, in the following manner; if the department issues an initial license

(1) within 30 days before the date by which it must be renewed, the licensee shall pay the entire license fee and is not required to pay the renewal fee until the second and subsequent renewal dates;

(2) within six months before but more than 30 days before the date by which the license must be renewed, the licensee shall pay one fourth of the prescribed license fee at the time of issuance;

(3) within 12 months before but more than six months before the date by which the license must be renewed, the licensee shall pay one half of the prescribed license fee at the time of issuance; or

(4) more than 12 months before the date by which the license must be renewed, the licensee shall pay the entire prescribed license fee at the time of issuance.

(b) A licensee whose initial license fee was prorated in accordance with (a)(2), (3) or (4) of this section, shall pay the entire prescribed renewal fee at the time of the first and subsequent renewal dates.

(c) A fee paid for an initial license issued 30 days or less before the date of the first renewal will be applied to the first renewal.

(d) Licensing and renewal fees in the amount of \$60.00 or less will not be prorated by the department, but must be paid in full at the time an initial license is issued and renewed. (Eff. 10/2/81, Reg. 80; am 3/20/82, Reg. 81)

Authority: AS 08.01.080
AS 08.01.100

CHAPTER 9
BOARD OF BARBER AND HAIRDRESSERS

Article

1. Examination Applications and Standards
2. Barber Examinations
3. Hairdressing and Cosmetology Examinations
4. Licensing Applications and Standards
5. Barber, Hairdressing and Cosmetology Schools
6. Student Permits
7. General Provisions

ARTICLE 1
EXAMINATION APPLICATIONS AND
STANDARDS

Section

05. Time and place for filing applications
10. Examinations
15. Reexamination
20. Conduct for examinations
30. Station assigned and equipment
35. Models
38. Computation of grades

12 AAC 09.005. TIME AND PLACE FOR FILING APPLICATIONS. (a) An application for examination as a barber, hairdresser, cosmetologist, hairdresser or cosmetician must be submitted on a form provided by the department with certified or notarized documents in support of the application.

(b) The application with the required fee must be received in the department not less than 15 days before the date of the examination. (Eff. 11/2/81, Reg. 80; am 4/18/82, Reg. 82)

Authority: AS 08.13.030(b)(1)
and (c)(3)

12 AAC 09.010. EXAMINATIONS. (a) Examinations of applicants for licensure will be given quarterly each year by the board.

(b) The board will give public notice of the date and place of an examination at least 30 days before the examination.

(c) Additional examinations may be held at the discretion of the board if there are five or more applicants. (Eff. 11/2/81, Reg. 80; am 4/18/82, Reg. 82)

Authority: AS 08.13.030(b)(1)
and (c)(3)
AS 08.13.040

12 AAC 09.015. REEXAMINATION. Applicants failing to pass an examination or failing to appear for an examination may take another examination by submitting the required fee of \$25.

(b) An applicant scheduled to take an examination who is unable to appear, will have his examination fee transferred to the next scheduled examination if he notifies the department of his inability to appear at least five days before the examination date. (Eff. 11/2/81, Reg. 80; am 4/10/82, Reg. 82)

Authority: AS 08.13.030(b)(1)
and (c)(3)

12 AAC 09.020. IDENTIFICATION OF APPLICANT. (a) The department will assign each applicant for examination a number by which he or she is identified during the examination.

(b) No applicant may reveal his or her identity to an examiner until grading has been completed by the examiners.

(c) No applicant may make any reference orally or in writing to an examiner about any school of barbering, hairdressing or cosmetology, instructor, or present licenses held until grading has been completed by the examiners.

(d) No equipment, supplies, apparel or items which are to be turned into the board may identify the applicant except by the number assigned by the department. (Eff. 11/2/81, Reg. 80)

Authority: AS 08.13.030(b)(1)
and (c)(3)
AS 08.13.090

12 AAC 09.025. CONDUCT FOR EXAMINATIONS. (a) No applicant may leave the practical examination site or the written examination site while the examination is being conducted without permission of an examiner.

(b) Any attempt by a school owner, instructor, or any person to communicate with or help an applicant in any way while taking the examination, or any attempt by an applicant to secure information from another applicant will disqualify the applicant from completing the examination. (Eff. 11/2/81, Reg. 80)

Authority: AS 08.13.030(b)(1)
and (c)(3)

12 AAC 09.030. STATION ASSIGNED AND EQUIPMENT. (a) Each applicant will be assigned a station equipped with a chair in which he or she will perform the required practical operations. Any change in station assignment must be approved by an examiner.

(b) An applicant must furnish his or her own tools and supplies for the practical examination as designated by the board. (Eff. 11/2/81, Reg. 80)

Authority: AS 08.13.030(b)(1)
and (c)(3)
AS 08.13.090(c)

12 AAC 09.035. MODELS. (a) An applicant shall secure his or her own model for the practical examination.

(b) An applicant shall provide the board with a statement of release of liability of the State and the applicant as executed by the model on a form provided by the department.

(c) An applicant shall provide the board with his or her model's name, age (if under 18 years of age), address and telephone number.

(d) A model for the practical examination must be at least 15 years of age.

(e) A model for the practical examination may not be a licensed barber, hairdresser or cosmetologist, a student or shop apprentice. (Eff. 11/2/81, Reg. 80)

Authority: AS 08.13.030(c)(3)
AS 08.13.020(c)

12 AAC 09.038. COMPUTATION OF GRADES. An applicant's final grade for each subject of the practical section of the examination is computed by totaling the number of points given to him or her by each examiner and dividing that total by the number of examiners grading the applicant. (Eff. 4/18/82, Reg. 82)

Authority: AS 08.13.030
AS 08.13.090

ARTICLE 2
BARBER EXAMINATIONS

Section

40. Content and grading criteria of barber examination
45. Content and grading criteria of barber instructor examination
50. Basis of questions
55. Reexamination

12 AAC 09.040. CONTENT AND GRADING CRITERIA OF BARBER EXAMINATION. (a) The examination for a barber consists of the following sections:

(1) a 2 hour written examination covering sanitation, barber science, sterilization of equipment, and common contagious and infectious diseases of the face, head and neck;

(2) a practical examination with a maximum grade of 100 points as may be given by an examiner in each of the following subjects when completed in the specified time period:

- (A) haircut, 45 minutes;
- (B) shave, 45 minutes;
- (C) scalp massage, 15 minutes;
- (D) shampoo, 15 minutes;
- (E) hairstyling and drying, 15 minutes, and

(F) facial (rolling cream or scientific rest), 45 minutes.

(b) The condition and use of tools, sanitation, and protection and comfort of model will be included in the grading of each subject of the practical examination.

(c) A grade of at least 75 percent on the written examination section and a grade of at least 75 points on each subject of the practical examination section is a passing grade. (Eff. 11/2/81, Reg. 80, am 4/18/82, Reg. 82; am 1/2/82, Reg. 84)

Authority: AS 08 13 030(c)(3)
AS 08 13 090

12 AAC 09.045. CONTENT AND GRADING CRITERIA FOR BARBER INSTRUCTOR EXAMINATION. (a) The examination for a barber instructor will consist of the following sections:

(1) a 2-hour written examination prepared by the board based on questions designated in 12 AAC 09 050; and

(2) a 30 minute or longer demonstration of a practical and theoretical barbering lesson plan to be determined by the board at the examination consisting of one or more of the following subjects:

- (A) haircut;
- (B) shaving;
- (C) scalp massaging; and
- (D) shampooing;
- (E) facial; and
- (F) hairstyling and drying.

(b) A grade of at least 75 percent on the written examination section is a passing grade for that section of the examination. The demonstration section of the examination will be graded by the board on a pass/fail basis. (Eff. 11/2/81, Reg. 80, am 10/21/82, Reg. 84)

Authority: AS 08 13 030(c)(3)
AS 08 13 090
AS 08 13 100

12 AAC 09.050. BASIS OF QUESTIONS. The authorized textbooks for basis of examination questions are:

(1) Practice and Science of Standard Barbering, published by Milady Publishing Company, Bronx, New York, 1969, and subsequent editions; and

(2) Standard Textbook of Professional Barbering, published by Milady Publishing Company, Bronx, New York, 1977, and subsequent editions. (Eff. 11/2/81, Reg. 80)

Authority: AS 08 13 030(c)(3)
AS 08 13 090

12 AAC 09.055. REEXAMINATION. (a) An applicant who fails the entire examination, or one section of the examination, may be reexamined at the next scheduled examination

(b) An applicant who fails one or more subjects of the practical section of the examination may be reexamined in only the subject or subjects failed.

(c) An applicant who fails one section of the examination, but passes the other section, may be reexamined only in the section failed.

(d) An applicant who fails the demonstration section of the instructor examination may be reexamined in the entire section. (Eff. 11/2/81, Reg. 80; am 4/18/82, Reg. 82)

Authority: AS 08 13 030(c)(3)
AS 08 13 090

ARTICLE 3 HAIRDRESSING AND COSMETOLOGY EXAMINATIONS

- Section
- 60. Content and grading criteria for hairdressing-cosmetology examination
 - 62. Content and grading criteria for hairdressing examination
 - 65. Content and grading criteria for cosmetician examination
 - 70. Content and grading criteria for hairdresser-cosmetologist instructor examination
 - 76. Reexamination

12 AAC 09.060. CONTENT AND GRADING CRITERIA FOR HAIRDRESSING COSMETOLOGY EXAMINATION. (a) The examination for a hairdresser cosmetologist consists of the following sections:

(1) a 2 hour written examination entitled the National Cosmetology Test, sponsored by the National Interstate Council of State Boards of Cosmetology and developed and scored by the Psychological Association, and

(2) a practical examination with a maximum grade of 100 points as may be given by an examiner in each of the following subjects graded when completed in the specified time periods allowed per subject:

- (A) permanent waving, 30 minutes;
- (B) virgin bleach and tint, 30 minutes;
- (C) haircutting, 45 minutes;
- (D) hair styling, 45 minutes.

(3) a practical examination with a maximum grade of 100 points as may be given by an examiner in the subjects of facial massage, skin care, make up and eye care, when completed within 90 minutes.

(b) sanitation, comfort and protection of model will be included in the grading of each subject of the practical examination.

(c) a grade of at least 75 percent on the written examination section and a grade of at least 75 points on each subject of the practical examination section is a passing grade.

(d) An applicant who passes the written examination and passes the subjects specified in (a)(2) and (b) of this section, but fails (a)(3) of this section, is entitled to a license as a hairdresser. A candidate who passes the written examination and the subjects specified in (a)(3) and (b) of this section, but fails one or more subjects in (a)(2) of this section, is entitled to a license as a cosmetician. (Eff. 11/2/81, Reg. 80, am 4/18/82, Reg. 82; am 10/21/82, Reg. 84)

Authority: AS 08 13 030(c)(3)
AS 08 13 090

12 AAC 09.062. CONTENT AND GRADING CRITERIA FOR HAIRDRESSING EXAMINATION. (a) The examination for a hairdresser will consist of the examination sections and subjects specified in 12 AAC 09 060(a)(1), (2) and (b).

(b) A grade of at least 75 percent on the written examination section and a grade of at least 75 points on each subject of the practical examination section is a passing grade. (Eff. 4/18/82, Reg. 82)

Authority: AS 08 13 030
AS 08 13 090

12 AAC 09.065. CONTENT AND GRADING CRITERIA FOR COSMETICIAN EXAMINATION. (a) The examination for a cosmetician consists of the following sections:

(1) a 2 hour written examination entitled the National Esthetician Test, sponsored by the National Interstate Council of State Board of Cosmetology and developed and scored by the Psychological Corporation; and

(2) a practical examination with a maximum grade of 100 points as may be given by an examiner in the subjects of facial massage, skin care, make up and eye care, when completed within 90 minutes.

(b) Sanitation, comfort and protection of model will be included in the grading of each subject of the practical examination.

(c) A grade of at least 75 percent on the written examination section and a grade of at least 75 percent on each subject of the practical examination section is a passing grade. (Eff. 11/2/81, Reg. 80, am 4/18/82, Reg. 82)

Authority: AS 08 13 030(c)(3)
AS 08 13 090

12 AAC 09.070. CONTENT AND GRADING CRITERIA FOR HAIRDRESSER COSMETOLOGIST INSTRUCTOR EXAMINATION. (a) The examination for a hairdresser cosmetologist instructor

consists of the following sections:

(1) a 2 hour written examination entitled the Cosmetology Teacher Test, sponsored by the National Interstate Council of State Boards of Cosmetology and developed and scored by the Psychological Corporation; and

(2) a 30 minute or longer demonstration of a practical and theoretical lesson plan to be determined by the board at the examination, consisting of one or more of the following subjects:

- (A) facial massage, skin care, make up and eye care;
- (B) haircutting;
- (C) hair styling;
- (D) permanent waving;
- (E) virgin bleach and tint;
- (F) chemical hair relaxing; and
- (G) scalp treatment.

(b) a grade of at least 75 percent on the written examination section is a passing grade for that section of the examination. The demonstration section of the examination will be graded on a pass/fail basis. (Eff. 11/2/81, Reg. 80; am 4/18/82, Reg. 82)

Authority: AS 08.13.030(c)(3)
AS 08.13.030(c)
AS 08.13.100

12 AAC 09.075. REEXAMINATION. (a) An applicant who fails the entire examination, or one section of the examination may be reexamined at the next scheduled examination.

(b) An applicant who fails one or more subjects of the practical section of the examination may be reexamined in only the subject failed.

(c) An applicant who fails the written section of the examination, but passes the practical examination section, may be reexamined in only the section failed.

(d) An applicant who fails the demonstration section of the instructor examination may be reexamined in the entire section. (Eff. 11/2/81, Reg. 80; am 10/21/82, Reg. 84)

Authority: AS 08.13.030(c)(3)
AS 08.13.090

ARTICLE 4 LICENSING APPLICATIONS AND STANDARDS

Section

- 80. Barber license by examination
- 85. Barber license by waiver
- 90. Hairdressing cosmetologist or hairdressing licenses by examination
- 95. Hairdressing cosmetology or hairdressing licenses by waiver
- 100. Cosmetician license by examination
- 105. Cosmetician license by waiver
- 107. Temporary permits
- 110. Shop owner and shop license
- 115. Verifications

12 AAC 09.080. BARBER LICENSE BY EXAMINATION. (a) An application for a barber license by examination must be submitted according to the provisions of 12 AAC 09.005 with:

(1) verification of 1,500 hours of training in a barber school approved by the board or approved by another licensing jurisdiction;

(2) verification of 1,500 hours of training in an apprenticeship program approved by the board or approved by another licensing jurisdiction; or

(3) verification of 1,500 hours combined training in a barber school and an apprenticeship program approved by the board or approved by another licensing jurisdiction.

(b) An application for a barber instructor license by examination must be submitted according to the provisions of 12 AAC 09.005 with:

(1) verification of a current Alaska barber license; and

(2) verification of at least three years of practice as a licensed barber in Alaska or in another licensing jurisdiction; or

(3) one year of practice as a licensed barber in Alaska or in another licensing jurisdiction and 600 hours of student instructor training in a barber school approved by the board or by another licensing jurisdiction. (Eff. 11/2/81, Reg. 80; am 10/21/82, Reg. 84)

Authority: AS 08.13.030(b) and (c)
AS 08.13.080(a)
AS 08.13.110
AS 08.13.100

12 AAC 09.085. BARBER LICENSE BY WAIVER. (a) An application for a barber license by waiver of examination must be submitted on a form provided by the department with:

(1) a check or money order in the amounts specified in AS 08.13.185(5) and (11);

(2) verification of a current barber license issued by another licensing jurisdiction; and

(3) verification of completed training or work experience equivalent to:

(A) 1,500 hours of training in a barber school or apprentice program approved by the board or approved by another licensing jurisdiction; or

(B) at least one year of full time work experience as a licensed barber, averaging no less than 32 hours per week, and a minimum 1,000 hours of training in a barber school or apprenticeship program approved by the board or by another licensing jurisdiction.

(b) An application for a barber instructor license by waiver of examination must be made on a form provided by the department with:

(1) a check or money order in the amount specified in AS 08.13.185(3) and (11);

(2) verification of a current barber instructor license issued by another licensing jurisdiction; and

(3) verification of training and experience equivalent to 12 AAC 09.080(b)(2) or (b)(3). (Eff. 11/2/81, Reg. 80; am 10/21/82, Reg. 84)

Authority: AS 08.13.030(b) and (c)
AS 08.13.080
AS 08.13.110
AS 08.13.100

12 AAC 09.090. HAIRDRESSING COSMETOLOGIST OR HAIRDRESSING LICENSES BY EXAMINATION. (a) An application for a hairdressing cosmetology or a hairdressing license by examination must be submitted according to the provisions of 12 AAC 09.005 with:

(1) verification of 2,000 hours of training in a hairdressing, cosmetology or beauty culture school approved by the board or approved by another licensing jurisdiction;

(2) verification of 2,000 hours of training in an apprenticeship program approved by the board or approved by another licensing jurisdiction; or

(3) verification of 2,000 hours of combined training in a hairdressing, cosmetology, or beauty culture school and apprenticeship program approved by the board or approved by another licensing jurisdiction.

(b) An application for a hairdresser cosmetologist instructor by examination must be submitted according to the provisions of 12 AAC 09.005 with:

(1) verification of a current license to practice as a hairdresser cosmetologist in Alaska; and

(2) verification of at least three years of practice as a licensed hairdresser cosmetologist in Alaska or in another licensing jurisdiction; or

(3) verification of one year of practice as a licensed hairdresser cosmetologist in Alaska or as a licensed hairdresser cosmetologist in another licensing jurisdiction and six hundred hours of student instructor training in a hairdressing, cosmetology or beauty culture school approved by the board or approved by another licensing jurisdiction. (Eff. 11/2/81, Reg. 80; am 4/18/82, Reg. 82; am 10/21/82, Reg. 84)

Authority: AS 08.13.030(b) and (c)
AS 08.13.080(b)
AS 08.13.110
AS 08.13.190

12 AAC 09.095 HAIRDRESSING COSMETOLOGY OR HAIRDRESSING LICENSES BY WAIVER. (a) An application for a hairdresser cosmetologist or hairdresser license by waiver of examination must be made on a form provided by the department with

(1) a check or money order in the amount specified in AS 08.13.185;

(2) verification of a current license to practice hairdressing cosmetology or hairdressing issued by another licensing jurisdiction; and

(3) verification of completed training and work experience equivalent to:

(A) 2,000 hours of training in a hairdressing, cosmetology or beauty culture school or an apprenticeship program approved by the board or approved by another licensing jurisdiction;

(B) at least one year of full time work experience as a licensed hairdresser cosmetologist or hairdresser, averaging no less than 32 hours per week, and a minimum 1,500 hours of training in a hairdressing, cosmetology, or beauty culture school or an apprenticeship program approved by the board or by another licensing jurisdiction; or

(C) at least two years of full-time work experience as a licensed hairdresser cosmetologist or hairdresser, averaging no less than 32 hours per week, and a minimum of 1,000 hours of training in a hairdressing, cosmetology or beauty culture school or an apprenticeship program approved by the board or approved by another licensing jurisdiction.

(b) An applicant unable to satisfy the requirements of (a)(3) of this section due to lack of equivalency, may obtain the needed hours of training and/or experience through attendance at an approved hairdressing, cosmetology, or beauty culture school or participation in an apprenticeship program approved by the board.

(c) An application for a hairdresser cosmetologist instructor license by waiver of examination must be made on a form provided by the department with:

(1) a check or money order in the amount specified in AS 08.13.185(3) and (11);

(2) verification of a current hairdresser cosmetologist instructor license issued by another licensing jurisdiction; and

(3) verification of training and experience equivalent to 12 AAC 09.090(b)(2) or (b)(3). (Eff. 11/2/81, Reg. 80; am. 10/21/82, Reg. 84)

Authority: AS 08.13.030(b) and (c)
AS 08.13.100(d)
AS 08.13.110
AS 08.13.190

12 AAC 09.100. COSMETICIAN LICENSE BY EXAMINATION. An application for a cosmetician license by examination must be submitted according to the provisions of 12 AAC 09.005 with:

(1) verification of 350 hours of cosmetician training in a hairdressing, cosmetology or beauty culture school approved by the board or approved by another licensing jurisdiction;

(2) verification of 350 hours of cosmetician training in an apprenticeship program approved by the board or approved by another licensing jurisdiction; or

(3) verification of 350 hours of combined cosmetician training in a hairdressing, cosmetology or beauty culture school and an apprenticeship program approved by the board or approved by another licensing jurisdiction. (Eff. 11/2/81, Reg. 80)

Authority: AS 08.13.030(b)(1)
and (c)(3)
AS 08.13.080(c)

12 AAC 09.105. COSMETICIAN LICENSE BY WAIVER. An application for a cosmetician license by waiver of examination must be submitted on a form provided by the department with:

(1) a check or money order in the amount specified in AS 08.13.185(7) and (11);

(2) verification of a current license to practice as a cosmetician issued by another licensing jurisdiction, and

(3) verification of training equivalent to 12 AAC 09.100. (Eff. 11/2/81, Reg. 80)

Authority: AS 08.13.030(b)(1)
and (c)(3)
AS 08.13.100(d)

12 AAC 09.107. TEMPORARY PERMITS. (a) An application for a temporary permit must be submitted on a form provided by the department with:

(1) verification of a current license to practice barbering, hairdressing cosmetology, or cosmetology issued by another licensing jurisdiction;

(2) a check or money order in the amount specified in AS 08.13.185;

(3) a statement of the purpose for which the temporary permit is being applied;

(4) the specific locations and exact dates the temporary permit holder would practice, demonstrate or teach; and

(5) the name or names of sponsors in Alaska, if applicable.

(b) A temporary permit is valid only for the locations and dates submitted with the application not exceeding a continuous period of 30 days.

(c) A temporary permit will not be renewed, but may be reissued upon receipt of a complete application submitted according to (a) of this section. (Eff. 10/21/82, Reg. 84)

Authority: AS 08.13.030(c)
AS 08.13.170

12 AAC 09.110. SHOP OWNER AND SHOP LICENSES. (a) An application for a shopowner license must be submitted on a form provided by the department with:

(1) a check or money order in the amount specified in AS 08.13.185(4); and

(2) the business name, physical location and addresses of all shops owned.

(b) An applicant for a shop license must be submitted on a form provided by the department with:

(1) the original or a notarized copy of a satisfactory report of a sanitary health inspection by the Alaska Department of Environmental Conservation, or its designee, which was conducted within 90 days of the date application is submitted to the department; and

(2) a notarized statement to include the:

(A) name of the owner or lessee;

(B) business name of the shop;

(C) physical location and address of the shop; and

(D) Alaska license number of the barber, hairdresser, cosmetologist or cosmetician employed as manager of the shop if the owner is not a licensed practitioner in the state.

(b) In the event of sale, lease, or transfer of ownership of a shop the seller, lessor or transferor shall notify the board in writing of the transaction within 30 days of sale, lease or transfer. The notice must include the name and address of buyer, lessee, or transferee.

(c) A violation of the rules and regulations of the Alaska Department of Environmental Conservation governing health and sanitary conditions in shops of barbering, hairdressing and cosmetology constitutes a violation of this chapter and is subject to the provisions of AS 08.13.030(c)(2).

(d) A shop owner or manager of a shop shall permit any member of the board of inspect the shop at any time during working hours. (Eff. 11/2/81, Reg. 80; am. 10/21/82, Reg. 84)

Authority: AS 08.13.030(c)(3)
AS 08.13.120
AS 08.13.210

12 AAC 09.115. VERIFICATIONS. Verification of licensed work experience or training of an applicant as required in 12 AAC 09.080-12 AAC 09.105, shall be certified or notarized documentation supplied to the board by:

(1) another jurisdiction's licensing board;

(2) a licensed school or shop;

(3) a licensed instructor; or

(4) a licensed hairdresser cosmetologist or barber who sponsored an apprentice and maintained the required records. (Eff. 11/2/81, Reg. 80)

Authority: AS 08.13.030(c)(3)

ARTICLE 6
BARBER, HAIRDRESSING AND
COSMETOLOGY SCHOOL

Section

- 120. School Owner License
- 125. Requirements for school license
- 130. School records
- 135. Transfer of hours and reenrollment
- 140. Instructor student ratio
- 145. Equipment for barber schools
- 150. Barber school curriculum
- 155. Equipment for hairdressing and cosmetology schools
- 160. Curriculums for hairdressing and cosmetology schools
- 165. Student instructor curriculums
- 170. Theory syllabus and criteria for grading of examination.
- 175. Sanitation

12 AAC 08.120. SCHOOL OWNER LICENSE. (a) Any person, association, firm or corporation proposing to open a school of barbering, hairdressing or cosmetology, shall make application to the board for a school owner license on a form provided by the department with:

(1) a check or money order in the amount specified in AS 08.13.185(2);

(2) names of all parties having a financial interest in the school; and

(3) a certified or notarized copy of a valid bond, for the school, filed with the Alaska Department of Education.

(b) In the event of a sale, lease or transfer of ownership of any school, the seller, lessor or transferor shall notify the board in writing of the transaction within 30 days of the sale, lease or transfer. The notice must contain the name and address of the buyer, lessee or transferee. (Eff. 11/2/81, Reg. 80)

Authority: AS 08.13.030(b)(2)
and (c)(3)
AS 08.13.110

12 AAC 09.125. REQUIREMENTS FOR SCHOOL LICENSE. (a) Any person, association, firm or corporation proposing to open a school of barbering, hairdressing or cosmetology shall make application to the board for inspection and approval of the school premises by at least one board member. Application must be made on a form provided by the department with:

(1) a check or money order in the amount specified in AS 08.13.185(1);

(2) a current and valid certificate of registration for the school issued by the Alaska Department of Education;

(3) name of school owner; and

(4) an exact description of the floor plan and location of the school.

(b) In order to be approved by the board, a school shall provide at least 15 square feet of instructional area per student. Minimum required instructional areas are:

(1) one classroom for theoretical instruction;

(2) one practical operation instructional area with student stations arranged to facilitate work to be performed; and

(3) one dispensary with at least one sink with hot and cold water.

(c) For the purpose of determining minimum instructional areas, noninstructional areas of a school are lavatories, closets, hallways, reception areas, offices, stock room and other similar rooms or structures. (Eff. 11/2/81, Reg. 80)

Authority: AS 08.13.030(b)(2)
and (c)(3)
AS 08.13.110

12 AAC 09.130. SCHOOL RECORDS. (a) A school owner must register each student with the board and include the student's name, address and date of commencement of instruction within 30 days after the date of a student's enrollment in the school.

(b) A school owner must notify the board in writing of the date of a student's termination of instruction within 30 days after the date of termination.

(c) A school owner must provide at least one time clock for the recording of student attendance and maintain daily records of student attendance, number of hours of instructional coursework, and number of practical operations of each student enrolled in the school.

(d) A school shall submit a report to the board on a form provided by the board, verifying hours of training received by each student enrolled in the school within 30 days after the date of

(1) each student's successful completion of a course of instruction; or

(2) each student's termination of a course of instruction.

(e) A school may not credit a student for more than 8 hours of training in any one day.

(f) A school owner shall provide a certificate, diploma, or other affidavit of completion of a course to each student successfully completing a course of instruction.

(g) All records required to be maintained by a school under this must be maintained in an orderly, alphabetical or numerical filing system, and must be made available for inspection by any member of the board during hours the school is open for instruction. (Eff. 11/2/81, Reg. 80; am 10/21/82, Reg. 84)

Authority: AS 08.13.030(c)(3)
AS 08.13.110

12 AAC 08.135. TRANSFER OF HOURS AND REENROLLMENT. (a) A school shall accept credit hours of instruction and training of a student transferring from another licensed school in Alaska, or in another licensing jurisdiction, upon presentation of a certified or notarized copy of the records maintained by the board or by the other licensing jurisdiction, unless the student has interrupted his schooling for a continuous period of two years or more before the request for transfer of credit hours.

(b) A student requesting reenrollment to a school who has interrupted his schooling for a continuous period of two years or more, will not be allowed credit for hours of instruction received prior to the date of interruption. (Eff. 11/2/81, Reg. 80, am 10/21/82, Reg. 84)

Authority: AS 08.13.030(c)(3)
AS 08.13.110

12 AAC 09.140. INSTRUCTOR STUDENT RATIO. (a) A school of barbering, hairdressing or cosmetology must employ licensed instructors and maintain at least the ratio of

(1) one full-time licensed instructor for 25 or fewer students; and

(2) after enrollment of the first 25 students, one additional full time licensed instructor for each additional 25 or fewer students.

(b) A licensed instructor must be on the school premises during all hours the school is open for instruction. (Eff. 11/2/81, Reg. 80; am 10/21/82, Reg. 84)

Authority: AS 08.13.030(c)(3)
AS 08.13.110
AS 08.13.190

PROFESSIONAL AND
VOCATIONAL REGULATIONS12 AAC 09.145
12 AAC 09.150

12 AAC 09.145. EQUIPMENT FOR BARBER SCHOOLS. (a) In addition to the requirements of 12 AAC 09.125(b), the classroom for theoretical instruction of the practice of barbering must be equipped with seating capacity for all students attending the classroom with equipment including, but not limited to:

- (1) one blackboard;
- (2) chart or charts of the skin, hair, muscles, nerves, bones, and circulatory system of the head, neck and face; and
- (3) book or books on anatomy, physiology and hygiene.

(b) The school shall provide each student with at least one board approved textbook as specified in 12 AAC 09.050, or a substantially similar textbook.

(c) The practical instructional area shall have available the following equipment for each student station including, but not limited to:

- (1) cabinet for instruments and linens;
- (2) towel container for soiled towels;
- (3) one portable hair dryer;
- (4) straight razor and strop;
- (5) cape with linens;
- (6) scissors;
- (7) combs;
- (8) brushes;
- (9) clips
- (10) razor with blades
- (11) shampoos, tonics, shaving lather, creams, conditioners, and antiseptics;
- (12) towels;

(13) dressing table, dresserette, or styling bar with mirror; and

(14) styling chair.

(d) For up to and including every 10 students, the practical instructional area shall have available at least:

- (1) one high frequency unit; and
- (2) one infrared generator.

(e) For up to and including every 6 students, the practical instructional area shall have at least one shampoo bowl. (Eff. 11/2/81, Reg. 80)

Authority: AS 08.13.030(c)
AS 08.13.110

12 AAC 09.150. BARBER SCHOOL CURRICULUM. (a) The curriculum for a student enrolled in a course of barbering must consist of 1,500 hours of theoretical and practical training. A school shall teach a minimum of 180 hours of theoretical instruction and the following minimum number of practical operations during the 1,500 hours of training:

PROFESSIONAL AND
VOCATIONAL REGULATIONS12 AAC 09.150
12 AAC 09.155

Subject

(1) Haircutting, including hair analysis and the use of the razor, scissors, electric clippers, and thinning shears, for wet and dry cutting.

350

(2) Beard Trim

100

(3) Shave

50

(4) Scalp Massage, including hair and scalp analysis, brushing, electrical and manual scalp manipulation, and other hair treatments.

75

(5) Shampoo

100

(6) Hair styling and drying

100

(7) Facial

75

(b) No credit shall be given for time spent laundering towels, washing floors, walls, windows, lavatories, or similar work performed by a student.

(c) A licensed barber school has 6 months from the effective date of this section to comply with the curriculum requirements of (a) of this section. (Eff. 11/2/81, Reg. 80, am 10/21/82, Reg. 84)

Authority: AS 08.13.030(c)
AS 08.13.110

12 AAC 09.155. EQUIPMENT FOR HAIRDRESSING AND COSMETOLOGY SCHOOLS. (a) In addition to the requirements of 12 AAC 09.125(b), the classroom for theoretical instruction of the practice of hairdressing and cosmetology must be equipped with seating capacity for all students attending the classroom with equipment including, but not limited to:

- (1) one blackboard;

Minimum
Number of
Practical
Operations

(2) chart or charts of the skin, hair, muscles, nerves, bones and circulatory system of the head, neck and face, and

(3) book or books on general anatomy, physiology and hygiene.

(b) The school shall provide each student with at least one board approved textbook covering all curriculum subjects as specified in 12 AAC 09.160.

(c) The practical instructional area shall have available the following equipment for each student station including, but not limited to:

- (1) cabinet for instruments and linens;
- (2) towel container for soiled towels;
- (3) cape with linens;
- (4) towels;
- (5) shampoos, tonics, creams, conditioners and setting lotions;
- (6) rollers;
- (7) clips, bobby and hair pins;
- (8) combs;
- (9) brushes;
- (10) dressing table, dresserette, or styling bar with mirror;
- (11) styling chair;
- (12) portable hair dryer or blow dryer;
- (13) pressing comb;
- (14) cutting iron;
- (15) razor with blades;
- (16) scissors;
- (17) manicuring materials;

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(18) permanent waving solutions, rods and applicators;	(2) Thermal hair styling, including hair analysis, straightening, waving, curling with hot combs and hot curling irons, and blow-dry styling.	60
(19) chemical straightening solutions;		
(20) bleaches, tints and rinses; and		
(21) disposable rubber gloves;	(3) Permanent waving, including hair analysis and chemical waving.	100
(22) thinning shears;		
(23) wax materials;	(4) Chemical straightening, including hair analysis and the use of sodium hydroxide and other base solutions.	5
(24) tweezers;		
(25) facial masks; and	(5) Haircutting, including hair analysis and the use of the razor, scissors, and thinning shears, for wet and dry cutting	250
(26) astringents.		
(d) For every 20 or fewer students working at one time, the practical instructional area shall have available	(6) Haircoloring and bleaching, including hair analysis, predisposition tests, safety precautions, formula mixing, tinting, bleaching, use of dye removers, but not including color rinses.	70
(1) four shampoo bowls; and		
(2) five standard chair style hair dryer units with hoods. (Eff. 11/2/81, Reg. 80, am 10/21/82, Reg. 84)	(7) Scalp and hair treatments, including hair and scalp analysis, brushing, electric and manual scalp manipulation, and other hair treatments.	60
Authority: AS 08.13.030(c) AS 08.13.110	(8) Facials	
12 AAC 09.160. CURRICULUM FOR HAIRDRESSERS AND COSMETOLOGISTS. (a) The curriculum for a student enrolled in a course of hairdressing cosmetology must consist of 2,000 hours of theoretical and practical training. A school shall teach a minimum of 250 hours of theoretical instruction and the following minimum number of practical operations during the 2,000 hours of training:	(A) Manual, including skin analysis, cleansing, manipulations, packs, and masks.	25
	(B) Eyebrow arching and hair removal, including the use of wax, tweezers.	20
Subject		
(1) Wet hair styling, including hair analysis, shampooing, fingerwaving, pin curling and comb outs		300

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12 AAC 09.160

(C) Makeup, including skin analysis, complete and corrective makeup, and the application of false eye lashes	25	safety precautions used when operating electrical equipment	5
(D) Water and oil manicure, including nail analysis, and hand and arm massage.	60	(4) Bacteriology, sterilization and sanitation, safety precautions, anatomy, physiology, skin analysis and conditions.	15
(b) The curriculum for a student enrolled in a course of hairdressing must consist of 2,000 hours of theoretical and practical training. A school shall teach the minimum 250 hours of theoretical instruction and the minimum number of practical operations specified in (a)(1)-(a)(7) of this section during the 2,000 hours of training.		(5) Facials	
(c) The curriculum for a student enrolled in a cosmetician course shall consist of 350 hours of theoretical and practical training. A school shall teach the following minimum hours of instruction and minimum number of practical operations during the 350 hours of training:		(A) Manual, including skin analysis, cleansing, manipulations, packs and masks.	30
		(B) Electrical, including the use of all electrical modalities and electrical apparatus, including dermal lights for facials and skin care purposes.	30
		(C) Eyebrow arching and hair removal including the use of wax, tweezers manual or electrical and depilatories for the removal of superfluous hair.	15
Subject	Minimum Hours of Theoretical Instruction	Minimum Practical Operations	
(1) The Rules and Regulations of the Alaska Board of Barbers and Hairdressers	5	(D) Make up, including skin analysis, complete and corrective make up, and the application of false eyelashes.	15
(2) Chemistry pertaining to the practices of a cosmetician, including the chemical composition and purpose of cosmetic and skin care preparation. Shall also include the elementary chemical makeup physical, and chemical changes of matter.	15	(d) No credit shall be given for time spent laundering towels, washing floors, walls, windows, lavatories or similar work.	
(3) Electricity, including the nature of electrical current, principles of generating electrical devices, and the various		(e) A licensed hairdressing cosmetology school has six months from the effective date of this section to comply with the curriculum requirements of (a) and (b) of this section. (Eff. 11/2/81, Reg. 80, am 10/21/82, Reg. 84)	
		Authority: AS 08.13.030(c)(3) AS 08.13.110	

12 AAC 09.165 STUDENT-INSTRUCTOR CURRICULUM. (a) The curriculum for a student enrolled in a course or instructor training must consist of 600 hours of training in teaching barbering, hairdressing or cosmetology. A school shall teach the following minimum hours of instruction.

Subject	Minimum Hours of Instruction
(1) Rules and Regulations of the board	25
(2) Preparatory theoretical instruction, including teaching techniques, lesson planning, methods of instruction, evaluation of instruction, student record keeping, state record keeping and school operation.	76
(3) Supervision of desk, booking appointments, and assigning students for clinic services.	25
141 Clinic floor supervision under direct supervision of licensed instructor.	60
(b) The remaining 425 hours shall be completed as scheduled by the school but must include:	
(A) presentation of theoretical subjects in a classroom situation;	60
(B) presentation of theoretical subjects in a classroom situation; and	50
(C) supervision of clinic floor.	325
(b) A school shall employ text and reference books in a student instructor teaching program.	
(c) No credit shall be given for time spent laundering towels, washing floors, walls, windows or similar work. (Eff. 11/2/81, Reg. 80; am. 10/21/82, Reg. 84)	

Authority: AS 08.13.030(c)
AS 08.13.110
AS 08.13.190

12 AAC 09.170. THEORY SYLLABUS AND CRITERIA FOR GRADING OF EXAMINATIONS. (a) The board may provide a theory syllabus to licensed schools of barbering, hairdressing and cosmetology, outlining topics to be taught by the school and listing suggested textbooks to be used for instruction in the practice of barbering, hairdressing and cosmetology.

(b) The board will provide its criteria for grading of examinations to each school of barbering, hairdressing and cosmetology and to each candidate permitted to take the examination prior to the date of an examination. (Eff. 11/2/81, Reg. 80, am. 4/18/82, Reg. 82)

Authority: AS 08.13.030(c)(3)
AS 08.13.110

12 AAC 90.175. SANITATION. A violation of the rules and regulations of the Alaska Department of Environmental Conservation governing health and sanitary conditions of the schools of barbering, hairdressing and cosmetology constitutes a violation of this chapter and is subject to the provisions of AS 08.13.030(c)(2). (Eff. 11/2/81, Reg. 80)

Authority: AS 08.13.030(c)(3)
AS 08.13.210

ARTICLE 6 STUDENT PERMITS

Section
160. Student permits
100. Apprentices

12 AAC 09.180. STUDENT PERMITS. (a) The board will issue a student permit according to the provisions of AS 08.12.180 upon receipt of the applicant's:

(1) check or money order in the amount specified in AS 08.13.180(b); and

(2) proof of enrollment in a licensed school of barbering, hairdressing or cosmetology as specified in 12 AAC 09.130; or

(3) proof of acceptance to be apprenticed to a practitioner in a shop approved by the board.

(b) The board will issue a student instructor permit, valid for two years from date of issuance, upon receipt of the applicant's:

(1) proof of enrollment in a student instructor program in a licensed school of barbering, hairdressing or cosmetology as specified in 12 AAC 09.130; and

(2) proof of a current license to practice as a barber, hairdresser, cosmetologist or cosmetician in Alaska.

(c) The board may extend a student permit beyond the original expiration date of the permit, up to the date of the next scheduled examination, if a request for an extension is made by the permit holder explaining the need for the extension. (Eff. 11/2/81, Reg. 80)

Authority: AS 08.13.030(c)(3)
AS 08.13.180
AS 08.13.190

12 AAC 09.190. APPRENTICES. (a) The owner or manager of a currently licensed barber, hairdressing or cosmetology shop which is approved by the board may sponsor an apprentice in the instruction of barbering, hairdressing or cosmetology if

(1) the shop submits a curriculum to the board and provides for

(A) the use of a standard textbook as specified in 12 AAC 09.050;

(B) instruction of the minimum hours of theory and minimum number of practical operations specified in 12 AAC 09.160 or 12 AAC 09.160;

(C) a training period which meets the requirements of AS 08.13.082; and

(D) the issuance of an affidavit of completion to each apprentice successfully completing the apprenticeship;

(2) the sponsoring shop owner or manager has been licensed and actively engaged in the practice of barbering or hairdressing/cosmetology in Alaska for at least three years and holds a current instructor license; and

(3) the shop owner or manager informs the board, on a form provided by the department, at least 30 days before the start of training an apprentice and no more than 30 days after the end of training an apprentice.

(b) A shop owner or manager may sponsor one apprentice for every five or fewer licenses practicing in the shop.

(c) A shop owner or manager may not sponsor a student instructor.

(d) The sponsor of an apprentice must provide training and instruction to the same extent required of a school of barbering, hairdressing, or cosmetology.

(e) A shop owner or manager must maintain daily records of an apprentice's number of hours of instructional coursework and number of practical operations sponsored by the shop.

(f) A shop owner or manager may not credit an apprentice for more than eight hours of training in any one day, and must comply with AS 08.13.220(1), concerning wages and charges for apprentice services.

(g) All records required to be maintained by a shop owner or manager under this section must be maintained in an orderly alphabetical or numerical filing system and must be made available for inspection by any member of the board during hours the shop is open for business.

(h) A shop approved by the board to sponsor an apprentice under this section is liable for all services and work performed by the apprentice in the shop. An apprentice may not perform work in the

shop unless the licensed barber or hairdresser-cosmetologist instructor responsible for his or her training is on the premises.

(i) An apprentice must complete his or her apprenticeship in the shop which first sponsored him or her, unless the apprentice transfers to another shop which is approved by the board and which complies with (a) of this section.

(j) Upon completion of a course of instruction under this section, an apprentice is eligible to take the appropriate examination in the license categories of barbering, hairdressing or cosmetology.

(k) An apprentice who interrupts his or her training for a continuous period of two years will not be allowed credit for apprenticeship instruction and training received before the interruption.

(l) A licensed barber, hairdresser, or cosmetologist sponsoring an apprentice as of [THE EFFECTIVE DATE OF THIS SECTION.] is not required to comply with (a)(2) of this section until another apprentice applies to be sponsored after that date. (Eff. 10/21/82, Reg. 84)

Authority: AS 08.13.030
AS 08.13.082
AS 08.13.180

ARTICLE 7 GENERAL PROVISIONS

Section

900. Examiners
905. Location of shops in private residence
910. Duties of Instructors and Student-Instructors
915. Definitions

12 AAC 09.900. EXAMINERS. (a) For the purpose of conducting practical sections of the examinations, the board may approve a person, who has been licensed in Alaska as a barber, hairdresser or cosmetologist for at least five years, to assist the board as an examiner.

(b) A person approved as an examiner under (a) of this section, may not be:

(1) a licensed practitioner of a shop sponsoring an apprentice taking the examination;

(2) the owner of a barber, hairdressing or cosmetology school located in the state; or

(3) a licensed instructor in a barber, hairdressing or cosmetology school located in the state. (Eff. 11/2/81, Reg. 80)

Authority: AS 08.13.030(c)(3)
AS 08.13.090(c)

12 AAC 09.005. LOCATION OF SHOPS IN PRIVATE RESIDENCE. (a) No shop may be opened and maintained in a private residence unless the shop is located in a separate room apart from living quarters.

(b) Application for a shop license must be made according to the provisions of 12 AAC 09.110(a) and is subject to the provisions of 12 AAC 08.110(b) and (c). (Eff. 11/2/81, Reg. 80)

Authority: AS 08.13.030(c)(3)
AS 08.13.120
AS 08.13.210

12 AAC 09.910. DUTIES OF INSTRUCTORS AND STUDENT INSTRUCTORS. (a) No instructor or student instructor may, in connection with his duties instructing at a licensed school, practice barbering, hairdressing or cosmetology upon members of the public, except when work pertains directly to the instruction of students.

(b) A student instructor shall not be permitted to instruct without a licensed instructor on the school premises. (Eff. 11/2/81, Reg. 80)

Authority: AS 08.13.030(c)(3)

12 AAC 09.015. DEFINITIONS. As used in this chapter:

(1) "board" means the Board of Barbers and Hairdressers;

(2) "cosmetician" means a person who is licensed to practice cosmetology;

(3) "department" means the Department of Commerce and Economic Development;

(4) "jurisdiction" means a licensing board or administrative agency of Alaska, another state, territory or country responsible for issuing licenses and maintaining licensing records for barbers, hairdressers or cosmetologists;

(5) "theoretical instruction" means instruction by lecture, classroom participation, or examination;

(6) "practical instruction, operation or training" means the demonstration of or the actual performance of barbering, hairdressing or cosmetology by a student, apprentice, or practitioner. (Eff. 11/2/81, Reg. 80; am 10/24/82, Reg. 84)

Authority: AS 08.13.030(c)

HB 305 File Contents
(Board of Barbers and Hairdressers)

April 3, 1985 Thursday

- 1) Bill Summary -- Legislative Reporting Service
- 2) Bill Overview -- Memo, Rep. Sund's Office
- 3) Sectional Analysis -- Rep. Sund's Office
- 4) Fiscal Note -- Dept. of Commerce
- 5) Position Statement -- Dept. of Commerce
- 6) Alaska Statutes and Regulations Relating to Barbers & Hairdressers
- 7) Letter from Marse Kueber to Senator Rodey,
(with attached 1984 Annual Report)
- 8) 1983 Legislative Budget and Audit Report

April 18, 1985 Thursday Meeting

- 9) Overview -- Roger Poppe, Committee Staff
- 10) Senate Letter of Intent on SB 435
- 11) Governor's veto letter to Kerttula -- May 25, 1984
- 12) Proposed Amendments -- Division of Occupational Licensing
- 13) Letter from Victoria Perdon, with proposed amendments --April
16,85
- 14) Personal Letters and POMs sent to the Committee on this issue
(located in your folder in the center of the table)

April 19, 1985 Friday Meeting

- 15) Detailed response of Marse Kueber to amendments proposed
by the Department and by Ward-Pedron (at top, it says page
1 of 3, April 18, 1985)
- 16) Working Document from Poppe to Committee dated April 19 "
Combining Marse Kueber's response with the Dept. and with
Ward-Pedron Amendments
- 17) Supplemental memo -- Poppe to Committee

DIVISION OF OCCUPATIONAL LICENSING
Proposed amendemnts to HB 305

Section 5

- Page 2, line 18 - Omit "once each calendar quarter in Anchorage."
line 19 - Keep "twice in every year."
line 20 - Omit "If there are at least five applicants."
line 21 - Omit entirely.
line 22 - Omit "immediately after the examination in Anchorage."

Section 8

- Page 4, line 2 - Change "program" to "board approved curriculum."
line 6 - Change "program" to "board approved curriculum."
line 10 - Change "program" to "board approved curriculum."
line 17 - Delete [teaching] and insert ". . . student instructor training from a board approved curriculum . . ."

Section 9

- Page 5, lines 10-13 - Omit. There are no schools in Southeast Alaska at the present time.

Section 10

- Page 5, line 18 - Omit "or a proctor." The 'committee of the board' mentioned in line 17 consists of proctors. Line 18 is redundant.

Section 11

- Page 5, line 21 - Change "an" to "the." There are two examinations under AS 08.13.090, a written and a practical.

Section 14

- Page 7, line 8 - Add colon ":" after "apply to."
Page 7, line 12 - Language used here is too broad. Professional products sold from supply warehouse stores also carry "chemicals available to the general public."
lines 14-15 - Delete. The amendment as proposed is limited to medical doctors only. AS 08.64 defines "practice of medicine."
Keep "A shampoo person."

Section 16

- Page 7, line 27 - Change "to a" to "by a."

Section 18

- Page 8, line 15 - Change reference "AS 08.01.080" to "AS 08.01.065" to reflect the Occupational Licensing Fee Bill.

Section 20

- Page 9, lines 13-21 - Omit. The board should not be involved in setting civil penalties. Civil penalties are determined by the Supreme Court of the State and the Legislature.

Section 21

- Page 9, line 26 - Change "Health and Social Services" to "Environmental Conservation."

Section 22

- Page 10, line 12 - Delete "mechanical or electrical"
line 14 - Change "on the human body" to "on the head and neck of a client . . ."
line 15 - Add ". . . for a fee, donation or gratuities;".

* DELIVER TO JPOH

* ORIGINAL

* SENT 04/18/85 TIME: 13:17

* FROM JUNE GALLEY

* SUBJECT FOM

* PRINT DATE: 04/18/85 TIME: 13:18

TO: HOUSE LABOR AND COMMERCE COMMITTEE MEMBERS: ~~NAVARRE~~, DAVIS,
BOUCHER, COLLINS, HANLEY, KOPONEN, PEARCE

SENATOR ZEIGLER
REPRESENTATIVES SUND AND TAYLOR

FROM: SHIRLEY JOHNSTON
RT. 1 BOX 750
KETCHIKAN, ALASKA 99901

RE: HB 305 BARBERS AND HAIRDRESSERS

MESSAGE: I OBJECT TO HB 305 I THINK THAT WE SHOULD CONTINUE
HAVING A BOARD TO EXAMINE STUDENTS GETTING OUT OF SCHOOL.

EOM/JG

TO: HOUSE LABOR AND COMMERCE COMMITTEE MEMBERS NAVARRE, DAVIS,
BOUCHER, COLLINS, HANLEY, KOPONEN, PEARCE

REPRESENTATIVES TAYLOR AND SUND

SENATOR ZIEGLER

RE: HB 305, BARBERS AND HAIRDRESSERS

I WOULD LIKE TO PROTEST THE ELIMINATION OF THE BOARD OF
HAIRDRESSERS AND BARBERS AS A LICENSED COSMETOLOGIST. I WORKED
HARD TO GET WHERE I AM NOW, AND I DON'T WANT TO FEEL LIKE I'VE
DONE IT IN VAIN.

EOM/JR

*
* BELIVED TO: JPOA *
*
* ORIGINAL *
* SENT: 04/18/85 TIME: 13:09 *
* FROM: JUNE ROBBINS *
* SUBJECT: POM *
* PRINT DATE: 04/18/85 TIME: 13:09 *
*

TO: HOUSE LABOR AND COMMERCE COMMITTEE MEMBERS **NAVARRE**, DAVIS,
BOUCHER, COLLINS, HANLEY, KOPONEN, PEARCE

REPRESENTATIVES SUND AND TAYLOR

SENATOR ZIEGLER

FR: LOIS SLANAKER
P. O. BOX 744
WARD COVE, ALASKA 99901
PH: 225-2533

RE: HB 305 BARBERS AND HAIRDRESSERS

I WOULD LIKE TO PROTEST THE ELIMINATION OF THE BOARD OF
HAIRDRESSERS AND BARBERS. AS A LICENSED COSMOTOLOGIST, I FEEL I
HAVE WORKED HARD IN MY PROFESSION TO GIVE THE PUBLIC THE BEST I
HAVE. IF LICENSES ARE NO LONGER REQUIRED, THE PUBLIC WOULD
SUFFER AND MANY INJURIES COULD ABOUND. THIS IS VERY UNFAIR TO
ALL CONCERNED.

EDM/JR