

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672  
4817 HLAB HB 283 - HR 299

387

1 employee's faculties are impaired by a drug or other consumed sub-  
2 stance on the job;

3 (2) the employee is in a position in which an impairment  
4 would present a clear danger to the physical safety of the employee or  
5 another person;

6 (3) the employer preserves an adequate sample or portion of  
7 a sample so that the employee may conduct an independent test to  
8 verify or refute the employer's results; and

9 (4) the employer provides the employee an opportunity to  
10 rebut or explain the test results.

11 (b) In conducting tests permitted under this section, the em-  
12 ployer shall limit the tests to the extent feasible so that only  
13 information regarding chemical substances in the body that are likely  
14 to affect the employee's ability to work safely is taken or recorded.

15 (c) In an action alleging that an employer violated this sec-  
16 tion, the employer has the burden of proving that the requirements of  
17 (a) of this section have been satisfied.

18 (d) This section does not prevent an employer from conducting  
19 medical screening to monitor exposure to toxic or other unhealthy  
20 substances found in the workplace or encountered in the performance of  
21 the employees' job duties if the employer has the express written  
22 consent of the employees. The screenings or tests must be limited to  
23 the specific substances expressly identified in the employee consent  
24 form. This section does not prevent an employer from conducting  
25 medical screening or tests for toxic exposure to the extent required  
26 by law.

27 (e) This section does not prohibit an employer from prohibiting  
28 the use of intoxicating substances or tobacco during work hours or  
29 from disciplining employees for using tobacco or being under the

1 influence of intoxicating substances during work hours.

2 (f) This section does not apply to

3 (1) the state or a political subdivision of the state when  
4 dealing with aircraft pilots, peace officers, or firefighters in its  
5 employ or persons applying to be employed as aircraft pilots, peace  
6 officers, or firefighters; or

7 (2) an employer as to an employee operating emergency  
8 service vehicles for the state or a political subdivision of the  
9 state.

10 (g) A person who violates or assists in a violation of this  
11 section is liable to the person aggrieved for special and general  
12 damages, together with attorney's fees and the costs of the action as  
13 provided in the Alaska Rules of Court.

14 (h) A person who violates or proposes to violate this section  
15 may be enjoined by a court of competent jurisdiction. An aggrieved  
16 person, the attorney general, or a person or entity that will fairly  
17 and adequately represent the interest of the protected class may bring  
18 an action for injunctive relief.

19 (1) In this section

20 (1) "employer" means a person who retains by personal  
21 services contract or employs at least one other person and includes  
22 the state and a political subdivision of the state;

23 (2) "firefighter" means a person who is a regular employee  
24 of a fire agency or organization of the state or a political subdivi-  
25 sion of the state and who is authorized to act under AS 18.70;

26 (3) "peace officer" means a person who is a regular em-  
27 ployee of the state or a political subdivision of the state and who  
28 has primary responsibility for the prevention and detection of crime  
29 and the enforcement of the fish and game, penal, traffic, or highway

1 laws of the state or the employing political subdivision.  
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1 employee's faculties are impaired by a drug or other consumed sub-  
2 stance on the job;

3 (2) the employee is in a position in which an impairment  
4 would present a clear danger to the physical safety of the employee or  
5 another person;

6 (3) the employer preserves an adequate sample or portion of  
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26 by law.

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28 the use of intoxicating substances or tobacco during work hours or  
29 from disciplining employees for using tobacco or being under the

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_

Bill Version: HB 283  
Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act prohibiting certain employers  
from testing employees for drugs..."  
Sponsor: Representative Sund  
Requestor: House Labor & Commerce

Agency Affected: Department of Law  
BRU: Legal Services  
Components: Operations

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-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: May 11, 1987  
 Approved by Commissioner: Richard I. Pegues / GR Date: May 11, 1987  
 Agency: Grace Berg Schaittle, Atty. Gen.  
Department of Law

Distribution (by preparer):

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 283

This bill amends AS 23.10 by adding a new section that prohibits certain employers from testing employees for drugs or other substances consumed by employees. This testing prohibition would also extend to applicants for employment. The bill would permit an employer to require a specific employee to submit to testing, if the employer had reasonable grounds to believe the employee's faculties are impaired by a drug or other consumed substance on the job. The new section does not apply to the state or a political subdivision of the state when dealing with peace officers or firefighters in its employ, or persons applying to be employed as peace officers or firefighters.

The bill provides that a person who violates the new section may be enjoined by a court of competent jurisdiction. And it further provides that a person who violates or assists in the violation of the section is liable to the aggrieved person for special and general damages, together with attorney's fees and costs. An aggrieved person, the attorney general, or a person or entity that will fairly and adequately represent the interest of the protected class may bring an action for injunctive relief. It is not anticipated that the attorney general will often become involved in seeking injunctive relief, because of the private right of action that the bill provides to individuals, including an individual's right to seek damages against violators.



## GREATER SITKA

## Chamber of Commerce, Inc.

DATE: May 7, 1987

TO: ~~Chairman~~  
House Labor & Commerce Committee  
Alaska State Legislature

Committee Members:

Koponen  
Boucher  
Davidson  
Ellis  
Furnace  
Menard

RE: HB 283 -- Employee Drug Testing

FROM: Roger L. Hames, President  
Greater Sitka Chamber of Commerce

The Greater Sitka Chamber of Commerce Board of Directors opposes HB 283 and urges you to drop this bill from consideration. Due to the excessive costs to the employer from lost production (from physical and functional absenteeism and premature mortality from accidents at the workplace, particularly in industrial operations) and due to the skyrocketing costs of employee medical, we believe the employer has the right to exercise prehire physical testing which includes screening for alcohol and drug abuse. Many of the companies in business today have contractual or moral obligations to provide employees with rehabilitation for alcohol and drug abuse. Because of this significant cost, both in dollars for insurance fees and lost time, we believe the employer has the right to protect himself from these excessive costs by requiring prehire physical testing if he so desires.

We also believe that it is an employee's right to be assured that individuals working alongside of him are in good health and of clear mind.

cc: Senator Dick Eliason  
Representative Ben Grussendorf

Proposed Amendment  
to House Bill 283  
by the Department of Labor

Amend lines 21-24 on page 2 to read:

the employees' job duties. The screenings or tests must be limited  
to the specific substances to which the employee may be exposed.



# NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

## ANCHORAGE REGIONAL OFFICE

1411 W 33RD AVENUE  
ANCHORAGE, ALASKA 99503  
(907) 274-0536

## JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302  
JUNEAU, ALASKA 99801  
(907) 586-3090

## FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET  
FAIRBANKS, ALASKA 99701  
(907) 456-4435

Jean Krause, President

Judy Selo  
Vice-President  
4510 Kenaitze Court  
Kenai, Alaska 99611

May 12, 1987

Susan Siltham  
NEA Director  
P.O. Box 80913, College Station  
Fairbanks, Alaska 99708

To: Rep. Dave Donley, Chair  
Members, House Labor & Commerce Committee

Alan Dill  
Region I Director  
P.O. Box 423  
Sitka, Alaska 99835

Phil Myerchin  
Region I Director  
717 Canyon Road  
Ketchikan, Alaska 99901

Re: House Bill No. 283; "An Act prohibiting certain employers from testing employees for drugs or other substances consumed by employees."

Teresa Benolkin  
Region II Director  
P.O. Box 874335  
Wasilla, Alaska 99687

NEA-Alaska supports and encourages the Committee to act favorably on HB 283.

Beverly Goad  
Region II Director  
Box 343  
Copper Center, Alaska 99573

Protection of basic constitutional rights is essential. This legislation does so while providing employees the opportunity to deal with specific circumstances under a test of reasonableness while safe-guarding the rights of employees.

Don Oberg  
Region III Director  
Box 1084  
Kenai, Alaska 99611

The Committee may want to consider the construction of the title of this legislation since it could be read to imply that "drugs or other substances are in fact consumed by employees," rather than possibly consumed by employees.

Phil Brady  
Region IV Director  
Scammon Bay Schools  
Scammon Bay, Alaska 99662

Thank you for your consideration of our support.

Myra Poage  
Region IV Director  
Box 973  
Nome, Alaska 99762

Respectfully submitted,

Joann Walker  
Region IV Director  
Box 570  
Kotzebue, Alaska 99752

Robert Manners  
Executive Secretary

Mary Lou Brent  
Region V Director  
Box 80074  
Fairbanks, Alaska 99708

BM69/dl

Carol Merritt  
Region V Director  
P.O. Box 60475  
Fairbanks, Alaska 99706

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Region VI Director  
2220 Yorkshire Lane  
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Pam McCarl  
Region VI Director  
2115 Sorbus Way  
Anchorage, Alaska 99508

Pam Reynolds  
Region VI Director  
8031 Evans Circle  
Anchorage, Alaska 99507

Dave Schwantes  
Region VI Director  
8148 E. 4th Avenue  
Anchorage, Alaska 99504

Peg Stout  
Region VI Director  
6208 E. 34th Avenue  
Anchorage, Alaska 99504

POSITION PAPER

HB 283

House Bill 283 insures that Alaska employers, including the State of Alaska, cannot conduct random testing for the use of drugs or other substances. Policy guidelines are outlined in Section 1 of the legislation. It also stipulates in Section 2 that testing can only be conducted for cause and lists those various circumstances.

The issue of drug testing in the workplace has gained national attention. There is little question of the serious nature of substance abuse in this country. The problems of the health and safety of the public, decreased productivity, and increased medical costs resulting from that abuse are real, both in the workplace and in society as a whole. Balancing out these concerns is the concern that employers, both public and private, conduct themselves in a business-like manner in relationship to their employees, with full regard for the individual and constitutional rights of those individuals. For many employers, the process of finding an approach that is both effective and legally defensible has been difficult without clear guidelines. Employers who have instituted drug testing programs without considering both aspects of the issue have frequently found themselves the object of lawsuits filed by employees who believe that their constitutional rights to privacy had been violated.

During the past year, the courts have been providing some guidance as more employers have been sued by employee groups subjected to drug testing procedures. It is becoming clear that an acceptable basis for a drug testing plan is that it be "job related" or "for cause." Recent court decisions have favored individual rights over employers' rights to institute drug testing carte blanche. In the case of Murray v. Brooklyn Gas Co., 122LRRM 2057 (N.Y. Sup Ct, 1986), the company's decision to implement a urinalysis testing program for all of its employees was successfully challenged. In its decision the court stated, ". . . to arbitrarily test without reason whatsoever; . . . is an impingement on the rights of individuals." However, the court further held that its ruling did not preclude testing for cause.

In the case of Amalgamated Transit Union v. Suscy (538 Fed Rprt 2d 1264), the Seventh Court of Appeals supported the Chicago Transit Authority's drug and alcohol testing plan for bus drivers who were involved in a serious accident or who exhibited suspicious behavior. The court held that such testing does not invade the privacy or violate the rights of these types of employees. Furthermore, the court held that even without specific situations that indicate a reasonable suspicion, a public employer may require its employees to undergo medical tests to determine fitness for work, and to discipline employees based upon the results of the test. In this situation, "bus drivers" can be seen to be directly responsible for the safety of others.

The legislature may wish to clarify the definition of "peace officer" in Sec 23.10.038(i)(2). As currently written it may exclude positions in such classes as Correctional Officer, Court Services Officer, and Fish and Wildlife Enforcement Officer.

POSITION PAPER

HB 283

It is clear that drug and alcohol abuse can negatively affect an employee's work performance and behavior. Work and performance problems that are related to substance abuse must be confronted and combated in the work place, but it must be done in such a way that individual rights are protected. Again, it appears this legislation meets these concerns and is consistent with recent court rulings on this matter. The Department of Administration supports HB 283.

*Diana DeSimone*

\_\_\_\_\_  
Diana DeSimone, Director  
Division of Personnel

*5/5/87*

\_\_\_\_\_  
Date

*Garrey Peska*

\_\_\_\_\_  
Commissioner Garrey Peska  
Department of Administration

*5/8/87*

\_\_\_\_\_  
Date

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: HB 283  
Publish Date: \_\_\_\_\_

REQUEST \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An act prohibiting certain employers  
from testing employees for drugs or other  
other substances consumed by employees.  
Sponsor: Sund, Adams, Koponen, Wallis  
Requestor: and Brown

Agency Affected: All  
BRU: All  
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	0	0	0	0	0	0

<b>POSITIONS:</b>	0	0	0	0	0	0
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

There will be no fiscal impact to the Division of Personnel

Prepared By: Diana DeSimone *DD*  
Division: Personnel  
Approved by Commissioner: Garrey Peska *GP*  
Agency: Department of Administration

Phone: 465-4430  
Date: 5/5/87  
Date: 5/8/87

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

BILL NO: HB 283

DATE: May 6, 1987

TITLE: "An Act prohibiting certain employers from testing employees for drugs or other substances..."

CONTACT: *WJ Gilmour*  
Maj. Walter J. Gilmour  
Acting Director  
Alaska State Troopers

DEPARTMENT OF  
PUBLIC SAFETY

POSTED  
PAPER

To protect the right of privacy and unreasonable search and seizure of employees by employers.

This proposed legislation would protect employees from random or company-wide testing for drugs, or other substances consumed, without just cause. The legislation excepts peace officers, firefighters, or applicants thereof, or persons who operate emergency services vehicles.

Perhaps consideration should be given to include aircraft pilots who fall under the jurisdiction of the state.

The Department of Public Safety is neutral on this legislation.



ARTHUR ENGLISH  
Commissioner

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: HB 283

Publish Date: \_\_\_\_\_

REQUEST

Revision Date: \_\_\_\_\_

Agency Affected: Public Safety

Title: "An Act prohibiting certain employers from testing employees..."

BRU: Alaska State Troopers

Sponsor: Judicial Committee

Components: Detachments & CIB

Requestor: House Labor & Commerce

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
CAPITAL						
REVENUE						

FUNDING:: (Thousands of Dollars)

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan *G.C.A.*

Phone: 269-5691

Division: Alaska State Troopers

Date: 5/6/87

Approved by Commissioner: Arthur English *Wm. J. English*

Date: 5/8/87

Agency: Public Safety

Distribution (by preparer):

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

*JML*  
*5/8/87*

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

Bill Version : HB 283

Publish Date : \_\_\_\_\_

**REQUEST:** \_\_\_\_\_

Revision Date: \_\_\_\_\_

Title: "An Act prohibiting...testing employees for drugs..."

Sponsor: Sund, et al

Requestor: House Labor and Commerce

Agency Affected: Labor

BRU: Labor Standards and Safety

Components: Wage and Hour

**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						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director  
Division: Labor Standards and Safety

Phone: 465-4870  
Date: 5/11/87

Approved by Commissioner: Jim Sampson  
Agency: Labor

Date: 5/11/87

**Distribution (by preparer):**

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



# KLUKWAN, INC.

P.O. Box 2077, Juneau, Alaska 99803 (907) 789-7361



May 11, 1987

Representative, Dave Donley, Chairman  
Labor & Commerce Committee  
P.O. Box V  
Juneau, Alaska 99811

RE: HB-283 An Act Prohibiting Drug Testing

Dear Chairman Donley and Members of the Committee:

During the past twelve months, Klukwan, Inc. and its subsidiaries have instituted a drug and alcohol policy that we feel has been very successful. The spirit of the policy is set forth in the following two paragraphs, an excerpt from our Employee Handbook.

"To help insure a safe, healthy and productive work environment for the employees of Klukwan, Inc. and its subsidiaries, (hereinafter refer to collectively as "Company") and others on Company property, to protect Company property and assets, and to assure efficient operations, the Company has adopted a Policy on drugs and alcohol."

"It is the Policy of the Company to maintain its property and provide a working environment that is both safe for our employees, including others having business with the Company or on Company property, and is conducive to high and productive work standards. This policy restricts certain items and substances from being brought on or being present on Company property, and prohibits Company employees from having in there systems detectable levels or identifiable traces of certain drug or other substances."

Part of our policy is to require a drug screen urinalysis as part of the pre-employment procedure. If an applicant should fail the test a second test may be taken after thirty days.

Another area that requires a drug screen test and a blood alcohol test is if an employee is injured on the job to the extent that medical attention is required or

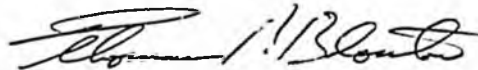
Representative, Dave Donley, Chairman  
Labor & Commerce Committee  
May 11, 1987  
Page 2

in the event that an accident results in the  
destruction or loss of company property.

Klukwan, Inc. and its subsidiaries has nearly five  
hundred employees in Southeast Alaska. Our employees  
have accepted the drug and alcohol Policy. The work  
they perform can be hazardous and each employee is  
entitled to the safest working conditions that can be  
provided.

For over a year industry has made significant progress  
to eradicate drugs from the work place. House Bill-283  
is a substantial step backwards. Legislation that  
prohibits drug testing will significantly impair  
industries fight against illegal drugs, and makes it  
more difficult to provide our employees with safe  
working conditions. We ask that this proposed  
legislation not be approved.

Very truly yours,



Thomas P. Blanton  
Vice President,  
General Counsel

TPB:skl

# ACLU SPEAKS OUT!

## DRUG TESTING IN THE WORKPLACE

On September 15, 1986, President Reagan issued his much anticipated executive order on the "Drug Free Federal Workplace." The order calls for the testing of approximately 1.2 million federal employees, the vast majority of whom are not even suspected of using illegal drugs. Although the order has been widely criticized, it symbolizes a trend toward forcing employees to submit to urine tests or else lose their jobs. Indeed, one-third of major American companies have now instituted such programs, presumably to remedy impaired job performance that results from drug abuse.

The American Civil Liberties Union opposes indiscriminate urine testing because we believe it is unfair and unreasonable to force millions of American workers who are not even suspected of using drugs, and whose job performance is satisfactory, to submit to degrading and intrusive urine tests on a regular basis. It is unfair to treat the innocent and the guilty alike.

Here are some frequent questions posed by members of the public about our stand on drug testing:

**?** *Don't employers have the right to expect their employees not to be high on drugs on the job?*

**!** Of course they do. Employers have the right to expect their employees not to be high, or stoned, or drunk, or sound asleep. Job performance is the bottom line; if you can't do the work, you get fired. But urine tests don't measure job performance. Nor do they measure current impairment or intoxication. The only thing such tests are capable of detecting are the metabolites of various substances ingested some time in the past.

**?** *Can urine tests determine when a particular drug was used?*

**!** No. Urinalysis can not determine when a particular drug was ingested, and the metabolites of some drugs will show up in urine weeks after ingestion. An

in the evening? What has that to do with their fitness to work? While employers do have the right to regulate their employees' activities during the workday, they do not and should not have the right to regulate their employees' off-the-job recreational activities. Millions of executives regularly have a drink or two at lunch, and it has never been deemed necessary to test them. Why test workers for their activities on weekends or on vacation?

**?** *If you don't use drugs, you have nothing to hide. Why object to testing?*

**!** Innocent people do have something to hide: their privacy. This "right to be left alone" is, in the words of the eminent Supreme Court Justice Louis Brandeis, "the most comprehensive of rights and the right most valued by civilized men." Urine tests are an unprecedented invasion of privacy. In order to guard against specimen tampering, it is standard practice to require employees to urinate in the presence of a witness, which, in the words of one judge, is "an experience which even if courteously supervised can be humiliating and degrading."

Analysis of one's urine can disclose many details about one's private life other than drug use. It can tell a company whether an employee or job applicant is being treated for a heart condition, depression, epilepsy, diabetes or schizophrenia. It can also reveal whether an employee is pregnant.

Innocent people also have reason to be concerned because the method of urinalysis most commonly used in drug testing (the "EMIT kit") is inherently unreliable. The EMIT kit gives a false positive result at least 10 percent and possibly as much as 30 percent of the time. Experts understand the test's unreliability. At a recent conference, 120 forensic scientists were asked, "Is there anybody who would submit urine for cannabinoid [marijuana] testing if his career, reputation, freedom or livelihood depended on it?" Not a single hand went up.

The EMIT test confuses substances. For example, over-the-counter cough medicines can show up as heroin. Certain antibiotics show up as cocaine; as many as eleven different legal substances may show up as marijuana. It is universally advised

sophisticated confirmatory tests. But such confirmatory tests are expensive, and in practice many employers do not use them. Millions of people across the country risk not being hired or losing their jobs and their reputations based on one unconfirmed, unreliable test.

**?** *Still, isn't indiscriminate testing the best way to catch the users?*

**!** It may be the easiest way to identify drug users, but it is also by far the most un-American. There is a long tradition in the United States that general searches of innocent people are unfair. This tradition began in colonial America, when King George's soldiers searched everyone indiscriminately in order to uncover those few who were committing offenses against the Crown. These general searches were deeply hated by the early Americans, and were a leading cause of the Revolution. After the Revolution, and fresh from the experience of the unfairness of indiscriminate searches, the Fourth Amendment was passed. It says that you cannot search everyone, innocent and guilty alike, to find the few who are guilty. You must have good reason to suspect a particular person before subjecting him or her to intrusive and degrading body searches.

But mandatory, general drug testing programs threaten to turn these traditional principles upside down. Compulsory blood and urine tests are bodily searches, according to the U.S. Supreme Court. The lower courts have already struck down mandatory testing programs in several government workplaces as violative of the Fourth Amendment because they were not based on particularized suspicion. And although the Fourth Amendment doesn't legally limit the power of private employers, the same principles of fairness ought to apply. Tests should be limited to those workers who are reasonably suspected of using drugs (including alcohol) in a way that impairs job performance.

**?** *Aren't there exceptions to the rule? Shouldn't workers such as airline pilots, who can endanger the lives of others if they aren't functioning properly, be subject to drug testing?*

# Drug-testing bandwagon rolling over workers' rights

by DON CLOCKSIN

A single mother working in sales is forced to urinate in front of her employer or be fired. . . . A school bus driver is fired for failing a urine drug test — even though he passed tests taken the day before and the day after. . . . An oil field worker is fired because he refused to submit to a urinalysis to test whether he smoked marijuana during his two weeks off work. . . . A white collar criminal released from prison has his parole revoked after a urine test shows a "false positive" because he took Sudafed. . . . A group of workers on a remote job site are locked in a room until they sign a waiver of their rights and urinate in a bottle. . . . A woman must tell her employer she's taking birth control pills or be fired for refusing to cooperate in a testing program. . . . A construction worker with a perfect safety record is fired for refusing to urinate in front of witnesses.

These situations are based on actual cases that come before the Alaska Chapter of the American Civil Liberties Union. These people are the casualties in the national war on drugs. They're people like you and me but whose jobs are lost and careers snuffed out, all because their employers decided to get on the "drug war" bandwagon.

In September 1986, President Reagan issued his executive order requiring a "drug-free" federal workplace. While the order only applies to certain "sensitive" federal workers, thousands of private employers have also instituted urine testing to their employees.



Urine drug testing requires that a worker urinate in a bottle — often in front of witnesses. The urine is then sent to a laboratory for testing. If the results are "positive," the employee is fired or suspended, often without an opportunity for appeal.

It is true that employers have a right not to have employees high on drugs while they work. But the urine tests do not measure job performance or current impairment. They only reveal the existence of certain substances ingested at some unknown time in the past — up to 30 days before, in the case of marijuana. Employers should not have the right to regulate their employees' off-the-job recreational activities.

Further, few testing programs test for alcohol, which is acknowledged to be Alaska's most serious health problem — on and off the job. Both alcohol and cigarette smoking have greater economic costs to industry than drug use, yet we don't see tests for them.

Many people believe only drug abusers have something to lose from urine testing, but that's not true. The Alaska Constitution provides that "the right of people to privacy is recognized and shall not be infringed." Innocent people lose their privacy rights.

Analysis of urine can disclose many details

about one's private life. It can reveal pregnancy, depression, epilepsy, or diabetes. The preliminary urine test used for drugs will often register a "false positive" because of the ingestion of Sudafed, Advil, decongestants, poppyseed bagels, birth control pills etc.

A basic tenet of our system of law is the presumption of innocence. An employee who must prove the absence of drugs is presumed guilty and must prove his/her innocence. Thus, his right to the presumption of innocence is violated. Further, indiscriminate searches without a reasonable suspicion that the victims use drugs on the jobs violate the constitutional prohibition of unreasonable searches of citizens.

Urine testing is expanding rapidly in Alaska. The Alaska Railroad, school district contractors, the federal government, oil field companies, moving firms, construction companies — they're all caught up in it. Almost all these employers have two things in common. First, there is no major on-the-job drug problem. Time after time these companies have admitted they have little or no evidence of drug use affecting job performance. Second, all these companies apparently believe that workers without contracts have no rights. Employers — and their lawyers — say that most workers are employed "at will" and can be fired at any time for almost any reason. Thus, they conclude, workers can be fired for refusing to submit to a urine test, or for failing the test.

I disagree. Workers have rights, including the right to be left alone if they are per-

forming their jobs well.

There are alternatives to indiscriminate urine testing. "Reasonable suspicion" testing and voluntary testing will increase workplace safety. An extensive public education campaign will work as well. Cigarette smoking has dropped substantially, primarily as a result of non-mandatory workplace education efforts. Finally, effective on-the-job alcohol abuse will increase workplace safety. Urine testing will never accomplish.

The ACLU and others have fought to get this bill back. A bill has been drafted by the ACLU to prohibit the use of urine drug tests as a condition of employment, absent a reasonable suspicion of on-the-job drug use.

The ACLU has obtained volunteer lawyers to help with two cases — the oil field worker and the bus driver. A national test case on Reagan's "drug-free federal workplace" has been filed in federal court in Alaska.

Indiscriminate urine testing should stop. It is unfair and unnecessary to force thousands of Alaskans who are not using drugs and whose jobs are not affected to submit to arbitrary, expensive and inaccurate drug tests, or to lose their jobs.

Former state Rep. Don Clocksin is a board member of the Alaska Chapter of the American Civil Liberties Union.

ment or intoxication. It would be far more meaningful to require all airline pilots to undergo a brief neurological exam for impaired visual acuity or motor coordination before stepping into the cockpit. No one could object to that. But urine testing is simply irrelevant to the issue of job impairment, and people in high risk occupations should be subjected to urinalysis on the same basis as anyone else—only to confirm a reasonable suspicion, based on observation, that a particular individual is job impaired because of drug abuse.

more inhibiting drug use under control than the most massive program of testing. Such efforts work. Since 1965, the proportion of Americans who habitually smoke cigarettes has gone down from 49 percent to 32 percent. Those who have studied this decline attribute it to public education. Certainly, it cannot be attributed to forced testing or employer sanctions.

In a number of schools, drug education courses have succeeded in teaching teenagers that it is all right to say "no" to drugs. We cannot stop everyone from using drugs, but we can encourage people to be more intelligent and prudent in their attitudes and behavior toward drugs, just as we do with alcohol and cigarettes.

**?** But if the Constitution doesn't apply to private employees, how can the privacy rights of private employees be protected?

**!** Only by special federal or state laws or by union contracts. At this time employees of private companies have virtually no protection against the mandatory drug testing programs that have now been adopted by one-third of the Fortune 500 companies. The ACLU believes it is grossly unfair that government workers are protected in their right to privacy while their counterparts in private industry are not. In a number of states, including California and Washington, the ACLU is attempting to remedy this disparity by using state privacy statutes—in many cases more far-reaching than the Fourth Amendment—to challenge drug testing programs in the private sector. The ACLU also urges labor unions to push for the inclusion of a ban on blanket testing in collective bargaining agreements.

The rights of non-union employees are best protected by pressing for the passage of federal, state or local legislation. Because of the efforts of the ACLU and other concerned organizations, the city of San Francisco, for example, has enacted a model law that protects workers in private industry from indiscriminate drug testing. The new law says that no employer doing business in San Francisco may demand, require, or request employees to submit to, or to take or to undergo any blood, urine, or saliva sample, test or analysis as a condition of continued employment, unless three conditions are met:

1. the employer has reason to believe the employee's faculties are impaired on the job;
2. the employee's impairment presents a clear and present danger to his own safety or the safety of others;
3. the employer gives the employee the opportunity, at the employer's expense, to have the sample tested by an independent laboratory and gives the employee an opportunity to rebut or explain the results.

This law strikes the delicate balance between an employee's fundamental right to privacy and the legitimate business needs of the employer.

**?** What about the high economic costs to industry of drug use? Shouldn't employers be permitted to institute drug testing as a way to protect their investments?

**!** The economic costs to industry of drug use are cited to justify mass drug testing in the workplace. Billions of dollars, we are told, are lost through low productivity and absenteeism. Some experts question these estimates as extrapolations and projections that have no convincing data base. Moreover, the economic costs of alcoholism and heavy cigarette smoking are without doubt higher, since so many more people use alcohol and smoke. But no one has yet suggested tests to discover the extent to which workers are drinking or smoking in the evenings or on weekends.

The people who most often cite the high economic costs to industry caused by drug use are the same people who are reaping huge profits from urine testing—manufacturers of the urine test, chemical laboratories and professional drug abuse consultants. Their pronouncements ought to be viewed with skepticism.

**?** Have any courts ruled that mandatory urine testing of government employees is a violation of the Constitution?

**!** Yes, the majority of state and federal courts have ruled that testing programs in public workplaces are unconstitutional if they are not based on some kind of individualized suspicion. For example, state courts in New York have struck down programs that tested teachers and police officers on a random basis. A federal court in Iowa ruled against drug tests for all state prison guards.

In New Jersey, a federal judge rejected a program under which all municipal firefighters and police employees were tested without notice, standards or probable cause. "In order to win the war on drugs, we must not sacrifice the life of the Constitution in the battle," the judge said, labeling drug testing "George Orwell's 'Big Brother' society or '1984'." The ACLU participated in all of these legal victories.

In New Orleans, a federal judge ruled that mandatory urine testing of Customs Service agents violated the Fourth Amendment's provision against unreasonable search and seizure and ordered Customs to discontinue the procedure. The judge characterized the urinalysis procedure as more intrusive than a search of the home. An attorney for the National Treasury Employees Union, which brought the lawsuit, said the decision was a significant obstacle to the President's order for mandatory drug testing of federal employees.

**?** If urine testing is out, is there anything left that can be done about the drug "epidemic"?

**!** Urine testing doesn't prevent drug use, or cure addiction. Education and voluntary rehabilitation are the only approaches that do. A well-funded, well-coordinated public education effort, such as the anti-smoking campaign, would do

The American Civil Liberties Union, founded in 1920, is the nation's only organization working full-time to defend the entire Bill of Rights. For information on how to join the ACLU, or to learn more about the ACLU's positions on other issues, contact the national ACLU or your local affiliate.

AK Civil Liberties Union  
Box 201844 (529)  
3101 K St #329 (50)  
26-2258

HB

287

# HOUSE COMMITTEE REPORT

(7)

Date referred: 4/22/87

FURTHER REFERRALS: Finance

DATE: 5/5/87

The Labor & Commerce Committee has considered HB 287

"An Act relating to students' entitlement to unemployment compensation credit and benefits."

**RECOMMENDS:**

- replace with CS HB 287 (LTC)  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 \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

W. Ellis

W. H. ...

...

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

Cliff Davidson no rec

... NO REC

... NO REC

... NO REC

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

David Douley  
Chairman's signature

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

HL+C

5-5-87

1:30 p.m.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

Bill Version: HB 287

Publish Date: \_\_\_\_\_

**REQUEST:** \_\_\_\_\_

Revision Date: \_\_\_\_\_

Title: "An Act relating to student's entitlement to unemployment compensation..."

Sponsor: Ulmer and Koponen

Requestor: House Labor and Commerce

Agency Affected: All

BRU: All

Components: All

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		30.0	30.0	30.0	30.0	30.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND		19.8	19.8	19.8	19.8	19.8
FEDERAL FUNDS						
OTHER		10.2	10.2	10.2	10.2	10.2
<b>TOTAL</b>	<b>0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: JS Joe Sitton, Director Phone: 465-2712  
 Division: Employment Security Date: 5/4/87  
 Approved by Commissioner: Jim Sampson Date: 5/4/87  
 Agency: Labor

**Distribution (by preparer):**

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

Fiscal Note Analysis  
HB 287

This bill would pay unemployment benefits to individuals who attend school if they became unemployed while both attending school and working at least thirty hours a week.

There would be a cost to the State if state employees became unemployed and qualified under this bill for unemployment benefits. Under existing law, the State reimburses the Unemployment Insurance trust fund for benefits paid to its employees. We estimate that fifteen employees a year would qualify for benefits. At an average benefit of \$2,000 each, this would equate to \$30,000 a year.

Since approximately 66% of the state operating budget is general funds, we estimate that \$19,800 (66% of \$30,000) of general fund money would be used while \$10,200 would be other funded. Other funds includes Federal, inter-agency, user fees, etc.

1 IN THE HOUSE

BY ULMER AND KOPONEN

2

HOUSE BILL NO. 287

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to students' entitlement to unem-  
7 ployment compensation credit and benefits."

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

9 \* Section 1. AS 23.20.378(c) is amended to read:

10 (c) An insured worker is disqualified for waiting-week credit or  
11 benefits for a week of unemployment while the insured worker is pursu-  
12 ing an academic education [ATTENDS AN ESTABLISHED SCHOOL IN A COURSE  
13 OF STUDY PROVIDING ACADEMIC INSTRUCTION OF 10 OR MORE CREDIT HOURS PER  
14 WEEK, OR THE EQUIVALENT]. A disqualification under this subsection  
15 begins with the first week of academic instruction and ends with the  
16 week immediately before the first full week in which the insured  
17 worker is no longer attending classes if the insured worker certifies  
18 that the period of nonattendance will last at least 60 days. However,  
19 an insured worker who was working at least 30 hours a week ~~while~~  
20 pursuing an academic education is not disqualified for waiting-week  
21 credit or benefits under this subsection if the insured worker became  
22 unemployed because the worker was laid off or the worker's job was  
23 eliminated. In this subsection,

24 (1) "pursuing an academic education" means attending an  
25 established school in a course of study providing academic instruction  
26 of 10 or more credit hours per week, or the equivalent;

27 (2) [THE TERM] "school" includes primary schools, secondary  
28 schools, and institutions of higher education.

*during a signifi-  
cantly portion of  
the time  
a worker  
was*

Bill No. House Bill 287  
Title "An Act relating to student's entitlement to unemployment compensation credit and benefits."

Date May 5, 1987  
Contact: Joe Sitton  
465-2712  
Eileen Plate  
465-2700

House Bill 287 provides for the payment of unemployment insurance benefits to individuals who have been working full-time while attending school and who are laid off from work. Under present law, a person who is taking 10 or more credit hours of classes is not eligible for unemployment insurance benefits, without exception.

The provisions of this bill remedy an inequity in the law that denies benefits to persons who have demonstrated that school attendance does not affect their availability for work or their ability to simultaneously work full-time and attend school.

The Department's understanding is that the intent of the existing law is to prevent persons from voluntarily leaving their jobs and attending school to an extent that the school attendance precludes the likelihood of their obtaining work. Those persons who have demonstrated that school attendance does not interfere are, therefore, unfairly penalized under the current law.

Accordingly, the Department supports the concept of House Bill 287. However, it is projected that the liberalization of benefits proposed under the bill will increase outlays from the Unemployment Insurance Trust Fund by approximately \$225,000. Inasmuch as the Trust Fund is rapidly being depleted because of the extensive and prolonged economic downturn in the state, and, in fact, the fund is projected to be exhausted by early 1988, the Department cannot support any proposals at this time which will result in increased Trust Fund expenditures.

Should the Legislature pursue passage of this bill, the Department would recommend the following amendment to it.

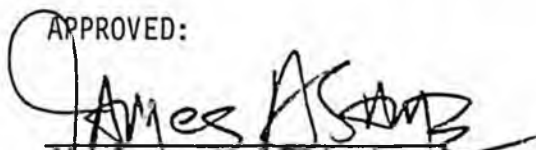
Amend Line 19 to read:

an insured worker who was working at least 30 hours a week during a significant portion of the time the worker was

This amendment would clarify the extent to which a worker must have demonstrated his/her ability to simultaneously work full-time and attend school. The present language is not clear in this regard.

The Department's fiscal note for state reimbursement of benefit outlays to laid off state employees is attached.

APPROVED:

  
James A. Sampson, Commissioner  
Department of Labor

**POSITION PAPER/**Department of Labor

MEMORANDUM

State of Alaska

TO: Jim Robison,  
Commissioner

DATE: November 15, 1983

FILE NO:

TELEPHONE NO: 465-2700

  
FROM: Dan Kassner,  
Hearing Officer

SUBJECT: AS 23.20.378(c)

Under the subject statute, any student who is attending an academic course of instruction of 10 or more credit hours per week or the equivalent is not eligible for benefits. Although no concise definition of "academic instruction" exists, AS 23.20.520(26) defines "vocational training or retraining course" as not including, "A program of instruction for an individual, including a transfer credit program of instruction given at a community college, which is intended as credit for a degree from an institution of higher education." As this definition is used to establish the difference between academic and vocational training courses, it is reasonable to apply this definition as well to students who are attending academic courses of instruction and who fall under the purview of AS 23.20.378(c).

Only one other state, Washington, has a law which is remotely similar to ours. However, the Washington law provides for an exception. The Revised Code of Washington (RCW) 50.20.095 provides that an individual who is attending 12 or more hours per week or the equivalent is disqualified unless that person is in approved training within the confines of RCW 50.20.043 (Washington's vocational training provision), or demonstrates by a preponderance of the evidence the person's actual availability for work. RCW 50.20.095 further puts forth 4 factors which shall be considered in determining a student's availability for work.

There are 13 other states which laws contain some provision for disqualifying students. Of these, 3 unequivocally deny benefits to all full-time students, 4 deny benefits but with some equivocation, 3 deny benefits unless the base period wages were earned while attending school full-time, and 2 consider a full-time student as not unemployed.

None of the states which have an unequivocal law denying benefits to full-time students have any known cases which have gone to court and which have been allowed benefits. In addition, the Superior Court of the State of Alaska, has twice upheld the 10 credit rule stating in one, "The legislature determined that full-time students were not 'available' for work if they are attending school as full-time students and they are, therefore, ineligible for unemployment compensation. There is no reason for this court to upset this legislative determination." Caruth v State, Sup. Ct. 3dJD JAN-81-368 Civ (12/08/81 unrptd).

It is my opinion based on the foregoing that to allow any individual who is attending school in an academic course of instruction of 10 or more credit hours per week or its equivalent regardless of the time of day, week, or year would be in direct opposition to the stated law and the intent of the Alaska legislature.

HB

288

Date referred: 4/22/87

FURTHER REFERRALS: Judiciary  
Finance

DATE: 5/14/87  
HB 288

The Labor & Commerce Committee has considered

"An Act relating to the medical malpractice liability revolving loan fund."

**RECOMMENDS:**

- replace with \_\_\_\_\_  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 \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_

*John Ellis*

*Steve ...*

*David K. Douley*

*Cliff ...*

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

*Cont ...*

*W. ...*

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\_\_\_\_\_

*David Douley*

Chairman's signature

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

**REQUEST:** \_\_\_\_\_

Bill Version: HB 288

Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_

Agency Affected: Comm. Econ. Dev.

Title: Relating to the medical malpractice liability revolving loan fund.

BRU: Insurance

Sponsor: Sund

Components: Public Protection

Requestor: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	171.0	306.0	282.0	258.0	234.0	210.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>171.0</b>	<b>306.0</b>	<b>282.0</b>	<b>258.0</b>	<b>234.0</b>	<b>210.0</b>

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	171.0	306.0	282.0	258.0	234.0	210.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>171.0</b>	<b>306.0</b>	<b>282.0</b>	<b>258.0</b>	<b>234.0</b>	<b>210.0</b>

**POSITIONS:**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

**ANALYSIS : (Attach a separate page if necessary)**

The figures above represent the total interest income on all loans made to the Medical Indemnity Corporation of Alaska to date. This is similar to SB 235.

Prepared by: John L. George, Director Phone: 465-2515

Division: Division of Insurance Date: May 14, 1987

Approved by Commissioner: J. Anthony Smith Date: May 14, 1987

Agency: Commerce and Economic Development

**Distribution (by preparer):**

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: HB288  
Publish Date: \_\_\_\_\_

REQUEST \_\_\_\_\_

Revision Date: \_\_\_\_\_ Agency Affected: Administration  
Title: An Act relating to Medical BRU: Finance  
Malpractice Liability Revolving Loan Fund  
SPONSOR: Sund, Koponen, et.al. Components: \_\_\_\_\_  
Requestor: House Labor and Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

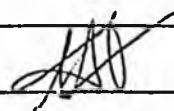
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:	0	0	0	0	0	0
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

There is no additional impact from the requirement to "separately account" for these funds. The costs to separately account for all program receipt sources is shown in the Fiscal Note for HB263. Without an appropriation for program receipt accounting in general we will not be able to meet the requirements of this bill.

Prepared By: Keith Busch Phone: 465-2240  
Division: Finance Date: May 14, 1987

Approved by Commissioner: Garrey Peska  Date: May 14, 1987  
Agency: Department of Administration

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

## MEDICAL INDEMNITY CORPORATION OF ALASKA (MICA)

A brief history and description.  
Prepared by Rep. John Sund's office;  
Revised March 16, 1987

### CREATION

MICA is an insurance company created by the Alaska Legislature to provide professional liability insurance to Alaskan physicians and surgeons, hospitals and related health care organizations. The company was established in response to the lack of available malpractice insurance in the state in the mid-1970s. MICA commenced business on June 28, 1976.

### STRUCTURE

MICA is administered by a nine-member board appointed by the governor and confirmed by the Legislature. The board consists of four physicians, a hospital administrator, two insurance industry professionals and two persons unrelated to the health care and insurance industries. The board maintains a plan of operation, which is subject to approval by the state director of the Division of Insurance.

The Legislature deliberately set up MICA to be a free-standing corporation with no direct political involvement in its operations. MICA reports to the Division of Insurance in the same manner as all insurance companies operating in the state. However, unlike other insurance companies, the Division of Insurance does have an extended relationship with MICA through approval of the plan of operation and capitalization loans (explained below). The Division is also invited to all MICA board meetings, but does not vote.

MICA is based in Anchorage. The daily operations are managed by the brokerage firm Marsh & McLennan. But the MICA board is moving toward self-management. MICA's actuary is Milliman & Robertson.

The state ruled that MICA is exempt from income taxes. That has not, to date, been challenged by the IRS.

By statute, MICA may be terminated by the director of the Division of Insurance if it posts written premiums for two consecutive years of less than 35 percent of all premiums written in the state for physicians' medical malpractice insurance, or posts premiums for one calendar year of less than 20 percent of all malpractice premiums in the state. The decision to terminate would be made by the director of insurance following public hearings.

## CAPITALIZATION

The Legislature established in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to capitalize MICA. The fund is administered by the director of insurance. The original loan was \$3 million, payable at 7 percent interest. MICA is paying interest, but there is no due date on the principal and the state loan is subordinate to all other obligations of the corporation. MICA must make a loan repayment in the event of an underwriting profit, but that has not happened to date. The board intends to pay off the loan in 15 years.

In 1979, the Division of Treasury purchased the \$3 million note from Commerce and Economic Development, thereby putting \$3 million more into the fund for MICA to borrow in the future. In late 1986, MICA requested an additional \$3 million loan to offset losses experienced in 1985 (see explanation below). The director of insurance approved a \$2 million loan which, by statute, is payable in five years at 6 percent interest. The fund balance is now \$1 million.

## FINANCIAL STATUS

Due largely to a reinsurance problem (explained below), MICA posted a \$2.14 million loss in 1985. The company used its entire \$2 million surplus built up in prior years to offset the loss. (Hence the reason for the loan request in 1986.) MICA's assets totaled \$10.47 million at the end of 1985 with \$6.5 million in reserve for claim payments.

## REINSURANCE PROBLEM OF 1985

In late 1984, after MICA had set its policy rates for 1985, the company faced a problem with its reinsurers which led to a financial loss. One of the company's reinsurers denied renewal of MICA's policy while another approximately tripled its premium rate. Not only did the reinsurance cost increase, the coverage diminished, leaving MICA with greater personal risk in claim settlements. Because of the late notice on the reinsurance rates, MICA could not reflect the increase in its premium rates. Thus, 1985 posted a large loss. MICA also had a couple of large claims in 1985 which the reinsurance did not fully cover, adding to MICA's dip into its surplus. MICA obtained better reinsurance in 1986 and for 1987, but the company also has to recoup some of the 1985 losses. As a result, and as a reflection of malpractice insurance in general, MICA's policy rates increased as much as 90 percent from 1985 to 1986.

## PRESENT SITUATION WITH HOSPITALS

MICA recently established a new policy requiring that all physicians in MICA-covered hospitals carry \$500,000 liability insurance. Meeting that requirement is causing financial difficulties for at least 7 of the 12 hospitals insured by MICA in 1986:

- Wrangell
- Cordova
- Homer
- Petersburg
- Seward
- Sitka
- Palmer

Because of the hardship to the hospitals, MICA then agreed to establish a separate, and higher rate for those hospitals whose physicians are not carrying at least \$500,000 malpractice insurance.

As of this writing, MICA is in the process of setting the new rates and it appears the added cost to the hospitals will be approximately 25 percent of what the physicians' premium would have been. (For example, if the hospital had two doctors without insurance and their insurance would have cost \$20,000 each, the added premium cost to the hospital would be \$10,000.)

Addendum: According to MICA, most claims against hospitals involve doctors and 85.4 percent of MICA's pending claims include hospitals.

## MICA Premiums for Wrangell General Hospital

	<u>1985</u>	<u>1986</u>	<u>1987</u>
MICA	\$17,900*	\$58,000*	\$54,000**
Hospital Budget	\$1.9 mill	\$2.0 mill	\$2.0 mill
MICA % of Total Budget	.94%	2.9%	2.7%

\*Coverage in 1985 was \$1 million maximum per occurrence and \$2 million aggregate. Coverage in 1986 and 1987 dropped to \$500,000 per occurrence and \$1 million aggregate.

\*\*Wrangell Hospital's premium rate for 1987 was first quoted at \$81,000 (in January of this year.) MICA just revised the rate to \$54,000. But that rate does not include any surcharge for having a physician in the hospital who does not have medical malpractice insurance. Wrangell has one physician without coverage.

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

HL+C	1-12-88	1:30 p.m.
HL+C	1-14-88	1:30 p.m.
HL+C	1-19-88	2:05 p.m.



FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act revising the state gaming laws."  
Sponsor: \_\_\_\_\_  
Requestor: Labor and Commerce

Agency Affected: Revenue  
BRU: Income and Excise Audit Division  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES		203.4	203.4	203.4	203.4	203.4
TRAVEL		53.3	53.3	53.3	53.3	53.3
CONTRACTUAL		33.5	33.5	33.5	33.5	33.5
SUPPLIES		1.4	1.4	1.4	1.4	1.4
EQUIPMENT		10.5	-	-	-	-
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		302.1	291.6	291.6	291.6	291.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		302.1	291.6	291.6	291.6	291.6
FEDERAL FUNDS		-	-	-	-	-
OTHER		-	-	-	-	-
TOTAL						

POSITIONS:

FULL-TIME		5	5	5	5	5
PART-TIME		-	-	-	-	-
TEMPORARY		-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel *Steven E. Kettel*  
Division: Income and Excise Audit Division

Phone: (907) 465-2320  
Date: January 19, 1988

Approved by Commissioner: *[Signature]*  
Agency: \_\_\_\_\_

Date: 1/19/88

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

## CSHB 299 Analysis

Prepared By: Steven E. Kettel  
Income and Excise Audit  
January 18, 1987Personal Services

<u>Position</u>	<u>Location</u>	<u>Annual Salary/Benefits</u>
Investigator III	Juneau	\$50.7
Clerk Typist III	Juneau	\$26.4
Investigator III	Anchorage	\$50.7
Revenue Auditor III	Anchorage	\$50.7
Clerk Typist II	Anchorage	<u>\$24.9</u>
	TOTAL	\$203.4

Travel

Supervisory Travel	\$4.1
Investigative Travel	\$30.7
Regulation Travel	\$5.0
Training Travel	\$5.0
Public Education Travel	<u>\$8.5</u>
TOTAL	\$53.3

Contractual

Four Wang PC Terminals (\$3.5/ea)	\$14.0
New Forms, printing and typesetting	\$10.0
Regulations, printing and advertising	\$7.5
Communications	<u>\$2.0</u>
TOTAL	\$33.5

Supplies

Office Supplies	\$1.4
-----------------	-------

Equipment

Five Chairs	\$2.5
Five File Cabinets	\$3.5
Modular Offices for Five Staff	<u>\$4.5</u>
TOTAL	\$10.5

FISCAL NOTE

REQUEST

Revision Date: 2/8/88 Agency Affected: Public Safety  
Title: "An Act revising state gambling laws." BRU: Alaska State Troopers  
Sponsor: Labor and Commerce Committee Components: Detachments and CIB  
Requestor: House Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES		32.5	32.5	32.5	32.5	32.5
TRAVEL						
CONTRACTUAL		1.4	1.4	1.4	1.5	1.5
SUPPLIES		3.0	3.0	3.0	3.0	3.0
EQUIPMENT		12.2				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		49.1	36.9	36.9	36.9	36.9

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUNDS		49.1	36.9	36.9	36.9	36.9
FEDERAL FUNDS						
OTHER						
TOTAL		49.1	36.9	36.9	36.9	36.9

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This fiscal note assumes that background investigations in Section (4) of the bill will be done by the Department of Public Safety. (Continued on page 2)

*Jmc*  
*2/8/88*

Prepared by: Francis C. Allan  
Division: Alaska State Troopers

Phone: 269-5691  
Date: 2/8/88

Approved by Commissioner: Arthur English  
Agency: Public Safety

Date: 2/08/88

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 299 (L&C)

The Division of Alaska State Troopers anticipates being responsible for providing background checks on organizations and individuals who apply for gambling permits. It is expected that AST will receive from the applicants applications (with funds attached to send with a fingerprint card to the FBI). Assuming an estimate of 1,200 background checks per year, a full-time Clerk IV will be required, based upon our experience with Security Guard Licensing. Based upon the language in section 2 of the bill, it is assumed that program receipts from permit requests will be available for appropriation to the Department of Revenue, and are thus not anticipated to offset any costs to DPS. Background checks will involve APSIN/NLETS/AAFIS checks, processing of fingerprint cards to the FBI (3-4 months delay), and filing of permit application checks. A micro computer will be utilized to maintain data on applicants and to meet reporting requirements needed under this bill. Equipment purchases are not anticipated after the first year and no inflation factor is included in future years.

Personal Services

Clerk IV, Range 9, Step A, PFT	\$20,772	
Overtime - 120 hours	1,917	
	Subtotal 22,689	
Benefits	9,844	
Total Personal Services		\$32,533

Contractual

Maintenance on computer	400	
Telephone costs	1,000	
Total Contractual		1,400

Supplies

Forms (Applications, licenses)	2,000	
Office Supplies	750	
Miscellaneous	250	
Total Supplies		3,000

Equipment

Compaq computer, software, printer, etc.	9,000	
Desk	691	
Chair	345	
Computer table	300	
Side chair	184	
Filing cabinets (6)	1,338	
Storage cabinet	385	
Total equipment		12,243

Total		<u>\$49,176</u>
-------	--	-----------------

Position Title Clerk IV		No. of Positions 1	Range/Step 9/A	Barg. Unit CGU
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District 7-12
Type of Expenditure		Justification		
1	2	3		
Salary	20,772	<p>This position will be responsible for processing applications and recording all related data, including fingerprint checks, criminal history checks, to include APSIN/NLETS/AAFIS checks, as well as answering questions from the public and applicants. The position will be responsible for developing and implementing regulations relating to business. The Clerk IV must be able to fingerprint applicants. This position will need to have a general book-keeping knowledge in order to be able to handle the processing of application fees.</p>		
Benefits	9,844			
Premium Pay	1,917			
Other				
Total Personal Services	32.5			
Travel				
Contractual	1.4			
Commodities	3.0			
Equipment	12.2			
Other				
Total Cost	49.2			
Funding Source for Total Cost				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	49.2		
GF Program Receipts	1005			
Other				

REQUEST FOR  
NEW POSITION

Agency Department of Public Safety  
 BRU Alaska State Troopers  
 Component Director's Office

FY 89

Page 3 of 3  
 Revised Date

FISCAL NOTE

REQUEST

Revision Date: 3/18/88 Agency Affected: Public Safety  
 Title: "An Act relating to games of chance..." BRU: Alaska State Troopers  
 Sponsor: Labor & Commerce Committee Components: Detachments & CIB  
 Requestor: House Judiciary

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-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

According to Mr. John Hansen, Office Audit Supervisor, Department of Revenue, that department will be responsible for conducting the background checks of permittees and licensees referred to in paragraph 5 of the bill, with only occasional assistance from the Department of Public Safety.

Prepared by: Gayle A. Horetski, Deputy Commissioner Phone: 465-4322  
 Division: Commissioner's Office Date: 3/18/88

Approved by Commissioner: *G. A. Horetski* Date: 3-18-88  
 Agency: Public Safety

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





BILL NO: 25 HB 299 (Orf)

DATE: May 4, 1987

TITLE: "An Act revising state gambling laws."

CONTACT: Maj. Walter J. Gilmour

DEPARTMENT OF PUBLIC SAFETY

RECEIVED

To legalize certain types of gambling statewide and provide procedures for issuing permits, collecting fees and monitoring gambling activities.

This proposed legislation would legalize certain types of gambling statewide and provide procedures for obtaining permits, accessing and collecting fees, conducting background checks and criminal history checks on certain employees, and monitoring the activities of the industry. The only portion of this legislation which will affect the Department of Public Safety is the background investigations, criminal history checks and fingerprinting of applicants, which would require a full-time position of an additional clerical person (Clerk IV) to perform the above functions and maintain files on same.

The Department of Public Safety is neutral on this legislation.

  
ARTHUR ENGLISH  
Commissioner

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 12, 1988

SUBJECT: Proposed clean-up amendments to HB 299  
TO: Representative Dave Donley  
FROM: George Utermohle, *GU*  
Legislative Counsel

The following clean-up amendments to HB 299 are offered for your consideration.

Page 9, line 2 following "conducted", insert a comma.

Page 9, line 8-9, delete "Except as provided in AS 05.15.189, a", and insert "A".

The deleted material refers to a section included in early drafts of the bill, but dropped from the bill as introduced.

Page 10, line 28, following "20 percent" insert, "or more".

GU:bb  
WKB1,036

A M E N D M E N T

Offered in the HOUSE

TO: HB 299

Page 17, line 20, following "awarded":

Insert "and state, federal, and municipal taxes paid or owed on the  
income"

A M E N D M E N T

Offered in the HOUSE

TO: HB 299

Page 3, line 12, following "convicted of":

Insert: ", in prison for, or on parole for"

Page 3, line 13, following "years or":

Insert: "convicted"

Page 3, lines 13 - 14:

Delete: "moral turpitude"

Insert: "theft or dishonesty"

Page 10, line 12, following "convicted of":

Insert: ", in prison for, or on parole for"

Page 10, line 13, following "years or":

Insert: "convicted"

Page 10, line 13:

Delete: "moral turpitude"

Insert: "theft or dishonesty"

Page 10, line 16, following "convicted of":

Insert: ", in prison for, or on parole for"

Page 10, line 17, following "years or":

Insert: "convicted"

Page 10, line 17:

Delete: "moral turpitude"

Insert: "theft or dishonesty"

Page 10, line 20, following "convicted of":

Insert: ", in prison for, or on parole for"

Page 10, line 21, following "years or":

Insert: "convicted"

Page 10, line 21:

Delete: "moral turpitude"

Insert: "theft or dishonesty"

Page 11, line 11 following "convicted of":

Insert: ", in prison for, or on parole for"

Page 11, line 12, following "years or":

Insert: "convicted"

Page 11, line 12:

Delete: "moral turpitude"

Insert: "theft or dishonesty"

Page 11, line 20, following "convicted of":

Insert: ", in prison for, or on parole for"

Page 11, line 21, following "years or":

Insert: "convicted"

Page 11, lines 21 - 22:

Delete: "moral turpitude"

Insert: "theft or dishonesty"

December 11, 1987

M E M O R A N D U M

To: Rep. Dave Donley  
From: Ginger Baim, Committee aide  
Re: Brief for 12/11/87 hearing on  
HB 299 - Charitable Gaming

- \* Hearing in fifth floor conference room 1:30 to 5:00
- \* Purpose: Take public testimony on HB 299 and markup bill in order to prepare a committee substitute for consideration early next session.
- \* Teleconference from 1:30 to 3:30 with MatSu, Juneau, Fairbanks, Sitka, and Barrow.
- \* Committee packet: New Sectional Analysis (your copy is highlighted to show areas of controversy or language that needs adjusted), copy of current and proposed regulations, analysis of regulations, copy of charitable gaming statute, copy of HB 299, copy of AG letters on pulltabs in bars and comingling of permits, copies of correspondence and public hearing notice.

PUBLIC HEARING ON HB 299

1. Open hearing (Day, Date, Time, Subject)
2. Members present
3. Tips for Testifying (in your file)
4. Introduction of teleconference sites
5. Brief statement about HB 299:

"HB 299 is a House Labor and Commerce Committee bill designed to more efficiently regulate charitable gaming in Alaska and to protect charitable organizations from fraud and corruption".

"Key elements of HB 299 are: stringent reporting and auditing requirements for operators, licensure and regulation of operators including requirements for bonding and insurance, raising the annual limits on gross sales, licensure of pulltab manufacturers and distributors, and establishing a clear audit trail for pulltab sales."

"HB 299 is widely supported by operators, consumers, and charitable gaming permit holders. It establishes strong regulation of the gaming industry and it will greatly enhance the opportunities for charitable organizations to raise money through gaming. At the same time, HB 299 will give the Department of Revenue the tools they need to clean up the abuses and protect the consumer".

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



November 20, 1987

Commissioner Hugh Malone  
Department of Revenue  
P.O. Box S  
Juneau, Alaska 99811-0400

Dear Commissioner:

Attached is a point by point response to the proposed charitable gaming regulations issued by your Department on October 15. Before reviewing them, I'd like to lay some arguments on the table for discussion.

I believe it is unproductive for the Department to pursue adoption of these regulations at this time. The reason is three-fold.

First, the Department cannot seem to come to grips with the question of operators - and that is at the heart of the problem. The choice is to either ban operators altogether, or to recognize them under law in such a way that they are taxed, regulated, and held accountable for their own actions.

Instead, the proposed regulations give operators some legal recognition, but provide no mechanism for regulating them. This is a middle ground position that benefits no one.

Second, the main impact of the proposed regulations is to allow the Department to abrogate their responsibilities for regulation and enforcement and put the entire burden on the group least able to handle it - the charitable organizations. This is neither workable or fair.

A better solution, to my way of thinking, is to increase the oversight and enforcement responsibilities of the Department, and to pay for it with increased license fees.

Finally, as reflected in your notes, statutory change is required for any meaningful change to occur. The Legislature is currently considering HB 299, a comprehensive re-write of charitable gaming laws, that addresses each of the issues raised by the proposed regulations.

It makes sense for the Department to wait to implement the new regulations until after the Legislature has had a chance to work HB 299 through the legislative process.

I'm aware that this is a bind the Department has been put in for several years - we ask you to wait to impose new regulations until we've had a crack at it, you agree, then we fail to adopt a bill by the end of the session, and we are all back to space one.

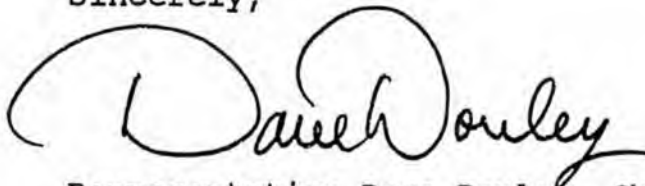
I have a suggestion to get us out of this rut. If the Department feels they must adopt new regulations regardless of what the Legislature may do, make those new regulations effective next year, after the Legislature adjourns.

That way, interested parties will know we have to make a sincere and concerted effort to adopt workable legislation next year. The benefits of playing a stalling game will be no more and both the Legislature and the Department can get on with the business of effectively regulating charitable gaming in Alaska.

In closing, let me reiterate that I don't believe the Department should pursue new regulations until after the Legislature has had the opportunity to adopt HB 299. If you choose to impose new regulations before that time, I urge you to consider the enclosed comments carefully, and to amend the proposed regulations accordingly.

In any case, I remain committed to working closely with the Department to assure that HB 299 becomes a measure we can all support and so that charitable organizations can continue to benefit from our gaming laws.

Sincerely,

A handwritten signature in cursive script that reads "Dave Donley". The signature is written in dark ink and is positioned above the typed name and title.

Representative Dave Donley, Chair  
House Labor and Commerce Committee

cc: Senator Tim Kelly, Chair  
Senate Labor and Commerce Committee

Sally Smith, Department of Revenue  
Bob Evans, Governor's office  
Mitch Gravo, Alaska Charitable Games Association

Comments on Proposed changes to Regulations  
Governing Charitable Gaming in Alaska

By Representative Dave Donley, Chair  
House Labor and Commerce Committee  
November 20, 1987

Before embarking on a point by point analysis of the attached regulations, let me make some general comments.

The proposed regulations reflect a sincere attempt on the part of the Department to forge a workable solution on the question of "operators". While I feel the regs fall far short of effectively regulating operators, I appreciate the effort toward compromise.

The proposed regulations recognize operators - a step in the right direction - but leaves the entire paperwork burden, including policing the operator, on the permittee. This flies in the face of the fact that most charitable organizations engage an operator because they are not able to effectively run their own permit in the first place.

The reporting requirements proposed under these regulations are inadequate and unworkable. The prohibitions against co-mingling of funds and the requirement of separate bank accounts for each permit are simply unworkable in view of current practice and accepted accounting principles. Annual reports and other audit requirements are too few and far between to effectively regulate abuses in a timely manner.

Finally, the proposed regulations will not increase the amount of license fees, nor will it impose any fees on operators. As a result, the Department cannot generate enough income off charitable gaming licenses to pay for enforcement of the appropriate regulation or laws.

In short, the regulations will add a considerable paperwork burden on the permittee and propose rather drastic changes in standard operating procedures with little apparent benefit to the permittee or the state.

That said, let's take the proposed regulations a section at a time:

SECTIONS 010 THROUGH 105

Why it is necessary to require that the member-in-charge of a trade association's gaming permit must be a "natural person". Is there a particular reason for this? Why is it desirable to prohibit corporations from operating permits?

SECTION 107

The major problems with the proposed changes in this section is what isn't covered. By recognizing operators but not providing for any oversight of their practices by the Department, the entire burden of policing operators falls on the permittees, who are demonstrably unable to do so.

Section 107 does not require: timely and complete reports by the operators to either the Department or the permittees, bonding or liability insurance by the operators, any reporting provisions to assure that operators are paying proper wages, unemployment taxes, and are carrying required workers' compensation coverage.

Section 107 does not provide for an increase in license fees, so no funds are generated to pay for investigations and enforcement by the Department.

Section 107 requires that operators must adhere to appropriate rules and regulations and places the gaming permit at risk of loss if an operator or their employee breaks any of the rules. Under this section, a violation by an operator or their employee would cost an organization their permit, yet the operator would not be damaged in any way, nor would there be anything to prevent them from contracting with other organizations. In fact, other than word of mouth, there wouldn't be any way for an organization to know if an operator had already had problems.

Section 107 (a) - Again, why is it desirable to prohibit corporations from being operators?

Section 107 (e) - The prohibition about an operator paying a permittees expenses is unclear. Does this mean wages? Supplies? Rent and utilities? Perhaps this should be spelled out in the contract.

Section 110 (i) - In bingo parlors without video equipment, the requirement of leaving the balls in place for five minutes after the game would be difficult, if not impossible to meet. If a regular session consists of twenty games, it would require nearly an hour and a half of waiting time.

Section 110 (j) - What happens if a winning patron has no picture I.D.? What happens to the prize money? Some

operators use a permit only once a month. Under the proposed regulation, award of prizes can be delayed until the next time the permit is used. What happens to the prize money in the meantime?

Section 110 (l) - Can game tickets, bingo cards, pull-tabs, or other gaming items be awarded in addition to the prize? What does this section accomplish?

Section 110 (r) - I can understand why alcohol is not allowed in an area where bingo is being played but why is it allowed in an area where pull-tabs, raffle, and lottery tickets are being sold. Is there something about bingo we should know?

Section 115 (a) - The \$200,000 limit will be exceeded by many organizations. There should be some way of reporting an excess, with appropriate fines perhaps, but not with such onerous punishment that permittees avoid reporting an inadvertent excess.

Section 125 (c) - Good. This should have been done a long time ago.

Section 125 (e) - This section makes sense on the surface unless you have actually observed how pull-tabs are played, particularly at bingo halls. It is routine practice to turn winning pull-tabs (under \$10) in for more pull-tabs. This is usually done during a break between bingo games. Requiring each person (there may be over a 100 people playing tabs at one time) to go to the cashier and get two or three dollars cash, then go to another cashier to purchase pull-tabs, will obviously discourage players.

In addition, the section requires all pull-tab winners to be recorded on a form provided by the Department. All winners? Even one and two dollar winners? Logistically, how will a permittee accomplish this?

Regardless of what the intent of this section is, its effect will be to drastically reduce the number of pull-tabs purchased, especially during bingo sessions.

Section 125 (g) - This section apparently intends to improve accountability, but it won't work and isn't necessary.

Pull-tabs are an entirely predictable game. You know how many pull-tabs are in a box/series, you know how much the box/series cost the permittee, you know how much each tab sells for, and you know how many winners there are and the exact amount of cash prizes.

Assuming that the integrity of the series is not in question, accountability on the part of the operator to the permittee is easy to verify.

When pull-tabs are played in bingo parlors, there are usually numerous types/series available. Most series will not be played out in one evening, so a particular run will be played out under several permits. This section attempts to stop that practice so that one permittee doesn't pay a disproportionate part of the winning tickets out of a particular series.

However, proper accounting of pull-tabs should prevent such abuse, without having to maintain separate series/runs by permit.

This regulation presents another problem. If patrons are playing a particular series and the big winners haven't gone yet, how are they going to react when the operator takes the run off sale for days or weeks until the particular permit is being played again?

Section 155 (a)(4) - Why are these kinds of charitable gaming exempt from restrictions placed on other types of gaming?

Section 160 - If this section is repealed, how will it affect contests of skill such as archery, bowling, and pool tournaments?

Section 165 - (a) (10) - There are some legitimate questions about whether persons with a criminal record should be allowed to work with charitable gaming. Our Committee, when reviewing this question, expressed support for prohibiting anyone having been convicted of a felony from participating within five years of the time their sentence/parole is completed, and a permanent prohibition for persons convicted of gambling offenses. I'd suggest dropping the "crimes of moral turpitude" language because, even though everyone likes to use the phrase, no one knows exactly what it means.

Section 165 (b)(5) - Local operators tell us that the Municipality of Anchorage doesn't know what to do with an application when they receive one. Is there a particular reason for this section? Did any local government entity ask for this?

Section 170 (b) - Wonderful!

Section 180 (b) - What is the time frame for the Department renewing a permit once the annual report has been submitted? If the previous year's permit serves as a temporary permit from January 1 through January 31 and gaming activity has to cease if the annual statement isn't received by the Department by February 15, what authority is the permittee operating under from January 31 to February 15? What happens when the Department is late in sending the license renewal? I understand that in the past, some licenses were not received until March or later.

Section 190 (b) - This section is at the heart of the Department's ability to move swiftly to close down charitable gaming operations that are violating the law. The section is fairly severe, although probably necessary given the current situation.

However, the penalties authorized under this section are equally applied whether there has been a consistent, blatant, and serious violation of the law or where an inadvertent or easily remedied error has led to suspension.

The section does not provide any additional penalty or oversight when a particular permit is involved in more than one suspension.

Under Section 190 (b) the Department may suspend a permit for reporting errors or omissions. However, even if the reporting error was made by an operator, the charitable organization is held responsible and may lose their permit as a result.

Since operators are not licensed under the proposed regulations, the Department has no way to hold operators accountable for their own actions. There will be no license fees for operators and no additional income generated for enforcement efforts. As a result, the Department's ability to use the powers granted under this section will be greatly impaired.

Section 190 (b) (3) contains no provision to assure that, once the mandatory hearing is held within 30 days of suspension, the hearing officer will submit a report in a timely manner. Since the Commissioner cannot act, and the permit cannot be restored without a written report by the hearing officer, it is reasonable to require a report within a certain time frame.

Finally, the subsequent sections in the proposed regulations that set minimum net proceeds make no provisions to accommodate operations that may have been closed down for a period of time because of suspension. Once the permit is back in operation, assuming the conditions that led to suspension are corrected, there will most likely be a "slack" time until regular customers return on a regular basis. This will most likely impact the operators' ability to remit the required amount to the permittee.

Section 205 (a) - Why is this section necessary? Has there been a problem with the integrity of a given box/series of pull-tabs?

Section 205 - The proposed regulations governing pull-tabs are most striking by what they don't do. The regulations do not provide any mechanism to restrict or even identify in any way who can buy, transport and sell pull-tabs in Alaska. The regulations provide no mechanism for the Department (or anyone

else) to determine the number, type, and location of pull-tab sales.

Without this primary information, there is no way for the Department to subsequently track a series of pull-tabs in order to know if the person who bought and sold them did so legally, or whether a particular permit received fair reimbursement for pull-tabs sold under their license.

Section 210 (a) This section, while necessary to assure that the charitable organization has ultimate control over the bookkeeping, is going to be extremely difficult to enforce. As you know, the primary reason an organization engages an operator is because they lack the volunteers who have both the time and expertise to run a gaming operation, particularly bingo.

Given current practice and human nature, I suspect this regulation will result in much subterfuge and little change. An operator is a business person with extensive experience in the kind of financial reporting required by the Department. The "member in charge" will not have anywhere near the knowledge about the gaming business that the operator possesses, and it will be the operator, not the "member in charge" who has the financial information to make the reports.

Therefore, the most likely scenario is that the operator will keep and maintain the books, and the "member in charge" will simply rubber-stamp them. The proposed regulation will still place the "member in charge" at the "mercy" of the operator.

I suggest you look at an alternative - making the operator responsible for the bookkeeping and reporting requirements to the Department and for making regular reports to the permittee.

This will provide the permittee and the Department with a means to cross-check the financial reports. The permittee will remain responsible for policing the operator and for determining that the financial reports are fair, complete, and accurate. The organization will maintain control over the reporting, but will not be forced into collusion with the operator in preparing financial reports to the Department.

This section should provide a way for a permittee to request the Department to investigate or help them investigate when they suspect irregularities in the way their operator is conducting business. This will be hard to do as long as regulations require a permit to be suspended when the operator goes bad. It does not encourage permittees to effectively police their operators.

Section 220 ~ A twenty percent limit on net proceeds may be impossible to meet. The proposed regulations have no

provisions to cover "start up" costs, when net proceeds will be low. What action will the Department take against the permit if the annual report reveals that the minimum was not met?

An annual reporting requirement is not enough. Too much time will elapse and too much damage can be done before the Department will have the information to take any action. Quarterly reports would make more sense and could be easily handled with an appropriate computer program. In addition to quarterly and annual reports, the proposed regulations should include provisions for monthly or even weekly reports when the Department has reason to believe problems exist with a particular permittee or operator.

Section 225 (b) - This provision is certainly superior to current regulations, but there may be circumstances where operating expenses may exceed twenty five percent for short periods of time. What happens to the permit in such a case?

Section 225 (c) - What about pull-tabs being sold in bars? As you know, many bar owners are taking a certain percentage of the take as payment for selling the pull-tabs. Some call it "rent". What does the Department propose to do about this situation? What is reasonable rent? Wages? What happens to the permit when this section of the proposed regulations is violated?

Section 230 (a) - Does the requirement to provide a list of prize winners who received \$100 or more include pull-tab winners?

Section 240 (c) - Is it necessary to require that prizes of \$100 or more be paid by check in order to properly account for prize money? Section 230(a) requires that winners of \$100 or more must be listed on a form provided by the Department. Will there be information on the checks that is different from the information listed on the form? If not, what useful purpose does it serve to require payment by check?

Section 240 (d) - This section has substantial problems and will have a severe impact on the ability of operators to efficiently account for the finances of the permit organizations they work for.

What purpose does it serve to require permittees/operators to deposit all proceeds into separate bank accounts for each permit? Have you identified specific problems with this practice that cannot be corrected by improving the reporting procedures? It is common practice for businesses to deposit all their clients funds in a single business account. Why should operators be any different?

This section will present tremendous problems with workers' compensation and unemployment coverage for employees. The operator is required to carry such insurance on their employees. Under this section, however, it is unclear whether the workers are employees of the operator or the permit organizations. This section requires permit organizations to pay the wages of the operators employees. This is a mess! (Not to mention that it is probably in violation of IRS regulations).

Paragraph (d) assumes a profit on the part of a particular permit. Otherwise, how would a permittee be able to pay wages and expenses? What happens if the permittee fails to make a profit for a month or even two? Who pays the rent, wages and utilities then?

When you have an operator running a dozen permits a month, how do you pro-rate rent and utilities? Will the landlord of a bingo parlor receive a dozen checks from a dozen separate organizations each paying one twelfth of the rent? Our municipal utilities company is going to love this one.

It appears that the intent of this paragraph is to make sure that permittees, not operators, have ultimate control over the finances. That is certainly an admirable goal but there are better ways to accomplish it than what is proposed by these regulations.

Section 245 - Again, my major problem with the auditing requirements is that they will not be done in a timely manner. Under the proposed regulations, eighteen months could pass before a problem became apparent. Annual reports are not sufficient for the Department to move swiftly and to meaningfully enforce gaming statutes. Quarterly reports, at a minimum, should be required for large organizations or operators.

Section 245 (d) (1) requires that audits be done by a CPA. While I have no problem with this provision, I understand that rural residents have expressed strong opposition to requiring a CPA.

Section 270 (b) - What is a "particular occasion". Does that mean only one permit can be played in a single day? As you know, many bingo halls play two permits a day, afternoon and evening session. In addition, one permit may be used for bingo while another permit is being used for pull-tabs because a given permittee may have exceeded their limit for pull-tabs. Is it your intention to prohibit this practice?

\* \* \* \*

SECTIONAL ANALYSIS OF HB 299

Prepared by: Steven E. Kettel  
Director, Income & Excise Audit  
January 12, 1988

Section 1. ANNUAL PERMIT AND FEES.

① The Department recommends that the annual permit and fees listed in subparagraphs 1, 2 and 3 of this section be modified slightly to include a fee of \$20.00 for new applicants. In paragraph (b), if the intent of this section is to raise funds for the administration of the program we would recommend that the basis upon which the one and three percent be based on adjusted gross income, not on net proceeds. Levying a fee on net proceeds would raise little revenue as most operations currently are not reporting significant net proceeds.

②

③ Paragraph (c) requires the Department to secure information as to whether or not a permittee has outstanding debts to a pull-tab distributor. This section does not give us guidance as to what action the Department would take if in fact there were outstanding debts to that pull-tab distributor. We would suggest that since the relationship between the permittee and the distributor is one of supplier to customer, and that the Department of Revenue has no interest in that transaction. This section should be removed.

Section 2. MONEY DEPOSITED IN GENERAL FUND.

Paragraph (c). We would recommend that in place of 30 days in which to notify the Department of a change in address, a 10 day notice be inserted. Most permittees develop a plan prior to their moving and would know well in advance the date upon which they would be moving their facility.

Section 4. REGULATIONS.

⑤ This section gives the Department broad discretion for the establishment of rules governing gaming in the state. We are concerned about how very broad this discretion is, especially in the determination of expense items that may be deducted by a charity in determining the net proceeds to devote to non-profit making activities.

⑥ Subparagraph (3) needs a change adding after the word "licenses" the phrase "authorized under this chapter". It needs to be made clear that the Department will not be revoking the business licenses under Chapter 43, Section 70 but only those licenses that would be issued under the gaming statutes.

⑦ In subparagraph (6) of this section we are concerned about the difficulty the Department may have in policing the employees of the licensee. Operators come and go, they may have many employees that will work short periods of time, and it may be very difficult for us to insure that no



Section 7. REPORTS TO PERMITTEE AND PAYMENT OF NET PROCEEDS.

16

This section presents a major departure from current law which requires permittees to make payments for all expenses. Recognizing that operators are currently paying these expenses on behalf of the permittee, we support this departure. We do request, however, that along with this report being made available to permittees on a monthly basis that paragraph (a) give the permittee the express ability to request original invoice documents and deposit slips.

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Paragraph (c) of this section requires the operator to file an annual report with each permittee by January 31. This would be the same date under current law, in which the permittee is required to file their annual report with the Department. We recommend that all of the reporting dates be reviewed in the bill to give ample time to both permittees and operators to file annual reports.

Section 8. GENERAL PROVISIONS RELATING TO THE FILING OF APPLICATIONS AND REPORTS AND PAYMENT OF FEES.

18

While we support the granting of extensions in paragraph (b), we are concerned that most large operations will take advantage of this extension and the Department will not be able to provide to the Legislature a meaningful gaming report as required in another section of the statute.

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We would also recommend that a paragraph (e) be inserted. This section would adopt penalty provisions for failure to timely pay on the application or annual report and would also provide a penalty for failure to timely file the monthly, quarterly or annual reports. As it now stands, there is little incentive to file timely reports with the Department.

Section 9.

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In paragraph (c) we recommend inserting the word "natural" before the word person on line 1. The Department recommends that all operators be individual persons as opposed to operating in corporate form.

Section 11. MEMBER IN CHARGE.

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We support the member in charge concept and recommend in paragraph (d) that it read "The municipality or qualified organization shall designate alternate members..."

Section 05.15.115. CONTRACTS BETWEEN PERMITTEES AND OPERATORS.

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In paragraph (b) we recommend the last sentence add the phrase "and any other information the Department may require." In paragraph (d) we recommend that the permittee be responsible for submitting to the

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Department a copy of the contract and in the second sentence we recommend that the contract be sent to us 15 days before the activities are conducted or the contract is amended. This will give the Department ample opportunity to file its objections or make comments concerning provisions in the contracts.

Section 12. OPERATOR'S LICENSE.

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Paragraph (a) possibly needs a technical change in that we do not find AS 05.15.189 anywhere in this draft document or existing statutes. In paragraph (b) we recommend removal of subparagraph (3). We wish this eliminated because we want all operators to be natural persons. In paragraph (c) we recommend that line 10 eliminating the phrase "a person having a significant interest in the applicant". This phrase again refers to one who would have some sort of ownership interest in an operator as in the corporate form of ownership. Along those same lines we recommend paragraph (d) be eliminated.

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Section 05.15.128. REVOCATION OF OPERATOR'S LICENSE.

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Paragraph (a) (1), we do not understand what the definition of "profit" is to be. We believe that the term should be net proceeds.

Section 16. OPERATORS.

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Subparagraph (e), line 2, page 13 we recommend inserting after the word "shall" the phrase "upon request".

Section 18. PULL-TAB MANUFACTURER'S LICENSE.

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In paragraph (c) we are concerned and question the rationale for requiring that pull-tabs be distributed only from a location in the state. Current practice has permittees buying from pull-tab distributors located both within and outside the state. This provision would probably create an extra level of administrative cost to the charitable organizations. We also support the concept that the distributor shall pay the 3% tax to the Department. This makes sense, in that the Department will collect the tax whether or not the pull-tabs are sold or distributed throughout the state.

Section 05.15.187. OPERATION OF PULL-TAB GAMES.

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In paragraph (b), we support raising the prize limit for pull-tab games to at least \$500,000.00 and would consider raising it beyond \$500,000.00. We do not understand why organizations that use operators should be limited to a maximum prize award of an amount less than those organizations that do not use operators. We recommend consistency in setting total prize limits. We recommend one other restriction not found in HB 299. That being the elimination of door prizes. Many small operations are unable to compete with the larger bingo halls in attracting players for their games because of the large amount of prizes being given away at the door. We would suggest that these door prizes either be severely curtailed to an amount not to exceed \$500.00 in value of merchandise to be given away in any one session or an annual limit be set. In no event should cash be given away as a door prize. We enthusiastically support paragraph (d) restricting pull-tab series from being sold at more than one location during the same day. Currently, there is a statewide lottery/pull-tab operation being run by a local Glennallen permittee. The tickets resemble

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in every characteristic a pull-tab with one exception. One of the tabs contains a chance at a \$100,000.00 grand prize drawing. These pull-tab/lottery tickets are being marketed throughout the state in many business establishments at one time. Paragraph (d) would prohibit such an operation from existing. The Department would support even stronger language to curtail this statewide pull-tab distribution. Concerning paragraph (g) we recommend raising the records maintenance for pull-tab winners from \$25 to \$50. This will lessen the records maintenance burden on the permittees.

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Section 21.

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In subparagraph (22) the definition of raffles and lotteries, we are looking for a better definition of the term lottery and raffle. We believe the two to be nearly synonymous. Also given the fact that we have one statewide lottery at this time using a pull-tab type ticket we feel that the definition should be a little bit more restrictive. In

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subparagraph (32) the definition of "operator", we would insert the word "natural" before the word person to make it clear that an operator cannot take any other form of ownership.

HOUSE BILL 299  
Department of Revenue  
Position Statement  
January, 1988

Prepared by  
Steven E. Kettel, Director  
Income & Excise Audit Division

The Department of Revenue supports the many provisions contained within HB 299 which will update the present statutes and assist the Department in its efforts to ensure that charities remain the beneficiary of the proceeds from gaming activities in Alaska.

We support the following concepts in HB 299:

- 1) The requirement that pull-tab manufacturers must be licensed and file reports with the Department, and affix labels to each sealed series of pull-tabs.
- 2) The requirement that pull-tab distributors must be licensed and file reports with the Department, and pay a fee for each pull-tab series sold.
- 3) The requirement that operators be licensed and file reports with the Department and with the permittee.
- 4) The requirement that permittees utilizing the service of licensed operators must enter into formal, written contract.
- 5) The concept that operators must report a profit and pay a minimum percentage of the net proceeds to the permittee to retain their license.
- 6) The concept that operators may provide accounting and banking services for the permittee but the permittee will remain responsible for games conducted on their behalf through their member in charge.
- 7) Restricting operators and their employees by forbidding gaming activities from being conducted by convicted felons.
- 8) We support raising the annual prize award limit. Public testimony on our gaming regulations this fall overwhelmingly supported raising the limit to an amount even greater than that in this bill.
- 9) We support program receipts funding for enforcement activities conducted by this agency.

Attached to this position paper are additional comments and recommended technical changes we have for HB 299. In addition to the provisions and concepts addressed in this bill, we would like to suggest two additional provisions be considered.

- 1) A local charity is currently operating a statewide "lottery", selling a pull-tab like ticket through many different vendors. The tickets offer a chance at an instant payoff of from \$2 to \$50, or the opportunity to be entered in a grand prize drawing for \$100,000. This activity strains current regulations and statutes to the breaking point and goes beyond several time honored customs, i.e. lottery tickets are being sold outside the permittee's general locality and control, and pull-tabs are available in outlets frequented by minors. Section 17 of HB 299 at 05.15.185(d) appears to prohibit the sale of only pull-tabs at more than one location. The question remains, are these "lottery" tickets or are they pull-tabs? We request that the bill clearly state that all pull-tabs, whether used in the traditional manner or in a lottery style be prohibited from being sold in more than one location at a time.
  
- 2) Recently, pull-tabs have found their way into bars and lounges throughout the state. Responsibility for accounting of the gross receipts and net proceeds have been effectively transferred to the bar owner/tender. We recommend that pull-tabs only be sold on the permittee's premises under the control and supervision of the member-in-charge or the operator.

PROPOSED REGULATIONS GOVERNING CHARITABLE GAMING  
Section Analysis  
October 1987

The following is an explanation of how the proposed regulations differ from the regulations currently in place. This explanation is only a summary and does not detail all minor revisions. Those interested are encouraged to compare the proposed regulations to the current regulations and existing laws governing charitable gaming.

Sections 010 through 105, with two exceptions, have been repealed because they repeat definitions for qualified organizations which are in current law. The two exceptions are sections 050, which prohibits fraternal organizations from using gaming proceeds for self support and 105, which defines nonprofit trade associations. Although section 050 has been reworded for clarity, there is no change from the existing rules. An addition has been made to 105 clarifying that the membership may be calculated by counting the members of the member organizations. The member-in-charge of the trade association's games must be a natural person.

Section 107. Operators. This new section proposes that permittees choosing not to operate their own permit be required to contract with an operator, and submit a copy of that contract to the department within 30 days of its execution. Operators would be required to comply with the governing laws and regulations and could not serve as the permittee's member in charge, nor would they be able to pay for expenses of gaming activities under the permit. That responsibility would remain with the permittee. This section also prohibits employees of the permittee or operator from playing the games under that permit.

Section 110. Bingo Rules. This section revises some of the bingo rules of play and removes language that duplicates current law. No change is proposed for the number of allowed monthly sessions (9) or the number of games in a session (35), except that only one session may be played in a 24 hour period. Admission remains at \$1.

Before each game the caller would be required to announce the type of game, the requirements to win and the prize. Numbers called during play must be displayed clearly or be available at any time during play and for a five minute period at the close of the game.

Winners would be required to show a picture identification card to collect their winnings, and payouts may be held until the next session to verify the identification of the winners and the authenticity of the winning cards.

Prize and age limits remain the same to allow more organizations to use this activity for fund raising, and as with the current regulations, no alcoholic beverages are permitted in bingo halls.

No gaming items may be substituted for the cash or merchandise prize payouts, and as with current regulations, purchases of supplies, equipment and prizes as well as equipment or hall rental must be at current value or current retail or rental price.

Sections 115 through 125 revise raffles, lotteries and pull tabs to set up separate, clear rules of play primarily for pull tabs.

Section 115. Annual Prize Limit for Raffles, Lotteries, and Pull Tabs. The annual combined prize ceiling of \$200,000 for raffles, lotteries and pull tabs is retained to allow more nonprofits to participate.

New language expressly prohibits co-mingling of permits to raise the prize limit, a practice ruled not legal under current law this year by the attorney general's office.

Section 120. Raffle and Lottery Rules. All changes are additions to the current regulations. The permittee would be required to state on the tickets if the winner must be present at the drawing, and must award the prize as announced or serve notice of any change to ticket buyers and allow for a refund.

All tickets and money must be accounted for before the drawing is held.

Section 123. Special Draw Games. All changes are housekeeping. No games are changed.

Section 125. Pull Tab Rules. This section provides separate treatment for pull tabs. There is no change in the \$2 maximum charge, although a minimum age of 19 replaces the current open age. Sales are limited to one location at a time, but there is no restriction on where that location may be. Bars can participate. Prizes are limited to cash and must be recorded on a form provided by the department. Permittees may not comingle or share pull tab supplies with other permittees. Pull tabs purchased under one permit may be played only under that permit.

Section 130. Kenai River Ice Classic. If both the Kenai and Soldotna Rotary Clubs compete for control of this classic, the application received first will be the permittee for that year.

Section 135. Monte Carlo Rules. No change is proposed for the current Monte Carlo regulations. Reporting requirements in current regulations under Section 235 have been moved to this section.

Section 140. Dog Musers' Contests. The language that is in the current law has been removed, and the language that is in current regulation is retained, so there is no change in these rules.

Section 150. Fish Derbies. This section is deleted under 150 and reappears in Section 155 with Classics.

Section 155. Classics and Derbies. Since the legislature has assigned all permitted classics and derbies to specific organizations in the law, the regulations have been rewritten to show the separation from other games of chance. Classics and Derbies, as currently required, would renew their permits and submit annual reports. They would also be required to send the state copies of their rules of play. This classification of games would be exempt from prize and expense ceilings, from the minimum profits outlined in other regulations, and from non-applicable provisions in the permit application process.

A disqualification provision is proposed should any organization in this section lose its current nonprofit status.

Section 160. Contests of Skill. This section is repealed, as it repeats provisions in current law.

Section 165. Application for Nonprofit Gaming Permit. Although the section number is new, the regulations were formerly in Section 170. Changes are additions to the application: naming the actual location of the gaming activity, the name and address of the operator (if any), and the inclusion of the operator and employees in the prohibition of involvement if there have been prior felony or gambling related convictions.

This section also lists items to be included with the application, all of which are currently required except evidence that a copy of the application has been submitted to the municipality as required by law.

Current regulations allow no refund if an application is denied. We propose dropping this language to allow for refunds.

Section 170. Issuance of Permits. This section picks up where 165 ended. As with current regulations, a permit is issued for the calendar year. Additions to current provisions are that the permittee must notify the department within ten days if there is any change to the information provided on the application, and that the commissioner will honor a municipal protest unless the protest is "arbitrary, capricious, or unreasonable."

Section 180. Renewal of Permits. This section requires that a current list of 25 members be included with each renewal. Permits will not be issued until the annual financial statement for the previous year has been received.

Provisions are added to allow use of the previous year's permit as a temporary permit until receipt of the annual financial statement or February 15, whichever comes first.

As with the initial application, the department proposes to allow fifteen days for municipal protest and will honor that protest with the same conditions.

Section 190. Suspension, Revocation and Denial of Permits. The 8 provisions in current regulations remain the same. This section adds that it is grounds for suspension, revocation or denial of a permit, if a permittee fails to notify the department of changes in information on the application within ten days of the change.

Procedures for suspension, revocation or denial are expanded to indicate if the commissioner is suspending a permit pending an investigation or hearing. If this is the case, the permittee is required to surrender the permit and stop all gaming. The hearing is to be conducted within thirty days unless the permittee requests an extension or waiver. The commissioner can stay the suspension based on a written decision of the hearing officer.

No change has been proposed for section 195 on the conduct of hearing.

Section 200. Investigation. Current regulations allow for investigations of all permit applicants. These proposed regulations clarify the procedure to provide for investigation at the discretion of the commissioner. The department and law enforcement officers are to have reasonable access to all gaming activities, and the permittee and/or operator are to cooperate and make available the records and materials. The department may issue notices of violation, serve subpoenas to witnesses for hearings, and "take other action necessary to assure compliance with, and enforcement of" gaming activities.

Section 205. Pull Tab Inspection. This added section is specific to pull tab inspections, allowing the commissioner to randomly examine a pull tab series. If no violation is found, the department will deduct its expenses and reimburse the permittee for the remainder. If a violation is found, all costs of the special inspection may be assessed to the permittee.

Section 210. Member-In-Charge. Permittees must currently name a member-in-charge to do the bookkeeping and be present at all gaming activities. This proposal still requires that a member-in-charge or the alternate be responsible for books and records, but either the member-in-charge or the operator must be at the activity. A member-in-charge must have been a member of the organization for at least one year prior to being named "member-in-charge" and cannot have a personal financial interest in the conduct of the activity.

Section 220. Minimum Net Proceeds. Current regulations have no minimum net requirements and define net as the total gross less prizes and allowable expenses. This section repeals those regulations and sets a minimum for net proceeds at 20% of the adjusted annual gross receipts. Adjusted annual gross is defined as the total gross less the total paid out in prizes. An 80% payout in prizes would mean the minimum net would be 4% of the total gross.

The listing of authorized and unauthorized expenses in current regulations is repealed in favor of achieving a minimum net. References to authorized and unauthorized expenses remain in the law and some have been included in the bingo rules of play. [See Section 110, (p) and (q).]

Section 225. Expense Limits. This section limits expenses other than prizes to 25% of the annual gross receipts. Rent, compensation, equipment and supplies may not be paid at a percentage of the gross or of the net proceeds. Trading the repeal of specifically authorized and unauthorized expenses for this ceiling on expenses should free permittees to tailor wages and activities to their particular needs.

Section 230. Annual Financial Statement. As with current law and regulation, the permittee is required to file an annual financial statement by January 31. The annual financial statement is to show all monies generated in the permit year and be accompanied by the statutorily required fee of 1% of the net. Replacing the currently required copy of the IRS 1099 form is the requirement of listing all prize winners of \$100 or more.

Section 235. Time for Filing Reports. This section was all Monte Carlo reporting. It has been relocated to Section 135.

Section 240. Method of Accounting. In addition to continuing the regulations of a separate bank account for gaming activities (as required by law), all prizes greater than \$100 must be paid by check. Permittees or operators must deposit all receipts, less cash prizes, into the gaming account, and all expenses must then be paid by check with two permittee signatures. Section 250, which has been repealed, is incorporated into this section and requires that records and documents be kept for three years.

Section 245. Required Audits. This new section requires the following schedule of audits by a CPA. Audits result are due to the department by July 1 or the permit may be suspended.

If Annual Gross Receipts are

Less than \$50,000

Between \$50,000 and \$200,000

Greater than \$200,000

No audit is required

A Biennial audit is required

An Annual audit is required

Section 250. (Incorporated as noted in section 240.)

Section 255. Payment of Prizes. This section requires that prizes of \$100 or more be paid by check. Winners must sign a check receipt form provided by the Department of Revenue.

Section 260. Disposition of Funds Upon Suspension or Revocation of Permit. There are no substantive changes. Any monies remaining in an account may only be used to pay accrued gaming expenses and with the rest going to the dedicated purposes.

Section 270. Display of Permit. This section clarifies that only one permit may be played on an occasion, and that the permit in play must clearly be identified.

Section 280. Use of Dedicated Net Proceeds. No changes have been made.

Section 290. Expenses. This section has been repealed as it repeats language in current law.

Section 300. Violations. This section sets suspensions at a minimum of thirty days, and provides that a violation of the law or its regulations subjects the permittee to possible denial, suspension or revocation of the permit.

4428A

NONPROFIT GAMING

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AND FOR OPERATORS.

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- 15. (Repealed)
- 20. (Repealed)
- 30. (Repealed)
- 40. (Repealed)
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- 60. (Repealed)
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- 80. (Repealed)
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ARTICLE 1. RULES FOR CERTAIN TYPES OF PERMITTEES  
AND FOR OPERATORS

15 AAC 105.010 is repealed:

15 AAC 105.010. QUALIFIED ORGANIZATION. Repealed / / .

15 AAC 105.015 is repealed:

15 AAC 105.015. MUNICIPALITY. Repealed / / .

15 AAC 105.020 is repealed:

15 AAC 105.020. CIVIC OR SERVICE ORGANIZATION. Repealed  
/ / .

15 AAC 105.030 is repealed:

15 AAC 105.030. RELIGIOUS ORGANIZATION. Repealed / / .

15 AAC 105.040 is repealed:

15 AAC 105.040. CHARITABLE ORGANIZATION. Repealed / / .

15 AAC 105.050 is repealed and readopted to read:

15 AAC 105.050. FRATERNAL ORGANIZATION PROCEEDS. Proceeds from charitable gaming conducted by a permittee fraternal organization may not be used to support the operations of the organization itself. (Eff. 9/7/60, Reg. 2; am / / , Reg. )

Authority: AS 05.15.060  
AS 05.15.150

15 AAC 105.060 is repealed:

15 AAC 105.060. EDUCATIONAL ORGANIZATION. Repealed  
/ / .

15 AAC 105.070 is repealed:

15 AAC 105.070. VETERANS' ORGANIZATION. Repealed / / .

15 AAC 105.080 is repealed:

15 AAC 105.080. POLICE OR FIRE DEPARTMENT AND COMPANY.  
Repealed / / .

15 AAC 105.090 is repealed:

15 AAC 105.090. DOG MUSHERS' ASSOCIATION. Repealed  
/ / .

15 AAC 105.095 is repealed:

15 AAC 105.095. OUTBOARD MOTOR ASSOCIATION. Repealed  
/ / .

15 AAC 105.100 is repealed:

15 AAC 105.100. FISHING DERBY ASSOCIATIONS. Repealed  
/ / .

15 AAC 105.105 is repealed and readopted to read:

15 AAC 105.105. NONPROFIT TRADE ASSOCIATIONS. "Non-profit trade association," as used in AS 05.15.210(19), means a qualified organization whose members are merchants, craftspersons, or business firms in a particular trade or industry organized in the state for the promotion of the common interests of that trade or industry. A non-profit trade association can satisfy the requirement of 15 AAC 105.165(b)(3) by listing its members and members of its members if necessary and appropriate. However, a member-in-charge of an activity conducted under a permit held by a nonprofit trade association must be a natural person. (Eff. 9/7/60, Reg. 2; am / / , Reg. )

Authority: AS 05.15.060  
AS 05.15.130

15 AAC 105 is amended by adding a new section to read:

15 AAC 105.107. OPERATORS. (a) A permittee may contract with a consultant to operate gaming activities authorized by a permit. Such a consultant or "operator" must be a natural person, not a corporation. A copy of the complete executed contract between the permittee and the operator must be submitted by the permittee to the department within 30 days of its execution. The term of an operator contract may not exceed the term of the annual permit.

(b) An operator and employees of an operator are subject to AS 05.15 and this chapter just as are the permittee and its members and employees. The actions of an operator and employees of an operator are grounds for suspension or revocation of the