

ALASKA LEGISLATURE COMMITTEE FILED 1907 - 1900

5325 SJUD SB 399 - SB 413

897

subject to fines of up to \$500. Id. § 80.05(2). Vending machine operators are specifically required to affix to tobacco-product vending machines in a prominent place the following notice:

"SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, OR OTHER TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW." Gen. Bus. Law § 399-a(1), (2).

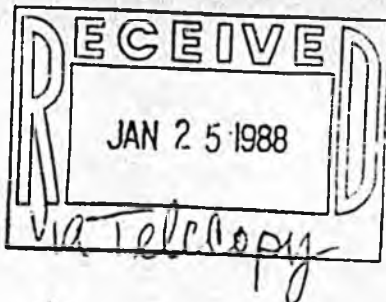
Prohibitions such as Section 260.20(5) apply regardless of whether the seller knows that the child is under 18. See People v. Lida, 42 Misc.2d 56, 247 N.Y.S.2d 421 (N.Y. Crim. Ct.), aff'd mem., 43 Misc.2d 692, 252 N.Y.2d 142 (S. Ct. App. T. 1964). Moreover, the applicable legal standard is one of negligence. See In re Lewis, 193 Misc. 676, 84 N.Y.S.2d 790 (1948). If a seller knows that persons under 18 have access to a vending machine subject to his control, Section 260.20(5) -- as currently written -- requires the seller to take reasonable steps to ensure that sales to minors do not occur.

Under these circumstances, there is no justification for banning vending machine sales of tobacco everywhere except where the presence of persons under 18 is "expressly prohibited." To assure that minors not buy tobacco from vending machines, what is required is enforcement of existing law. As far as we are aware, Section 260.20(5) has not been enforced in many years. See State v. Juliano, 279 App. Div. 590 (1951)

violation of predecessor of Section 260.20(5)). It would take only a handful of prosecutions to stem any problems that actually exist.

Before considering more drastic steps, the State should use the tools already at its disposal. Caution is especially important because the ban proposed by AB 5546 would have severe economic consequences for an industry already beset by high taxes and burdensome regulation. A substantial portion of all revenue from vending machine sales is derived from the sale of tobacco. It is questionable whether the industry could survive legislation that effectively deprived it of so substantial a portion of its income.

In short, existing law should not be changed until it has been shown to be incapable of serving its purpose. The prohibition already embodied in Section 260.20(5) is fully capable of accomplishing the objectives of AB 5546.



MORINGO

MEMORANDUM

TO: Goss
Halicki
Moran
Stapf

FROM: Bill Klopfar

RE: Tobacco purchase/possession age limits

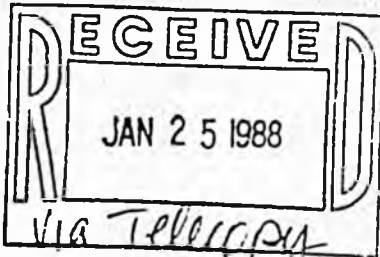
The Institute's position on minimum age statutes for purchase or possession of tobacco products is that such statutes should be decided by state and local authorities. We neither oppose nor support them, and we do not suggest, endorse or oppose any specific minimum age. Regardless of state and local decisions or the absence thereof, we regard tobacco use as an adult custom.

Last May 19, a UPI dispatch indicated that The Institute and the Smokeless Tobacco Council both support a proposal from Secretary Bowen for a national minimum age. That story was repeated in a newsletter published by the Tobacco Merchants Association.

The Smokeless Tobacco Council has supported minimum age proposals in certain instances. Otherwise, the UPI and TMA reports are not correct.

cc: E. Chilcote
R. Lewis
K. Moringo
P. Spahr

June 29, 1987



STATE MAR 28 1986

CIGARETTE AND TOBACCO TAX - PHASE II RECODIFICATION

1986

GENERAL SESSION

Enrolled Copy

H. B. No. 138

By Franklin W. Knowlton

Molan E. Karras

Ted D. Lewis

AN ACT RELATING TO REVENUE AND TAXATION; PROVIDING PHASE II CHANGES IN THE CIGARETTE AND TOBACCO LICENSING AND TAX LAWS; INCLUDING THOSE NEEDED CHANGES WHICH INVOLVE MINOR POLICY ALTERATIONS IN ORDER TO CLARIFY INTENT, DEFINE TERMS, OR RESOLVE CONFLICTS WITHIN AND AMONG STATUTES, AND TO IMPROVE THE ORGANIZATION AND CLARIFY THE CODE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:

CHAPTER 18a, TITLE 59, UTAH CODE ANNOTATED 1953

76-10-105.5, UTAH CODE ANNOTATED 1953

REPEALS:

CHAPTER 18, TITLE 59, UTAH CODE ANNOTATED 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Chapter 18a, Title 59, Utah Code Annotated 1953, is enacted to read:

59-18a-1. This act is known as the Cigarette and Tobacco Tax and Licensing Act.

59-18a-2. As used in this chapter:

Skip to

H. B. No. 138

(1) enter upon the premises of any taxpayer and examine or cause to be examined by any agent or representative designated by it for that purpose, any books, papers, records, or memoranda bearing upon the taxes;

(2) secure any other information directly or indirectly concerned in the enforcement of this chapter; and

(3) waive, reduce, abate, or compromise any of the penalties provided for in this chapter upon making a record of its reasons therefor.

59-18a-19. If the taxes or penalties imposed by this chapter are not paid when due, collection shall be made in the manner provided in Sections 59-13-53 and 59-13-54, except as otherwise provided by this chapter.

59-18a-20. The State Tax Commission may call to its aid the attorney general, any city or county attorney, or any peace officer to enforce any tax laws which it administers.

Section 2. Section 76-10-105.5, Utah Code Annotated 1953, is enacted to read:

76-10-105.5. (1) Any person who (a) maintains in the person's place of business a tobacco vending machine accessible to persons under 19 years old, or (b) provides any method of self-help for the disposition to persons under 19 years old by gift, sale, or otherwise of any cigarette or cigarette paper or wrapper, or any paper made or prepared for the purpose of making cigarettes or tobacco in any form whatsoever, is guilty of a class B misdemeanor.

(2) Cigarette vending machines are deemed accessible to persons under 19 years old except where they are in locations where:

H. S. No. 138

(a) persons under 19 years old are prohibited;

(b) the machine can be operated only by the owner or his employes, either directly or through a remote control device which is inaccessible to the customer and operated for each sale;

(c) in private industrial locations where only adult employes are customarily allowed, if the locations are inaccessible to persons under 19 years old; and

(d) in adult private clubs, if the locations are inaccessible to persons under 19 years old.

(3) Every person, firm, or corporation which sells, gives, or in any way furnishes to another person who is in fact under 19 years old, any tobacco, cigarette, or cigarette papers or any other preparation of tobacco in violation of this section shall, upon conviction be punished:

(a) for the first offense by a fine of not less than \$25 nor more than \$100 or by imprisonment for not more than 60 days;

(b) for the second offense by a fine of not less than \$50 nor more than \$200, or by imprisonment for not more than 90 days; and

(c) for each subsequent offense by a fine of not less than \$100 nor more than the maximum fine for a class B misdemeanor under Section 76-3-301 or by imprisonment for not less than 90 days, or both.

(4) Every person, firm, or corporation which owns a tobacco products machine operating within the state of Utah shall, within 90 days after this act becomes affective, post and maintain on each machine a decal of not less than six inches by three inches, which contains the following:

H. R. No. 138

WARNING: PURCHASE BY, or POSSESSION BY, or SALE TO a person UNDER 19 YEARS OF AGE, of tobacco products is a violation of:

Penal Code, 76-10-104, Utah Code Annotated 1953;

Penal Code, 76-10-105, Utah Code Annotated 1953; and

Penal Code, 76-10-105.5, Utah Code Annotated 1953.

(5) Any person violating Subsection (1), (2), or (4) is guilty of keeping and maintaining a nuisance, and that person may be enjoined from maintaining the nuisance.

Section 3. Chapter 18, Title 59, Utah Code Annotated 1953, is repealed.

Section 4. This act takes effect on July 1, 1986.

VENDING MACHINES AND CIGARETTE PURCHASES BY MINORS

Only 2 Out Of 10 Teenagers Smoke
Only 1 out Of 10 Teenage Smokers
Purchase Cigarettes
Over 97 Per Cent Of Teenage Smokers
Do Not Buy From Vending Machines
Most Cigarette Vending Machines
Are Located In Establishments
Where Minors Are Not Admitted

Compiled From Major Research Studies And Published By
National Automatic Merchandising Association
20 North Wacker Drive, Chicago, Illinois 60606

VENDING MACHINES AND CIGARETTE PURCHASES BY MINORS

The discussion on smoking and health has intensified in recent months, augmented by the proposals of the American Medical Association in December, 1985 that cigarette advertising and the sale of cigarettes from vending machines be banned. Those who contend that smoking is dangerous to health have tried to convince cigarette smokers to stop smoking through various means, including multiple warning labels on cigarette packs, ever increasing cigarette excise taxes, and restrictions on smoking in public places and at work. The net result of these efforts has, on the whole, been disappointing to those who oppose smoking.

Consequently, special attention is being aimed at teenagers to discourage them from starting to smoke. In the past there were only a few attempts to restrict the placement and use of cigarette vending machines, but now the American Medical Association House of Delegates has adopted a resolution to draft model legislation designed to ban cigarette sales through vending machines throughout the country.

Vending Machines Falsely Accused

The American Medical Association and others who have advocated legislative restrictions on cigarette vending machines falsely claim that vending machines are a major source of cigarettes for minors. They allege that since the machines cannot distinguish between adults and teenagers, cigarette vending machines must be a major source of cigarettes for teenagers, and that they circumvent state laws which prohibit the sale of tobacco products to minors.

This allegation ignores the facts. The fallacy will be recognized by anyone who understands how vending machines retail cigarettes. Here are the facts!

Facts About Teenage Smoking and Sources of Cigarettes

Current and past studies published by the U.S. Government and others show that:

- * only 2 out of 10 teenagers smoke
- * only 1 out of 10 teenage smokers *purchase* cigarettes
- * over 97% of teenage smokers do *not* buy from vending machines
- * only 7% of high school seniors smoke a pack or more a day

Whether parents smoke is the most important influence on teenagers' smoking. In 1974 U.S. Government research by the Department of Health, Education and Welfare and subsequent studies found that *when both parents smoke, teenagers are twice as likely to smoke as when neither parent smokes*. The extensive literature of behavioral research on file at the Centers for Disease Control in Atlanta, Georgia reveals that parental and sibling smoking habits, teenage peers' influence and the desire to appear adult are the most important factors in creating the smoking habit in teenagers. These findings are confirmed by the National Institute on Drug Abuse study *Drugs and American High School Students 1975-1983*, U.S. Department of Health and Human Services, Public Health Service.

The majority of cigarette vending machines are located in cocktail lounges and bars, where minors are not admitted, and in places of employment (factories and offices) where teenagers usually do not have access. This is not by accident. These locations happen to be the most profitable for vending machines and this has been the case for many years. Most of the typical places patronized by teenagers, such as fast food chains, do not sell cigarettes.

The Six Step Self-Regulation Program For Vending

The vending industry has long recognized its responsibility to prevent minors' purchasing cigarettes from vending machines. Vending companies, aware of the laws which prohibit sales of cigarettes to minors, have long conducted their business under an industry Code of Self-Regulation designed to make sure cigarette vending machines are *not* a source of cigarettes for minors.

Here is a brief statement of the six-step Self-Regulation Program used by vending companies (since 1962):

1. Survey the entire cigarette operation to determine the location of those machines to which minors are likely to have access. As part of this survey maintain a permanent file record for each machine location.
2. Post "Minors Are Forbidden" decals conspicuously on all machines.
3. Post on each machine the name, address, and phone number of the operator.
4. Solicit the location owner's cooperation to prevent minors from purchasing from machines to which minors have access. Reposition machines, where necessary, to assure adequate supervision.
5. Remove machines from locations where the sale of cigarettes to minors cannot be prevented.
6. Cooperate with competitors to achieve area-wide compliance of preventing the purchase of cigarettes by minors from vending machines. (As part of this step, establish local group liaison with police officials and offer cooperation in the enforcement of "sales to minors" laws).

Conclusion:

Accusations against cigarette vending machines related to teenage smoking have no basis in fact. The vending industry continues to recognize its responsibilities through self-regulation (even though few teenagers actually purchase cigarettes from vending machines). It stands ready to cooperate with all groups to make sure that its record of responsible conduct and compliance with established laws is maintained in fact and in spirit.

BILL NO: SB 399

DATE: March 1, 1988

TITLE: An Act Relating to the
Inclusion of Fingerprint
Information in the Criminal
Justice Information System

CONTACT: Ken Bischoff
465-4336

DEPARTMENT OF
PUBLIC SAFETY

Passage of this legislation would allow fingerprints of persons, including minors to be maintained in a "Criminal Justice Identification System."

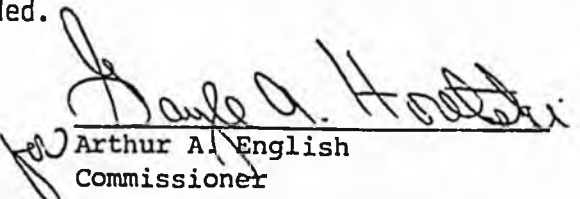
This legislation discusses a "Criminal Justice Information System" but apparently refers to the Alaska Automated Fingerprint Identification System (AAFIS) which is not a criminal justice information system, but a data base of fingerprint minutia. Federal definitions of "Criminal History Record Information" exclude fingerprint information "to the extent that such information does not indicate involvement of the individual in the criminal justice system." While AAFIS contains fingerprints from criminals, it does not contain any information related to that person's offense, arrest, or disposition. Therefore, the legislation should be amended to substitute the term "Fingerprint Identification System" instead of "Criminal Justice Information System."

Since the AAFIS is not a criminal justice information system, it would be more appropriate to place the proposed new statute in another portion of the Alaska Statutes such as Title 44, which already contains a provision discussing "Fees for Fingerprint Information", AS 44.41.025. Therefore, the Commissioner of Public Safety would be the appropriate authority to establish regulations for this subject.

Section 1(d) of the legislation provides specific details which are more appropriate to program administration of the AAFIS rather than to be embodied in a statute. For example, if fingerprints submitted for any purpose are not of sufficient quality or clarity to be read into the machine, they are rejected and the originating agency is advised of the poor print quality. While subparagraph 2 is appropriate, it should be part of program administration rather than embodied in statute.

Section 2 of the bill also should be amended to eliminate the "Commission" and substitute "the Department of Public Safety" as well as to eliminate the term "Criminal Justice Information System" and substitute the term "Fingerprint Identification System," as well as other rewording required by placement of this legislation in Title 44.

The Department supports this bill. It is difficult for us to determine the number who would take advantage of the opportunity to submit fingerprints. No fiscal impact is estimated presently; but if volumes were to reach high levels, additional resources would be needed.

for 
Arthur A. English
Commissioner

FISCAL NOTE

REQUEST

Revision Date: 2/12/88 Agency Affected: Public Safety
 Title: "An Act relating to the inclusion ... information system" BRU: DPS Administration
 Sponsor: Sen. Szymanski, Zharoff, etc. Components: Administrative Services
 Requestor: Senate 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						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: M. J. Clemens Phone: 465-4336
 Division: Administrative Services Date: _____

Approved by Commissioner: Arthur English Date: 3-1-88
 Agency: Public Safety

Distribution (by preparer):

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

1 IN THE SENATE

BY SZYMANSKI, ZHAROFF, ELIASON,
FISCHER, STURGULEWSKI AND RODEY

2

SENATE BILL NO. 399

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the inclusion of fingerprint
information in the criminal justice information
system."

7

8

9

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

10

* Section 1. AS 12.62.020 is amended by adding new subsections to read:

11

(c) The commission's regulations adopted under AS 12.62.010(b)

12

must provide that each of the following may submit a complete set of

13

fingerprints of the person designated for addition to the criminal

14

justice information system:

15

(1) a person may submit the person's own fingerprints;

16

(2) the parent or guardian of a minor may submit the mi-

17

nor's fingerprints; and

18

(3) the guardian or conservator of a person under AS 13.26

19

may submit the fingerprints of the person protected by the guardian or

20

conservator.

21

(d) The commission's regulations may provide that the commission

22

may not accept for addition to the criminal justice information system

23

(1) a fingerprint set submitted under (c) of this section

24

that is not of sufficient quality or clarity;

25

(2) a fingerprint set submitted under (c)(2) of this sec-

26

tion for a minor who is under two years of age.

27

(e) The commission may maintain the fingerprint sets of minors

28

who are under 14 years of age submitted under (c)(2) of this section

29

in a file separate from the general file for all other fingerprints

1 received under AS 12.62.

2 (f) The commission may by regulation, establish and charge a
3 reasonable fee for filing of fingerprint sets under (c) of this sec-
4 tion. The commissioner of administration shall separately account for
5 all fees that are collected and deposited in the general fund under
6 this subsection. The annual estimated balance in the account may be
7 used by the legislature to make appropriations to the commission to
8 carry out the purpose of (c) of this section.

9 * Sec. 2. AS 12.62.040 is amended by adding a new subsection to read:

10 (c) Upon request by a person who is 18 years of age or older,
11 the commission shall remove from the records of the criminal justice
12 information system the complete set of the person's fingerprints
13 submitted by the parent or guardian of the person under AS 12.62.-
14 020(c)(2). The commission's regulations adopted under AS 12.62.010(b)
15 must establish a procedure for the submission of a request under this
16 subsection and for notification that the fingerprint set has been
17 removed from the records in response to the request.



Alaska State Legislature

Senator Mike Szymanski

While in Session:
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4978/4979

MEMORANDUM

MAR 7 1988

To: All Senators
Alaska State Legislators

From: *Mike Szymanski*
Senator Mike Szymanski

Date: February 4, 1988

Subject: Bill Allowing Additions of Fingerprint information in the criminal justice information system.

Interim
3111 C Street
Suite 150
Anchorage, AK 99503
(907) 276-6739

165 E. Parks Hwy.
Suite 104
Wasilla, AK 99687
(907) 376-MIKE

Attached is a bill I will be introducing on Monday, February 8. Currently, there are no statutory means by which the people of Alaska who wish to can have their fingerprints added to the state's criminal justice computerized fingerprint system.

There are people who want this information to be on file for a variety of personal reasons: for identification purposes in case of accidents or kidnappings or abductions, to identify runaways, amnesia cases, people suffering from Alzheimer's disease, etc. There are private groups in Alaska that currently keep fingerprint information on their own for identification purposes, but none of this information is allowed in the present system, and much of it is not of good quality.

The Alaska Automatic Fingerprint Identification System is governed under regulations by the Governor's Commission on the Administration of Justice. The bill would allow the Commission to set up regulations governing things like the quality of the prints being submitted (under the age of 2 the quality is too poor), procedures for taking prints, the age of the person whose prints are submitted, method of removing prints from the system and what fees (if any) would be charged to users. The Department of Public Safety fiscal note should be zero.

Because the AAFIS is a system based on absolute measurements, it cannot automatically allow for increased print size of children due to growth up to about 14 years of age. Hence, children's prints would be kept in a special file to be retrieved in case of need and enlarged manually to be searched against any current prints. Children from approximately the age of 14-18 would be in the regular system files with the prints of offenders. However, because the automatic print matcher works only through file numbers and not names, and all court records are kept separate, there would be no pejorative connotation of criminality just because someone's prints were in the system.

Anyone wishing to co-sponsor this legislation please contact Roger Poppe in my office at 465-4978 before 10:00 am February 8.

Senate District E

5-1746A
Chenoweth
2/3/88

1 IN THE SENATE

BY SZYMANSKI

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the inclusion of fingerprint
7 information in the criminal justice information
8 system."

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

10 * Section 1. AS 12.62.020 is amended by adding new subsection to read:

11 (c) The commission's regulations adopted under AS 12.62.010(b)
12 must provide that each of the following may submit a complete set of
13 fingerprints of the person designated for addition to the criminal
14 justice information system:

15 (1) a person may submit the person's own fingerprints;

16 (2) the parent or guardian of a minor may submit the mi-
17 nor's fingerprints; and

18 (3) the guardian or conservator of a person under AS 13.26
19 may submit the fingerprints of the person protected by the guardian or
20 conservator.

21 (d) The commission's regulations may provide that the commission
22 may not accept for addition to the criminal justice information system

23 (1) a fingerprint set submitted under (c) of this section
24 that is not of sufficient quality or clarity;

25 (2) a fingerprint set submitted under (c)(2) of this sec-
26 tion for a minor who is under two years of age.

27 (e) The commission may maintain the fingerprint sets of minors
28 who are under 14 years of age submitted under (c)(2) of this section
29 in a file separate from the general file for all other fingerprints

1 received under AS 12.62.

2 (f) The commission may by regulation, establish and charge a
3 reasonable fee for filing of fingerprint sets under (c) of this sec-
4 tion. The commissioner of administration shall separately account for
5 all fees that are collected and deposited in the general fund under
6 this subsection. The annual estimated balance in the account may be
7 used by the legislature to make appropriations to the commission to
8 carry out the purpose of (c) of this section.

9 * Sec. 2. AS 12.62.040 is amended by adding a new subsection to read:

10 (c) Upon request by a person who is 18 years of age or older,
11 the commission shall remove from the records of the criminal justice
12 information system the complete set of the person's fingerprints
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14 020(c)(2). The commission's regulations adopted under AS 12.62.010(b)
15 must establish a procedure for the submission of a request under this
16 subsection and for notification that the fingerprint set has been
17 removed from the records in response to the request.

FISCAL NOTE

REQUEST: _____

FEB 22 1988

Revision Date: _____ Agency Affected: Public Safety
 Title: "An act relating to the obstruction
or hindrance of lawful hunting, fishing, ..." BRU: Fish & Wildlife Protection
 Sponsor: Fanning, Faiks, et al
 Requestor: House Transportation Components: Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

JKS
2/2/88

Prepared by: Captain Conrad G. Seibel Phone: 269-5509
 Division: Fish & Wildlife Protection Date: 2/10/88

Approved by Commissioner: Harold A. H. ... Date: 2-18-88
 Agency: Department of Public Safety

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

SB

413

STATE OF ALASKA
THE LEGISLATURE

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


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 7, 1988

SUBJECT: Enclosed Amendments for CSSB 413 (Jud)

TO: All Members
Senate Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes 

Senator Kerttula's office asked me to send to each of you the two enclosed amendments for draft CSSB 413 (Jud), the revisor's bill. It is hoped that the amendments and the draft CS will be taken up by the committee at the Thursday, March 10 meeting.

Amendment 5-1406Ba, designated "By Duncan," would replace the existing text of sec. 8 of draft CSSB 413 (Jud). Existing sec. 8 amends AS 06.05.180(4); the new material incorporates that amendment and also amends AS 06.05.180(10), which was added to the section by sec. 1, ch. 7, SLA 1988. The following sectional analysis discusses the reason for the amendment:

Sec. 8. This section of the bill amends two paragraphs in AS 06.05.180, setting out the authorized trust powers of banks. Paragraph (4) is amended to update the language used in referring to incapacitated persons. Paragraph (10), added to AS 06.05.180 by sec. 1, ch. 7, SLA 1988, is amended to correct a misunderstanding of the effect of an amendment adopted last year by the House Labor and Commerce Committee. The error was not discovered until the Department of Law reviewed the bill for the governor last month. By copy of the review letter, the revisor was asked to consider making an editorial correction under AS 01.05.031. Based upon a review of the bill file and the legislative history of the bill, it was determined that the correction needed to be made by the legislature.

As enacted, the provision of AS 06.05.180(10) that allows certain investments "for short-term cash management purposes" modifies both direct investments and investments in the form of certain securities and other interests. The intent was, apparently, to modify only investments in the form of certain securities and other interests. Thus, direct investments could be for purposes other than short-term cash management. The proposed amendment, suggested by the Department of Law, changes the location in the paragraph of the conditioning language in order to carry out the intent of the proponents of the legislation.

Amendment 5-1406Bb was proposed by the revisor to resolve a recently discovered problem. It would add a new sec. 17, amending AS 09.63.040(c). The sectional analysis for the new section would read:

Sec. 17. This section amends AS 09.63.040(c) to correct an oversight in the original drafting of the subsection, which sets out the statutory form for verifications. As originally enacted, the form does not conform to the requirements of AS 09.63.040(b). That subsection requires the person making a verification to sign it, but the form set out in (c) does not include a signature line for that person. The proposed amendment adds a signature line for the person making the verification and also removes the personal pronouns in the provision.

If you have any questions about the enclosed amendments, please do not hesitate to give me a call.

Enclosure

cc: Senator Jalmar Kerttula

DRD:gc
WkG2:33

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 2, 1988

SUBJECT: Enclosed Amendment for CSSB 413(Judiciary)
TO: Senator Jay Kerttula
Chair, Senate Judiciary Committee
FROM: David R. Dierdorff
Revisor of Statutes

Enclosed is another amendment for the revisor's bill for the consideration of your committee. I discovered the need for this amendment when checking the remaining personal pronouns in the Alaska Statutes. The amendment is needed to correct an oversight in the original drafting of AS 09.63.040(c), not simply to remove the personal pronouns.

The problem I discovered is that the form set out in subsection (c) does not comply with the requirements of AS 09.63.040(b). That subsection requires the person making the verification to sign it, but the form does not include a signature line for that person. The proposed amendment would add a signature line for the person making the verification and remove the personal pronouns.

This will be the last amendment for CSSB 413 that I will submit.

Enclosure

cc: Art Peterson

DRD:gc
WKG2:19

A M E N D M E N T

Offered in the SENATE JUDICIARY COMMITTEE

TO: CSSB 413 (Judiciary)

Page 5, following line 26:

Insert a new bill section to read:

"* Sec. 17. AS 09.63.040(c) is amended to read:

(c) A verification made under this section may be in substantially the following form:

I _____ say [SAYS] on oath or affirm [AFFIRMS] that I have [HE (OR SHE) HAS] read the foregoing (or attached) document and believe [BELIEVES] all statements made in the document are true.

Signature

Subscribed and sworn to or affirmed before me at _____ on

(date)

Signature of Officer

Title of Officer"

Renumber remaining bill sections accordingly.

Page 13, line 25:

Delete "18 and 19"

Insert "19 and 20"

Page 13, line 26:

Delete "18 and 19"

Insert "19 and 20"

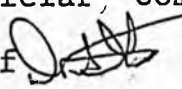
STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

March 2, 1988

SUBJECT: Enclosed Amendment for CSSB 413(Jud)
TO: Senator Jay Kerttula
Chair, Senate Judiciary Committee
FROM: David R. Dierdorff 
Revisor of Statutes

Enclosed for the consideration of your committee is an amendment for CSSB 413(Jud), the revisor's bill. The amendment was prepared at the request of Senator Duncan to resolve a problem in ch. 7, SLA 1988, that was brought to our attention by the Department of Law in its bill review letter to the governor.

As a matter of form, because sec. 8 of CSSB 413(Jud) already proposed an amendment to AS 06.05.180(4), Senator Duncan's requested change to AS 06.05.180(10) was combined with the existing material so that sec. 8 would, if the amendment is adopted, amend the entire AS section.

The sectional analysis for sec. 8 would have to be rewritten to read:

Sec. 8. This section of the bill amends two paragraphs in AS 06.05.180, setting out the authorized trust powers of banks. Paragraph (4) is amended to update the language used in referring to incapacitated persons. Paragraph (10), added to AS 06.05.180 by sec. 1, ch. 7, SLA 1988, is amended to correct a misunderstanding of the effect of an amendment adopted last year by the House Labor and Commerce Committee. The error was not discovered until the Department of Law reviewed the bill for the governor last month. By copy of the review letter, the revisor was asked to consider making an editorial correction under AS 01.05.031. However, based upon a review of the bill file and the legislative history of the bill, it was determined that the correction needed to be made by the legislature.

Senator Jay Kerttula
Page 2
March 2, 1988

As enacted, the provision of AS 06.05.180(10) that allows certain investments "for short-term cash management purposes" modifies both direct investments and investments in the form of certain securities and other interests. The intent was, apparently, to modify only investments in the form of certain securities and other interests. Thus, direct investments could be for purposes other than short-term cash management. The proposed amendment, suggested by the Department of Law, changes the location in the paragraph of the conditioning language in order to carry out the intent of the legislation.

I enclose a copy of the Department of Law's bill review letter for your information. I also enclose a copy of my response to that letter.

Enclosure

cc: Senator Jim Duncan
Art Peterson
Willis Kirkpatrick

DRD:bb
wkb3/058

STATE OF ALASKA
THE LEGISLATURE

COPY

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 25, 1988

SUBJECT: HCS CSSB 93 (Judiciary)

TO: Art Peterson
Assistant Attorney General
Department of Law

FROM: David R. Dierdorff
Revisor of Statutes

I have reviewed your bill review letter for HCS CSSB 93 (Jud) in which you request that I consider making a change in the language of AS 06.05.180(10), as added by sec. 1 of the instant bill. I have also reviewed our work file to determine the drafting history and development of the bill.

While I sympathize with the fact that the end product may not have reflected the actual intent of some people, the error is not apparent on the face of the bill, and the material available to me gives no indication that a clerical or similar error was made. To the contrary, the House Labor and Commerce Committee CS accurately reflected the desire of the parties involved as expressed in drafting requests and other material in our confidential files. The fact that the parties may have misunderstood the effect of their desired language does not amount to a manifest error that the revisor may correct under AS 01.05.031(b).

Under the circumstances, I am afraid that the error must be corrected legislatively. I would suggest that Senator Duncan or the Department of Commerce and Economic Development ask the Senate Judiciary Committee to include a correction in CSSB 413 (Jud) (the 1988 revisor's bill) now being considered by that committee. I will certainly cooperate in the preparation of the necessary amendment to that bill.

cc: Senator Jim Duncan
Willis Kirkpatrick

DRD:bb
wkb3/038

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

February 23, 1988

COPY

Honorable Steve Cowper
Governor
State of Alaska
P.O. B.x A
Juneau, AK 99811

Re: HCS CSSB 93 (Jud) -- invest-
ments by financial institu-
tions
Our file no. 883-88-0009

Dear Governor Cowper:

At Judy Fleming's request on your behalf, we have reviewed HCS CSSB 93(Jud), which adds to those investments that are permissible for state financial institutions (banks). In situations where a bank is authorized to invest in obligations of the United States government, the bill will allow the bank to invest in those obligations through a money market mutual fund, if the mutual fund's portfolio is invested solely in the same United States government obligations. Despite a flaw in the bill, which we hope that the revisor of statutes will be able to correct, we recommend that you sign the bill.

Section 1 of the bill deals with those cases where the bank is acting in its fiduciary capacity as a trustee. The current state law does not appear to restrict or prohibit a bank acting as trustee from investing trust money in United States government obligations. Current AS 06.05.180(8) provides that the bank may "receive, manage, hold and dispose of according to the terms of any trust or power any property or estate, real or personal, which may be the subject of any such trust or power." Dale Staley, assistant to Senator Jim Duncan (sponsor of SB 93) indicated that there was some uncertainty in the banking community regarding authority to make such investments, and the bill was intended to express that authority and remove any doubt. It did so by providing that the bank may "invest in the obligations either directly or in the form of securities of, or other interests in, an open-end management type investment company...."

At the suggestion of the division of banking, etc., the Senate Judiciary Committee inserted the words "with the approval of the trustor" in front of the investment language. This was intended to protect the trustor from unwanted investments of the trust money in such investment companies. One of the

disadvantages of those investments is the additional fee charged to the trustor by the investment company, in addition to the fee charged by the bank for handling the trust. The bill passed the Senate in that form.

In the House, the Labor and Commerce Committee, as something of a compromise and agreed to by the division of banking, etc., changed the trustor approval language to a clause that allowed such investments only "for short-term cash management purposes." (The House Judiciary Committee version retained that language, while adding a reference to the African Development Bank in sec. 2.) The Labor and Commerce Committee substitute also inserted a reference to "a money market mutual fund operating as" in front of "an open-end management type investment company...."

The problem in the bill arises because the "for short-term cash management purposes" clause was put in the wrong place. As we understand it, there was no intent by either the original sponsor, anyone else in the legislature, or the division of banking, etc., to restrict a bank's authority to "directly" invest in these United States government obligations. It was only with regard to the "money market mutual fund operating as an open-end management type investment company..." that the short-term cash management restriction was to apply. However, the bill, as passed by the legislature, applies the restriction to both types of investment. It provides that a bank may "invest in the [United States government] obligations, for short-term cash management purposes, either directly or in the form of securities of ... a money market mutual fund operating as an open-end management type investment company...." Clearly, that qualifying clause applies both to the direct investments and to investments in the form of money market mutual fund shares. To accurately convey the intent, as it has been described to us, the relevant part of the new AS 06.05.180(10) should be amended to read as follows:

... invest in the obligations, [FOR SHORT-TERM CASH MANAGEMENT PURPOSES,] either directly or, for short-term cash management purposes, in the form of securities of, or other interests in, a money market mutual fund operating as an open-end management type investment company...."

By a copy of this letter, we are calling this to the attention of the revisor of statutes, for possible correction under his authority granted by AS 01.05.031(b) or AS 01.05.036.

Without the limitation, the bill specified broad

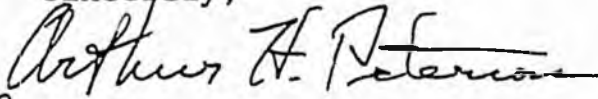
investment power for the trustee without allowing the trustor the right to determine whether he or she wanted this type of investment. Although the language in the final bill will allow these investments without trustor approval, the "short-term cash management" limitation made the bill more acceptable (than the original) to the division.

Section 2 of the bill amends AS 06.05.270(a) to allow a state bank to make this type of investment for its own account, but without the "short-term" limitation and without the reference to "a money market mutual fund." Thus a bank's investment authority when not acting as a trustee will be broader than when it is acting as a trustee.

In addition, in the House Judiciary Committee version (final), this section also will permit state banks to invest in obligations of the African Development Bank. This latter provision was apparently made at the request of the United States State Department, which has made similar requests in other states. It is not expected to have any significant impact on Alaska financial institutions.

The proposed Act is supported by the Department of Commerce and Economic Development. Other than the language problem discussed above, it does not present any constitutional or legal problems.

Sincerely,


for Grace Berg Schaible
Attorney General

GBS:AHP:JWB:cb:nb

cc: Hon. Tom Smith, Commissioner
Department of Commerce and
Economic Development

Willis Kirkpatrick, Director
Division of Banking, Securities,
and Corporations
Department of Commerce and
Economic Development

David Dierdorff
Revisor of Statutes
Legislative Affairs Agency

A M E N D M E N T

Offered in the SENATE JUDICIARY COMMITTEE

By Duncan

TO: CSSB 413 (Judiciary)

Page 2, line 29, following "* Sec. 8." through page 3, line 7:

Delete all material.

Insert: "AS 06.05.180, as amended by sec. 1, ch. 7, SLA 1988, is amended to read:

Sec. 06.05.180. POWERS AS TRUSTEE AUTHORIZED. Every bank organized under this chapter, subject to the restrictions and limitations of laws and the regulations of the department, may

(1) act as trustee under any mortgage or bond issued by the state, or any municipality, body politic, or corporation, foreign or domestic, and accept and execute any municipal or corporate trust not prohibited by the laws of this state;

(2) accept a trust from, and execute a trust for a married woman in respect to the married woman's separate property, and act as agent in the management of the property or transact any business in relation to the property;

(3) act under the order or appointment of a court of competent jurisdiction including any probate court as guardian, receiver, or trustee of the estate of a minor, and as depository of money paid into court for the benefit of any person, corporation, or party, and in any other fiduciary capacity;

(4) act under the order or appointment of a court of

competent jurisdiction including any probate court as trustee, guardian, receiver or committee of the estate of an incapacitated person, as defined in AS 13.26.005, or of a [LUNATIC, IDIOT,] spendthrift, [PERSON OF UNSOUND MIND OR HABITUAL DRUNKARD,] or as receiver or committee of the property or estate of a [ANY] person in insolvency or bankruptcy proceedings;

(5) act as executor or administrator with or without the will annexed of the estate of a deceased person;

(6) accept and execute any legal trust, duty and power in regard to the holding, management and disposition of any estate, real or personal, wherever located, and the rents and profits from it, or the sale of it, as may be granted or confided to it by a court of competent jurisdiction including any probate court or by any person, corporation, municipality or other authority, and is accountable to all parties in interest for the faithful discharge of every trust, duty, or power which it may accept;

(7) accept and execute any trust or power conferred upon it by any person or any body politic or domestic or foreign corporation, or any other authority, grant, assignment, transfer, devise, bequest or otherwise, or which may be entrusted or committed or transferred to it by order of a court of competent jurisdiction including any probate court;

(8) receive, manage, hold and dispose of according to the terms of any trust or power any property or estate, real or personal, which may be the subject of any such trust or power;

(9) act as the fiscal or transfer agent of the United

States or of any state, territory, municipality, or other body politic, and in this capacity may receive and disburse moneys, transfer, register and countersign certificates of stocks, bonds, or other evidences of indebtedness;

(10) whenever the instrument or power governing the fiduciary relationship directs, requires, authorizes, or permits investment in obligations of the United States government, invest in the obligations, [FOR SHORT-TERM CASH MANAGEMENT PURPOSES,] either directly or, for short-term cash management purposes, in the form of securities of, or other interests in, a money market mutual fund operating as an open-end management type investment company or investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), if

(A) the portfolio of the investment company or investment trust is limited to obligations of the United States government and repurchase agreements fully collateralized by the obligations; and

(B) the investment company or investment trust takes delivery of the collateral directly or through an authorized custodian."

STATE OF ALASKA



SENATE JUDICIARY COMMITTEE

SEN. JAY KERTTULA
SEN. ARLISS STURGULEWSKI
SEN. JAN FAIKS
SEN. JOE JOSEPHSON
SEN. PAT RODEY

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3717
(907) 465-3771

DATE: FEBRUARY 26, 1988
TO: SENATE JUDICIARY COMMITTEE
FROM: SENATOR JAY KERTTULA
RE: SB 413 (REVISOR'S BILL)

Attached is a copy of the new committee substitute and sectional for CSSB 413 (Jud). Please review and pass your comments on to Sen. Sturgulewski and her staff. She is the chairman of the Revisor's bill subcommittee.

STATE OF ALASKA
THE LEGISLATURE

FEB 23 1988

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 24, 1988

SUBJECT: Draft CSSB 413 (revisor's bill)

TO: Senator Jay Kerttula
Chairman
Senate Judiciary Committee

FROM: David R. Dierdorff 
Revisor of Statutes

Enclosed is a draft committee substitute for SB 413, the 1988 revisor's bill. The draft incorporates the amendment reviewed by the committee on February 23. The amendment added secs. 7 - 11, 26, 29, 30, and 32; substituted new text for sec. 11 of the printed bill (now sec. 16 in the CS); and added provisions to the repealer in sec. 37.

The following sectional analysis consolidates the analyses prepared for the original bill and for the amendment.

SUMMARY OF EFFECT

To assist you in understanding the draft, I have summarized the contents by grouping sections that have similar effects.

Sections that delete or repeal obsolete provisions:

Sections 22, 24, 29, 30 and 37 of the bill delete or repeal provisions that have become obsolete either through the passage of time or other legislative action. Please note that all of the repealers are in sec. 37, a departure from the style of previous revisor's bills, in which we located repealed provisions in numerical order. The change was made to accommodate our automated "statutes affected" program in BASIS. The text of each substantive AS section proposed for repeal is attached to this memorandum as an Appendix.

Sections that update obsolete or archaic provisions:

The following sections of the bill substitute new provisions for provisions that are obsolete, archaic, or otherwise outdated, and make conforming changes in related provisions as necessary: 1-6, 8, 11, 16, 20, 21, 28, and 31.

Sections that eliminate conflicts with other laws:

Sections 34 and 35 resolve a conflict between related provisions of the statutes.

Sections that correct errors or oversights:

The following sections of the bill correct errors or oversights in drafting, or make conforming amendments to harmonize laws passed during the same legislative session that could not be harmonized editorially: 7, 9, 10, 12-15, 17-19, 23, 25-27, 33, and 36.

Sections that improve the form of the statutes:

Section 32 adds a definition section applicable to all of AS 41. Related repealers in sec. 37 repeal individual definitions in portions of AS 41 that would be unnecessary with the enactment of the new provision.

SECTIONAL ANALYSIS

Sections 1 - 6. These sections change the phrase "wine gallons" to "gallons" in six sections of AS 04. Webster's New World Dictionary, 2nd college ed., defines "wine gallon" as "the old English gallon of 231 cu. in., now the standard gallon in the U.S." Consequently, these sections of the bill delete the archaic usage.

Sec. 7. This section amends AS 06.05.095 to correct an error in the original 1951 enactment. As enacted, the section was internally contradictory and did not say what it meant. If the amendment is enacted, the language of the section will conform to the interpretation that the section has always been given by the financial community.

Sec. 8. The proposed amendment to AS 06.05.180 (setting out the authorized trust powers of banks) updates the language used in referring to incapacitated persons.

Secs. 9 and 10. These sections amend two provisions relating to unclaimed property upon voluntary liquidation of

a bank to reflect the 1986 enactment of new laws on unclaimed or abandoned property. As drafted, the amendments do the bare minimum to accomplish the purpose. The legislature may desire to amend the provisions further by eliminating the references to holding the property for five years and simply provide for disposition under AS 34.45.110 - 34.45.780.

Sec. 11. This section proposes an amendment to AS 06.-25.140, relating to the powers of trust companies, to update the language used to refer to incapacitated persons.

Sec. 12. Section 48, ch. 94, SLA 1987 deleted the reference to the Board of Electrical Examiners from the list in AS 08.01.010 that sets out the regulated occupations and professions that are subject to the centralized licensing provisions of AS 08.01. Instead of deleting the reference to the board (which was eliminated through repeal in the same legislation), the provision should have been amended to refer to the regulation of the occupation. Section 7 of the draft corrects this oversight.

Sec. 13. The language proposed for deletion became redundant when AS 08.01.010 was amended in 1987 to include the Real Estate Commission. AS 08.01.110(1) defines "board" to include a commission listed in AS 08.01.010.

Sec. 14. AS 08.01.065(c) was amended by sec. 1, ch. 87, SLA 1987, and repealed and reenacted by sec. 5, ch. 94, SLA 1987. The first amendment, however, had a later effective date than the repeal and reenactment, and because it added a sentence to the subsection, it was determined by the revisor that the ch. 94 amendment did not supersede the ch. 87 amendment. The Department of Law had advised the governor, in its bill review letters on the two Acts, that if the governor signed CSHB 222(Fin) am S (which became ch. 94) after he signed SCS CSHB 70(Jud) am S (which became ch. 87), the former would supersede the latter under the later enactment theory. The proposed amendment in sec. 14 of the bill would delete the language added by sec. 1, ch. 87, which is redundant to the provisions of the subsection as repealed and reenacted by ch. 94, and carry out the apparent legislative intent of the 1987 legislation.

Sec. 15. This section corrects an oversight in drafting ch. 94, SLA 1987, by substituting "department" for a

reference to the Board of Electrical Administrators, which was eliminated by repeal in ch. 94.

Sec. 16. This section substitutes the word "unintentional" for the word "casual" in AS 09.45.730. In Matanuska Elec. Ass'n v. Weissler, 723 P.2d 600, the supreme court of Alaska construed the term "casual" to mean "unintentional," but noted that the usage was derived from an 1848 New York code, later used as a model for an early Oregon law and then Alaska's law, and had a 19th century meaning. The amendment is suggested to update the language in conformity with the court's construction. The section is also amended to substitute current Alaska usage for the terms "village, town, or city" and to make other changes to conform to current style.

Sec. 17. This section amends AS 12.55.035(b) to incorporate a reference to sexual abuse of a minor in the first degree in a listing of unclassified felonies. This corrects an oversight dating back to the 1983 change in the classification of that offense.

Sections 18 and 19. These sections correct the error in the 1987 amendments to AS 14.03.070 and 14.03.080(d) relating to school age. The 1987 bill was vetoed by the governor because of the error, but the veto was overridden in the special session on the assurance that the error would be corrected before the effective date of ch. 1, FSSLA 1987 (July 1, 1988). In sec. 18, the language "or who will become six years of age" is proposed for deletion because it is redundant. A similar amendment was made in AS 14.03.-080(d) in the 1987 legislation.

Sec. 20. AS 14.17.140(c) was deleted from that section in 1986, making the reference to the subsection in AS 14.11.-115(c)(1) obsolete. The proposed amendment would substitute the substance of former AS 14.17.140(c) for the existing reference in AS 14.11.115(c)(1).

Sec. 21. In 1982, AS 14.25.063(b)(2) was amended, deleting the language of that section that concerned options. The proposed amendment simply inserts "former" before the reference to AS 14.25.063(b)(2) in AS 14.25.110(g).

Sec. 22. In ch. 78, SLA 1987, the penalty for violations of the compulsory attendance law was reduced to a violation. The language proposed for deletion from AS 14.30.030 is no

longer appropriate as a result of that amendment. A court would normally issue a summons to a person charged with a violation, and issue a warrant only if the person failed to appear. The subject is adequately covered by other statutes and the Rules of Court.

Sec. 23. Section 5, ch. 92, SLA 1987, added AS 14.43.-120(d)(4), but the language of the paragraph as enacted did not reflect legislative intent. As enacted, the default rate necessary for disqualification would be 250 percent of the program default rate, rather than the 150 percent the legislature intended. The amendment rewrites the paragraph to reflect the legislature's intent. The amendment was requested by the Department of Law on behalf of the Commission on Postsecondary Education.

Sec. 24. This section amends AS 15.13.020(d), relating to the terms of members of the Alaska Public Offices Commission, by deleting obsolete material relating to initial terms of members. The repeal and reenactment method was used to allow the subsection to be reorganized for clarity.

Sec. 25. In 1977, AS 15.25.040(a) was amended to include a reference to paragraphs "(1)-(16)" of AS 15.25.030. At that time, AS 15.25.030 contained only paragraphs (1)-(15). The error was not corrected editorially, however. In 1980, AS 15.25.030 was amended to include a paragraph (16). The amendment proposed by this section corrects the error and formally amends the provision to properly include a reference to paragraph (16) as added in 1980.

Sec. 26. This section corrects an error in the 1980 amendment to AS 23.20.350. This error could be corrected editorially by the revisor under AS 01.05.031(b), as a manifest error in the enactment, but I felt that the legislature should have the opportunity to review the provision and the proposed correction because of its importance to the calculation of unemployment benefits.

Sec. 27. The amendment to AS 24.60.030(c) proposed by this section adds "or" between paragraphs (1) and (2) of the subsection to correct a drafting oversight and clarify legislative intent. Without the conjunction, the rules of statutory construction could require that the provisions of the two paragraphs be read together, which would be contrary to our understanding of the legislative intent.

Sec. 28. The amendment to AS 28.10.441(8) updates a reference by substituting a reference to current provisions for the existing reference to former provisions.

Secs. 29 and 30. Last year the legislature passed ch. 48, SLA 1987, relating to mental health trust land. As a part of that Act, AS 37.14.010 - 37.14.050 were repealed. Those sections had established the mental health fund and provided for its administration. The new provisions included the establishment of the mental health trust income account (AS 37.14.011). The 1987 legislation, however, failed to address references in AS 37.14.160 and 37.14.170 to two of the provisions that were repealed. Sections 29 and 30 address that oversight, by deleting the references and making related changes in the language to reflect the fact that the provisions of AS 37.14.160 and 37.14.170 will now apply only to the public school fund and the related advisory board.

Sec. 31. The proposed amendment deals with old language that appears to be internally inconsistent. The existing language provides "Except as otherwise provided by law . . . the provisions of this section . . . govern exclusively and supersede all other provisions of law . . ." (Emphasis added). Logic suggests that if the provisions of AS 39.20.-180 are exclusive and supersede all other provisions, no other provision may provide to the contrary. The proposed amendment deletes some obsolete language and resolves the inconsistency by deleting the "supersedes" language. Obviously, the problem could be resolved by retaining the "supersedes" language and deleting the introductory clause relating to other provisions.

Sec. 32. This section adds a definition section to AS 41. There are currently definitions of "commissioner" for five chapters in AS 41, and of "department" in three chapters. All definitions are for the commissioner of natural resources or the Department of Natural Resources. The enactment of the definitions for the title, and the related repeal of the eight existing definitions (in sec. 37), is consistent with the preferred approach in the Alaska Statutes in titles that primarily involve one department.

Sec. 33. The division of telecommunications was repealed in 1987 by Executive Order No. 66. A reference to the division in AS 44.21.160(f) was not changed. The amendment proposed by this section corrects that oversight.

Secs. 34 and 35. AS 44.81.270(b), added by sec. 7, ch. 49, SLA 1987, conflicts with the existing provisions of AS 44.-81.270. The amendments proposed by secs. 34 and 35 resolve the conflict by incorporating the substance of the last sentence of (b) into (a), and deleting the last sentence of (b).

Sec. 36. As a part of the new municipal code (ch. 74, SLA 1985), AS 44.85.270(i) was amended to substitute a reference to AS 29.14.010 for a reference to AS 29.18.510. However, AS 29.14, which had been proposed in earlier drafts of the municipal code as a reenactment of AS 29.18.510 - 29.18.610, was dropped from the draft before passage. Consequently, there is no AS 29.14.010 in the Alaska Statutes. (AS 29.-18.510 - 29.18.610, enacted in 1978, have never become law, because the terms of the effective date provision have not been met; see sec. 7, ch. 143, SLA 1978.) The amendment proposed by this section deletes the language relating to the nonexistent law.

Sec. 37. This section contains the repeal of obsolete sections. AS 08.40.080 is obsolete as a result of the passage of ch. 94, SLA 1987. AS 15.05.016 is obsolete as a result of the elimination of the voter's certificate by ch. 116, SLA 1972. AS 15.15.213 was deleted from AS editorially after the passage of ch. 100, SLA 1980, which enacted virtually identical provisions (found in AS 15.15.198(a)). AS 19.10.220, and AS 19.25.110 and 19.25.120 are obsolete because of the passage of time. The sections in AS 41 proposed for repeal contain definitions of "commissioner" and "department" that would be redundant to the definitions enacted in sec. 32 of the bill. AS 44.33.020(11) is obsolete as a result of the passage of ch. 94, SLA 1981. AS 44.81.010(c) became obsolete by its own terms after fiscal year 1979.

Sec. 38. This section gives a special effective date to the sections amending the school age law to tie the effective date of the amendments to the effective date of the 1987 amendments.

Sec. 39. Gives the remainder of the bill an immediate effective date.

Enclosure

cc: Representative John Sund
Art Peterson, Department of Law

DRD:bb
wkb3/029

APPENDIX - REPEALED PROVISIONS

Sec. 08.40.080. Compensation of board members. Members of the board are entitled to payments, per diem allowances and transportation expenses allowed by law and paid members of other state examining and licensing boards. (§ 6 ch 158 SLA 1960)

Sec. 15.05.016. Fee prohibited. No person may receive a fee from a voter for attesting to a voter's certificate required by § 14 of this chapter. (§ 1 ch 69 SLA 1967)

Sec. 15.15.213. Questioning a voter's ballot. If his polling place is in question a voter shall be allowed to vote, and any election official shall consider the ballot as a questioned ballot. (§ 13 ch 228 SLA 1968; am § 23 ch 116 SLA 1972)

Sec. 19.10.220. Prior contracts unaffected. Sections 170—250 of this chapter do not apply to contracts entered into before April 1, 1957. (§ 8 art III title IV ch 152 SLA 1957)

Sec. 19.25.110. Removal of nonconforming advertising. A sign, display or device which is lawfully in existence along the interstate system or the primary system on August 6, 1968 and which is not in conformity with §§ 80—180 of this chapter may not be required to be removed until July 1, 1970. A sign, display or device which is lawfully in existence along the secondary system on July 1, 1970 and which is not in conformity with §§ 80—180 of this chapter shall be removed by July 1, 1971. (§ 5 ch 59 SLA 1949; added by § 1 ch 86 SLA 1953; am § 1 ch 112 SLA 1955; am § 3 ch 233 SLA 1968; am § 44 ch 69 SLA 1970; am § 4 ch 155 SLA 1970)

Effect of amendments.—The 1968 amendment rewrote this section.

The first 1970 amendment deleted a former second sentence.

The second 1970 amendment added the present second sentence.

Legislative committee report.—For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 19.25.120. Neglect or refusal to obey removal order. A person who fails to obey an order issued under § 110 of this chapter is subject to the penalty provided in § 130 of this chapter. Each day the person neglects or refuses to obey the order is a separate offense. (§ 6 ch 59 SLA 1949; added by § 1 ch 86 SLA 1953; am § 2 ch 112 SLA 1955)

Sec. 44.33.020. Duties of department. The Department of Commerce and Economic Development shall

(11) before the commencement of each calendar quarter, furnish lending institutions, title insurance companies, mortgage companies and clerks of the respective superior courts with the 12th Federal Reserve District discount rate that is to be used during that calendar quarter for computing the maximum rate of interest under AS 45.45.010(b);

Sec. 44.81.010. Alaska Commercial Fishing and Agriculture Bank.

(c) After the board of directors has completed the necessary organizational matters described in former AS 44.81.030 and in 44.81.040, the commissioner of revenue may purchase with funds from the general fund up to \$2,000,000 of preferred stock of the bank during fiscal year 1979 at such time and with terms agreed upon by the commissioner and the board. (§ 3 ch 159 SLA 1978; am § 1 ch 53 SLA 1979; am § 12 ch 122 SLA 1980; am § 1 ch 109 SLA 1981; am § 65 ch 21 SLA 1985; am § 1 ch 49 SLA 1987)

5-1406B

Dierdorff
2/24/83

Original sponsor: Rules/Legislative Council

1 IN THE SENATE

THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 413 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSICN

5 A BILL

6 For an Act entitled: "An Act making corrective amendments to the Alaska
7 Statutes as recommended by the revisor of statutes;
8 and providing for an effective date."

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

10 * Section 1. AS 04.11.120(b) is amended to read:

11 (b) A sale under a bottling works license may be made only to a
12 person licensed under this title and only in quantities of more than
13 five [WINE] gallons.

14 * Sec. 2. AS 04.11.130(b) is amended to read:

15 (b) A brewery license authorizes the holder to sell beer in
16 quantities of more than five [WINE] gallons to persons licensed to
17 sell beer under this title.

18 * Sec. 3. AS 04.11.140(b) is amended to read:

19 (b) A winery license authorizes the holder to sell wine to
20 persons licensed under this title in quantities of more than five
21 [WINE] gallons.

22 * Sec. 4. AS 04.11.160(b) is amended to read:

23 (b) A wholesale malt beverage and wine license authorizes the
24 holder to sell malt beverages and wine in the original packages in
25 quantities of not less than five [WINE] gallons. The holder of a
26 wholesale malt beverage and wine license may not sell to a person not
27 licensed under this title except as provided in AS 04.21.040. The
28 annual wholesale malt beverage and wine license fee is \$200 for the
29 first \$20,000 of business transacted during a year, payable at the

1 time of making an original application or application for renewal. In
 2 addition, the following annual fees shall be paid by a holder of a
 3 wholesale malt beverage and wine license:

Business Transacted During Year	Fee
over \$20,000 and not over \$50,000	\$ 300
over \$50,000 and not over \$100,000 . . .	\$ 1,000
over \$100,000 and not over \$150,000 . . .	\$ 1,500
over \$150,000 and not over \$200,000 . . .	\$ 2,000
over \$200,000 and not over \$400,000 . . .	\$ 4,000
over \$400,000 and not over \$600,000 . . .	\$ 6,000
over \$600,000 and not over \$800,000 . . .	\$ 8,000
over \$800,000	\$10,000

13 * Sec. 5. AS 04.11.200(b) is amended to read:

14 (b) A sale by a holder of a retail stock sale license may only
 15 be in quantities of five [WINE] gallons or more per sale and may only
 16 be to persons licensed under this chapter.

17 * Sec. 5. AS 04.16.130(b) is amended to read:

18 (b) This section does not apply to stocks of beer carried on a
 19 delivery truck by a licensed wholesaler if carried for the purpose of
 20 sale and delivery to persons licensed under this title in quantities
 21 of not less than 10 [WINE] gallons for each sale.

22 * Sec. 7. AS 06.05.095 is amended to read:

23 Sec. 06.05.095. PAYMENT OF ITEMS. If the balance in an [ANY]
 24 account subject to withdrawal by or upon the order of a depositor is
 25 insufficient to pay an [EQUALS OR EXCEEDS THE AMOUNT OF ANY] item
 26 presented for payment, a bank may select from the items that [WHICH]
 27 in the aggregate exceed the balance the items to be paid in the [ANY]
 28 order convenient to the bank.

29 * Sec. 8. AS 06.05.180(4) is amended to read:

1 (4) act under the order or appointment of a court of compe-
2 tent jurisdiction including any probate court as trustee, guardian,
3 receiver or committee of the estate of an incapacitated person, as
4 defined in AS 13.26.005, or of a [LUNATIC, IDIOT,] spendthrift, [PER-
5 SON OF UNSOUND MIND OR HABITUAL DRUNKARD,] or as receiver or committee
6 of the property or estate of a [ANY] person in insolvency or bankrupt-
7 cy proceedings;

8 * Sec. 9. AS 06.05.465(f) is amended to read:

9 (f) The contents of safe deposit boxes which have not been
10 removed within 30 days after demand shall be opened and the contents
11 dealt with in the manner provided for boxes upon which the payment of
12 rental is in default, and the sealed packages containing the contents
13 and the certificates together with any other unclaimed property held
14 by the bank as bailee and certified inventories of that property shall
15 be transferred to the department which shall retain it for five years
16 unless claimed by the person entitled to it before that time. After
17 five years the department shall [SELL OR OTHERWISE APPROPRIATELY]
18 dispose of the property under AS 34.45.110 - 34.45.780. [THE PROCEEDS
19 OF ANY SALE SHALL BE TRANSFERRED TO THE STATE TREASURY AND SHALL BE
20 DEPOSITED IN THE GENERAL FUND.]

21 * Sec. 10. AS 06.05.465(i) is amended to read:

22 (i) Any unclaimed distribution to a stockholder or a depositor
23 shall be held until 90 days after the final distribution and then
24 transmitted to the department. Unclaimed funds of a stockholder or a
25 depositor shall be held by the department for five years and, unless
26 claimed by the person entitled to them before that date, shall be
27 disposed of under AS 34.45.110 - 34.45.780 [TRANSFERRED TO THE STATE
28 TREASURY AND DEPOSITED IN THE GENERAL FUND].

29 * Sec. 11. AS 06.25.140 is amended to read:

1 Sec. 06.25.140. ESTATES OF INCAPACITATED PERSONS [INCOMPETENTS].

2 A trust company may act under the order or appointment of a court of
3 competent jurisdiction including any probate court as trustee, guard-
4 ian, receiver or committee of the estate of an incapacitated person,
5 as defined in AS 13.26.005, or of a [LUNATIC, IDIOT,] spendthrift,
6 [PERSON OF UNSOUND MIND OR HABITUAL DRUNKARD,] or as receiver or
7 committee of the property or estate of a [ANY] person in insolvency or
8 bankruptcy proceedings, and act as executor or administrator with or
9 without the will annexed of the estate of a [ANY] deceased person.

10 * Sec. 12. AS 08.01.010 is amended by adding a new paragraph to read:

11 (28) regulation of electrical administrators under AS 08.40.

12 * Sec. 13. AS 08.01.035 is amended to read:

13 Sec. 08.01.035. APPOINTMENTS AND TERMS. Members of boards
14 subject to this chapter [AND MEMBERS OF THE REAL ESTATE COMMISSION
15 UNDER AS 08.88] are appointed for staggered terms of four years. A
16 member of a board serves until a successor is appointed. An appoint-
17 ment to fill a vacancy on a board is for the remainder of the un-
18 expired term. A member who has served all or part of two successive
19 terms on a board may not be reappointed to that board unless four
20 years have elapsed since the person has last served on the board.

21 * Sec. 14. AS 08.01.065(c) is amended to read:

22 (c) A fee established under this section should reflect, but
23 should not exceed, the actual costs to the department of the activity
24 for which the fee is charged except that the department may establish
25 a fee that is less than the cost of the activity for which the fee is
26 charged if the department determines that it is not reasonable to
27 impose the full cost of the activity on the applicant or licensee.
28 [THE ACTUAL OR ANTICIPATED COSTS TO THE DEPARTMENT OF SERVICES PROVID-
29 ED TO OR ON BEHALF OF A BOARD MUST REFLECT, TO THE EXTENT POSSIBLE,

1 THE AMOUNT OF FEES THE DEPARTMENT COLLECTS FROM PERSONS IN OCCUPATIONS
2 REGULATED BY THE BOARD.]

3 * Sec. 15. AS 08.40.190(c) is amended to read:

4 (c) Work within the exclusionary provisions of this section is
5 nevertheless subject to the inspection provisions of AS 08.40.070 and
6 must follow the regulations regarding workmanship adopted by the
7 department [BOARD].

8 * Sec. 16. AS 09.45.730 is amended to read:

9 Sec. 09.45.730. TRESPASS BY CUTTING OR INJURING TREES OR SHRUBS.
10 A person who without lawful authority cuts down, girdles, or otherwise
11 injures or removes [CARRIES OFF] a tree, timber, or a shrub on (1)
12 the land of another person or on the street or highway in front of a
13 person's house, or (2) [OF] a village [, TOWN,] or municipal [CITY]
14 lot, or cultivated grounds, or [ON] the commons or public land
15 [GROUNDS] of a village [, TOWN,] or municipality [CITY], or (3) [ON]
16 the street or highway in front of land described in (2) of this sec-
17 tion [THEM, WITHOUT LAWFUL AUTHORITY], is liable to the owner of that
18 land, or to the village [, TOWN,] or municipality [CITY] for treble
19 the amount of damages which may be assessed in a civil action. Howev-
20 er, if the trespass was unintentional [CASUAL] or involuntary, or the
21 defendant had probable cause to believe that the land on which the
22 trespass was committed was the defendant's own or that of the person
23 in whose service or by whose direction the act was done, or where the
24 timber was taken from unenclosed woodland for the purpose of repairing
25 a public highway or bridge on or adjoining [UPON] the land 'OR ADJOIN-
26 ING IT], only actual damages may be recovered.

27 * Sec. 17. AS 12.55.035(b) is amended to read:

28 (b) Upon conviction of an offense, a defendant who is not an
29 organization may be sentenced to pay, unless otherwise specified in

1 the provision of law defining the offense, a fine of no more than

2 (1) \$75,000 for murder in the first or second degree,
3 sexual assault in the first degree, sexual abuse of a minor in the
4 first degree, kidnapping, or misconduct involving a controlled sub-
5 stance in the first degree;

6 (2) \$50,000 for a class A, B, or C felony;

7 (3) \$5,000 for a class A misdemeanor;

8 (4) \$1,000 for a class B misdemeanor;

9 (5) \$300 for a violation.

10 * Sec. 18. AS 14.03.070 is amended to read:

11 Sec. 14.03.070. SCHOOL AGE. A child who is six years of age [OR
12 WHO WILL BECOME SIX YEARS OF AGE] before August 15 following [PRECED-
13 ING] the beginning of the school year, and who is under the age of 20
14 and has not completed the 12th grade, is of school age.

15 * Sec. 19. AS 14.03.060(d) is amended to read:

16 (d) A child who is five years of age before August 15 following
17 [PRECEDING] the beginning of the school year, and who is under school
18 age, may enter a public school kindergarten.

19 * Sec. 20. AS 14.11.115(c)(1) is amended to read:

20 (1) "debt" means the principal amount of the direct and
21 general obligation indebtedness of the municipality for which all
22 taxable property is subject to taxation to pay the bond, note or other
23 evidence of the debt, determined annually by the Department of Commu-
24 nity and Regional Affairs in consultation with each municipality that
25 is a school district and reported to the municipality and the commis-
26 sioner of education; the determination shall be made by October 1 and
27 report the outstanding debt as of July 1 of that year [IN ACCORDANCE
28 WITH AS 14.17.140(c)];

29 * Sec. 21. AS 14.25.110(g) is amended to read:

1 (g) A member who is eligible for a service retirement salary
2 under this chapter or under the Retirement Act of 1945 is entitled to
3 a benefit of at least \$25 per month for each year of credited service,
4 excluding adjustments made under AS 14.25.142 or 14.25.143. If the
5 member elected option two under former AS 14.25.063(b)(2) for payment
6 of any indebtedness when the member initially applied for a retirement
7 benefit, or if the member elected to receive an early retirement
8 benefit under (b) of this section, the resulting benefit reduction
9 continues in effect.

10 * Sec. 22. AS 14.30.030 is amended to read:

11 Sec. 14.30.030. REPORT OF VIOLATIONS AND PROCEDURES. The chief
12 administrative officer of a district school or regional educational
13 attendance area shall report all apparent violations of AS 14.30.010
14 to the governing body of the district. The governing body shall, on
15 receiving the report or on the complaint of any person, provide for a
16 full and impartial investigation of all charges of violation. In
17 private or federal schools, the chief administrative officer shall
18 make a full and impartial investigation of all apparent violations.
19 If it reasonably appears upon investigation that a person has violated
20 AS 14.30.010, the governing body of a district school or regional
21 educational attendance area, or the chief administrative officer of a
22 private or federal school, shall make and file with the district court
23 a complaint against the person, charging the violation. [THE JUDGE OR
24 MAGISTRATE MAY ISSUE A WARRANT FOR THE ARREST OF THE PERSON AND MAY
25 ACT UPON THE COMPLAINT.]

26 * Sec. 23. AS 14.43.120(d)(4) is amended to read:

27 (4) to attend an institution, other than a nonprofit insti-
28 tution, if the total amount of scholarship loans made to students to
29 attend that institution exceeds \$100,000 and the default rate on those

1 loans exceeds 150 percent of the program default rate [BY MORE THAN
2 150 PERCENT] as defined by regulation.

3 * Sec. 24. AS 15.13.020(d) is repealed and reenacted to read:

4 (d) Members of the commission serve staggered terms of five
5 years, or until a successor is appointed and qualifies. The terms of
6 no two members who are members of the same political party may expire
7 in consecutive years. A member may not serve more than one term.
8 However, a person appointed to fill the unexpired term of a predeces-
9 sor may be appointed to a successive full five-year term.

10 * Sec. 25. AS 15.25.040(a) is amended to read:

11 (a) The declaration is filed by either

12 (1) the actual physical delivery of the declaration in
13 person or by mail at or before 5:00 p.m., prevailing time, June 1 of
14 the year in which a general election is held for the office, or

15 (2) the actual physical delivery by telegram of a copy in
16 substance of the statements made in paragraphs (1) - (5) of the decla-
17 ration as required by AS 15.25.030 at or before 5:00 p.m., prevailing
18 time, June 1 of the year in which a general election is held for the
19 office and also the actual physical delivery of the declaration con-
20 taining paragraphs (1) - (16) [(1) - (15)] as required by AS 15.25.030
21 by registered mail which is received not more than 15 days after that
22 time.

23 * Sec. 26. AS 23.20.350(e) is amended to read:

24 (e) An individual who is eligible under (d) of this section is
25 entitled to receive a weekly benefit under this chapter for the number
26 of weeks set out in column (B) of the table in this subsection oppo-
27 site the applicable earnings ratio of the individual set out in column
28 (A):

29 (A)

(B)

Earnings Ratio	Number of Weeks
less than <u>1.50</u> [1.49]	16
1.50 - 1.99	18
2.00 - 2.49	20
2.50 - 2.99	22
3.00 - 3.49	24
3.50 or more	26

* Sec. 27. AS 24.60.030(c) is amended to read:

(c) Conflicts of interest are prohibited but there is not a conflict of interest if, as to a specific matter, there is no substantial impropriety or appearance of impropriety because

(1) the person's interest is relatively insignificant; or

(2) the person's authority is relatively far removed from any official action that could reasonably be affected by the potential conflict of interest, provided that no attempt has been made to remove the appearance of impropriety by delegating responsibility for official action.

* Sec. 28. AS 28.10.441(8) is amended to read:

(8) special permit for vehicle used for transport of disabled or handicapped person issued under AS 28.10.495 [AS PROVIDED IN AS 28.10.215] none.

* Sec. 29. AS 37.14.160 is amended to read:

Sec. 37.14.160. DUTIES OF COMMISSIONER OF REVENUE. The commissioner of revenue is the treasurer of the fund [FUNDS] created in AS 37.14.110 [AS 37.14.010 AND 37.14.110] and shall

(1) act as official custodian of the cash and securities belonging to the fund [THOSE FUNDS] and provide adequate safe deposit facilities for it [EACH OF THEM];

(2) receive cash belonging to the fund [THOSE FUNDS];

1 (3) collect the principal on securities acquired for the
2 [EACH] fund [ESTABLISHED UNDER AS 37.14.010 AND 37.14.110] and credit
3 the [EACH] fund accordingly;

4 (4) collect interest and dividends earned on investments of
5 the fund [FUNDS ESTABLISHED UNDER AS 37.14.010 AND 37.14.110] and
6 credit the income reserve account of the [EACH] fund accordingly;

7 (5) invest and reinvest the principal of the [EACH] fund in
8 accordance with AS 37.14.170.

9 * Sec. 30. AS 37.14.170 is amended to read:

10 Sec. 37.14.170. INVESTMENTS. (a) The commissioner of revenue,
11 with the approval of the [EACH] advisory board created in AS 37.14.120
12 [AS 37.14.020 AND 37.14.120], may invest the principal of the fund
13 [FUNDS] created in AS 37.14.110 [AS 37.14.010 AND 37.14.110] in the
14 same manner as specified for the investment of surplus pension funds
15 under AS 39.35.110.

16 (b) The commissic.ner of revenue may

17 (1) invest and reinvest the principal of the fund [FUNDS];

18 (2) sell, exchange, convey, transfer, or otherwise dispose
19 of investments of the fund [FUNDS] by private contract or at public
20 auction;

21 (3) vote upon a stock, bond, or other security; give a
22 general or special proxy or power of attorney with or without power of
23 substitution; exercise a conversion privilege, subscription right, or
24 other option and make payments incidental to it; consent to or partic-
25 ipate in a corporate reorganization or other change affecting corpo-
26 rate securities, delegate discretionary power, pay an assessment or
27 charge in connection with the delegation; and generally exercise any
28 of the powers of an owner with respect to stocks, bonds, securities,
29 or other investments held in the fund [FUNDS];

1 (4) make, execute, acknowledge, and deliver documents of
2 transfer and conveyance and instruments necessary or appropriate to
3 carry out the powers granted;

4 (5) register investments held in the [A] fund in the name
5 of the public school fund advisory board [HAVING THE POWER TO APPROVE
6 INVESTMENTS FOR A FUND];

7 (6) do all acts whether or not expressly authorized that
8 [WHICH] are considered proper for the protection of the investments
9 held in the fund [FUNDS].

10 * Sec. 31. AS 39.20.180 is amended to read:

11 Sec. 39.20.180. TRANSPORTATION AND PER DIEM EXPENSES FOR MEMBERS
12 OF BOARDS, COMMISSIONS, ETC. Except as otherwise provided by law,
13 [FROM AND AFTER MARCH 27, 1962,] the provisions in this section re-
14 lating to per diem and transportation govern exclusively [AND SUPER-
15 SEDE ALL OTHER PROVISIONS OF LAW] with respect to a member of a state
16 board, commission, committee, judicial council, or other similar body
17 of persons of the state organized or established under the authority
18 of law, but excluding any other state employee other than a legis-
19 lator, who is otherwise entitled by law to receive from the state
20 payments for expenses of transportation, and for reimbursement or for
21 per diem in lieu of reimbursement for other expenses incident to
22 duties as such member:

23 (1) for [FOR] transportation, the member is entitled either
24 to the use of state transportation requests, or to be reimbursed for
25 expenses of transportation to the same extent, in the same manner, and
26 under the same conditions as provided for state officials and employ-
27 ees by the provisions of AS 39.20.110 - 39.20.170; [.]

28 (2) for [FOR] reimbursement for other expenses, the member
29 is entitled to a per diem allowance prescribed by the commissioner of

1 administration under the regulatory authority set out in AS 39.20.160
2 for each day or portion of a day spent in actual meeting or on au-
3 thorized official business incident to duties as a member.

4 * Sec. 32. AS 41.99 is amended by adding a new section to read:

5 Sec. 41.99.900. DEFINITIONS. In this title, unless the context
6 requires otherwise,

7 (1) "commissioner" means the commissioner of natural re-
8 sources;

9 (2) "department" means the Department of Natural Re-
10 sources.

11 * Sec. 33. AS 44.21.160(f) is amended to read:

12 (f) The department [DIVISION OF DATA PROCESSING] shall provide
13 [COORDINATE WITH THE DIVISION OF TELECOMMUNICATIONS IN PROVIDING] for
14 the effective transfer of information by telecommunications through
15 the establishment of compatible systems and common standards.

16 * Sec. 34. AS 44.81.270(a) is amended to read:

17 (a) At the direction of the Legislative Budget and Audit Commit-
18 tee under AS 24.20.271, the [THE] legislative auditor may conduct an
19 audit of [CAUSE] the bank [TO BE AUDITED IN THE MANNER AND UNDER THE
20 CONDITIONS PRESCRIBED BY AS 24.20.271 FOR AUDITS PERFORMED BY THE
21 LEGISLATIVE AUDIT DIVISION]. The legislative audit division has free
22 access to all books and papers of the bank that relate to its business
23 and books and papers kept by a director, officer, or employee relating
24 to or upon which a record of its business is kept, and may summon
25 witnesses and administer oaths or affirmations in the examination of
26 the directors, officers, or employees of the bank or any other person
27 in relation to its affairs, transactions, and conditions, and may
28 require and compel the production of records, books, papers, con-
29 tracts, or other documents by court order if not voluntarily produced.

1 * Sec. 35. AS 44.81.270(b) is amended to read:

2 (b) The bank shall be audited annually by independent outside
3 auditors. The legislative auditor may confer with the outside audi-
4 tors and review the workpapers of the audit. [AT THE DIRECTION OF THE
5 LEGISLATIVE BUDGET AND AUDIT COMMITTEE UNDER AS 24.20.271, THE LEGIS-
6 LATIVE AUDITOR MAY CONDUCT AN AUDIT OF THE BANK.]

7 * Sec. 36. AS 44.85.270(i) is amended to read:

8 (i) All references to the "reserve fund" in this section include
9 special accounts within the reserve fund which may be created by the
10 authority to secure the payment of particular bonds [, INCLUDING,
11 WITHOUT LIMITATION, BONDS ISSUED BY THE CAPITAL CITY ESTABLISHED UNDER
12 AS 29.14.010]. The commissioner of revenue may lend surplus money in
13 the general fund to the authority for deposit to any account in the
14 reserve fund in an amount equal to the required debt service reserve.
15 The loans shall be made on such terms and conditions as may be agreed
16 upon by the commissioner of revenue and the authority, including,
17 without limitation, terms and conditions providing that the loans need
18 not be repaid until the obligations of the corporation secured and to
19 be secured by the account in the reserve fund are no longer outstand-
20 ing.

21 * Sec. 37. AS 08.40.080; AS 15.05.016; AS 15.15.213; AS 19.10.220;
22 AS 19.25.110, 19.25.120; AS 41.06.060(1); AS 41.15.170(1); AS 41.17.950(3),
23 41.17.950(4); AS 41.21.990(1), 41.21.990(2); AS 41.35.230(1), 41.35.230(3);
24 AS 44.33.020(11); and AS 44.81.010(c) are repealed.

25 * Sec. 38. Sections 18 and 19 of this Act take effect July 1, 1988.

26 * Sec. 39. Except for secs. 18 and 19, this Act takes effect immediate-
27 ly under AS 01.10.070(c).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

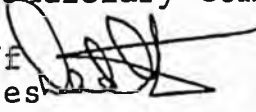
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 23, 1988

SUBJECT: Enclosed Amendment for SB 413 (revisor's bill)

TO: Senator Jay Kerttula
Chairman, Senate Judiciary Committee

FROM: David R. Dierdorff 
Revisor of Statutes

Enclosed is a proposed amendment to SB 413 for the consideration of the Judiciary Committee. With the exception of proposed new sections 29 and 30, the amendment has been reviewed by Senators Sturgulewski and Josephson. All proposals have been reviewed by the Department of Law.

SECTIONAL ANALYSIS

Sec. 7. This section amends AS 06.05.095 to correct an error in the original 1951 enactment. As enacted, the section was internally contradictory and did not say what it meant. If the amendment is enacted, the language of the section will conform to the interpretation that the section has always been given by the financial community.

Sec. 8. The proposed amendment to AS 06.05.180 (setting out the authorized trust powers of banks) updates the language used in referring to incapacitated persons.

Secs. 9 and 10. These sections amend two provisions relating to unclaimed property upon voluntary liquidation of a bank to reflect the 1986 enactment of new laws on unclaimed or abandoned property. As drafted, the amendments do the bare minimum to accomplish the purpose. The legislature may desire to amend the provisions further by eliminating the references to holding the property for five years and simply provide for disposition under AS 34.45.110 - 34.45.780.

Sec. 11. This section proposes an amendment to AS 06.-25.140, relating to the powers of trust companies, to update the language used to refer to incapacitated persons.

Sec. 16. On page three of the enclosed amendment new language is proposed for sec. 11 of the printed bill (sec. 16 after insertion of the preceding new bill sections). In the printed bill, the only amendment to AS 09.45.730 was the substitution of the word "unintentional" for the word "casual," to conform the language of the provision to the interpretation by our supreme court (see original sectional analysis, page 3, for a discussion of the original sec. 11). As suggested in the original discussion, the language of AS 09.45.730 was quite archaic, and, at the direction of Senators Sturgulewski and Josephson, I have proposed further changes to update the language used.

Sec. 26. This section corrects an error in the 1980 amendment to AS 23.20.350. This error could be corrected editorially by the revisor under AS 01.05.031(b), as a manifest error in the enactment, but I felt that the legislature should have the opportunity to review the provision and the proposed correction because of its importance to the calculation of unemployment benefits.

Secs. 29 and 30. Last year the legislature passed ch. 48, SLA 1987, relating to mental health trust land. As a part of that Act, AS 37.14.010 - 37.14.050 were repealed. Those sections had established the mental health fund and provided for its administration. The new provisions included the establishment of the mental health trust income account (AS 37.14.011). The 1987 legislation, however, failed to address references in AS 37.14.160 and 37.14.170 to two of the provisions that were repealed. Proposed secs. 29 and 30 address that oversight, by deleting the references and making related changes in the language to reflect the fact that these two provisions will now apply only to the public school fund and the related advisory board. The proposed solution was discussed with Representative Pourchot's office because of his involvement in the 1987 legislation and familiarity with the issues.

Sec. 32. This section proposes the addition of a definition section for AS 41. There are currently definitions of "commissioner" for five chapters in AS 41, and of "department" in three chapters. All definitions are for the commissioner

Senator Jay Kerttula
Page 3
February 23, 1988

of natural resources or the Department of Natural Resources. The enactment of the definitions for the title, and the related repeal of the eight existing definitions, is consistent with the preferred approach in the Alaska Statutes in titles that primarily involve one department.

cc: Senator Arliss Sturgulewski
Senator Joe Josephson
Art Peterson

Enclosure

DRD:bb
wkb3/021

A M E N D M E N T

Offered in the SENATE JUDICIARY COMMITTEE

TO: SB 413

Page 2, after line 21:

Insert new bill sections to read:

"* Sec. 7. AS 06.05.095 is amended to read:

Sec. 06.05.095. PAYMENT OF ITEMS. If the balance in an [ANY] account subject to withdrawal by or upon the order of a depositor is insufficient to pay an [EQUALS OR EXCEEDS THE AMOUNT OF ANY] item presented for payment, a bank may select from the items that [WHICH] in the aggregate exceed the balance the items to be paid in the [ANY] order convenient to the bank.

* Sec. 8. AS .06.05.180(4) is amended to read:

(4) act under the order or appointment of a court of competent jurisdiction including any probate court as trustee, guardian, receiver or committee of the estate of an incapacitated person, as defined in AS 13.26.005, or of a [LUNATIC, IDIOT,] spendthrift, [PERSON OF UNSOUND MIND OR HABITUAL DRUNKARD,] or as receiver or committee of the property or estate of a [ANY] person in insolvency or bankruptcy proceedings;

* Sec. 9. AS 06.05.465(f) is amended to read:

(f) The contents of safe deposit boxes which have not been removed within 30 days after demand shall be opened and the contents

dealt with in the manner provided for boxes upon which the payment of rental is in default, and the sealed packages containing the contents and the certificates together with any other unclaimed property held by the bank as bailee and certified inventories of that property shall be transferred to the department which shall retain it for five years unless claimed by the person entitled to it before that time. After five years the department shall [SELL OR OTHERWISE APPROPRIATELY] dispose of the property under AS 34.45.110 - 34.45.780. [THE PROCEEDS OF ANY SALE SHALL BE TRANSFERRED TO THE STATE TREASURY AND SHALL BE DEPOSITED IN THE GENERAL FUND.]

* Sec. 10. AS 06.05.465(i) is amended to read:

(i) Any unclaimed distribution to a stockholder or a depositor shall be held until 90 days after the final distribution and then transmitted to the department. Unclaimed funds of a stockholder or a depositor shall be held by the department for five years and, unless claimed by the person entitled to them before that date, shall be disposed of under AS 34.45.110 - 34.45.780 [TRANSFERRED TO THE STATE TREASURY AND DEPOSITED IN THE GENERAL FUND].

* Sec. 11. AS 06.25.140 is amended to read:

Sec. 06.25.140. ESTATES OF INCAPACITATED PERSONS [INCOMPETENTS]. A trust company may act under the order or appointment of a court of competent jurisdiction including any probate court as trustee, guardian, receiver or committee of the estate of an incapacitated person, as defined in AS 13.26.005, or of a [LUNATIC, IDIOT,] spendthrift, [PERSON OF UNSOUND MIND OR HABITUAL DRUNKARD,] or as receiver or committee of the property or estate of a [ANY] person in insolvency or

bankruptcy proceedings, and act as executor or administrator with or without the will annexed of the estate of a [ANY] deceased person."

Renumber following bill sections accordingly.

Page 3, line 21 through page 4, line 7:

Delete all material.

Insert:

"Sec. 09.45.730. TRESPASS BY CUTTING OR INJURING TREES OR SHRUBS. A person who without lawful authority cuts down, girdles, or otherwise injures or removes [CARRIES OFF] a tree, timber, or a shrub on (1) the land of another person or on the street or highway in front of a person's house, or (2) [OF] a village [, TOWN,] or municipal [CITY] lot, or cultivated grounds, or [ON] the commons or public land [GROUNDS] of a village [, TOWN,] or municipality [CITY], or (3) [ON] the street or highway in front of land described in (2) of this section [THEM, WITHOUT LAWFUL AUTHORITY], is liable to the owner of that land, or to the village [, TOWN,] or municipality [CITY] for treble the amount of damages which may be assessed in a civil action. However, if the trespass was unintentional [CASUAL] or involuntary, or the defendant had probable cause to believe that the land on which the trespass was committed was the defendant's own or that of the person in whose service or by whose direction the act was done, or where the timber was taken from unenclosed woodland for the purpose of repairing a public highway or bridge on or adjoining [UPON] the land [OR ADJOINING IT], only actual damages may be recovered."

Page 7, after line 3:

Insert a new bill section to read:

"* Sec. 26. AS 23.20.350(e) is amended to read:

(e) An individual who is eligible under (d) of this section is entitled to receive a weekly benefit under this chapter for the number of weeks set out in column (B) of the table in this subsection opposite the applicable earnings ratio of the individual set out in column (A):

(A)	(B)
Earnings Ratio	Number of Weeks
less than <u>1.50</u> [1.49]	16
1.50 - 1.99	18
2.00 - 2.49	20
2.50 - 2.99	22
3.00 - 3.49	24
3.50 or more	26"

Renumber the following bill sections accordingly.

Page 7, after line 17:

Insert new bill sections to read:

"* Sec. 29. AS 37.14.160 is amended to read:

Sec. 37.14.160. DUTIES OF COMMISSIONER OF REVENUE. The commissioner of revenue is the treasurer of the fund [FUNDS] created in AS 37.14.110 [AS 37.14.010 AND 37.14.110] and shall

(1) act as official custodian of the cash and securities

belonging to the fund [THOSE FUNDS] and provide adequate safe deposit facilities for it [EACH OF THEM];

(2) receive cash belonging to the fund [THOSE FUNDS];

(3) collect the principal on securities acquired for the [EACH] fund [ESTABLISHED UNDER AS 37.14.010 AND 37.14.110] and credit the [EACH] fund accordingly;

(4) collect interest and dividends earned on investments of the fund [FUNDS ESTABLISHED UNDER AS 37.14.010 AND 37.14.110] and credit the income reserve account of the [EACH] fund accordingly;

(5) invest and reinvest the principal of the [EACH] fund in accordance with AS 37.14.170.

* Sec. 30. AS 37.14.170 is amended to read:

Sec. 37.14.170. INVESTMENTS. (a) The commissioner of revenue, with the approval of the [EACH] advisory board created in AS 37.14.120 [AS 37.14.020 AND 37.14.120], may invest the principal of the fund [FUNDS] created in AS 37.14.110 [AS 37.14.010 AND 37.14.110] in the same manner as specified for the investment of surplus pension funds under AS 39.35.110.

(b) The commissioner of revenue may

(1) invest and reinvest the principal of the fund [FUNDS];

(2) sell, exchange, convey, transfer, or otherwise dispose of investments of the fund [FUNDS] by private contract or at public auction;

(3) vote upon a stock, bond, or other security; give a general or special proxy or power of attorney with or without power of substitution; exercise a conversion privilege, subscription right, or

other option and make payments incidental to it; consent to or participate in a corporate reorganization or other change affecting corporate securities, delegate discretionary power, pay an assessment or charge in connection with the delegation; and generally exercise any of the powers of an owner with respect to stocks, bonds, securities, or other investments held in the fund [FUNDS];

(4) make, execute, acknowledge, and deliver documents of transfer and conveyance and instruments necessary or appropriate to carry out the powers granted;

(5) register investments held in the [A] fund in the name of the public school fund advisory board [HAVING THE POWER TO APPROVE INVESTMENTS FOR A FUND];

(6) do all acts whether or not expressly authorized that [WHICH] are considered proper for the protection of the investments held in the fund [FUNDS]."

Renumber the following bill sections accordingly.

Page 8, after line 11:

Insert a new bill section to read:

"* Sec. 32. AS 41.99 is amended by adding a new section to read:

Sec. 41.99.900. DEFINITIONS. In this title, unless the context requires otherwise,

(1) "commissioner" means the commissioner of natural resources;

(2) "department" means the Department of Natural

Resources."

Renumber remaining bill sections accordingly.

Page 9, line 24, following "19.25.120;"

Insert "AS 41.06.060(1); AS 41.15.170(1); AS 41.17.950(3), 41.17.-
950(4); AS 41.21.990(1), 41.21.990(2); AS 41.35.230(1), 41.35.230(3);"

Page 9, line 26:

Delete "13 and 14"

Insert "18 and 19"

Page 9, line 27:

Delete "13 and 14"

Insert "18 and 19"

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

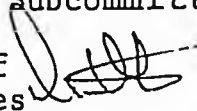
MEMORANDUM

February 15, 1988

FEH 15 1988

SUBJECT: Amendments to SB 413

TO: Senator Arliss Sturgulewski
Senator Joe Josephson
(Senate Judiciary Subcommittee on SB 413)

FROM: David R. Dierdorff 
Revisor of Statutes

I enclose to each of you a copy of proposed amendments for SB 413, this year's revisor's bill. The first five new sections arose out of my recent review of AS 06 (Banks and Financial Institutions). Each of the proposals related to AS 06 has been discussed with Willis Kirkpatrick, director of the division of banking, securities and corporations in the Department of Commerce and Economic Development. The next new section was requested by the Department of Labor through the Department of Law. The last new section and the addition of several provisions to the repealer arose out of our current review of AS 41 (Public Resources).

SECTIONAL ANALYSIS.

Sec. 7. This section amends AS 06.05.095 to correct an error in the original 1951 enactment. As enacted, the section was internally contradictory and did not say what it meant. If the amendment is enacted, the language of the section will conform to the interpretation that the section has always been given by the financial community.

Sec. 8. The proposed amendment to AS 06.05.180 (setting out the authorized trust powers of banks) updates the language used in referring to incapacitated persons.

Secs. 9 and 10. These sections amend two provisions relating to unclaimed property upon voluntary liquidation of a bank to reflect the 1986 enactment of new laws on unclaimed or abandoned property. As drafted, the amendments do the bare minimum to accomplish the purpose. The

Senator Arliss Sturgulewski
Senator Joe Josephson
Page 2
February 15, 1988

legislature may desire to amend the provisions further by eliminating the references to holding the property for five years and simply provide for disposition under AS 34.45.110 - 34.45.780.

Sec. 11. This section proposes an amendment to AS 06.-25.140, relating to the powers of trust companies, to update the language used to refer to incapacitated persons.

Sec. 26. This section corrects an error in the 1980 amendment to AS 23.20.350. This error could be corrected editorially by the revisor under AS 01.05.031(b), as a manifest error in the enactment, but I felt that the legislature should have the opportunity to review the provision and the proposed correction because of its importance to the calculation of unemployment benefits.

Sec. 30. This section proposes the addition of a definition section for AS 41. There are currently definitions of "commissioner" for five chapters in AS 41, and of "department" in three chapters. All definitions are for the commissioner of natural resources or the Department of Natural Resources. The enactment of the definitions for the title, and the related repeal of the eight existing definitions, is consistent with the preferred approach in the Alaska Statutes in titles that primarily involve one department.

Enclosure

cc: Senator Jay Kerttula

Representative John Sund

Art Peterson

Willis Kirkpatrick

DRD:bb
wkb2/094

A M E N D M E N T

Offered in the SENATE JUDICIARY COMMITTEE

TO: SB 413

Page 2, after line 21:

Insert new bill sections to read:

"* Sec. 7. AS 06.05.095 is amended to read:

Sec. 06.05.095. " PAYMENT OF ITEMS. If the balance in an [ANY] account subject to withdrawal by or upon the order of a depositor is insufficient to pay an [EQUALS OR EXCEEDS THE AMOUNT OF ANY] item presented for payment, a bank may select from the items that [WHICH] in the aggregate exceed the balance the items to be paid in the [ANY] order convenient to the bank.

* Sec. 8. AS 06.05.180(4) is amended to read:

(4) act under the order or appointment of a court of competent jurisdiction including any probate court as trustee, guardian, receiver or committee of the estate of an incapacitated person, as defined in AS 13.26.005, or of a [LUNATIC, IDIOT,] spendthrift, [PERSON OF UNSOUND MIND OR HABITUAL DRUNKARD,] or as receiver or committee of the property or estate of a [ANY] person in insolvency or bankruptcy proceedings;

* Sec. 9. AS 06.05.465(f) is amended to read:

(f) The contents of safe deposit boxes which have not been removed within 30 days after demand shall be opened and the contents dealt with in the manner provided for boxes upon which the payment of

rental is in default, and the sealed packages containing the contents and the certificates together with any other unclaimed property held by the bank as bailee and certified inventories of that property shall be transferred to the department which shall retain it for five years unless claimed by the person entitled to it before that time. After five years the department shall [SELL OR OTHERWISE APPROPRIATELY] dispose of the property under AS 34.45.110 - 34.45.780. [THE PROCEEDS OF ANY SALE SHALL BE TRANSFERRED TO THE STATE TREASURY AND SHALL BE DEPOSITED IN THE GENERAL FUND.]

* Sec. 10. AS 06.05.465(i) is amended to read:

(i) Any unclaimed distribution to a stockholder or a depositor shall be held until 90 days after the final distribution and then transmitted to the department. Unclaimed funds of a stockholder or a depositor shall be held by the department for five years and, unless claimed by the person entitled to them before that date, shall be disposed of under AS 34.45.110 - 34.45.780 [TRANSFERRED TO THE STATE TREASURY AND DEPOSITED IN THE GENERAL FUND].

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Sec. 06.25.140. ESTATES OF INCAPACITATED PERSONS [INCOMPETENTS]. A trust company may act under the order or appointment of a court of competent jurisdiction including any probate court as trustee, guardian, receiver or committee of the estate of an incapacitated person, as defined in AS 13.26.005, or of a [LUNATIC, IDIOT,] spendthrift, [PERSON OF UNSOUND MIND OR HABITUAL DRUNKARD,] or as receiver or committee of the property or estate of a [ANY] person in insolvency or bankruptcy proceedings, and act as executor or administrator with or

without the will annexed of the estate of a [ANY] deceased person."

Renumber following bill sections accordingly.

Page 7, after line 3:

Insert a new bill section to read:

"* Sec. 26. AS 23.20.350(e) is amended to read:

(e) An individual who is eligible under (d) of this section is entitled to receive a weekly benefit under this chapter for the number of weeks set out in column (B) of the table in this subsection opposite the applicable earnings ratio of the individual set out in column (A):

(A)	(B)
Earnings Ratio	Number of Weeks
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Renumber the following bill sections accordingly.

Page 8, after line 11:

Insert a new bill section to read:

"* Sec. 30. AS 41.99 is amended by adding a new section to read:

Sec. 41.99.900. DEFINITIONS. In this title, unless the context requires otherwise,

(1) "commissioner" means the commissioner of natural resources;

(2) "department" means the Department of Natural Resources."

Renumber remaining bill sections accordingly.

Page 9, line 24, following "19.25.120;"

Insert "AS 41.06.060(1); AS 41.15.170(1); AS 41.17.950(3), 41.17.-950(5); AS 41.21.990(1), 41.21.990(2); AS 41.35.230(1), 41.35.230(3);"

Page 9, line 26:

Delete "13 and 14"

Insert "18 and 19"

Page 9, line 27:

Delete "13 and 14"

Insert "18 and 19"

STATE OF ALASKA



SENATE JUDICIARY COMMITTEE

SEN. JAY KERTTULA
SEN. ARLISS STURGULEWSKI
SEN. JAN FAIKS
SEN. JOE JOSEPHSON
SEN. PAT RODEY

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3717
(907) 465-3771

January 26, 1988

To Senate Judiciary Committee Members:

Enclosed is a draft copy of the 1988 Revisor's bill for your information. Could you please review this draft and contact my office with any suggestions or comments that you might have?

Senator Jay Kerttula

STATE OF ALASKA
THE LEGISLATURE

JAN 20 1988

POUCH Y. STATE CAPITOL
JUNEAU ALASKA 99811
907-465-2900

LEGISLATIVE AFFAIRS AGENCY


MEMORANDUM

January 20, 1988

SUBJECT: 1988 Revisor's Bill (W.O. 5-1406)

TO: Senator Jay Kerttula, Chairman
Senate Judiciary Committee

Representative John Sund, Chairman
House Judiciary Committee

FROM: David R. Dierdorff 
Revisor of Statutes

I enclose to each of you a copy of the draft 1988 revisor's bill and accompanying sectional analysis in order to give your staff adequate time to review the bill and, hopefully, expedite its journey through the legislature. It is my understanding that Legislative Council will be meeting within the next two weeks and that the draft will be before it at that meeting for introduction.

Enclosure

DRD:gc
WKG1:033

STATE OF ALASKA
THE LEGISLATURE

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

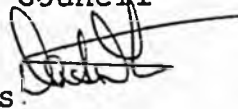
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 14, 1988

SUBJECT: 1988 Revisor's Bill
(Work Order No. 5-1406)

TO: Senator Bettye Fahrenkamp
Chair, Legislative Council

FROM: David R. Dierdorff 
Revisor of Statutes

This memorandum discusses the enclosed 1988 revisor's bill, in draft form, for the consideration of the Legislative Council for possible introduction through the Senate Rules Committee. I would be happy to meet with you or your staff prior to the next meeting of the council in the event you have any questions about the draft.

The draft was prepared under AS 01.05.036, which provides, in part, that the revisor of statutes shall

. . . prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state.

SUMMARY OF EFFECT

To assist you in understanding the draft, I have summarized the contents by grouping sections that have similar effects.

Sections that delete or repeal obsolete provisions:

Sections 17, 19, and 28 of the bill delete or repeal provisions that have become obsolete either through the passage of time or other legislative action. Please note that all of the repealers are in sec. 28, a departure from the style of previous revisor's bills, in which we located repealed provisions in numerical order. The change was made

to accommodate our automated "statutes affected" program in BASIS. The text of each AS section proposed for repeal is attached to this memorandum as an Appendix.

Sections that update obsolete or archaic provisions:

The following sections of the bill substitute new provisions for provisions that are obsolete, archaic, or otherwise outdated, and make conforming changes in related provisions as necessary: 1-6, 11, 15, 16, 22, and 23.

Sections that eliminate conflicts with other laws:

Sections 25 and 26 resolve a conflict between related provisions of the statutes.

Sections that correct errors or oversights:

The following sections of the bill correct errors or oversights in drafting, or make conforming amendments to harmonize laws passed during the same legislative session that could not be harmonized editorially: 7-10, 12-14, 18, 20, 21, 24, and 27.

SECTIONAL ANALYSIS

Sections 1 - 6. These sections change the phrase "wine gallons" to "gallons" in six sections of AS 04. Webster's New World Dictionary, 2nd college ed., defines "wine gallon" as "the old English gallon of 231 cu. in., now the standard gallon in the U.S." Consequently, these sections of the bill delete the archaic usage.

Sec. 7. Section 48, ch. 94, SLA 1987 deleted the reference to the Board of Electrical Examiners from the list in AS 08.01.010 that sets out the regulated occupations and professions that are subject to the centralized licensing provisions of AS 08.01. Instead of deleting the reference to the board (which was eliminated through repeal in the same legislation), the provision should have been amended to refer to the regulation of the occupation. Section 7 of the draft corrects this oversight.

Sec. 8. The language proposed for deletion became redundant when AS 08.01.010 was amended in 1987 to include the Real

Estate Commission. AS 08.01.110(1) defines "board" to include a commission listed in AS 08.01.010.

Sec. 9. AS 08.01.065(c) was amended by sec. 1, ch. 87, SLA 1987, and repealed and reenacted by sec. 5, ch. 94, SLA 1987. The first amendment, however, had a later effective date than the repeal and reenactment, and because it added a sentence to the subsection, it was determined by the revisor that the ch. 94 amendment did not supersede the ch. 87 amendment. The Department of Law had advised the governor, in its bill review letters on the two Acts, that if the governor signed CSHB 222(Fin) am S (which became ch. 94) after he signed SCS CSHB 70(Jud) am S (which became ch. 87), the former would supersede the latter under the later enactment theory. The proposed amendment in sec. 9 of the bill would delete the language added by sec. 1, ch. 87, which is redundant to the provisions of the subsection as repealed and reenacted by ch. 94, and carry out the apparent legislative intent of the 1987 legislation.

Sec. 10. This section corrects an oversight in drafting ch. 94, SLA 1987, by substituting "department" for a reference to the Board of Electrical Administrators, which was eliminated by repeal in ch. 94.

Sec. 11. This section substitutes the word "unintentional" for the word "casual" in AS 09.45.730. In Matanuska Elec. Ass'n v. Weissler, 723 P.2d 600, the supreme court of Alaska construed the term "casual" to mean "unintentional," but noted that the usage was derived from an 1848 New York code, later used as a model for an early Oregon law and then Alaska's law, and had a 19th century meaning. The amendment is suggested to update the language in conformity with the court's construction. It may also be desirable to rewrite the section to substitute current Alaska usage for the terms "village, town, or city" and to make other changes to conform to current style.

Sec. 12. Amends AS 12.55.035(b) to incorporate a reference to sexual abuse of a minor in the first degree in a listing of unclassified felonies. This corrects an oversight dating back to the 1983 change in the classification of that offense.

Sections 13 and 14. These sections correct the error in the 1987 amendments to AS 14.03.070 and 14.03.080(d) relating to school age. The 1987 bill was vetoed by the governor

because of the error, but the veto was overridden in the special session on the assurance that the error would be corrected before the effective date of ch. 1, FSSLA 1987 (July 1, 1988). In sec. 13, the language "or who will become six years of age" is proposed for deletion because it is redundant. A similar amendment was made in AS 14.03.080(d) in the 1987 legislation.

Sec. 15. AS 14.17.140(c) was deleted from that section in 1986, making the reference to the subsection in AS 14.11.-115(c)(1) obsolete. The proposed amendment would substitute the substance of former AS 14.17.140(c) for the existing reference.

Sec. 16. In 1982, AS 14.25.063(b)(2) was amended, deleting the language of that section that concerned options. The proposed amendment simply inserts "former" before the reference to AS 14.25.063(b)(2).

Sec. 17. In ch. 78, SLA 1987, the penalty for violations of the compulsory attendance law was reduced to a violation. The language proposed for deletion from AS 14.30.030 is no longer appropriate as a result of that amendment. A court would normally issue a summons to a person charged with a violation, and issue a warrant only if the person failed to appear. The subject is adequately covered by other statutes and the Rules of Court.

Sec. 18. Section 5, ch. 92, SLA 1987, added AS 14.43.-120(d)(4), but the language of the paragraph as enacted did not reflect legislative intent. As enacted, the default rate necessary for disqualification would be 250 percent of the program default rate, rather than the 150 percent the legislature intended. The amendment rewrites the paragraph to reflect the legislature's intent. The amendment was requested by the Department of Law on behalf of the Commission on Postsecondary Education.

Sec. 19. This section amends AS 15.13.020(d), relating to the terms of members of the Alaska Public Offices Commission, by deleting obsolete material relating to initial terms of members. The repeal and reenactment method was used to allow the subsection to be reorganized for clarity.

Sec. 20. In 1977, AS 15.25.040(a) was amended to include a reference to paragraphs "(1)-(16)" of AS 15.25.030. At

that time, AS 15.25.030 contained only paragraphs (1)-(15). The error was not corrected editorially, however. In 1980, AS 15.25.030 was amended to include a paragraph (16). The amendment proposed by this section corrects the error and formally amends the provision to properly include a reference to paragraph (16) as added in 1980.

Sec. 21. The amendment to AS 24.60.030(c) proposed by this section adds "or" between paragraphs (1) and (2) of the subsection to correct a drafting oversight and clarify legislative intent. Without the conjunction, the rules of statutory construction could require that the provisions of the two paragraphs be read together, which would be contrary to our understanding of the legislative intent.

Sec. 22. The amendment to AS 28.10.441(8) updates a reference by substituting a reference to current provisions for the existing reference to former provisions.

Sec. 23. The proposed amendment deals with old language that appears to be internally inconsistent. The existing language provides "Except as otherwise provided by law . . . the provisions of this section . . . govern exclusively and supersede all other provisions of law . . ." (Emphasis added). Logic suggests that if the provisions of AS 39.20.-180 are exclusive and supersede all other provisions, no other provision may provide to the contrary. The proposed amendment deletes some obsolete language and resolves the inconsistency by deleting the "supersedes" language. Obviously, the problem could be resolved by retaining the "supersedes" language and deleting the introductory clause relating to other provisions.

Sec. 24. The division of telecommunications was repealed in 1987 by Executive Order No. 66. A reference to the division in AS 44.21.160(f) was not changed. The amendment proposed by this section corrects that oversight.

Secs. 25 and 26. AS 44.81.270(b), added by sec. 7, ch. 49, SLA 1987, conflicts with the existing provisions of AS 44.-81.270. The amendments proposed by secs. 25 and 26 resolve the conflict by incorporating the substance of the last sentence of (b) into (a), and deleting the last sentence of (b).

Sec. 27. As a part of the new municipal code (ch. 74, SLA 1985), AS 44.85.270(i) was amended to substitute a reference

to AS 29.14.010 for a reference to AS 29.18.510. However, AS 29.14, which had been proposed in earlier drafts of the municipal code as a reenactment of AS 29.18.510 - 29.18.610, was dropped from the draft before passage. Consequently, there is no AS 29.14.010 in the Alaska Statutes. (AS 29.-18.510 - 29.18.610, enacted in 1978, have never become law, because the terms of the effective date provision have not been met. See sec. 7, ch. 143, SLA 1978.) The amendment proposed by this section deletes the language relating to the nonexistent law.

Sec. 28. This section contains the repeal of obsolete sections. AS 08.40.080 is obsolete as a result of the passage of ch. 94, SLA 1987. AS 15.05.016 is obsolete as a result of the elimination of the voter's certificate by ch. 116, SLA 1972. AS 15.15.213 was deleted from AS editorially after the passage of ch. 100, SLA 1980, which enacted virtually identical provisions (found in AS 15.15.198(a)). AS 19.10.220, and AS 19.25.110 and 19.25.120 are obsolete because of the passage of time. AS 44.33.020(11) is obsolete as a result of the passage of ch. 94, SLA 1981. AS 44.81.010(c) became obsolete by its own terms after fiscal year 1979.

Sec. 29. This section gives a special effective date to the sections amending the school age law to tie the effective date of the amendments to the effective date of the 1987 amendments.

Sec. 30. Gives the remainder of the bill an immediate effective date.

DRD:bb
WKB1/058

cc: Art Peterson
Karla Forsythe
Randall Burns

APPENDIX - REPEALED PROVISIONS

Sec. 08.40.080. Compensation of board members. Members of the board are entitled to payments, per diem allowances and transportation expenses allowed by law and paid members of other state examining and licensing boards. (§ 6 ch 158 SLA 1960)

Sec. 15.05.016. Fee prohibited. No person may receive a fee from a voter for attesting to a voter's certificate required by § 14 of this chapter. (§ 1 ch 69 SLA 1967)

Sec. 15.15.213. Questioning a voter's ballot. If his polling place is in question a voter shall be allowed to vote, and any election official shall consider the ballot as a questioned ballot. (§ 13 ch 228 SLA 1968; am § 23 ch 116 SLA 1972)

Sec. 19.10.220. Prior contracts unaffected. Sections 170—250 of this chapter do not apply to contracts entered into before April 1, 1957. (§ 8 art III title IV ch 152 SLA 1957)

Sec. 19.25.110. Removal of nonconforming advertising. A sign, display or device which is lawfully in existence along the interstate system or the primary system on August 6, 1968 and which is not in conformity with §§ 80—180 of this chapter may not be required to be removed until July 1, 1970. A sign, display or device which is lawfully in existence along the secondary system on July 1, 1970 and which is not in conformity with §§ 80—180 of this chapter shall be removed by July 1, 1971. (§ 5 ch 59 SLA 1949; added by § 1 ch 86 SLA 1953; am § 1 ch 112 SLA 1955; am § 3 ch 233 SLA 1968; am § 44 ch 69 SLA 1970; am § 4 ch 155 SLA 1970)

Effect of amendments.—The 1968 amendment rewrote this section.

The first 1970 amendment deleted a former second sentence.

The second 1970 amendment added the present second sentence.

Legislative committee report.—For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 19.25.120. Neglect or refusal to obey removal order. A person who fails to obey an order issued under § 110 of this chapter is subject to the penalty provided in § 130 of this chapter. Each day the person neglects or refuses to obey the order is a separate offense. (§ 6 ch 59 SLA 1949; added by § 1 ch 86 SLA 1953; am § 2 ch 112 SLA 1955)

5-1406A
- Dierdorff
12/31/87

1 IN THE SENATE

BY THE RULES COMMITTEE
BY REQUEST OF THE
LEGISLATIVE COUNCIL

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making corrective amendments to the Alaska
7 Statutes as recommended by the revisor of statutes;
8 and providing for an effective date."

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

10 * Section 1. AS 04.11.120(b) is amended to read:

11 (b) A sale under a bottling works license may be made only to a
12 person licensed under this title and only in quantities of more than
13 five [WINE] gallons.

14 * Sec. 2. AS 04.11.130(b) is amended to read:

15 (b) A brewery license authorizes the holder to sell beer in
16 quantities of more than five [WINE] gallons to persons licensed to
17 sell beer under this title.

18 * Sec. 3. AS 04.11.140(b) is amended to read:

19 (b) A winery license authorizes the holder to sell wine to
20 persons licensed under this title in quantities of more than five
21 [WINE] gallons.

22 * Sec. 4. AS 04.11.160(b) is amended to read:

23 (b) A wholesale malt beverage and wine license authorizes the
24 holder to sell malt beverages and wine in the original packages in
25 quantities of not less than five [WINE] gallons. The holder of a
26 wholesale malt beverage and wine license may not sell to a person not
27 licensed under this title except as provided in AS 04.21.040. The
28 annual wholesale malt beverage and wine license fee is \$200 for the
29 first \$20,000 of business transacted during a year, payable at the

CORRECTION

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

APPENDIX - REPEALED PROVISIONS

Sec. 08.40.080. Compensation of board members. Members of the board are entitled to payments, per diem allowances and transportation expenses allowed by law and paid members of other state examining and licensing boards. (§ 6 ch 158 SLA 1960)

Sec. 15.05.016. Fee prohibited. No person may receive a fee from a voter for attesting to a voter's certificate required by § 14 of this chapter. (§ 1 ch 69 SLA 1967)

Sec. 15.15.213. Questioning a voter's ballot. If his polling place is in question a voter shall be allowed to vote, and any election official shall consider the ballot as a questioned ballot. (§ 13 ch 228 SLA 1968; am § 23 ch 116 SLA 1972)

Sec. 19.10.220. Prior contracts unaffected. Sections 170—250 of this chapter do not apply to contracts entered into before April 1, 1957. (§ 8 art III title IV ch 152 SLA 1957)

Sec. 19.25.110. Removal of nonconforming advertising. A sign, display or device which is lawfully in existence along the interstate system or the primary system on August 6, 1968 and which is not in conformity with §§ 80—180 of this chapter may not be required to be removed until July 1, 1970. A sign, display or device which is lawfully in existence along the secondary system on July 1, 1970 and which is not in conformity with §§ 80—180 of this chapter shall be removed by July 1, 1971. (§ 5 ch 59 SLA 1949; added by § 1 ch 86 SLA 1953; am § 1 ch 112 SLA 1955; am § 3 ch 233 SLA 1968; am § 44 ch 69 SLA 1970; am § 4 ch 155 SLA 1970)

Effect of amendments.—The 1968 amendment rewrote this section.

The first 1970 amendment deleted a former second sentence.

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Sec. 44.33.020. Duties of department. The Department of Commerce and Economic Development shall

(11) before the commencement of each calendar quarter, furnish lending institutions, title insurance companies, mortgage companies and clerks of the respective superior courts with the 12th Federal Reserve District discount rate that is to be used during that calendar quarter for computing the maximum rate of interest under AS 45.45.010(b);

Sec. 44.81.010. Alaska Commercial Fishing and Agriculture Bank.

(c) After the board of directors has completed the necessary organizational matters described in former AS 44.81.030 and in 44.81.040, the commissioner of revenue may purchase with funds from the general fund up to \$2,000,000 of preferred stock of the bank during fiscal year 1979 at such time and with terms agreed upon by the commissioner and the board. (§ 3 ch 159 SLA 1978; am § 1 ch 53 SLA 1979; am § 12 ch 122 SLA 1980; am § 1 ch 109 SLA 1981; am § 65 ch 21 SLA 1985; am § 1 ch 49 SLA 1987)

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