

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4702 HJUD HB 293 - HB 299

27

ALASKA COURT SYSTEM

HB 296 - Victims of Crimes
Analysis of Fiscal Impact

Personal Services:

	Salary	Benefits	Total
Pro Tem Judge, Superior Court, PFT, 12 months	\$19,332	\$21,502	\$40,834 -----
Total Personal Services & First Year Cost			\$40,834 =====

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 22, 1987

SUBJECT: Sectional analysis of victims rights bill
(Work Order No. 15-0242)

TO: Representative Dave Donley

FROM: Keith B. Levy ^{KB}
Legislative Counsel

The following is a sectional analysis of Work Order 15-0242, relating to victims of crime, claims arising from criminal conduct, and service of process on prisoners.

Section 1 provides that AS 12.61, relating to victims rights, may be cited as the "Alaska Victims Rights Act."

Section 2 provides that service of process on people in the custody of the Commissioner of Corrections in civil cases may be accomplished by delivering or mailing the summons to the Commissioner of Corrections (AS 09.05.050(a)). The commissioner is required to keep a record of each summons served and to deliver a notice of the service and a copy of the summons to the prisoner within 10 days after the date of service (AS 09.05.050(b)). The commissioner must also file, with the court having jurisdiction of the civil case, a copy of the summons and an affidavit showing that service of the summons on the prisoner has been made (AS 09.05.050(c)). Finally, the court is given authority to extend the time in which the defendant can respond to the summons (AS 09.05.050(d)).

Section 3 amends AS 09.38.065(a) to permit a creditor to levy against property that would otherwise be exempt from execution in order to enforce a claim arising from criminal conduct that resulted in a felony or misdemeanor conviction. However, certain items such as tools and professional books up to \$750, and household goods and wearing apparel up to \$250, remain exempt from execution.

Representative Dave Donley

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April 22, 1987

Section 4 adds to the factors which a court may consider in aggravation of a felony sentence the question of whether the defendant's conduct caused substantial physical, emotional, or financial harm to the victim, or the victim's immediate family if the victim died as a result of the defendant's conduct (AS 12.55.155(c)(27)).

Section 5 provides that if the state seeks to establish a factor in aggravation of a felony or the defendant seeks to establish a factor in mitigation of a felony, the prosecutor must serve written notice of the sentencing hearing on the victim. This section also gives the victim the right to appear at sentencing hearings and to present evidence. The court is required to consider the evidence presented by the victim (AS 12.55.155(f)).

Section 6 amends the definition of the term "victim," as used in the sentencing provisions, to include the victim's aunt, uncle, parent-in-law, brother-in-law, and sister-in-law, in cases where the victim has died, is a minor, or is incapacitated (AS 12.55.185(11)). The term already includes the victim's spouse, parent, child, brother, and sister.

Section 7 adds to the list of victim's rights the right, without a court order, to obtain access to the presentence reports from the court and to obtain access to the relevant police reports from the appropriate law enforcement agency and the right to make a statement for presentencing and sentencing. (AS 12.61.010(a)). This section has the effect of amending Alaska Rule of Criminal Procedure 32(d)(2), because that section does not permit release of presentence reports without a court order, except in limited circumstances. Accordingly, this effect on the court rules is reflected in the title of the bill and is also explained in Section 14.

Section 8 adds two new provisions to AS 12.61. AS 12.61.015 sets out a list of duties of the prosecuting attorney with respect to victims of crime. These include the duty to

(1) confer with the victim before jury selection and trial;

(2) notify the victim of the defendant's conviction, the victim's right to make a sentencing statement and that the defendant will see the sentencing statement, the address and telephone number of the office that will prepare the sentencing statement, and the time and place of the sentencing proceeding; and

Representative Dave Donley
Page 3
April 22, 1987

(3) notify the victim in writing of the final disposition of the case within 30 days.

AS 12.61.017 makes it a class B misdemeanor for an employer of a victim of crime to penalize the victim because of the victim's cooperation in a prosecution.

Section 9 amends AS 33.16.120(c) to give victims the right to attend meetings of the parole board.

Section 10 amends existing law to provide that the parole board must notify a victim not only of its decision to grant parole, but also if it decides to deny parole (AS 33.16.120(e)).

This section also provides that the notification must include the prisoner's residence address and employer, if known.

Section 11 provides that notification to a victim of a prisoner's early release for good time served must also include the prisoner's residence address and employer, if known (AS 33.16.120(f)).

Section 12 amends AS 33.30.011 to require the Commissioner of Corrections to notify the victim or the victim's family if the offender escapes or is released on a furlough, to a correctional restitution center, or any other early release program.

Section 13 amends AS 47.10.070 to give the victim of an offense by a minor the right to attend a hearing involving the minor. In certain cases, the victim's family may attend. This section has the effect of amending Rule 12(d)(2) of the Alaska Rules of Children's Procedure by giving victims access to the children's hearing. Accordingly, this effect is reflected in the title of the bill and is also explained in Section 15 of the bill.

If I may be of further assistance, please advise.

KBL:mkr
m11/050



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEER R. STRANDBERG
Staff Counsel

March 21, 1988

303 K Street
Anchorage, AK 99501
(907) 264-8228

Representative John Sund
Chair, House Judiciary
P.O. Box V
Juneau, Alaska 99811

Re: CSHB 296

Dear Representative Sund:

Section 9(a)(11) of CSHB 296 would give a victim the right to obtain a defendant's presentence report unless the court finds otherwise. It is the court system's position that a victim should make a showing of need before a presentence report is disclosed.

In deciding the issue of public disclosure of presentence reports, other courts have used the standard governing the release of grand jury materials. This standard requires that the person seeking disclosure must demonstrate that disclosure is needed in the interests of justice. Illinois vs. Abbott and Associates, 460 U.S. 557, 103 S.Ct. 1356, 75 L.Ed 2d 28⁷ (1983). The court system suggests that this is the appropriate standard to be applied when a victim seeks access to a presentence report.

The principal purpose of a presentence report is to assist the court in determining the appropriate sentence. A secondary purpose is to assist the correctional facility to which an offender is sentenced in matters such as offender classification and supervision of probationers and parolees. U.S. vs. Charmer Industries, Inc., 711 F2d 1164 (2nd Cir. 1983). To best serve these purposes, the presentence report should be as complete as possible and contain "[a]ll objective information which is significant to the decision-making process." Administrative Office of U.S. Courts, The Presentence Investigation Report 1 (1978). Sources of information for these reports may include defendant's family members, welfare and other government agencies, friends and acquaintances of the defendant, employers and law enforcement agencies. Frequently, information given to presentence investigators is given in confidence, particularly information provided by law enforcement agencies.

To insure the availability of complete and candid information to assist in sentencing, presentence reports should be confidential. "[T]he prevailing

Representative John Sund
March 21, 1988
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judicial view [is] that the public availability of presentence reports would likely inhibit the flow of information to the sentencing judge." Durns vs. Bureau of Prisons, 804 F2d 701 (DC Cir. 1986) citing Charmer, supra, at 1173. "[R]equiring disclosure of a presentence report is contrary to the public interest as it may adversely affect the sentencing court's ability to obtain data on a confidential basis from the accused, and from sources independent of the accused, for use in the sentencing process." U.S. vs. Martinello, 556 F2d 1215, 1216 (5th Cir. 1977).

For these reasons, the American Bar Association also has recommended that presentence reports not be made public. "No legitimate interests are served by public disclosure. The incentive for both the offender and for sources close to the offender to cooperate candidly in the presentence investigation might be lessened if they knew that their statements could become part of the public record." ABA Standards for Criminal Justice, 2nd Ed., commentary (1984).

If I can provide more information or answer any questions about this letter, please let me know.

Very truly yours,


Janalee R. Strandberg
Staff Counsel

STATE OF ALASKA

PUBLIC DEFENDER AGENCY

STEVE COWPER, GOVERNOR

900 W. 5TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-2090
PHONE: (907) 279-7541

March 11, 1988

Representative John Sund
P. O. Box V
Juneau, AK 99811

Mar 17 1988

Re: Victim's Rights Bill (HB 296)

Dear Representative Sund:

I have received your request for comment regarding the Victim's Rights Bill (HB 296) proposed by Representative Donley. I recognize the propriety of such a bill, which address the rights and concerns of victims of crime. Many of the bill's provisions are directed at giving information to victims concerning the criminal litigation in which they may have a direct interest. There are, however, three components of this bill which I believe are cause for concern:

Section 9: This section allows victims of crime to obtain a copy of the defendant's pre-sentence reports. Pre-sentence reports, prepared by the probation department, are sensitive documents, often containing highly personal information about not only a defendant, but also his/her family. These reports provide the sentencing judge with a detailed social history of defendant, spouse, parents, siblings, etc. For example, while a family history of alcoholism or psychiatric illness may prove helpful to a judge in fashioning a sentence, such information should not be otherwise available to the public because of its obviously private nature. In addition, information concerning victims of previous criminal conduct by a defendant often appears in pre-sentence reports. Information of this kind should not go beyond the court file. As the bill recognizes, federal confidentiality acts may prohibit the dissemination to victims and their families of certain information included in pre-sentence reports.

This section also gives victims access to police reports. Since the exclusionary rule applies in most criminal cases, requiring each victim or witness to testify independently about his or her recollection of events, allowing victim's to have access to these reports, which include other witness statements, could taint or alter the independent memories of the witness, and should be avoided. Additionally, sensitive police information, such as the identity of informants, should

be kept confidential.

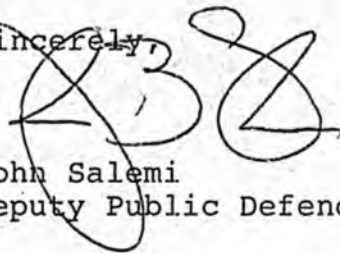
Section 11: This provision allows victims and their legal counsel to attend meetings of the parole board. This could chill the parole board's function and its need to make independent, objective decisions concerning parole matters. Pressure from victim's or their families may interfere with arriving at sound judgments concerning specific cases. Furthermore, the presence of legal counsel would create a more formal atmosphere, which in this setting inhibits the transmission of information about a potential parolee. It seems more appropriate that input from victim's at this stage be provided in writing, as is currently their right.

Section 12: This section requires the parole board provide victims with a defendant's residence address upon his/her release from prison. While it is understandable that a victim might desire information about the geographic area in which a defendant will reside, providing a specific address will in many cases encourage unwanted contact, from which hostility could arise. Therefore, limiting such disclosure to city and general neighborhood or area would serve the purpose of this section while avoiding potential conflict.

Again, I understand this bill is for the purpose of increasing the criminal justice system's sensitivity to victims' rights. That objective is a laudable one. The changes suggested above would not affect the overall impact of these proposals.

I hope these comments are helpful. Please do not hesitate to contact me if I can provide further information.

Sincerely,



John Salemi
Deputy Public Defender

JS:cly

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 18, 1988

SUBJECT: Sectional analysis of CSHB 296 ()
TO: Representative Dave Donley
FROM: Jack Chenoweth
Legislative Counsel

The following is a sectional analysis of the draft committee substitute, CSHB 296 (), designated version "Z." This version is based on changes made in a series of draft committee substitutes. It also incorporates the provisions of HB 405, a governor's bill on the subject of victims' rights.

Bill section 1 adds a short title to AS 12.61, the chapter defining the rights of a crime victim. It provides that the chapter may be cited as the "Alaska Crime Victim's Rights Act."

Bill section 2 provides that service of process in civil cases on people in the custody of the commissioner of corrections may be accomplished by delivering or mailing the summons to the commissioner of corrections (AS 09.05.050(a)). The commissioner is required to deliver a copy of the summons to the prisoner within 10 days after the date of service (AS 09.05.050(b)). The commissioner is to file with the court having jurisdiction of the civil case a copy of the summons and an affidavit showing that the summons was delivered to the prisoner (AS 09.05.050(c)). The court is authorized to extend the time in which the defendant may respond to the summons (AS 09.05.050(d)). There is provision (AS 09.05.050(e)) that the state may not be liable in damages for the commissioner's failure to comply with the requirements of this section.

Bill section 3 amends AS 09.38.065(a) to permit a creditor to levy against property that would otherwise be exempt from execution in order to enforce a claim arising from criminal conduct that resulted in a felony conviction. The amendment

details specific property of the defendant that is exempt from the execution.

Bill section 4 adds a new section, AS 12.47.095, that places additional duties on the commissioner of health and social services for offenders who are determined to be guilty but mentally ill or, alternatively, who are found to be not guilty by reason of insanity. The section enumerates instances in which the commissioner must communicate to the victim, or to certain persons other than the victim, a change in the status of the offender. The section places a burden on the victim to request a notice of the offender's change of status and to act only if the victim has maintained a current address on file with the commissioner.

Bill section 5 enumerates the right of a victim to make a statement to a probation officer preparing a presentence report concerning the offender and directs the inclusion of that statement, if made in writing, in that presentence report.

Bill section 6, derived from HB 405 but modified in accordance with your instructions, adds to the rights of a victim of a violent crime (i.e. a "crime against a person," that is, a person convicted under AS 11.41) to comment in certain postconviction proceedings. The postconviction proceedings addressed in this provision are motions to modify or reduce sentence. If an offender files a motion to modify sentence and time permits, or if an offender files a motion to reduce sentence, the Department of Corrections is directed to provide notice to the victim (AS 12.55.088(d)). The victim is entitled to submit written comment (AS 12.55.088(e)). The comments are to be provided to the offender or the offender's attorneys (AS 12.55.088(f)) and considered by the court in conjunction with disposition of the motion (AS 12.55.088(g)). The responsibility to maintain a current address with the commissioner of corrections in order to receive notice under this section rests with the victim, and that address may not be disclosed (AS 12.55.088(h)).

Bill section 7 revises the definition of the term "victim" as that term is used in the sentencing provisions (AS 12.55). Victims are natural persons. As persons to whom an obligation may be due under AS 12.55 in cases where the victim has died, is a minor, or is incapacitated, the revision adds the victim's aunt, uncle, parent-in-law, brother-in-law, and sister-in-law.

Bill section 8 incorporates a definition of the term "crime against a person," a term that is used in bill section 6.

Bill section 9 adds to the list of victim's rights the right to make a statement in conjunction with preparation of a presentencing report for the offender and in conjunction with the offender's sentencing, and the right to obtain from the prosecutor, after conviction, a copy of the offender's criminal record.

Bill section 10 adds to the list of duties of the prosecuting attorney with respect to the victim of a crime. The additional provisions include the duty to ^{FELONY}

(1) confer with the victim about the victim's testimony before jury selection and trial;

(2) notify the victim of the defendant's conviction and the crimes for which convicted; the victim's rights to make a statement for use in conjunction with preparation of the presentence report and to make a statement at the time of sentencing; the address and telephone number of the office that will prepare the presentencing report; and of the time and place of the sentencing hearing;

(3) notify the victim in writing of the final disposition of the case within 30 days.

The provision directs the prosecutor's office to advise the victim that the content of the material that may be presented in conjunction with the victim's presentence statement or sentencing statement is limited, and describes the nature of what the victim may address in those statements.

Another provision of bill section 10 makes it a class B misdemeanor for an employer of a crime victim to "discipline" or to threaten to discipline the victim who cooperates in a prosecution. The provision defines the term "discipline."

Bill section 11 amends AS 33.16.120(c) to give victims the right to comment in writing or by attendance at a meeting of the Parole Board relative to proposed action that the board is considering concerning the offender. The section limits these rights to the victim and does not extend them to persons designated to act in place of the victim or the victim's attorney.

Bill section 12 amends existing law to provide that the Parole Board must notify the victim not only of its decision

to grant discretionary parole, but also if it decides to deny discretionary parole.

Bill section 13 directs that, as to service of process on a paroled offender in conjunction with a civil action initiated by the victim, the commissioner of corrections is to provide the victim the address of the parolee if the address is requested by the victim and the commissioner is satisfied that the victim has initiated the action and requires the address in order to serve process.

Bill sections 14 and 15 assign certain additional responsibilities to the Parole Board when the governor refers to that board applications for executive clemency. The board is to give the victim of a "crime against a person" notice of an application for clemency and opportunity to submit written comment to the board as it considers the executive clemency request. The requirement is to be met only if the victim maintains a current mailing address and so requests.

Bill section 16 adds a new section, AS 33.30.013, that requires the commissioner of corrections to notify the victim or the victim's family if the offender escapes, is released on furlough or to a correctional restitution center, or is released on an early release program. The requirement is to be met only if the victim or other person entitled to notice maintains a current valid mailing address on file with the commissioner.

Bill section 17 adds a new program component in the Department of Public Safety. That department shall establish and maintain a victim assistance program--a paid supervisor and any volunteers--to manage the victim assistance program and to recruit, train, and evaluate the efforts of the volunteers under this program.

Bill section 18 authorizes the victim of an offense by a minor to request permission from the court to attend any hearing scheduled for the minor under AS 47.10.070. The section also directs the Department of Health and Social Services to assist a victim in preparing a written statement for submission and consideration at that proceeding, and directs that department to "make reasonable efforts to inform victims of the availability of this assistance."

Bill sections 19 and 20 directly amend pertinent court rules of criminal procedure. The change made by bill section 19

Representative Dave Donley

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when a presentence investigation shall be completed and the report made available to the parties and their counsel; the change abets exercise of the crime victim's right to comment in conjunction with preparation of the presentence report. The court rule additions made by bill section 20, derived from HB 405, parallel the changes set out in bill section 6 covering postconviction relief for a victim of a crime against a person.

Bill section 21, an uncodified provision, directs that the amendments and additions made by this bill are to apply "to proceedings against defendants initiated on or after the effective date of the Act.

JC:bb
b5/013

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 23, 1988

SUBJECT: Suggested language to replace * Sec. 2
(Service of process on prisoners) of draft
CSHB 296 ()

TO: Representative Dave Donley

FROM: Jack Chenoweth
Legislative Counsel

In the matter of service of summons, the applicable court rule is Alaska Rule of Civil Procedure 4(d)(11), which states, in pertinent part:

OFFICER OR AGENCY OF STATE AS AGENT FOR NON-GOVERNMENTAL DEFENDANT. Whenever, pursuant to statute, an officer or agency of the State of Alaska has been appointed as agent to receive service for a non-governmental defendant, . . . service of process shall be made in the manner provided by statute.

It is probably a good idea to insert into the text of bill section 2 something that specifies that the commissioner of corrections is, as the submission suggests, "appointed as agent to receive service of process for any prisoner committed to the custody of the Department of Corrections at the time of service."

The principal suggestion submitted by the Department of Corrections would require that, in a civil action commenced against a prisoner confined to a state facility, the plaintiff serve a copy of the summons and complaint on the superintendent of the correctional facility in which the prisoner is incarcerated rather than the commissioner of corrections as provided in the current bill draft. Though the disposition of the department's suggestion is, of course, a policy matter, there are three arguments that weigh against adoption of the change proposed. First, prisoners are legally committed to the custody of the commissioner of corrections,

Representative Dave Donley

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not to one of the commissioner's subordinates. See AS 33.-30.011 and 33.30.051. The commissioner may designate the facility at which a prisoner is to be incarcerated (AS 33.-30.061) and generally specify the applicable program to which the prisoner is to be assigned (AS 33.30.091). Second, most plaintiffs and their attorneys would not necessarily know the facility to which the prisoner is assigned and might incur costs in ascertaining that information. Third, some defendants are incarcerated "Outside," and the bill makes no provision for service of summons on an official at a correctional facility in another jurisdiction. I am of the view that the bill provision, as drafted, better accommodates sound management of the corrections system as a whole while permitting the commissioner to discharge the responsibility assigned by bill section 2 in a reasonable manner without substantial additional burden.

I trust this is responsive to the points for which the request was submitted.

Attachment

JBC:gc
WKG1:110

Sec. 09.05.050. SERVICE OF PROCESS ON PRISONERS. (a) In a civil action against a person committed to the custody of the commissioner of corrections under state law, service of process may be effected by delivering personally or by registered or certified mail a copy of the summons and complaint to the superintendent of the correctional facility in which the prisoner is incarcerated with a copy to the prisoner. For purposes of service of process, the superintendent of the facility shall be deemed to be the appointed agent for service for any prisoner confined in the facility at the time of service. The execution of an Acknowledgement of Receipt form by the superintendent or a designated correctional staff member shall constitute proof of service upon the prisoner.

(b) Upon receipt of service of a summons and complaint naming a prisoner as a defendant, the superintendent or the designated correctional staff member shall immediately log in the date and time of receipt of the documents, and shall deliver a copy of the summons and complaint to the named prisoner within a reasonable time not to exceed five working days.

Dave,

what do you think?

SH-B

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 14, 1988

SUBJECT: Sectional analysis of CSHB 296 ()
TO: Representative Dave Donley
FROM: Jack Chenoweth
Legislative Counsel

The following is a sectional analysis of the proposed committee substitute, denoted CSHB 296 ().

Section 1 adds a short title to existing AS 12.61, the chapter defining a victim's rights. It provides that the chapter may be cited as the "Alaska Crime Victim's Rights Act."

Section 2 provides that service of process on people in the custody of the commissioner of corrections in civil cases may be accomplished by delivering or mailing the summons to the commissioner of corrections (AS 09.05.050(a)). The commissioner is required to keep a record of each summons served and to deliver a notice of the service and a copy of the summons to the prisoner within 10 days after the date of service (AS 09.05.050(b)). The commissioner must also file, with the court having jurisdiction of the civil case, a copy of the summons and an affidavit showing that service of the summons on the prisoner has been made (AS 09.05.050(c)). The court may extend the time in which the defendant can respond to the summons (AS 09.05.050(d)).

Section 3 amends AS 09.38.065(a) to permit a creditor to levy against property that would otherwise be exempt from execution in order to enforce a claim arising from criminal conduct that resulted in a felony or misdemeanor conviction. However, certain items such as tools and professional books up to \$750, and household goods and wearing apparel up to \$250, remain exempt from execution.

Section 4 adds a new section, AS 12.47.095, that places new duties on the commissioner of health and social services and the attorney general for offenders who are determined to be

guilty but mentally ill or, alternatively, are found to be not guilty by reason of insanity. The section enumerates instances when either of these officials must communicate to the victim, or to certain persons other than the victim, a change in the status of the offender if the victim or person other than the victim has requested notice of the change of status and has maintained a current address on file with the two state officers.

Section 5 adds to the factors that a court may consider in aggravation of a felony sentence the question of whether the defendant's conduct caused substantial physical, emotional, or financial harm to the victim, or the victim's immediate family if the victim died as a result of the defendant's conduct (AS 12.55.155(c)(27)).

Section 6 provides that if the state seeks to establish a factor in aggravation of a felony or the defendant seeks to establish a factor in mitigation of a felony, the prosecutor must serve written notice of the sentencing hearing on the victim. This section also gives the victim the right to appear, personally or by legal counsel, at sentencing hearings and to present evidence. The court is required to consider the evidence presented by the victim (AS 12.55.155(f)).

Section 7 revises the definition of the term "victim" as that term is used in the sentencing provisions. Victims are natural persons. As persons to whom obligation may be due under AS 12.55 in cases where the victim has died, is a minor, or is incapacitated, the definition presently includes the victim's spouse, parent, child, brother, sister, or legal guardian. The revision adds the victim's aunt, uncle, parent-in-law, brother-in-law, and sister-in-law (AS 12.55.185(11)).

Section 8 adds to the list of victim's rights the right to make a statement for presentencing and sentencing, either in person or by legal counsel, the right to make a statement, in person or through legal counsel, in the event the defendant moves to modify or reduce sentence, and the right to make a written statement to the governor in the event the governor considers executive clemency. (AS 12.61.010(a)).

Section 9 adds two new provisions to AS 12.61. AS 12.61.015 sets out a list of duties of the prosecuting attorney with respect to victims of crime. These include the duty to

Representative Dave Donley

Page 3

January 14, 1988

(1) confer with the victim before jury selection and trial;

(2) notify the victim of the defendant's conviction, the victim's right to make a sentencing statement and that the defendant will see the sentencing statement, the address and telephone number of the office that will prepare the sentencing statement, the time and place of the sentencing proceeding, and of the victim's right to appear, in person or by counsel, at the sentencing hearing to address the court; and

(3) notify the victim in writing of the final disposition of the case within 30 days.

AS 12.61.017 makes it a class B misdemeanor for an employer of a victim of crime to penalize the victim because of the victim's cooperation in a prosecution.

Section 10 amends AS 33.16.120(c) to give victims the personal right to attend meetings of, or to be represented by legal counsel before, the parole board and to address the parole board, directly or through legal counsel, about proposed action that the board is considering concerning the offender. The rights granted under this subsection, as amended, may only be exercised by the victim or the victim's legal representative.

Section 11 amends existing law to provide that the parole board must notify a victim not only of its decision to grant parole, but also if it decides to deny parole (AS 33.16.120(e)). This section also provides that the notification must include the prisoner's residence address.

Section 12 provides that notification to a victim of a prisoner's early release for good time served must also include the prisoner's residence address (AS 33.16.120(f)).

Section 13 adds a new section, AS 33.30.013, that requires the commissioner of corrections to notify the victim or the victim's family if the offender escapes, is released on a furlough to a correctional restitution center, or any other early release program. It also requires the commissioner to notify the victim if the offender is considered for screening investigation to determine the need for further treatment in the event the offender has been transferred to the commissioner's custody if the offender was adjudicated guilty but mentally ill.

Representative Dave Donley

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January 14, 1988

Section 14 amends AS 47.10.070 to give the victim of an offense by a minor the right to attend, or to be represented by legal counsel at, a hearing involving the minor. In certain cases, the victim's family may attend. This section has the effect of amending Rule 3(c) of the Alaska Child in Need of Aid Rules and Rule 3(c) of the Alaska Delinquency Rules, by giving victims access to the children's hearing. Accordingly, this effect is reflected in the title of the bill and is also explained in section 15 of the bill.

JC:bb

WKB1/055

Enclosure

The Fairbanks Child Sexual Abuse Task Force

1423 Peger Road
Fairbanks AK 99709

March 17, 1988

House Judiciary Committee Members:

Representatives Sund, Ulmer, Cotten, Gruenberg, Navarre,
Barnes, and Taylor

Interior Delegation Members:

Representatives Boyer, Davis, Frank, Koponen, Miller, Shultz
Senators Coghill, Fahrenkamp, Fanning

P.O. Box V

Juneau, AK 99811

Re: House Bill 296

Dear Legislators,

We are writing on behalf of the Fairbanks Child Sexual Abuse Task Force, a coalition of agencies, organizations and associations involved in prevention and treatment of child sexual abuse. The CSATF wants to express its views on HB 296.

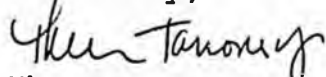
We support the bill. There is too little emphasis placed on victims' rights in both civil and criminal proceedings.

There are two minor changes we would suggest. First, we would recommend deleting subsection (1) of the new AS 12.61.015 (section 9 of the bill), which provides that the prosecuting attorney is to confer with the victim prior to selection of the jury. This gives the impression that the victim should have some say in jury selection, which in our view would be inappropriate. Prosecutors have much better experience and instinct in this area, and the new subsection could create conflicts, delay trials, and perhaps decrease convictions. Any competent prosecutor trying a case will by necessity have conferred with the victim prior to the trial, and thus we feel the best course is to delete that subsection, while retaining the remainder of the new AS 12.61.015.

Second, it might be helpful to clarify that those passages giving the victim the right to appear "by counsel" (at sentencing, before the parole board, etc.) are not intended to confer a right to appointed counsel.

Again, we would like to express our support for this bill and urge the committee to work for its enactment into law. Thank you for your consideration.

Sincerely,



Theresa Tanoury
Coordinator
452-1342



Ruth Lister
Chair
452-2293

POSITION PAPER

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 296 (HESS)

For an Act entitled: "An act relating to victims of crime, claims arising from criminal conduct, and service of process on prisoner's; and amending Rule 32(d)(2) of the Alaska Rules of Criminal Procedure."

The Department supports the goals of protecting the rights of victims of crime, providing for appropriate participation of victims in court proceedings, and insuring that victims are informed to the outcome of proceedings relating to perpetrators. However, because the nature and processes of children's proceedings differ significantly from those of the adult criminal justice system the Department believes different mechanisms must be used for achieving these goals in juvenile cases.

Children's proceedings are closed to the public in order to promote the free discussion of sensitive psychological, social, and historical information concerning the child and the child's family which have relevance to the decisions of the court concerning the child. Closure also serves to promote rehabilitation by avoiding stigmatizing or labeling of youth.

Once the commission of an offense has been established (and in the vast majority of instances this occurs through admission of the youth rather than through trial) the focus of children's proceedings is not on the offense but on the causes of the child's behavior and on actions necessary to prevent further offenses. Though the offense is discussed it is in the context of determining the appropriate disposition.

Victim involvement in the process occurs in a variety of ways. Victims may be called to testify at any of the children's proceeding hearings, may provide information and opinion for presentation to the court in the predisposition report, and may be allowed to attend a closed hearing as a spectator with permission of the court.

Section 14 of this bill represents a substantial improvement over the original bill in the approach taken to providing victim access to juvenile court proceedings. This section would establish a duty of the Department of Health and Social Services to assist victims in requesting permission to attend juvenile proceedings. It would also ensure that victims are aware of their ability to make such requests and of the availability of aid in preparing requests. By maintaining court discretion in allowing spectators to attend juvenile proceedings but establishing a mechanism to facilitate victim involvement this bill avoids problems in the original bill. Broader opening of juvenile proceedings to spectators would inhibit the presentation of full and complete information, compromise confidentiality, and reduce the effectiveness of these proceedings.

Department Position

The Department supports CS HB296 as an effective means of balancing the public's interest in ensuring appropriate involvement of victims in criminal and juvenile delinquency proceedings with its interest in maintaining the confidentiality and effectiveness of the juvenile court process.

RECOMMENDED: *Russell G. Brown*
Yvonne M. Chase, Director
Division of Family
and Youth Services

DATE: 1-28-88

APPROVED: *Myra M. Munson*
Myra M. Munson, Commissioner
Department of Health
and Social Services

DATE: 2-9-88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to victims of
crime.."
Sponsor: Donley
Requestor: _____

Agency Affected: Health and Social Services
BRU: Youth Services

Components: Probation Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Because this bill would not require additional activities by the agency, it would have no fiscal impact.

Prepared by: Yvonne M. Chase, Director *YMC* Phone: 465-3170 *LP*
Division: Family and Youth Services Date: 02-01-88

Approved by Commissioner: Myra M. Munson *Myra M. Munson* Date: 2-9-88
Agency: Department of Health and Social Services

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

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 25, 1988

SUBJECT: "Crime Victim's Rights Act": Comparison
between CSHB 296 (HESS) and draft CSHB 296
() [version of 2/24/88]

TO: Representative Dave Donley

FROM: Jack Chenoweth
Legislative Counsel

Per your February 24 request, this memorandum briefly describes the differences between CSHB 296 (HESS) and the 2/24/88 draft of CSHB 296 ().

Title: The 2/24 draft adds the phrase "by victims of crime" after the word "claims" in recognition of bill's provisions extending the rights of crime victims against crime perpetrators. The 2/24 draft also adds a reference to a rule change in Rule 32(d)(2) of the Rules of Criminal Procedure.

Bill sections 1 and 2: There are no differences between these provisions in the drafts.

Bill section 3: The new material in this section is revised in the 2/24 bill draft to parallel certain comparable provisions in the statute defining exemptions of personal property (AS 09.38.020) in the Alaska Exemptions Act. The dollar limitations that are specified in CSHB 296 (HESS) are increased in the 2/24 draft.

Bill section 4: There are no differences between these provisions in the drafts.

Bill section 5 (2/24 draft): This section is new to the 2/24 draft; it has no comparable provision in the HESS CS. The provision is based on the February 2 suggestion of Assistant Attorney General Stephanie Joannides and speaks to a victim's right to offer material for consideration in the preparation of a presentence investigation report.

Bill section 6 (2/24 draft) and bill section 5 (HESS CS):
These sections add to the "aggravator" provision applicable to criminal sentencing. Though the subject matter between these provisions is generally the same, the approach is different. The 2/24 draft incorporates your amendment "Bi" that adds the "financial harm" provision and rewrites the aggravator provision that speaks to the impact of the crime on the victim's family.

Bill section 7 (2/24 draft) and bill section 6 (HESS CS):
The HESS CS is changed by deletion of language limiting the right of the victim to a right of appearance and omitting language saying that the victim has the right "to participate" at aggravation or mitigation proceedings and sentencing hearings, and by deletion of language authorizing the victim to be represented "by counsel" at these proceedings.

Bill section 8 (2/24 draft) and bill section 7 (HESS CS):
There are no differences between these sections of the two bills.

Bill section 9 (2/24 draft) and bill section 8 (HESS CS):
The differences between the two are these --

Paragraph (1): This provision is rewritten, based on your amendment "Bj," and broadened in the 2/24 draft to direct that the victim may obtain the dates of all criminal proceedings involving the defendant (rather than just the dates of trial and sentencing);

Paragraphs (7) and (8): The 2/24 draft is revised, based on your amendments "Bj" and "Bk," to omit appearance and representation by counsel and the sentencing hearing and at any hearing involving modification of sentencing; the victim's appearances at these proceedings must be in person;

Paragraph (10) of the 2/24 draft: The provision is new in the draft and does not have a comparable provision in the HESS CS; it adds to the rights of a victim the right to review the defendant's entire conviction record, and is based on your direction that new language be prepared and added to incorporate this right;

Paragraph (11) of the 2/24 draft: This revises the language of paragraph (10) of the HESS CS provisions applicable to a victim's access to police reports and presentence reports.

Bill section 10 (2/24 draft) and bill section 9 (HESS CS):
The 2/24 draft

-- specifies, in (a)(1), based on your amendment "Bj," that the right to the conference with the prosecuting attorney must concern the victim's testimony;

-- deletes from (a)(2)(B), based on your amendment "Bk," the opportunity of the victim to appear by counsel at a sentencing hearing; the victim may appear only personally;

-- substitutes for proposed AS 12.61.017 the new, tighter language of your amendment "Bm" that protects a victim in the exercise of the rights provided by AS 12.61 from employer interference; the changes better define "disciplinary action" that is prohibited, but at the same time specifically protect the employer's right to reduce a victim's pay and benefits when the reduction is "directly attributable to a victim's absence from employment to attend a court proceeding."

Bill sections 11 - 14 (2/24 draft) and bill sections 10 - 13 (HESS CS): There are no differences between these sections of the two bills.

Bill section 15 (2/24 draft): This provision is new in the 2/24 draft and has no counterpart in the HESS CS. It is based on your amendment "La" adding a victim's assistance program and a victim's assistance volunteer coordinator into the Department of Public Safety.

Bill section 16 (2/24 draft) and bill section 14 (HESS CS): There are no differences in this section of the two bills.

Bill section 17 (2/24 draft): This provision, a Criminal Rule change, is new in the 2/24 draft and has no counterpart in the HESS CS. The provision is based on the February 2 suggestion of Assistant Attorney General Stephanie Joannides and speaks to the availability of presentence reports to the attorneys for the parties "at the time of the aggravator and mitigator hearing and prior to sentencing."

Bill section 18 (2/24 draft) and bill section 15 (HESS CS): Except to change the reference to the bill section making the Criminal Rule change, there are no differences in this section of the two bills.

Representative Dave Donley

Page 4

February 25, 1988

Bill section 19 (2/24 draft): This provision, speaking to the applicability of this Act, is new to the 2/24 draft and has no counterpart in the HESS CS. It is based on language of amendment "Bh" provided with my January 22 memorandum suggesting that these provisions not be made applicable to criminal matters in progress.

JBC:gc
WKG2/05

**STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE**

HB 296

REQUEST: _____

Bill Version:
Publish Date:

Revision Date: 1-6-88
Title: An act relating to victims of crimes...
Sponsor: Donley, Collins, Martin...
Requestor: Rep. Donley

Agency Affected: Alaska Court System
BRU: Trial Courts

Components:

#

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
Personal Services	40.8	40.8	40.8	40.8	40.8
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	40.8	40.8	40.8	40.8	40.8
CAPITAL
REVENUE

FUNDING: (Thousands of Dollars)

General Funds	0.0	40.8	40.8	40.8	40.8	40.8
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	40.8	40.8	40.8	40.8	40.8

POSITIONS:

Full-time	. . . .	1.0	1.0	1.0	1.0	1.0
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: *Jan Strandberg* General Counsel Phone: 264-8228
 Division: Alaska Court System Date: 1-6-88
 Approved by: *Stephanie Cole for* Arthur H. Snowden, II, Administrative Director Date: 1-6-88
 Agency: Alaska Court System

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management & Budget
 - Impacted Agency(ies)
 - Senate Secretary

FISCAL ANALYSIS: HB 296

This bill will permit victims to appear and participate in sentencing proceedings. Based upon information provided by the deputy presiding judge for the Anchorage trial court criminal division, one-fifth of the time of a judge assigned to a criminal caseload is occupied by sentencing. It is anticipated that victim participation will extend the length of the proceeding. Given the volume of criminal cases in courts statewide, it is estimated that the equivalent of one additional judge will be required to handle the additional hearing time. Services of a retired judge appointed to serve pro tem are the least costly way of providing additional judicial resources.

ALASKA COURT SYSTEM

HB 296 - Victims of Crimes
Analysis of Fiscal Impact

Personal Services:

	Salary	Benefits	Total
Pro Tem Judge, Superior Court, PFT, 12 months	\$19,332	\$21,502	\$40,834 -----
Total Personal Services & First Year Cost			\$40,834 =====

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 296

Publish Date: _____

REQUEST: _____

Revision Date: _____

Title: An Act relating to victims of crime, claims arising from criminal etc.

Sponsor: Donley, et. al.

Requestor: House HESS

Agency Affected: Public Safety

BRU: Council on Domestic Violence & Sexual Assault

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

JNR
5/13/87

Prepared by: Barbara Miklos, Executive Director
Division: Council on Domestic Violence & Sexual Assault

Phone: 465-4356
Date: 5-13-87

Approved by Commissioner: [Signature]
Agency: Public Safety

Date: 5/13/87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

FISCAL NOTE

REQUEST:

Revision Date: January 20, 1988
Title: "An Act relating to victims of
crime..."
Sponsor: Representative Donley
Requestor: House HESS

Agency Affected: Department of Law
BRU: Prosecution
Components: First, Second, Third and
Fourth Judicial Districts

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		231.9	238.9	246.1	253.5	261.1
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		24.4	25.1	25.9	26.7	27.5
SUPPLIES		10.8	11.1	11.4	11.7	12.1
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		267.1	275.1	283.4	291.9	300.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		267.1	275.1	283.4	291.9	300.7
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		4	4	4	4	4
PART-TIME		4	4	4	4	4
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: January 20, 1988

Approved by Commissioner: Richard I. Pegues / FOR / Grace Berg Schaible, Atty. Gen.

Date: January 20, 1988

Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 296 (HESS)

The proposed committee substitute for this bill amends existing law to require, among other things, that prosecuting attorneys provide certain information to the victims of crime, in three important respects.

In Section 6, the bill requires that prosecutors serve written notice upon a victim of the victim's right to appear and participate at hearings to establish aggravators or mitigators to be considered by a court in the sentencing of defendants for crimes against victims. This particular circumstance arises in most felony trials.

In Section 9, the bill requires, that upon the request of a victim of a crime, prosecuting attorneys shall: (1) confer with the victim of crime before the selection of the jury and the trial of the defendant; and (2) after trial notify the victim of the defendant's conviction and the crimes for which the defendant was convicted, including advising the victim of the victim's right to make an oral or written statement in preparation of the defendant's presentence report and sentencing, and advising the victim of the victim's right to appear personally or by counsel at the defendant's presentence hearing to present a written or oral statement, and advising the victim of the address and telephone number of the office preparing the presentence report, and advising of the time and place of sentencing.

Finally, Section 9, would require that prosecuting attorneys notify the victim in writing of the final disposition of the case within 30 days after final disposition of the case. The requirements of Section 9 would apply to both felony and misdemeanor crimes. It also appears that notification of final disposition would be required at both the trial and appellate levels.

Currently, of the 18,000 new criminal matters handled by the department each year, about 3,000 felony cases and 4,000 misdemeanor cases involve crimes having a victim. Many of the felony cases have multiple victims. Moreover, in cases where the victim has died, is a minor, or is incapacitated, the term victim includes a spouse, parent, child, brother, sister, aunt, uncle, parent-in-law, brother-in-law, sister-in-law, or legal guardian of the victim. Consequently, a substantial amount of new work must be undertaken by all of the department's prosecution offices in order to satisfy the requirements of the bill. Most of this work would be handled by paralegals and legal secretaries, except for the requirement for prosecutors to confer with victims before the selection of a jury. Where the victim is to be a witness the requirement for attorneys to confer with victims will not cause additional work. Where victims are not witnesses this requirement could consume several hundred hours of the limited attorney time that is now, and will be available in the future.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 296 (HESS)

The requirements of the bill, for literally thousands of notices, and numerous subsequent requests for assistance and further information, will place an enormous burden on a reduced prosecution support staff that simply cannot be borne without additional staff resources. This is particularly true in smaller offices where, in FY 1989, clerical support will be very thin. And it is also an important consideration in the state's two largest prosecution offices, because of their overwhelming caseloads.

It will therefore be necessary to add part-time clerical assistance at Ketchikan, Kotzebue, Sitka, and Kodiak. A full-time paralegal and a full-time legal secretary would be added in Anchorage, and a full-time paralegal and a full-time legal secretary would be added in Fairbanks, because of the large number of cases at these locations, including major felonies with multiple victims. All of these locations suffered support staff reductions in FY 1988.

In addition to the fiscal impact expected by the Department of Law, this bill could have substantial fiscal impact on the Department of Corrections and, to a lesser impact, the Department of Health and Social Services. These departments should be contacted for their comments.

Section 4 covers notification to victims of changes in the status of offenders committed to the custody of the commissioner of health and social services. The proposed section divides the responsibility for giving notice to victims between the commissioner of health and social services, the attorney general, or the prosecutor. Because offenders committed under AS 12.47 are in the custody of the commissioner of health and social services, responsibility for giving notice should reside with the commissioner.

The granting of rights to victims to participate personally or by counsel in aggravation or mitigation proceedings, sentencing proceedings and parole board meetings, as proposed by Sections 8 and 10, will result in more and lengthier hearings being held. Although the cost of this result is not quantifiable, some additional cost to the courts, prosecutors, public defenders, public advocates, connections, and the parole board will undoubtedly occur.

Lastly, the Department of Law is greatly concerned with the part of Section 8 that would give victims the right to access police reports related to the case in which the victim was involved. These reports often contain information that is provided confidentially by members of the general public and by confidential informants. The reports may also include unverified information and information that is unverifiable. Release of these reports would discourage people from coming forward with information about a crime, could expose confidential police sources and, in some cases, result in the dissemination of information that is incorrect or cannot be proven.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 296 (HESS)

Fiscal Summary - CSHB 296 (HESS)

	<u>Pers. Svcs.</u>	<u>Contractual</u>	<u>Supplies</u>	<u>Total</u>
Anchorage Paralegal Asst. II, PFT	43.9	4.1	1.8	49.8
Anchorage Legal Secretary I, PFT	32.1	4.1	1.8	38.0
Fairbanks Paralegal Asst. II, PFT	49.9	4.1	1.8	55.8
Fairbanks Legal Secretary I, PFT	35.6	4.1	1.8	41.5
Kodiak Legal Secretary I, PFT	17.3	2.0	0.9	20.2
Ketchikan Legal Secretary I, PPT	16.0	2.0	0.9	18.9
Kotzebue Legal Secretary I, PPT	20.6	2.0	0.9	23.5
Sitka Legal Secretary I, PPT	16.5	2.0	0.9	19.4
	<hr/>	<hr/>	<hr/>	<hr/>
	231.9	24.4	10.8	267.1

Costs beyond FY 89 include a 3 percent annual inflation factor.

Position Title Paralegal Assistant II		No. of Positions 1	Range/Step 16A	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Anchorage		Election District 8/9/10/11/12/13
Justification				
Type of Expenditure			Amount	
1	2	3		
Salary	32,424			
Benefits	11,487			
Premium Pay				
Other				
Total Personal Services		43,911		
Travel		-0-		
Contractual		4,100		
Commodities		1,800		
Equipment				
Other				
Total Cost		49,811		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	49,811		
GF Program Receipts	1005			
Other				

This full-time position is needed to provide for the victim notification and liaison requirements of CSHB 296. Written notice of a victim's rights to participate in aggravation/mitigation hearings, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.

Allocation to the Paralegal Assistant class is recommended because of the major felony cases handled by the position.

Request For
New Position

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 2 of 8
 Revised Date 1/20/88

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU	
Time Status PFT	Staff Months 12	Location Anchorage		Election District 8/9/10/11/12/13	
Type of Expenditure		Justification			
Amount		<p>This full-time position is needed to provide for the victim notification and liaison requirements of CSHB 296. Written notice of a victim's rights to participate in aggravation/mitigation hearings, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.</p> <p>Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.</p>			
1	2				3
Salary	22,716				
Benefits	9,334				
Premium Pay					
Other					
Total Personal Services					32,050
Travel					-0-
Contractual					4,100
Commodities					1,800
Equipment					
Other					
Total Cost		37,950			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	37,950			
GF Program Receipts	1005				
Other					

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 3 of 8
 Revised Date 1/20/88

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Fairbanks		Election District 19/20A/21
Type of Expenditure:		Justification		
		This full-time position is needed to provide for the victim notification and liaison requirements of CSHB 296. Written notice of a victim's rights to participate in aggravation/mitigation hearings, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.		
Amount		Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.		
1	2	3		
Salary	25,620			
Benefits	9,978			
Premium Pay				
Other				
Total Personal Services		35,598		
Travel		-0-		
Contractual		4,100		
Commodities		1,800		
Equipment		-0-		
Other				
Total Cost		41,498		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	41,498		
GF Program Receipts	1005			
Other				

Request For
New Position

Agency Department of Law
 BRU Prosecution
 Component Fourth Judicial District

Page 4 of 8
 Revised Date 1/20/88

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PPT	Staff Months 12	Location Ketchikan		Election District 1
		Justification		
Type of Expenditure		Amount		
1	2	3		
Salary	11,358			
Benefits	4,667			
Premium Pay				
Other				
Total Personal Services		16,025		
Travel		-0-		
Contractual		2,000		
Commodities		900		
Equipment		-0-		
Other				
Total Cost		18,925		
Funding Source for Total Cost				
Federal Receipts	1002			
G. P. Match	1003			
General Fund	1004	18,925		
GF Program Receipts	1005			
Other				

This part-time position is needed to provide for the victim notification and liaison requirements of CSHB 296. Written notice of a victim's rights to participate in aggravation/mitigation hearings, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.

Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component First Judicial District

Page 5 of 8
 Revised Date 1/20/88

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PPT	Staff Months 12	Location Kodiak		Election District 27
Justification				
Type of Expenditure		Amount		
1	2	3		
Salary	12,432			
Benefits	4,905			
Premium Pay				
Other				
Total Personal Services		17,337		
Travel		-0-		
Contractual		2,000		
Commodities		900		
Equipment		-0-		
Other				
Total Cost		20,237		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	20,237		
GF Program Receipts	1005			
Other				

This part-time position is needed to provide for the victim notification and liaison requirements of CSHB 296. Written notice of a victim's rights to participate in aggravation/mitigation hearings, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.

Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 6 of 8
 Revised Date 1/20/88

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PPT	Staff Months 12	Location Kotzebue		Election District 22
Justification				
Type of Expenditure		Amount		
1	2	3		
Salary	15,108			
Benefits	5,498			
Premium Pay				
Other				
Total Personal Services		20,606		
Travel		-0-		
Contractual		2,000		
Commodities		900		
Equipment				
Other				
Total Cost		23,506		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	23,506		
GF Program Receipts	1005			
Other				

This part-time position is needed to provide for the victim notification and liaison requirements of CSHB 296. Written notice of a victim's rights to participate in aggravation/mitigation hearings, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.

Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Second Judicial District

Page 7 of 8
 Revised Date 1/20/88

FY 89

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Sitka		Election District 3
Type of Expenditure		Amount		
1	2	3		
Salary	11,730			
Benefits	4,750			
Premium Pay				
Other				
Total Personal Services		16,480		
Travel		-0-		
Contractual		2,000		
Commodities		900		
Equipment				
Other				
Total Cost		19,380		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	19,380		
GF Program Receipts	1005			
Other				
		Justification		
		<p>This part-time position is needed to provide for the victim notification and liaison requirements of CSHB 296. Written notice of a victim's rights to participate in aggravation/mitigation hearings, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.</p> <p>Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.</p>		

Request For
New Position

Agency Department of Law
 BRU Prosecution
 Component First Judicial District

Page 8 of 8
 Revised Date 1/20/88

FY 89

HB

299

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD.	3-16-88	1:30p.m.
H. JUD.	3-15-88	1:30p.m.
H. JUD.	3-9-88	1:30p.m.
H. JUD.	2-29-88	1:30p.m.
H. JUD.	2-8-88	1:30p.m.

DATE: March 16, 1988

The Judiciary Committee has considered HB 299

"An Act revising the state gaming laws."

RECOMMENDS:

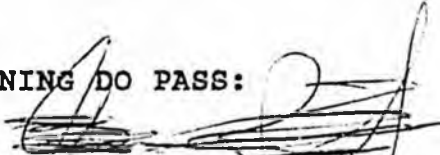
- replace with CS HB 299 (Jud) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published 1/22/88
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:



Max F. Eisenberg*
 *look at technical amendments

SIGNING OTHER RECOMMENDATIONS:

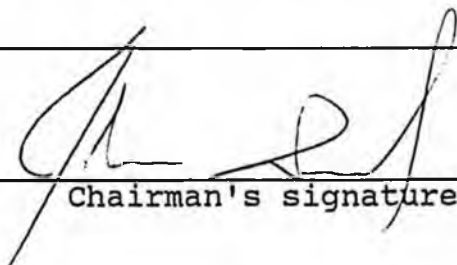
Max Ulmer - needs amendment

Robin L. Taylor (DO NOT PASS)

Mike Savane (no rec needs work)

Sam Gots (no rec needs work)

John R. [unclear] (no rec)



 Chairman's signature

MAR 21 1988

LAW OFFICES
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DOUGLAS B. L. ENDRESON**
MARY V. BARNEY
ANNE D. NOTO
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March 18, 1988

*ALASKA AND DISTRICT OF COLUMBIA BARS
**WISCONSIN BAR
ALL OTHERS DISTRICT OF COLUMBIA BAR

Honorable John Sund, Chairman
House Committee on the Judiciary
State Capitol Building
P. O. Box V (Mail Stop 3100)
Juneau, Alaska 99811

Dear Representative Sund:

I write to thank you for providing me an opportunity to testify earlier this week on behalf of the Alaska Native Health Board, the Kodiak Area Native Association, the Aleutian/Pribilof Islands Association, and the Aleutian Housing Authority in connection with H.B. 299, a bill relating to games of chance.

The four health and social service non-profit permittees we represent are very pleased that this important legislation is continuing to move forward in this session. At the same time, they also feel strongly that the four amendments discussed in my testimony are critical and essential if this bill is to accomplish its stated purpose of promoting responsible games of chance, especially those conducted directly by permittees who avoid a "middleman" in the form of an operator.

As I noted in Committee, those four amendments deal with the monthly cap on the number of bingo sessions (p. 4, line 9), the nature of the limit established on door prices (p. 13, line 18), the handling of pull-tabs (pp. 17-18, line 27 - line 2), and the member-in-charge language (p. 9, line 15 and p. 17, line 15). Very briefly, it is critical that the cap on the number of

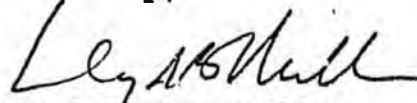
Representative Sund
March 18, 1988
Page 2

monthly sessions be substantially increased from 9 to at least 12, if not 14. Limits on door prizes should be rejected in favor of market place regulation given the tremendous value of door prizes in attracting patrons and thus increasing profits far in excess of the cost of the prizes. If door prize limits are established, the limits set forth in the bill are unrealistically low. But most importantly, any prize limit that is imposed should have equal application to a bingo hall run by an operator (who may possess 15 or 20 permits) as it does to a permittee running games of chance without an operator. (I understand from subsequent discussions with Representative Donley's aide that he would likely no longer oppose an amendment along these lines.) And last, the member-in-charge provisions require technical correction to account for the many qualified organizations holding permits which are not "membership" organizations.

My understanding from Wednesday's hearing was that the Committee was sympathetic to the need for serious consideration of these four amendments, and expressed hope that these amendments would be reviewed in depth by the Finance Committee. Since H.B. 299 has now been referred by that committee to a special subcommittee, the non-profit health and social service organizations we represent would be most appreciative if you could convey your Committee's view to Representative Adams. In the meantime, I am certain that Director Kettle and I will arrange to testify before that subcommittee to further explain the importance of these four corrective amendments.

The non-profits we represent are encouraged that this important legislation is improving each step of the way, and that a final bill will be enacted which is both fair and carries out fully the Legislature's intent to promote limited gaming activities by non-profit health and social service organizations.

Sincerely,



Lloyd Benton Miller

LBM;bj
Ltr2.Sund

5-0947X ✓

Utermohle
3/15/88

Original sponsor: Labor and Commerce
Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 299 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the conduct of games of chance
7 and contests of skill by municipalities and nonprofit
8 organizations; and regulation of operators and
9 pull-tabs."

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

11 * Section 1. AS 05.15.020 is repealed and reenacted to read:

12 Sec. 05.15.020. ANNUAL PERMIT AND FEES. (a) A municipality or
13 qualified organization may conduct an activity permitted under this
14 chapter, if the municipality or qualified organization pays the appro-
15 priate permit fee and receives an annual permit issued by the depart-
16 ment. The annual permit fee is

17 (1) \$20 for an applicant that did not hold a permit during
18 the preceding year;

19 (2) \$20 for an applicant that had gross receipts of less
20 than \$20,000 from activities conducted under this chapter during the
21 preceding year;

22 (3) \$50 for an applicant that had gross receipts of \$20,000
23 or more but not exceeding \$100,000 from activities conducted under
24 this chapter during the preceding year; or

25 (4) \$100 for an applicant that had gross receipts exceeding
26 \$100,000 from activities conducted under this chapter during the
27 preceding year.

28 (b) An additional fee shall be paid to the department annually
29 by the municipality or qualified organization authorized to conduct

1 activities under this chapter. The additional fee is

2 (1) one percent of the net proceeds of the activities au-
3 thorized under the permit if the gross receipts for the activities
4 were \$20,000 or more but not exceeding \$100,000; or

5 (2) three percent of the net proceeds of the activities au-
6 thorized under the permit if the gross receipts for the activities
7 exceeded \$100,000.

8 (c) A municipality or qualified organization applying for renew-
9 al of the annual permit shall provide proof satisfactory to the de-
10 partment that it does not have an outstanding debt for payment of a
11 tax on pull-tabs under AS 05.15.183 to a pull-tab distributor.

12 * Sec. 2. AS 05.15 is amended by adding a new section to read:

13 Sec. 05.15.025. MONEY DEPOSITED IN GENERAL FUND. Money received
14 by the department under this chapter shall be deposited in the general
15 fund. The commissioner of administration shall separately account for
16 the money deposited in the general fund under this section. The
17 annual estimated balance in the account may be used by the legislature
18 to make appropriations to the department to carry out enforcement of
19 this chapter.

20 * Sec. 3. AS 05.15.030(a) is amended to read:

21 (a) At the time of filing an application for a permit or license
22 under this chapter the applicant shall notify the city or borough
23 nearest to the location of the proposed activity of the application.
24 A local government unit may protest the conduct of the activity in its
25 jurisdiction by resolution stating the reasons for the protest filed
26 with the department; protests are limited to the lack of qualifica-
27 tions prescribed by this chapter. This resolution is only a recommen-
28 dation by the city which may be considered by the commissioner in
29 determining whether to issue or refuse to issue a permit or license.

1 * Sec. 4. AS 05.15.030 is amended by adding a new subsection to read:

2 (c) If a permittee or licensee changes the location of an activ-
3 ity in the jurisdiction for which a permit has been issued, the per-
4 mittee shall notify the department and the local government within 10
5 days after moving to the new location.

6 * Sec. 5. AS 05.15.060 is repealed and reenacted to read:

7 Sec. 05.15.060. REGULATIONS. The department shall adopt regula-
8 tions under the Administrative Procedure Act (AS 44.62) necessary to
9 carry out this chapter covering, but not limited to

10 (1) the issuance, renewal, and revocation of permits and
11 licenses;

12 (2) a method of ascertaining net proceeds, the determina-
13 tion of items of expense that may be incurred or paid and the limita-
14 tion of the amount of the items of expense to prevent the proceeds
15 from the activity permitted from being diverted to noncharitable,
16 noneducational, nonreligious, or profit-making organizations, indi-
17 viduals, or groups;

18 (3) the immediate revocation of permits and licenses au-
19 thorized under this chapter if this chapter or regulations adopted
20 under it are violated;

21 (4) the requiring of detailed, sworn, financial reports of
22 operations from permittees and licensees including detailed statements
23 of receipts and payments;

24 (5) the investigation of permittees, licensees, and their
25 employees, including the fingerprinting of those permittees, licens-
26 ees, and employees whom the commissioner considers it advisable to
27 fingerprint;

28 (6) exclusion from participation as a permittee, licensee,
29 or employee of a permittee or licensee of a person convicted of, in

1 prison for, or on parole for a felony within the preceding five years
2 or convicted of a crime involving theft or dishonesty or of a viola-
3 tion of a municipal, state, or federal gambling law;

4 (7) the method and manner of conducting authorized activi-
5 ties and awarding of prizes or awards, and the equipment that may be
6 used;

7 (8) the number of activities that may be held, operated, or
8 conducted under a permit during a specified period; however, the
9 department may not allow more than nine bingo sessions per month and
10 35 bingo games per session to be conducted under a permit;

11 (9) a method of accounting for receipts and disbursements
12 by operators, including the keeping of records and requirements for
13 the deposit of all receipts in a bank;

14 (10) the disposition of funds in possession of a permittee
15 or a person, municipality, or qualified organization that possesses an
16 operator's license at the time a permit or a license is surrendered,
17 revoked, or invalidated;

18 (11) restrictions on the participation by employees of the
19 Department of Fish and Game in salmon classics;

20 (12) other matters the commissioner considers necessary to
21 carry out this chapter or protect the best interest of the public.

22 * Sec. 6. AS 05.15.070 is amended to read:

23 Sec. 05.15.070. COMMISSIONER [OF REVENUE] MAY EXAMINE PERMIT-
24 TEES. The commissioner may examine or have examined the books and
25 records of a permittee, an operator, or a person licensed to manufac-
26 ture or to distribute pull-tab games in the state [THE COMMISSIONER
27 MAY REQUIRE THE PERMITTEE TO PAY THE REASONABLE COST OF THE EXAMINA-
28 TION]. The commissioner may issue subpoenas for the attendance of
29 witnesses and the production of books, records, and other documents.

CORRECTION

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

1 prison for, or on parole for a felony within the preceding five years
2 or convicted of a crime involving theft or dishonesty or of a viola-
3 tion of a municipal, state, or federal gambling law;

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27 MAY REQUIRE THE PERMITTEE TO PAY THE REASONABLE COST OF THE EXAMINA-
28 TION]. The commissioner may issue subpoenas for the attendance of
29 witnesses and the production of books, records, and other documents.

1 * Sec. 7. AS 05.15.080 is repealed and reenacted to read:

2 Sec. 05.15.080. REPORTS AND FEES REQUIRED OF MUNICIPALITIES AND
3 QUALIFIED ORGANIZATIONS. (a) A municipality or a qualified organiza-
4 tion issued a permit under this chapter shall file a report with the
5 department by the 45th day following each calendar quarter in which
6 the permittee had gross receipts of \$50,000 or more from activities
7 authorized under this chapter. The report must include the type of
8 activity conducted, the date and location of the activity, the amount
9 of gross receipts, the amount of authorized expenses, the value of
10 prizes awarded, the amount of net proceeds, and other information the
11 department may require. However, if the only activity conducted by a
12 municipality or qualified organization during a calendar quarter is a
13 raffle or lottery, then the municipality or qualified organization is
14 not required to file a report under this subsection until the raffle
15 or lottery is completed.

16 (b) A municipality or a qualified organization issued a permit
17 under this chapter shall file an annual report with the department by
18 March 15 of the year following the year in which activities were con-
19 ducted, accompanied by the payment of the additional fee, as may be
20 required under AS 05.15.020(b). The report must list the types of
21 activities conducted, and, for each activity, the total amount of
22 gross receipts, the total amount of authorized expenses, the total
23 value of prizes awarded, and the total amount of net proceeds.

24 * Sec. 8. AS 05.15 is amended by adding new sections to read:

25 Sec. 05.15.083. REPORTS TO DEPARTMENT BY OPERATORS. (a) An
26 operator shall file a report with the department by the last business
27 day of the month following each calendar quarter in which an activity
28 was conducted. The report must include, for each authorizing permit-
29 tee on whose behalf an activity was conducted during the quarter, the

1 date and location of each activity, the type of activity conducted,
2 the amount of gross receipts, the amount of authorized expenses, the
3 value of prizes awarded, the amount of net proceeds paid, and other
4 information the department may require; a completed Internal Revenue
5 Service Form 941; and a copy of the operator's employer contributions
6 and wage reports submitted to the Department of Labor for the quarter.
7 However, if the only activity conducted by an operator during the
8 calendar quarter is a raffle or lottery, then the operator is not
9 required to file a report under this subsection until the raffle or
10 lottery is completed.

11 'b) An operator shall file an annual report with the department
12 no later than February 28 of the year following the year in which
13 activities were conducted. The report must include, for each autho-
14 rizing permittee on whose behalf an activity was conducted, the types
15 of activities conducted, the total amount of gross receipts, the total
16 amount of authorized expenses, the total value of prizes awarded, the
17 total amount of net proceeds paid to each authorizing permittee. The
18 annual report shall also include a completed Internal Revenue Service
19 Form W-2 for each person employed by the operator during the preceding
20 year.

21 Sec. 05.15.087. REPORTS TO PERMITTEE AND PAYMENT OF NET PRO-
22 CEEDS. (a) An operator shall file a monthly report with each author-
23 izing permittee for which the operator has conducted an activity
24 during the preceding month. The report must include a daily summary
25 of activity conducted under the permit issued to the authorizing
26 permittee and an accounting of gross receipts, expenses, and net
27 proceeds for the month. A check in the amount of the net proceeds due
28 to the authorizing permittee for the month must accompany the report.
29 The operator shall file the report by the 15th day after the end of

1 the month covered by the report.

2 (b) An operator shall file a quarterly report with each autho-
3 rizing permittee for which the operator has conducted an activity
4 during the preceding calendar quarter. The report must contain quar-
5 terly summaries and year-to-date totals of the information provided
6 under (a) of this section. The operator shall file the report by the
7 last day of the month following the end of the calendar quarter.

8 (c) An operator shall file an annual report with each authoriz-
9 ing permittee for which the operator has conducted an activity during
10 the preceding calendar year. The report must contain an annual sum-
11 mary of the information provided under (a) of this section. The
12 operator shall file this report by February 28 of the year following
13 the year in which the activities were conducted.

14 (d) An operator shall provide original invoice documents and
15 deposit slips upon the request of an authorizing permittee for whom
16 the operator has conducted activities.

17 * Sec. 9. AS 05.15.090 is amended to read:

18 Sec. 05.15.090. REPORTS TO THE LEGISLATURE. Before April 15
19 [MARCH 2] of each year the commissioner of revenue shall submit a
20 detailed report containing a summary of all reports required of per-
21 mittees and operators [RECOMMENDING A PERMIT FEE SCALE THAT WILL COVER
22 COSTS OF ADMINISTRATION AND ENFORCEMENT]. The attorney general and
23 the commissioner of public safety shall, within 10 days after the
24 convening of the legislature each year, submit a jointly prepared,
25 detailed report outlining the effect, if any, of the operation of this
26 chapter on the legal and law-enforcement activities of the state.

27 * Sec. 10. AS 05.15 is amended by adding a new section to article 1 to
28 read:

29 Sec. 05.15.095. GENERAL PROVISIONS RELATING TO THE FILING OF

1 APPLICATIONS AND REPORTS AND PAYMENT OF FEES. (a) The applications
2 and reports to the department required by this chapter shall be signed
3 under penalty of perjury by the following person, as applicable:

- 4 (1) the member in charge for the qualified organization;
5 (2) a person authorized to sign on behalf of the municipal-
6 ity;
7 (3) the operator or the operator's agent;
8 (4) the licensed pull-tab distributor or the distributor's
9 agent; or
10 (5) the licensed pull-tab manufacturer or the manufactur-
11 er's agent.

12 (b) A permittee or operator may not conduct an activity under
13 this chapter during a period in which a report or fee is delinquent.

14 (c) A delinquent fee bears interest at the rate set by AS 43.-
15 05.225.

16 (d) A permittee or licensee under this chapter shall pay a
17 penalty of one percent of the unpaid balance, as determined by the
18 department, of a fee due under this chapter for each 30-day period or
19 part of a 30-day period that the fee is delinquent. The department
20 may waive the penalty if the failure to pay the fee on time is due to
21 a reasonable cause, as defined by regulation adopted by the depart-
22 ment. The amount of the penalty may not exceed 25 percent of the
23 unpaid fee.

24 * Sec. 11. AS 05.15.100(a) is amended to read:

25 (a) The commissioner [OF REVENUE] may issue a permit to a munic-
26 ipality or qualified organization. The permit gives the municipality
27 or qualified organization the privilege of conducting bingo, raffles
28 and lotteries, pull-tab games, ice classics, rain classics, goose
29 classics, mercury classics, salmon classics, dog mushers' contests,

fish derbies and contests of skill.

1
2 * Sec. 12. AS 05.15.100 is amended by adding a new subsection to read:

3 (c) The commissioner may issue an operator's license to a natu-
4 ral person to conduct an activity permitted under this chapter on
5 behalf of a municipality or a qualified organization. The commis-
6 sioner may also issue an operator's license to a municipality or a
7 qualified organization authorized to conduct an activity on behalf of
8 another municipality or qualified organization.

9 * Sec. 13. AS 05.15 is amended by adding new sections to read:

10 Sec. 05.15.112. MEMBER IN CHARGE. (a) Each municipality or
11 qualified organization that receives a permit under this chapter shall
12 designate a member in charge.

13 (b) The member in charge is responsible for preparation, mainte-
14 nance, and transmittal of all records and reports required of the
15 permittee. The member in charge shall be a member of the qualified
16 organization or an employee of the municipality.

17 (c) The member in charge shall monitor the operator's perfor-
18 mance under and compliance with contracts for the conduct of activ-
19 ities on behalf of the authorizing permittee.

20 (d) The municipality or qualified organization shall designate
21 alternate members in charge who are responsible for the duties of the
22 member in charge in the absence of the member in charge.

23 Sec. 05.15.115. CONTRACTS BETWEEN PERMITTEES AND OPERATORS. (a)
24 A municipality or qualified organization holding a permit to conduct
25 an activity under this chapter may enter into a contract with an
26 operator licensed under this chapter to conduct on behalf of the
27 municipality or qualified organization those activities permitted
28 under the authority of the permit.

29 (b) The contract between an authorizing permittee and an

1 operator must include the amount and form of compensation to be paid
2 to the operator, the term of the contract, the activities to be con-
3 ducted by the operator on behalf of the permittee, the location where
4 the activities are to be conducted, the name and address of the member
5 in charge, and other provisions the department may require.

6 (c) A permittee may not contract with more than one operator at
7 a time to conduct the same type of activity. For the purposes of this
8 subsection, bingo games, raffles, lotteries, pull-tab games, ice
9 classics, rain classics, goose classics, mercury classics, salmon
10 classics, dog mushers' contests, fish derbies, contests of skill, and
11 all activities permitted under AS 05.15.100(b) are each a different
12 type of activity.

13 (d) A permittee shall submit to the department a copy of each
14 contract with an operator with whom the permittee contracts to conduct
15 activities subject to this chapter. The permittee shall submit to the
16 department a copy of the contract or subsequent amendment of the
17 contract by certified mail at least 15 days before activities are
18 conducted under the contract or amended contract.

19 * Sec. 14. AS 05.15 is amended by adding new sections to read:

20 Sec. 05.15.122. OPERATOR'S LICENSE. (a) A person, municipal-
21 ity, or qualified organization may not conduct an activity subject to
22 this chapter on behalf of a municipality or qualified organization
23 unless the person, municipality, or qualified organization has re-
24 ceived an operator's license issued by the department.

25 (b) The department may issue an operator's license to a natural
26 person, municipality, or qualified organization that

- 27 (1) applies on the form provided by the department;
28 (2) pays the annual fee of \$500;
29 (3) discloses the identity of persons employed by the

1 applicant in a managerial or supervisory capacity;

2 (4) submits proof of liability insurance satisfactory to
3 the department; and

4 (5) posts a bond or security satisfactory to the department
5 in the amount of \$25,000 for each permit under which the operator
6 operates up to a maximum of \$100,000.

7 (c) The department may not issue an operator's license to an
8 applicant if the applicant or a person employed by the applicant in a
9 managerial or supervisory capacity, has been convicted of, in prison
10 for, or on parole for a felony within the preceding five years or
11 convicted of a crime involving theft or dishonesty or of a violation
12 of a municipal, state, or federal gambling law.

13 (d) A licensee may not employ a person in a managerial or super-
14 visory capacity if the person has been convicted of, in prison for, or
15 on parole for a felony within the preceding five years or convicted of
16 a crime involving theft or dishonesty or of a violation of a municipi-
17 pal, state, or federal gambling law.

18 Sec. 05.15.124. MUNICIPAL REGULATION OF OPERATORS. A munic-
19 ipality may by ordinance prohibit an operator from conducting activ-
20 ities under this chapter within the municipality.

21 Sec. 05.15.128. REVOCATION OF OPERATOR'S LICENSE. (a) The
22 department shall revoke the license of an operator who does not

23 (1) report an adjusted gross income of at least 15 percent
24 of gross income for two consecutive quarters based on the total opera-
25 tion of the operator; or

26 (2) pay to each authorizing permittee for two consecutive
27 quarters at least 15 percent of the adjusted gross income, as de-
28 termined under (1) of this subsection, received from activities con-
29 ducted on behalf of the authorizing permittee.

1 (b) A person, municipality, or qualified organization whose
2 operator's license has been revoked under this section may appeal the
3 revocation if the person, municipality, or qualified organization
4 submits to and pays for a complete audit of the operator's financial
5 records by the department. The results of the audit are conclusive.

6 * Sec. 15. AS 05.15.140(b) is amended to read:

7 (b) In an application for a permit, a municipality or qualified
8 organization shall disclose the name and address of each person re-
9 sponsible for the operation of the activity and whether any person
10 named

11 (1) has [EVER] been convicted of, in prison for, or on
12 parole for a felony within the preceding five years or convicted of a
13 crime involving theft or dishonesty or of a violation of a municipal,
14 state, or federal gambling law [MISDEMEANOR]; or

15 (2) has a prohibited financial interest, as defined in
16 regulations adopted by the commissioner, in the operation of the
17 activity.

18 * Sec. 16. AS 05.15.140(c) is amended to read:

19 (c) The commissioner [OF REVENUE] may not issue a permit for an
20 activity operated by a person who has been convicted of, in prison
21 for, or on parole for a felony within the preceding five years or
22 convicted of a crime involving theft or dishonesty or of a violation
23 of a municipal, state, or federal gambling law [MISDEMEANOR].

24 * Sec. 17. AS 05.15.160 is amended to read:

25 Sec. 05.15.160. AUTHORIZED EXPENSES. The only expenses that [AN
26 ITEM OF EXPENSE] may [NOT] be incurred or paid in connection with the
27 operation of an activity under a permit issued under this chapter are
28 [EXCEPT FOR] bona fide expenses reasonably necessary for

29 (1) gas, oil, tires, and merchandise necessary for the

1 operation of the activity;

2 (2) personal services [RENDERED THAT ARE NOT DIRECTLY OR
3 INDIRECTLY] involved with the operation of the activity, including
4 those [; OR

5 (3) PERSONAL SERVICES INVOLVED WITH THE OPERATION OF THE
6 ACTIVITY PROVIDED THE SERVICES ARE] performed by

7 (A) an employee of the permittee: [MUNICIPALITY, QUAL-
8 IFIED ORGANIZATION,] or

9 (B) an operator [A CONSULTANT] hired by the permittee
10 to conduct [MUNICIPALITY OR QUALIFIED ORGANIZATION CONDUCTING]
11 the activity if [AND] the compensation is not related to the
12 receipts from the activity.

13 * Sec. 18. AS 05.15.160 is amended by adding a new subsection to read:

14 (b) Municipalities, qualified organizations, and operators shall
15 pay their employees the prevailing wage for the work performed while
16 the employees are engaged in activities subject to this chapter.

17 * Sec. 19. AS 05.15 is amended by adding new sections to read:

18 Sec. 05.15.165. OPERATORS. (a) An operator shall pay net
19 proceeds to the authorizing permittee by check.

20 (b) If the department finds that an operator has incurred ex-
21 penses that are not authorized under AS 05.15.160, the department
22 shall order the operator to refund to the authorizing permittee the
23 amount of the unauthorized expenses. The operator shall pay the
24 authorizing permittee interest on the amount ordered to be paid at the
25 rate of 1.5 percent a month for each month or fraction of a month
26 between the date of the activity and the date the refund is made.

27 (c) The operator shall post in a public place on the premises
28 where the activities are conducted the operator's permit and a copy of
29 the permit of each authorizing permittee with whom the operator has a

1 contract to conduct activities at the location.

2 (d) An operator shall obtain liability insurance covering each
3 location where the licensee conducts an activity subject to this chap-
4 ter. The operator shall provide upon request proof of insurance for
5 each location to the department. The operator and the insurer shall
6 inform the department of changes in the coverage of the insurance or
7 of cancellation of the insurance. Cancellation of the insurance
8 immediately suspends the rights of the operator to conduct activities
9 under this chapter at the location covered by the insurance until
10 subsequent insurance is obtained.

11 (e) An operator shall have its financial records reviewed an-
12 nually by a certified public accountant. The operator shall submit
13 the results of the review to the department by February 28 of the year
14 following the year for which the review is conducted.

15 (f) An operator may not

16 (1) charge losses resulting from bad checks or uncollect-
17 able debts against the net proceeds due to the authorizing permittee;

18 (2) extend credit to players;

19 (3) employ house players;

20 (4) allow the operator's employees to play a game conducted
21 by the operator at the location where the employee works for the
22 operator.

23 Sec. 05.15.167. OPERATOR'S BOND. (a) The bond or security
24 filed under AS 05.15.122(b) must be made payable to the department and
25 must be conditioned upon payment of the amounts due to the department
26 and payment of net proceeds due to the authorizing permittee. If the
27 operator fails to make the required payments, the operator forfeits
28 the bond or security to the department.

29 (b) The amount forfeited under (a) of this section shall be

1 first used to satisfy delinquent fees, interest, and penalties due the
2 department under this chapter. If the bond or security is not ex-
3 hausted by payment of delinquent fees, interest, and penalties, the
4 department may use the remaining amount to pay net proceeds due an
5 authorizing permittee. The total amount available for payment of net
6 proceeds shall be prorated among the permittees to whom proceeds are
7 due from that operator.

8 (c) The operator and the surety shall inform the department if
9 the bond is canceled or the security is impaired.

10 * Sec. 20. AS 05.15.180(b) is amended to read:

11 (b) With the exception of raffles, lotteries, bingo games,
12 pull-tab games, rain classics, goose classics, mercury classics,
13 salmon classics, and other activities authorized under AS 05.15.-
14 100(b), an activity may not be licensed under this chapter unless it
15 existed in the state in substantially the same form and was conducted
16 in substantially the same manner before January 1, 1959.

17 * Sec. 21. AS 05.15.180 is amended by adding new subsections to read:

18 (d) The total value of door prizes offered or awarded under
19 authority of a permit issued to a municipality or qualified orga-
20 nization under this chapter may not exceed \$1,000 a month or \$12,000 a
21 year.

22 (e) A person under the age of 19 years may not play a bingo
23 game.

24 * Sec. 22. AS 05.15 is amended by adding new sections to read:

25 Sec. 05.15.181. PULL-TAB MANUFACTURER'S LICENSE. (a) A person
26 may not manufacture pull-tabs in the state unless the person has
27 received a pull-tab manufacturer's license issued by the department.

28 (b) The department may issue a pull-tab manufacturer's license
29 to a person who pays an annual fee of \$500.

1 (c) Each series of pull-tabs manufactured in the state shall be
2 sealed and have a serial number label issued by the National Associa-
3 tion of Fund Ticket Manufacturers or other serial number label ap-
4 proved by the department.

5 (d) A pull-tab manufacturer may distribute pull-tabs only to a
6 licensed pull-tab distributor unless the pull-tab manufacturer is also
7 a licensed pull-tab distributor.

8 (e) Each pull-tab manufacturer shall report to the department by
9 the last business day of the month on each series of pull-tabs dis-
10 tributed during the preceding month, including the serial number of
11 each series distributed and the name of the distributor to whom the
12 series was distributed.

13 Sec. 05.15.183. PULL-TAB DISTRIBUTOR'S LICENSE; PULL-TAB TAX.

14 (a) A person may not distribute pull-tab games unless the person has
15 received a pull-tab distributor's license issued by the department.

16 (b) The department may issue a pull-tab distributor's license to
17 a person who pays an annual fee of \$1,000.

18 (c) Pull-tabs may be distributed only from a location in the
19 state. A person may not distribute pull-tabs directly to another
20 person in the state from a location outside of this state.

21 (d) A pull-tab distributor shall report to the department by the
22 last business day of each month on each pull-tab series distributed in
23 the preceding month. The report must include the name of the permit-
24 tee to whom each series of pull-tabs is distributed and the serial
25 number of each series.

26 (e) A pull-tab distributor shall collect a tax of three percent
27 of an amount equal to the gross receipts less prizes awarded on each
28 series of pull-tabs distributed. The pull-tab distributor shall pay
29 to the department the tax collected in the preceding month at the time

1 that the report under (d) of this section is filed with the depart-
2 ment.

3 Sec. 05.15.185. DISTRIBUTION OF PULL-TAB GAMES. Each series of
4 pull-tabs distributed in the state shall be sealed and have a serial
5 number label issued by the National Association of Fund Ticket Manu-
6 facturers or other serial number label approved by the department and
7 may be distributed only to a municipality or a qualified organization
8 that has obtained a permit issued under this chapter or to an operator
9 on behalf of an authorizing permittee.

10 Sec. 05.15.187. OPERATION OF PULL-TAB GAMES. (a) A municipali-
11 ty or qualified organization may operate pull-tab games. Pull-tabs
12 shall be obtained from a licensed distributor.

13 (b) A municipality or a qualified organization may award up to
14 \$500,000 in prizes each year if it uses only employees of the munic-
15 ipality or members of the qualified organization to operate the pull-
16 tab game. However, a municipality or qualified organization may award
17 more than \$500,000 in prizes if the municipality or qualified orga-
18 nization pays a fee of one percent of the amount awarded in prizes
19 after exceeding \$500,000 in prizes. The municipality or qualified
20 organization shall pay the fee on awards of prizes exceeding \$500,000
21 with its annual report to the department.

22 (c) If a municipality or a qualified organization contracts with
23 an operator to conduct a pull-tab game on its behalf, the municipality
24 or qualified organization may award a maximum of \$300,000 in prizes.

25 (d) A pull-tab series may not be sold at more than one location
26 during the same day.

27 (e) Pull-tabs from different series may not be mixed or com-
28 bined.

29 (f) A pull-tab series may not be withdrawn from sale until all

pull-tabs in the series are sold.

1
2 (g) Pull-tabs may not be sold to a person under the age of 19
3 years. A person under the age of 19 years may not purchase a pull-
4 tab.

5 (h) Each municipality or qualified organization that had gross
6 receipts exceeding \$100,000 during the preceding year from activities
7 conducted under this chapter or that is required to report under
8 AS 05.15.080(a), that conducts a pull-tab game shall maintain records
9 for two years of each prize of \$50 or more, the first day and last day
10 that each series was distributed, the serial number of each series,
11 and the distributor from whom each series was purchased.

12 * Sec. 23. AS 05.15.210(2) is amended to read:

13 (2) "charitable organization" means an organization, not
14 for pecuniary profit, that is operated for the relief of poverty,
15 distress, or other condition of public concern in the state[, AND THAT
16 HAS BEEN SO ENGAGED FOR FIVE YEARS BEFORE APPLYING FOR A PERMIT UNDER
17 THIS CHAPTER];

18 * Sec. 24. AS 05.15.210(3) is amended to read:

19 (3) "civic or service organization" means any branch or
20 lodge or chapter of a national or state organization that is a civic
21 or service organization, not for pecuniary profit, and authorized by
22 its written constitution, charter, or articles of incorporation, or
23 bylaws to engage in a fraternal, civic, or service purpose in the
24 state [AND THAT HAS BEEN SO ENGAGED FOR FIVE YEARS BEFORE APPLYING FOR
25 A LICENSE UNDER THIS CHAPTER];

26 * Sec. 25. AS 05.15.210(5) is amended to read:

27 (5) "dog mushers' association" means a civic, service, or
28 charitable organization in the state, not for pecuniary profit, formed
29 exclusively to promote interest in the breeding and training of dog

1 teams for work or recreational and racing purposes [AND WHICH HAS BEEN
2 IN EXISTENCE FOR FIVE YEARS BEFORE APPLYING FOR A PERMIT UNDER THIS
3 CHAPTER], but does not include an organization formed or operated for
4 gaming or gambling purposes;

5 * Sec. 26. AS 05.15.210(7) is amended to read:

6 (7) "educational organization" means a civic, service, or
7 charitable organization in the state, not for pecuniary profit, whose
8 primary purpose is educational in nature and designed to develop the
9 capabilities of individuals by instruction [AND WHICH HAS BEEN IN
10 EXISTENCE FOR FIVE YEARS BEFORE APPLYING FOR A LICENSE UNDER THIS
11 CHAPTER];

12 * Sec. 27. AS 05.15.210(8) is amended to read:

13 (8) "fishing-derby association" means a civic, service, or
14 charitable organization in the state, not for pecuniary profit, whose
15 primary purpose is to promote interest in fishing for recreational
16 purposes [AND WHICH HAS BEEN IN EXISTENCE FOR FIVE YEARS BEFORE APPLY-
17 ING FOR A PERMIT UNDER THIS CHAPTER], but does not include an orga-
18 nization formed or operated for gaming or gambling purposes;

19 * Sec. 28. AS 05.15.210(10) is amended to read:

20 (10) "fraternal organization" means a civic, service, or
21 charitable organization in the state, except a college and high school
22 fraternity, not for pecuniary profit, that is a branch or lodge or
23 chapter, of a national or state organization and exists for the common
24 business, brotherhood, or other interest of its members [AND THAT HAS
25 SO EXISTED FOR FIVE YEARS BEFORE APPLYING FOR A LICENSE];

26 * Sec. 29. AS 05.15.210(15) is repealed and reenacted to read:

27 (15) "net proceeds" means the gross receipts from an autho-
28 rized activity less the fee described in AS 05.15.020(b), the expenses
29 authorized by AS 05.15.160, and the prizes awarded at the activity;

1 * Sec. 30. AS 05.15.210(19) is amended to read:

2 (19) "police or fire department and company" means a civic,
3 service, or charitable organization in the state, not for pecuniary
4 profit, consisting of members of a police department or fire company
5 established by the state or a political subdivision of the state [THAT
6 HAS BEEN IN EXISTENCE FOR FIVE YEARS BEFORE APPLYING FOR A LICENSE
7 UNDER THIS CHAPTER];

8 * Sec. 31. AS 05.15.210(21) is amended to read:

9 (21) "qualified organization" means a bona fide civic or
10 service organization or a bona fide religious, charitable, fraternal,
11 labor, political, or educational organization, police or fire depart-
12 ment and company, dog mushers' association, outboard motor associa-
13 tion, or fishing derby [FISHING-DERBY] or nonprofit trade association
14 in the state, that operates without profits to its members and that
15 has been in existence continually for a period of three [FIVE] years
16 immediately before applying for a license; the organization may be a
17 firm, corporation, company, association, or partnership;

18 * Sec. 32. AS 05.15.210(22) is repealed and reenacted to read:

19 (22) "raffle and lottery" means the selling of rights to
20 participate and the awarding of prizes in a game of chance conducted
21 by the drawing for prizes by lot;

22 * Sec. 33. AS 05.15.210(24) is amended to read:

23 (24) "religious organization" means an organization, church,
24 body of communicants, or group, not for pecuniary profit, gathered in
25 common membership for mutual support and edification in piety, wor-
26 ship, and religious observances, or a society, not for pecuniary
27 profit, of individuals united for religious purposes at a definite
28 place and that [HAS BEEN SO GATHERED OR UNITED FOR FIVE YEARS BEFORE
29 APPLYING FOR A LICENSE AND] is recognized as a religious organization

1 under the federal income tax laws and the selective service law;

2 * Sec. 34. AS 05.15.210(26) is amended to read:

3 (26) "veterans organization" means a civic, service, or
4 charitable organization in the state, or a branch or lodge or chapter
5 of a national or state organization in the state, not for pecuniary
6 profit, the membership of which consists of individuals who were
7 members of the armed services or forces of the United States, [AND
8 WHICH HAS BEEN IN EXISTENCE FOR FIVE YEARS BEFORE APPLYING FOR A
9 LICENSE UNDER THIS CHAPTER].

10 * Sec. 35. AS 05.15.210 is amended by adding new paragraphs to read:

11 (27) "adjusted gross income" means gross income less prizes
12 awarded and state, federal, and municipal taxes paid or owed on the
13 income;

14 (28) "authorizing permittee" means a municipality or qual-
15 ified organization that authorizes an operator to conduct an activity
16 subject to this chapter on its behalf;

17 (29) "commissioner" means the commissioner of revenue;

18 (30) "department" means the Department of Revenue;

19 (31) "distribute" means sell, distribute, furnish, or sup-
20 ply;

21 (32) "operator" means a natural person who, or a municipal-
22 ity or qualified organization that, has obtained a license to conduct
23 an activity subject to this chapter on behalf of a permittee;

24 (33) "pull-tab game" means a game of chance where a card,
25 the face of which is covered to conceal a number, symbol, or set of
26 symbols, is purchased by the participant and where a prize is awarded
27 for a card containing certain numbers or symbols designated in advance
28 and at random;

29 (34) "series" means a unit of pull-tabs with the same serial

number.

* Sec. 36. AS 05.15 is amended by adding a new section to read:

Sec. 05.15.995. SHORT TITLE. This chapter may be cited as the Alaska Gaming Reform Act.

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STATE OF ALASKA

DEPARTMENT OF REVENUE

HB 299
STEVE COWPER, GOVERNOR

STATE OFFICE BUILDING
P.O. BOX 5A
JUNEAU, ALASKA 99811-0400

March 9, 1988

Honorable John Sund, Chairman
House Judiciary Committee
State Capital Building
P.O. Box V (Mail Stop 3100)
Juneau, Alaska 99811

Dear Representative Sund,

Here are our comments in response to each of the proposed amendments contained in Lloyd Miller / Lucky Strike Bingo's letter to the Judiciary Committee. We either agree with or have no opposition to seven of their nine concerns.

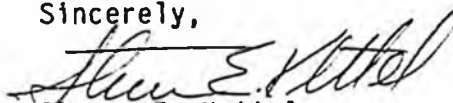
- 1) The Department agrees that it should not be policing a matter that should be between the permittee and the distributor.
- 2) AS 05.15.060 is defining what must be promulgated in the form of regulations. This statute is not meant to be more specific. The Department will be responsive to the public's comments when addressing wage rates in regulations.
- 3) The Department agrees with the proposed law as it is currently written. We don't feel that it is fair to continue to condemn a person for a crime when the courts have established a time period in which the person must pay his/her debt to society.
- 4) Although the Department is flexible on this point, leaving the number of sessions as is will allow more organizations the opportunity to participate in conducting bingo. We have actually had several organizations complain that 9 sessions per month is too many. Increasing the number of sessions to 14 could arguably decrease the number of permittees able to participate in the operator run halls by 35%.
- 5) The Department has no opposition to this proposal, as long as there is some guarantee that the 'member in charge' is in some manner associated with the organization and is responsible for the maintenance of the books and records.
- 6) The Department has no opposition to the proposal and would support an increase to 20% of the adjusted gross receipts.
- 7) (A) The Department has heard of problems with an organization pulling a series before any of the large prizes are won. We would support the mixing of the last 10% of pull-tabs from one series into another similar series, but would require that all pull tabs in a series must be sold.

(B) The Department has no opposition to this proposal, but with the condition that the Department also received a notice of the defective pull-tabs.

8) The Department believes that there is a misunderstanding as to the intent of actual meaning of AS 05.15.150 (a). The statute does not prohibit organizations from repairing or maintaining an existing individual's home. If, by the repair, or maintenance of an individual's home, or by removing a public hazard, the home is made safer for living, then the use of the proceeds in this manner is acceptable. Additionally, 15 AAC 105.180 allows the erection, buying or leasing of buildings or land for the organization so long as the buildings are used exclusively for educational, civic, public, or religious purposes. Perhaps this also could best be handled in regulations.

9) As so many organizations are now awarding door prizes, whether operator conducted or not, the Department believes that if door prizes were to be allowed, some limit should be placed on the amount allowable as door prizes. Our other option was to eliminate door prizes altogether, but we felt that too many organizations would disagree. At a minimum the provision should not provide a competitive advantage for one hall over another. Finally, in the long run we believe door prizes reduce the amount of funds available to charitable pruposes.

Sincerely,



Steven E. Kettel

Director

Income & Excise Audit

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February 1, 1988

*ALASKA AND DISTRICT OF COLUMBIA BARS
**WISCONSIN BAR
ALL OTHERS DISTRICT OF COLUMBIA BAR

Honorable Dave Donley, Chairman
House Committee on Labor & Commerce
State Capitol Building
P. O. Box V (Mail Stop 3100)
Juneau, AK 99811

Re: Comments on proposed gaming
bill H.B. 299 (Our File
1302.21)

Dear Representative Donley:

In follow up to a recent discussion with staffmember Ginger Baine, we submit this letter on behalf of four non-profit health, housing, and social service providers, the Alaska Native Health Board, the Aleutian/Pribilof Islands Association, the Aleutian Housing Authority, and the Kodiak Area Native Association (collectively referred to as "the non-profits") in connection with H.B. 299, a bill relating to games of chance.

The Kodiak Area Native Association and the Aleutian/Pribilof Islands Association are regional non-profit entities serving most of the health and social service needs of qualifying citizens residing on the Aleutian Chain, the Pribilof Islands and in the Kodiak Island area. They operate clinics, alcohol and mental health programs, family assistance programs, vocational job training assistance, higher education programs, weatherization programs, and provide a wide variety of other services. The Alaska Native Health Board carries out a wide range of health programs and research initiatives for the collective benefit of Alaska Native people across the state. Finally, the Aleutian Housing Authority administers low-income housing projects for communities on the Aleutian Chain and the Pribilof Islands. To further these purposes, in 1986 the four non-profits joined together to establish a bingo hall in Anchorage under the umbrella name of "Lucky Strike Bingo."

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For these organizations, gaming revenues are vital to supplement the government-funded programs that each of the non-profits operates. In an era of severe declines in state and federal grants and contracts, dramatically rising costs and increasing human needs, gaming funds provide a vital and essential bridge. Gaming proceeds are also virtually their only source of non-restricted funds which can be spent to further the objectives of each organization in areas not specifically targeted by an existing grant. Gaming revenues are thus critical in a faltering economy; without them, the non-profits would be compelled to substantially cut back and narrow their services and activities.

By way of example, gaming revenues have been used to purchase food for needy people in the A/PIA region and to aid families in paying funeral expenses. They have been used by ANHB to fund travel to Washington, D.C. to work with the Indian Health Service to improve the administration of federal drug and alcohol treatment programs in the State. They have been used by KANA to establish a fund to build a museum celebrating the cultural heritage of the Native people of the Kodiak region. They have been used by AHA in part to contribute to other non-profit organizations including churches located in the Aleutian Chain. All four of the joint venturers plan to continue using future gaming monies for similar purposes such as social services, for health services, for cultural programs and school scholarship programs.

The experience gained in owning and operating Lucky Strike Bingo under current laws and regulations has given the four non-profits particular insight into the regulation of games of chance. The non-profits generally support the concept of reform of the gaming laws, and wish to offer specific suggestions for the improvement of H.B. 299. Their insight is especially unique in that the non-profits operate their own games of chance and employ staff which are under their direct control. They do not conduct gaming activities through a professional, high-paid "operator." This perspective is critical, for it means the non-profits can offer insights strictly from their motivation to maximize the benefits of gaming for charitable organizations while maintaining the integrity of charitable gaming in Alaska.

At the outset, it is important to reflect on the legislature's past policy regarding games of chance in Alaska. As we see it, the clear intent of the original 1960 gaming laws (as well as the 1976 amendments) was to allow qualifying charitable organizations to engage in limited gaming activities in order to raise revenues and carry out charitable purposes.

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in order to raise revenues and carry out charitable purposes. The principle notion was to provide a means for fundraising, so that charitable organizations could continue and expand their good works in the State. This principle rationale for legalizing limited gaming has not changed. What has changed is the increased popularity of games of chance coupled with radical changes in the State's economic health. Consistent with the original intent, all amendments must continue to encourage charitable gaming in Alaska while simultaneously providing safeguards against potential abuses.

We next address specific sections of the bill. In doing so, we emphasize the importance of preserving gaming as a fundraising source for non-profit organizations, and of maintaining a balance between the goals of preserving wide participation by charitable organizations while ensuring that organizations which do elect to become involved have a real opportunity to realize net profits.

1. Section 20(b). This section would regulate annual permits and fees. Although the non-profits do not object to the development of a sliding scale for the calculation of the annual permit fee, the fee under subsection (b) appears to be an unnecessary tax on gaming operations should the legislature determine that such a fee is essential, the fee should be determined from gross proceeds. A calculation based upon gross proceeds would be more equitable because it would eliminate the ability of gaming operations to claim questionable deductions in arriving at their net figure. We believe that a figure set at .005% of gross proceeds would be equal to 1% of accurately determined net proceeds.

2. Section 20(c). The non-profits believe that Section 05.15.020(c) is unnecessary. The financial arrangement between a pull-tab distributor and the permittee or operator is a business matter not relevant to the Department's role in the permit renewal process.

3. Section 60. This section generally addresses matters which would be more specifically governed by regulations adopted by the Department. As you know, last year the Department proposed substantial changes in the current gaming regulations. One of the proposed changes addresses the allowable operational expenses which may be paid out of gross proceeds. The non-profits we represent strongly believe that the current and proposed regulations impose unreasonable limitations which do not

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further the State's legitimate policy of avoiding diversion of funds to non-charitable purposes or organizations. For example, current and proposed regulations limit the wages which may be paid to employees to one dollar over the established minimum wage. The regulations also prohibit employee bonuses under any circumstances.

The non-profits believe these wage limitations substantially hinder and impede the responsible and professional operation of gaming. As in any business, competent employees are obtained by hiring on a basis competitive with prevailing wage rates. By offering competitive wage rates, gaming permittees would be able to ensure professional and courteous service to patrons. Given the predisposition of the Department to impose a wage scale, The legislature should address such important policy questions in H.B. 299 by prohibiting the department from imposing any hourly wage scales.¹

H.B. 299 proposes several other amendments to A.S. 05.15.060 which the non-profits believe should be revised. Subsection (3) would immediately revoke permits and licenses if the chapter or regulations are violated. Although the non-profits support stiff penalties for the violation of the gaming laws, we believe this proposed provision is far too broad. Rather, a standard should be developed, recognizing that some violations are more serious than others, that a history of violations is more deserving of revocation than a one-time unintentional mistake, and that other circumstances may bear on whether or not revocation is the appropriate remedy.

Subsection (6) could be clarified in three ways: first, we suggest inserting the following underlined language: "exclusion from participation in the operation of games of chance of a permittee, licensee, operator, or employee...". Second, the non-profits strongly believe that a period longer than five years after conviction for a felony should be required in the interest of protecting the public and charitable organizations, and that the time should run from completion of a sentence rather than the date of conviction. Finally, we suggest that this subsection be revised to make clear that the limitation regarding persons who

¹Although the draft bill does not specify whether employees of permittees conducting games could be paid competitive wages, the bill apparently would not limit operators from paying their employees above a certain ceiling.

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have committed a crime of moral turpitude is absolute, regardless of the time that has lapsed since conviction. We strongly believe this is an area where caution dictates an extra measure of protection.

We recommend that Subsection (8) be amended to establish a minimum annual operating period of nine months and a maximum number of games per permit per month of twelve. These limits would acknowledge the fiscal reality of the operation of gaming activities: if the current cap on nine games per month is maintained, it will become increasingly difficult for charitable organizations to realize any substantial return on their operations (since many expenses are fixed costs). At the same time, we agree that some limit on the number of games that may be operated under a permit is wise and furthers public policy because it ensures that permit holders desiring to conduct only a few games will be able to do so. This, in turn, is desirable because it spreads the benefit of this important fund-raising source.

Subsection (9) of AS 05.15.060 would require the Department to develop an accounting method including the banking of all receipts and payments by check only. As you may know, most patrons play games of chance using only cash. Likewise, they expect to receive their winnings in cash. With sufficient safeguards in place regarding the recording and witnessing of all transactions, this system works well. It also allows winners to turn around and play a new game. Requiring permittees and operators to bank by check creates an enormous and unnecessary burden, and the increased administrative costs of compliance will only decrease net profits. In addition, winners who wish to play another game would be required to endorse back their check for cash, a somewhat pointless exercise. The non-profits are fully aware of the State's legitimate interest and concern in full and accurate accounting of the proceeds, but believe that strict controls on verification and internal accounting procedures (as are employed at Lucky Strike) will eliminate any difficulties in ascertaining the amounts of receipts and payments.

As a general matter, the non-profits believe an exemption from the definition of "operator" should be made for permit holders who conduct only a very limited number of games for other permit holders. The non-profits occasionally conduct games on the permits of other charitable organizations. (This is because of the existing low ceiling on the number of sessions each of the non-profits may conduct.) These games are only a

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very small portion of the collective gaming revenues for all Lucky Strike games. They are of great benefit to those organizations that do not wish to become more active in gaming, and who would therefore not otherwise be able to secure a facility the size of Lucky Strike Bingo. Technically, under these circumstances the non-profits may fall within the proposed definition of "operators" when acting in this capacity; but in actuality, the non-profits are certainly not "operators" as that term is commonly understood.

To impose the requirements of an "operator" on the non-profits would be a considerable burden to both the non-profits and the other charitable permitholders benefitting from the limited use of the non-profits' facility. The exemption from the definition of "operator" which we propose would be narrow and would continue to include the category of gaming managers which we agree should be subject to rigorous reporting and accounting requirements. Without such a change, Lucky Strike would in all likelihood be compelled to cease assisting other permitholders in playing their permits. The non-profits believe that joint ventures such as Lucky Strike Bingo can only fairly be characterized as "permittees". For example, proposed Section 165 would impose many requirements on an operator which would neither be appropriate nor necessary in the case of a self-operated joint venture like the non-profits.

4. Section 83. This section would require operators to file certain reports monthly, quarterly, and annually with the Department. The non-profits suggest that these quarterly and annual reports should also be filed with the permitholders. Further, we believe the quarterly reports should include data concerning the pricing, amounts, and types of supplies purchased on behalf of each permitholder during the quarter. The additional information and the furnishing of reports to the permittees would greatly decrease the opportunity for operators to "skim" proceeds from permittees, and allow the Department sufficient information to investigate suspicious transactions. The information required in the bill's proposed operator-to-permittee reports (see proposed A.S. 05.15.08) would be in addition to the information required under A.S. 05.15.083 so that furnishing the permitholder with both reports would not be duplicative.

5. Section 112. This section should be revised to clarify that it would apply only to operators, not permitholders conducting their own games. This section does not anticipate the

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situation of a joint venture comprised of permittees, because it requires that a member of the "qualified organization" fulfill certain duties. In a joint venture, employees are in a sense collectively employed. The employees are not necessarily members of one of the four entities comprising the joint venture, and in a sense all are representatives of the joint venture itself. "Representatives" rather than "members", should either be added in all sections referring to members, or should replace the term "member".

6. Section 115. This section should be revised to specify that a written contract is required between a permittee and an operator. For instance, this section could be revised to state: "A municipality or qualified organization holding a permit to conduct an activity under this chapter shall enter into a written contract with an operator...". Further, the contract itself should expressly incorporate the operator-permitholder reporting requirements set forth in the proposed legislation. Such express incorporation will further strengthen the accountability of the operator to the permitholder.

Subsection (d) of the same section would require only 72 hours between the submission of a contract to the Department for approval and the operation of games under the contract. The non-profits believe this time period is far too short to allow meaningful review by the Department. The non-profits suggest instead a 30-day period for review. Further, the Department should be directed to promulgate regulations consistent with the provisions and policy of the gaming legislation to guide the contract review and approval process.

7. Section 128(a). This section requires an "operator" to either report a minimum percentage of profit bi-quarterly, or to pay the permittee a certain percentage per month. The non-profits believe a better formula in subsection (b) would be based on the percentages set forth under subsection (a). The subsection should read: "pay each month to each authorizing permittee 30% of 15% or more of the adjusted gross income as calculated under (1) of this subsection...". The non-profits believe this formula more fully achieves the intent of the provision.

8. Section 160(f). This section requires that an operator submit the results of a CPA audit to the Department by February 28 of each year. The non-profits believe this timeframe is too

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short, as such audits are complex and usually cannot be completed by the end of February. April 15th would be a more realistic date.

In subsection (g) of the same section, the non-profits believe that the charge of losses resulting from bad checks against the net proceeds of the permittee is a matter to be resolved in the operator's contract rather than by legislation or regulation. The parties may desire that the operator absorb the costs.

9. Section 181(e). This section would require pull-tab manufacturers to provide monthly reports to the Department concerning certain information on the sales and distribution of pull-tabs. The non-profits believe the pull-tab manufacturers should also be required to submit a list of prices for the pull-tabs, to ensure uniformity of price. The same information should be included in the operator's quarterly reports to the Department and the permit holders. The requirement of filing a price list should also be a condition of receiving a permit under proposed A.S. 05.15.183.

10. Section 183(b). This section would prohibit distribution of pull-tabs directly to another person in Alaska from a location outside of the State. The non-profits strongly object to this proposed change from existing law. Such a provision would inevitably lead to higher prices for pull-tabs if in-state distributors were insulated from out-of-state competition. Indeed, it could well lead to a monopoly on such distributing, a consequence directly at odds with the policy of gaming in Alaska. The non-profits do not believe this provision would be of benefit to any persons other than the distributors themselves. Again, we strongly believe this proposed change is directly contrary to the public policy purpose behind the gaming legislation.

In subsection (e) of the same section, the bill would require distributors to pay a tax to the Department based on a formula which directly links the sale of pull-tabs to amounts realized on pull-tab games. The non-profits do not object to the imposition of a tax on distributors, but the tax should not link the sale of pull-tabs with the results of games. Such a link would create in the distributor a direct financial interest in the outcome of the games, and would increase the incentive for tampering. Further, the law should expressly prohibit the

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distributor from passing the tax on to the operators or permittees. If the legislation does not contain a "pass-through" prohibition, the distributor will simply increase the price of pull-tabs and the purchasers of the pull-tabs will ultimately pay the distributor's tax.

11. Section 187. This section imposes a ceiling on the total annual amount of prizes that may be awarded. As explained to us, the apparent purpose of this provision is to limit gaming activities and to somehow ensure that more permit holders will have an opportunity to realize net profits from gaming. The non-profits are skeptical that ceilings on prizes achieve this goal, and suggest that a reasonable limit on the maximum number of games that may be played on a permit is a more effective means of meeting the legislature's goals. (As stated above, the non-profits suggest that a cap of 12 games per month per permit would go far in achieving both maximum participation and net profits for the permittees.) If a permit holder is within that limit, there is no reason in logic nor in policy why the charitable permittee's income should be limited.

If the legislature believes a ceiling on prizes is necessary for some reason, subsections (b) and (c) should be made uniform. Subsection (c) would limit a municipality or qualified organization to a ceiling of \$300,000 in prizes, but does not include an option for exceeding that ceiling if the municipality or qualified organization pays a 1% fee. Such an option, however, is available under subsection (b) for a municipality or qualified organization. As there is no reason to impose an absolute ceiling merely because an operator rather than a municipality or other qualified enterprise is conducting the games, the two subsections should both contain the 1% fee option. Further, the proposed legislation should clarify whether the \$500,000 or \$300,000 ceilings are for all forms of games conducted or per category of game. As written it is possible a permittee could offer bingo games up to \$500,000 and simultaneously offer pull-tab games up to \$500,000.

Subsection (e) would prohibit mixing or combining pull-tabs from different series. Although the non-profits recognize that the intent of the provision is to eliminate one potential for tampering with a pull-tab series, they believe the provision should be revised to allow mixing 10% of one series with a full series. This practical revision is necessary because when only 10% of a series is left, sales usually decrease substantially. Patrons resist purchasing from a less than apparently full pull-