

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
5884 HOUSE LABOR & COMMERCE

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1 vehicle of the type and general class of vehicles for which the appli-  
2 cant seeks a license.

3 \* Sec. 14. AS 28.15.255(c) is amended to read:

4 (c) In this section, the term "proof of financial responsibility  
5 [FOR THE FUTURE]" has the meaning given in AS 28.20.630 [AS 28.20.-  
6 230(b)] and may be established as provided in AS 28.20.

7 \* Sec. 15. AS 28.20.400(a) is amended to read:

8 (a) A person in whose name more than 25 vehicles are registered  
9 in this state may qualify as a self-insurer by obtaining a certificate  
10 of self-insurance issued by the department as provided in (b) of this  
11 section. A person in whose name fewer than 25 vehicles are registered  
12 qualifies as a self-insurer and shall be issued a certificate of  
13 self-insurance, if the person provides proof satisfactory to the  
14 department that the person has and will continue to have the ability  
15 to pay a judgment for property damage, bodily injury, or both, in the  
16 amount of at least \$125,000.

17 \* Sec. 16. AS 28.20.630 is amended to read:

18 Sec. 28.20.630. DEFINITIONS [DEFINITION]. In this chapter,  
19 unless the context otherwise requires,

20 (1) "judgment" ["JUDGMENT"] means a judgment that [WHICH]  
21 is final by expiration without appeal of the time within which an  
22 appeal may be taken, or final by affirmation on appeal, given by a  
23 court of a [ANY] state or of the United States, upon a cause of action  
24 arising out of the ownership, maintenance, or use of a vehicle of a  
25 type subject to registration under the laws of this state, for dam-  
26 ages, including damages for care and loss of services, because of  
27 bodily injury to or death of a person, or for damages because of  
28 injury to or destruction of property, including the loss of use of  
29 property, or upon a cause of action on an agreement of settlement for

1 such damages;

2 (2) "proof of financial responsibility" means an owner's  
3 motor vehicle liability policy that covers all vehicles owned by the  
4 person that are subject to registration in this state, or if the  
5 person does not own a vehicle, proof required under AS 28.20.390.

6 \* Sec. 17. Sections 2 and 6 of this Act apply to automobile liability  
7 insurance policies entered into or renewed on or after January 1, 1990.

8 \* Sec. 18. AS 28.20.230(b) is repealed.

9 \* Sec. 19. Sections 7, 8, and 10 of this Act take effect January 1,  
10 1990.

11 \* Sec. 20. Except for secs. 7, 8, and 10 of this Act, this Act takes  
12 effect immediately under AS 01.10.070(c).

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HB

47

Alaska State Legislature  
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SPONSOR STATEMENT

HB47

HB 47 is identical to SSHB 410 which I introduced in the 15th Legislature to act as a working draft for a solution for uninsured and underinsured Alaskans. We all know of relatives, friends, or friends of friends who have found themselves in the unfortunate position of desperately needing medical care and not being able to pay for it. An estimated 7-10% of Alaskans are uninsured. Alaskans are like most other Americans - most of those who are uninsured are employed. 40% of the uninsured are children.

There are several concepts behind HB 47 which distinguish it from some other current bills dealing with the issue of access to health care. HB 47 includes a single pool concept, which would allow for good planning and shared risk. It has a deductible (of \$5,000). It is capped on a per person, lifetime basis. It would be funded by utilizing a portion of income of the Permanent Fund and would provide a nontaxable benefit to Permanent Fund recipients. I believe it would also reduce the hold harmless paid by the State to the federal government for Alaska welfare recipients and as a universal access program should lower the cost of workers' compensation.

*Entrepreneurialism ran rampant and forgot sound management principles.*

# The Failed Revolution in Health Care — The Role of Management

by Regina E. Herzlinger

The American health care industry is sick. Its huge fraction of our GNP—one out of every eight dollars—is double that of Japan and at least 50% higher than that of other developed countries. Because it is growing at rates 50% higher than the GNP, the industry's cost hampers control of our disastrous trade deficit.

Even so, despite the sums they spend on health care, many Americans cannot get the services they need or want. Plagued by the ubiquitous ailments that reduce their productivity, like backaches, sore feet, and digestive difficulties, Americans find services to be fragmented, impersonal, inconveniently located, and offered at unsuitable times. Then there is the quality of the care itself, which is notoriously erratic. Although our health care system excels in heroic procedures that save lives, more common procedures are less expertly provided. For example, most experts concede that only a fraction of the 700,000 hysterectomies performed every year can be medically justified.

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In response to demand and to the perceived inadequacies of the system, new organizations sprang up in the 1970s to deliver more efficient service, new organizations to upgrade the quality and accessibility of care, and new organizations to exploit the extraor-

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**I** Entrepreneurs saw a big opportunity in the health care industry.

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dinary advances of molecular biology and computer science. They were the forebears of a revolution that in the 1980s was supposed to transform the health care picture.

These new organizations were not like the hospitals, the medical suppliers, and the care providers of an earlier era that grew slowly and cautiously to become fixtures on the landscape. Often launched by entrepreneurs, these were upstarts—HMOs, nursing home chains, health-related businesses—that looked to the financial markets for nourishment. And the financial community fell in love with their prospects and tapped the spigots that let billions of dollars flow. One securities analyst giddily predicted that virtu-

ally all Americans would eventually be enrolled in new health care organizations. After U.S. Health-care's initial public offering in 1983, the price soared to 74 times earnings.

The entrepreneurs were well rewarded. The fabled Abe Gosman, a skilled real estate developer and banker, began Mediplex, a nursing home chain, in 1983, took it public in 1984, and sold the company to Avon for \$300 million in 1986, netting more than \$100 million. Like him, the entrepreneurs who entered the industry were challenged by the prospect of transforming the sluggish giant—filled with business-as-usual administrators and detail men—into a sleek machine delivering efficient, convenient, and technologically advanced services and products. They recognized the importance of the cause; health care, they thought, is nobler than Pringle's.

Abetting the revolution were two powerful sectors: government and large private employers, allied in this case by their alarm over skyrocketing costs. By 1985, the health care costs of the average big company were growing so fast that they would equal its net income by 1993.<sup>1</sup> Uncle Sam quailed at the prospect of paying to maintain the well-being of a surprisingly resilient and fast-growing elder population. A shot of good, old-fashioned competition was just the medicine the government wanted. That, of course, was business's natural inclination as well.

Business and government used their enormous purchasing power—paying for more than 80% of health care bills—to push and prod the system to respond. When the federal government started limiting its hospital payments to a fixed price for the service rendered (through so-called diagnosis-related groups, or DRGs) in the early 1980s and the private sector initiated a host of audit techniques to review health care providers, the stage was set for the revolution.

But the revolution failed. Despite the ability of the entrepreneurs, the enthusiasm of its powerful backers, the billions of dollars spent to fuel its engines, the nobility of the cause, and the clarity of the mandate, it failed. Despite the vaunted efficiencies to be created by new services and competition, costs proved intractable. Services remained inconvenient and variable in quality. The scientific breakthroughs that pioneers have created have yet to be reaped as effective medical technologies.

What went wrong? I claim that the failure was almost entirely that of management, not of strategy, that the creators of these new organizations were so blinded by the vision of the dazzling new world they hoped to forge that they neglected the details of management that would breathe life into their vision. My purpose in this article is to reorient the revolution to

a second stage that will be guided by those who believe that in management, as in architecture, God is in the details.

## The Altered Scene

The revolution grew out of profound changes in technology, in population characteristics, and in social expectations of what health care should be.

We are most familiar with the technological changes. Laser and microsurgery, pharmacological miracles, ultrasonics, magnetic resonance imagers (MRIs), and other computer diagnostics, transplants, and artificial joints and organs—all these innovations increasingly enable health care providers to do what was once unimaginable.

And the promise is breathtaking. Genetic engineering itself not only will offer better, more specific, and safer therapies for sick people but also may permit actual prevention of disease by correcting genetic defects that cause it. The increasing cost-effectiveness and user-friendliness of computers promise instruments that vastly expand our ability to diagnose, monitor, cure, and account for the cost of disease. These instruments may eventually replace one or another of the five senses; hearing has already been restored in some completely deaf people through electromechanical ear implants.

In the last decade or so, entrepreneurial "techies" have created hundreds of companies, ranging from the biotech miniatures that surround most major medical schools to the giants that make big, computerized diagnostic equipment like MRIs and CAT scanners, to the aggressive ventures marketing clinical and management information systems.

The aging of the population is the most important demographic phenomenon; it has prompted the rise of a whole subindustry of geriatric care. Also significant is the altered status of women, the largest consumers of health care and the prime agents for their families' purchases. Their rising income, declining free time, and growing dissatisfaction with traditional health care have shaped enterprises aimed solely at them, including birthing centers and no-appointment-needed neighborhood emergency care providers.

The new status of women also affected the supply of services. The trend toward a corporate practice of medicine, with physicians working under the direction of a manager who was to help them establish more efficient, standardized service, was facilitated by the growth in the number of female MDs from virtually none in 1969 to nearly 25% of the total by

decades later. Many of them and their spouses (particularly the ones with young children) were willing to trade the independence and high income of the fee-for-service doctor for the more limited responsibilities of a salaried employee.

But the dependably subservient army of women health workers—nurses, technicians, aides, and dieticians—increasingly found more rewarding and more lucrative opportunities elsewhere. By 1986, for the first time, the number of female college freshmen interested in becoming doctors exceeded those interested in nursing.

Meanwhile, Americans' expectations of the care delivery system were changing; people were increasingly charging it with keeping them healthy instead of just treating their diseases. Better educated and more self-sufficient than their forebears, they considered themselves the best instruments for health maintenance, and acted accordingly. The remarkable drop in the incidence of cardiovascular disease, for example, was greatly levered by individuals who reduced their cholesterol intake, stopped smoking, and pursued fitness regimens. To serve them, fitness clubs, weight-reduction emporiums, and other health-promoting enterprises sprang up.

An overriding concern during this time of upheaval was the cost of health care. Even doctors overwhelmingly rated costs as their number one worry about the system. Groups formed to "manage" care spread quickly. The most popular were HMOs (health maintenance organizations), which combined insurance with care delivery functions—thus offering an incentive to limit the cost of care to the price of the insurance—and PPOs (preferred provider organizations), in which the "preferred" physicians and hospitals discounted their fees.

Many hospitals integrated vertically to supply comprehensive services, ranging from health insurance to community-based outpatient care, and integrated horizontally into chains to obtain economies of scale. Nursing homes, medical equipment suppliers and manufacturers, distributors, and pharmaceutical companies also sought to integrate for the sake of scale and product-line efficiencies.

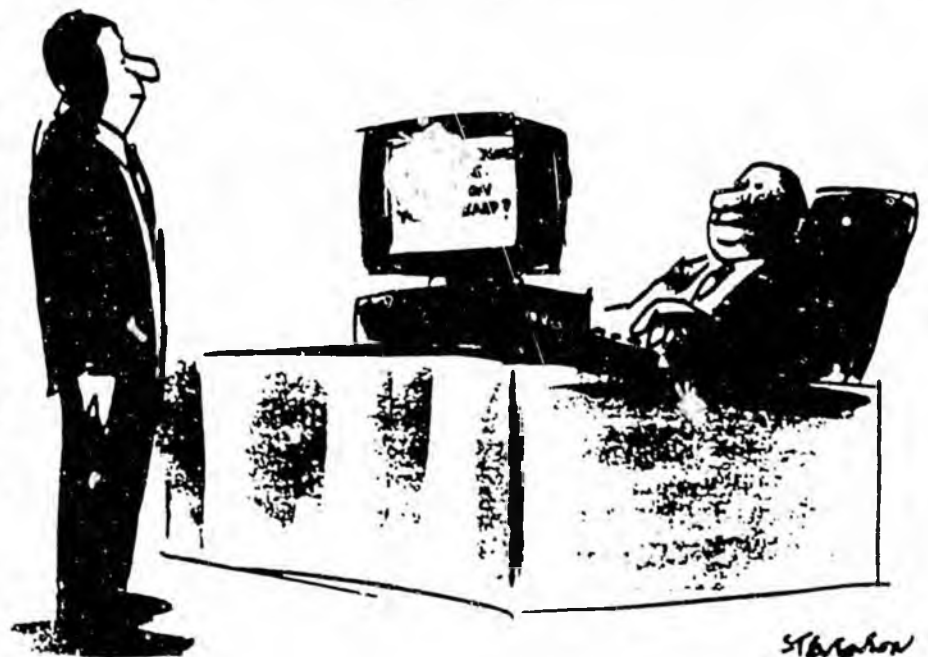
Health care quality became a universal concern. Doctors, insurance companies, the federal government, and consumer groups

questioned the necessity for some procedures and called attention to the great variability in utilization patterns across the medical profession and around the country. Organizations to monitor the quality of care emerged, as did national health care chains that promised to furnish consistent and appropriate levels of service. As knowledge of the ills of the system grew, attention began to shift toward measures to rebuild and reinvigorate. They added up to a promise of more responsive, less expensive care, committed to maintaining health as well as healing the sick.

## What Went Wrong?

The promise has given way to discouragement and stagnation. Costs have not only continued to climb at staggering rates—50% higher than the CPI in 1983—but also have become so unpredictable that insurance companies cannot price their packages correctly. They lost about \$7 billion in 1987 alone.<sup>2</sup> In a survey I conducted last year of all publicly listed companies, 70% of the CEOs complained about the rise in health care costs and nearly 50% felt they could not control them.

Evidence of continued serious quality problems abounds. When half the surveyed doctors do not know the American Cancer Society's guidelines for cancer checkup, how good is the advice they give their patients?<sup>3</sup> Coronary angiography, widely used to detect coronary circulatory problems, was shown to



be inappropriate in 17% of cases studied.<sup>4</sup> There is considerable doubt about the need for the astonishingly high number of Caesarean birth procedures performed (nearly one million in 1987). In a poignant description of a hospital's treatment of his infant granddaughter, one physician asked, "Is Brutality Now Our Standard of Care?"<sup>5</sup>

To be sure, this decade has seen important surgical innovations that permit many patients to shorten their hospital stays or to avoid them altogether. And there have been impressive gains in heroic procedures like transplantation of hearts and other organs. Moreover, of course, many care providers continue to give dedicated, excellent service.

But the new organizations have almost universally failed to meet their promise. A glance at the stock market tables says a lot: Hospital Corporation of America (HCA), a high of \$57 in 1983, priced at \$43 at this writing; U.S. Healthcare, an HMO, high of \$23 in 1986, now at \$6; Manor Care, a nursing home chain, high of \$26 in 1986, now at \$14; Cetus, a biotech company, high of \$42 in 1983, now at \$11. Many of the biotechnology concerns are financially precarious. Most of the HMOs and hospital and nursing home chains have posted losses or seen severe curtailment of their earnings growth. Many companies that invested in health care enterprises in the early 1980s are sorry they did. Avon Products, for one, just wrote off hundreds of millions in losses.

### Entrepreneurs were obsessed with growth and single-mindedly focused on marketing.

The usual reason for failure: the entrepreneur's obsession with financing and fixation on marketing. Although a fledgling enterprise understandably must attend to securing its capital and its place in the market, the health care entrepreneurs gave too little thought to how the organization should be run.

Just like any other business, such organizations require, for example, excellent accounting systems for tracking costs. Technologically innovative companies need organizational frameworks that enhance the research function and control systems that balance the technologists' creative activity with the company's financial resources. Moreover, every new enterprise needs to be guided by a philosophy about centralization of power that reflects appropriately the circumstances of the business and its growth potential. When a company is run well, earnings growth should take care of itself.

But financing fixes to "create" growth were a standard part of the scene, especially among hospital chains. They usually involved restructuring of sources of capital and optimistic accounting to generate high returns on invested capital. The chains' practice was to buy hospitals, revalue the assets, and borrow up to 80% of the purchase price. The resulting leverage lifted return on equity into the stratosphere—enabling, for example, one company to achieve a 24% ROE in 1985, though its return on sales amounted to a more modest 10%.

When hospital utilization dropped, new financing fixes emerged and Wall Street continued to fund them. Some chains formed ESOPs that "bought" their lower performance hospitals, with junk bonds as the vehicle. In one stroke, they got rid of a drag on earnings and posted a gain on the sale! Later, when the market seemed to turn sour on their newly fixed earnings, they turned to yet another approach and sought to go private.

The nation's 6,000 nonprofit hospitals, beset by the same empty-bed problem, also used financial fixes extensively. Many restructured into holding companies with for-profit and nonprofit subsidiaries. The lower costs produced by their tax exemptions enabled the nonprofits to underprice the tax-paying businesses with which they increasingly competed.

Certain entrepreneurs could not resist the temptation to indulge in creative accounting to impress their bankers. Many HMOs held constant their "reserves for contingent liabilities for claims incurred but not yet filed," while revenues climbed dramatically. In other words, they understated expenses. The nonprofit holding companies usually provided financial statements only for their money-losing hospitals, to maintain their tax exemptions and to keep donations coming, while obscuring any favorable results of their for-profit units.

Some entrepreneurs were particularly clever as financiers. The head of Health Stop, the nation's largest chain of ambulatory care centers, got much of his financing from hospitals that paid \$250,000 to \$1 million each for the right to put their names on the centers' doors. Although the hospitals were sure that the centers would create new patient bases for them, the credibility of a hospital's name on the door probably created a patient flow for the Health Stops they would not otherwise have had.

Where was Wall Street while these financial machinations were going on? The financial community restricted its criticism to the attire of these new entrepreneurs, snickering at their "la la" look and open shirts.

The biotechnology companies are also preoccupied with financing; but for them it reflects the

unfortunate realities of the U.S. capital markets. Although their research has been very productive, the hundreds of millions of dollars needed to bring a drug to market through clinical trials to determine efficacy and safety are beyond the resources of nearly all biotech companies—at least since October 19, 1987. So the entrepreneurs are forced to give away much of their technology through contingent licensing and joint-venture agreements with established pharmaceuticals. Will their techie creativity survive these bear hugs?

The marketing efforts of health service entrepreneurs often held out a promise that the actual delivery of the service could not meet. For example, the widely touted "women's programs," created in response to women's complaints about inadequate services, are usually no more than a referral source to traditional care providers. One hospital's ignorance led it to trumpet its PMS (premenstrual stress) program as dealing with women's postmenstrual stress syndrome.

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**I**nstead of sound cost-accounting systems, the new managers looked for financing fixes.

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For hospitals, buildings and building additions are an important part of marketing: they signal solidity and promise modernity and new services. So, while thousands of hospital beds lie empty, hospital construction proceeds at a swift rate, with \$2 billion in investment in 1986.

Technology-based companies sometimes fall into a trap of confusing market glamour for product fit (another responsibility of management). There is the case of the talented former Digital Equipment engineers who started Computers in Medicine to sell an integrated clinical and management information system to the fast-growing doctors' group-practice market. It was a technological marvel, complete with touch-screen and voice-recognition capabilities to appeal to the computer-leery doctor. The engineers positioned the system as the Mercedes of its class, a beautiful \$100,000 machine.

But Mercedes-driving doctors turned out to be very hard-nosed when buying computers. Technology held no magic for them, especially when offered by a company with no history. They wanted service assurances that the company could not provide. Computers in Medicine failed.

Like this advanced information system, the much-touted expert systems have made little headway

with medical practitioners. The brilliant MDs designing these systems have trouble empathizing with the mass of physicians who are uncomfortable with computers or unwilling to abdicate their decision making to a machine. User-friendly expert systems that support doctors' decision making, instead of supplanting it, have yet to be designed.

The biotechnology companies have also had difficulty selling advanced concepts to their conservative, wary clientele. A case in point is the largest of them, Genentech, which, after surmounting many regulatory hurdles, finally brought its long-awaited clot-dissolving drug, t-PA, to market. But 1988 sales fell far short of expectations because the company did not foresee the difficulty of convincing doctors of the efficacy or cost-effectiveness of the innovative cardiological therapy that t-PA represents.

Similar marketing misperceptions have also bogged down health promotion companies. No question there's a market out there: 50 million Americans smoke, 23 million are drug abusers, 18 million are problem drinkers, and 10% of adults are so obese that they jeopardize their lives. But health is customarily promoted by true believers who cannot empathize with the destructive life-styles of those who most need their services. So in aerobics classes you see athletes with 20-inch waists or necks working out, while the potbellied, hard-breathing smokers who most need the exercise are elsewhere. Because the instructor has not tailored the program to their needs and abilities.

## Missed Opportunities

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While the entrepreneurs were busy devising financing and marketing schemes, they missed opportunities to improve the quality and efficiency of health care in four key areas: administration of operations, management of human resources, management control systems, and the formation of a management philosophy.

*Operational Administration.* The health care system too often delivers service in inconvenient settings, in ways that are inconsistent if they are subject to the individual preferences of physicians, and in ways that demonstrate too little regard for patients or clients.

Everybody has heard a horror story about a hospital stay that reflects the depersonalization felt there. (Professional staff, for instance, may refer to patients not by their names but by their illness or the procedure used, like "the cabbage in 312"—a cabbage being a coronary artery bypass graft.)

The entrepreneurs who started Nutritional Management offered help to morbidly obese people who weigh two or three times their ideal weight and have high risk of illness and premature death. Their protocol of fasting, tailored exercise plans, and behavior modification regimens held great promise. The key to the program was the support given these seriously ill and depressed individuals in transforming eating and exercise habits so they could maintain weight loss. But the support included only 20 minutes a week with their counselors and 10 minutes a month with their physicians. Not surprisingly, the company folded.

The women's program at the Charles River Hospital in Massachusetts, in contrast, represents sensible operational administration. Instead of simply relying on traditional therapy, the psychiatric hospital studied its clients' needs. It identified the importance of close personal relationships in women's perceptions and structured a program consistent with that view, in the therapy sessions and also in the world they would reenter following their hospital stays. After discovering that some patient problems, like sexual abuse, were so repugnant that the staff avoided dealing with them, Charles River also offered therapy to staff members.<sup>6</sup>

Many emergency health care centers exhibit a wide gap between concept and actual operation.

**What distinguished one psychiatric hospital's program for women was its study of the clientele's needs before starting the therapy service.**

Created to supply no-appointment, no-wait service to working parents and people with medical emergencies, they have become instead as slow in service as any hospital emergency room. Patients often have to wait an hour or more. Many centers have failed to give their doctors (who are salaried) clinical guidance or managerial training, or to motivate them. Consequently, the centers have suffered from high physician turnover rates, frustrating their avowed aims of continuity of service, friendly atmosphere, and physician involvement.

Compare this situation with Health Stop's policy. It rewards doctors directly for building volume and delivering the efficient, patient-centered service that makes people want to return when they next need treatment. Each center is now divided into two entities: one, Health Stop, for the delivery of care, which

is owned by the physicians; the other, Wellesley Medical Management, for administrative services like accounting, maintenance, and billing, which is owned by management. The doctors' equity stake influences them to look at their place of employment differently. They learn, for example, to schedule employees' work in a cost-effective way and to look for ways to shorten patients' visit time. Yet they become mindful of the benefits of having a satisfied clientele; a clue is the fact that they often telephone patients to inquire about their progress.

*Human Resources.* In many segments of the health care industry, those employees who are at the most critical point in fulfilling the purpose of the organization—that is, in close and frequent contact with the "customer"—are often given the lowest pay and the lowest status. In nursing homes they are the aides, denigrated by their very job title. Mismanagement of this worker group has undermined the delivery of new services to the elderly. Few are the organizations, for-profit or nonprofit, that have ignored stereotypes of income or career paths and have carved out satisfactory roles for nursing home aides and workers of similar status.

The shortage of nurses is a case study of human resource mismanagement in the health care industry. Although nurses are the backbone of hospital service, their career prospects are limited. Their salary scale is compacted to a \$24,000 range between the base salary of a staff nurse and that of the director of nursing services (depending on the section of the country), peaking at an average of \$39,000 for the director of critical care nursing—a small increment for a 20- to 40-year career.<sup>7</sup> Only 6% of supervisory nurses got incentive payments in 1986.<sup>8</sup>

Moreover, their work has become increasingly difficult: while hospital patients became "sicker and left quicker," institutions' support staff numbers shrank and left the nurses with more paperwork and tasks not directly connected with caring for patients. More important, the role of hospital nurses has become rather unclear as they have specialized—are they allies or competitors of the doctors? Lingering sexism compounds this problem, as some doctors cannot deal with the financial demands and independence shown by the once subservient nursing profession, 97% of which is female.

A program at Boston's Brigham and Women's Hospital is a notable attempt to manage this problem. In an effort to establish a distinct professional identity and to reinforce nurses' self-esteem, the hospital encourages them to spend a great deal of time articulating what they do. To enhance patients' and nurses' satisfaction, patients are assigned "primary nurses" who are responsible for all their hospital care and for

all subsequent visits. The hospital looks for ways to foster physicians' respect for the nursing staff. In one seemingly trivial change (but significant to all concerned), nurses are entering their observations directly in the patient's medical record, next to the doctor's note, rather than in the back of the record, as in the past.

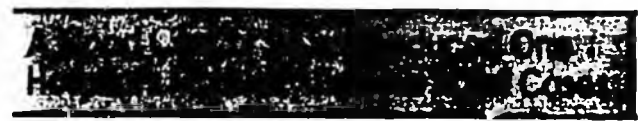
Nurses are also encouraged to explore various career options, like research. The results have been rewarding. When a nurse group's study of premature infants' care, for example, found that the practice of tying their limbs to the four corners of the bed (so they wouldn't dislodge their support tubes) stunted their growth, Brigham and Women's nurses designed a womb-like environment in which the preemie's fetal position stimulated rapid growth. The hospital provides intense career counseling, supported by heavy doses of training and internal public relations. These measures have eased the impact of the nursing shortage in the hospital and have helped the hospital's nurses grow professionally.

**Control Systems.** Managerial control systems to track costs and establish the organizational basis for operations are a critical component of any for-profit or nonprofit entity. These systems consist of a structure, which divides the organization into the units responsible for carrying out the work, and an accounting system that continuously evaluates their performance.

Many health care organizations lack either aspect of a managerial control system. Some HMOs even lack accounting systems. One fast-growing HMO had no CFO or controller during a period when it was entering into fixed-price contracts to deliver its services. Not surprisingly, it later suffered heavy losses. It is no secret that healthy young adults dominate the rosters of HMOs. As these members age, however, the absence of a firm fix on costs imposed by a good managerial control system may prove fatal; clever marketing cannot substitute for it.

Some entrepreneurial companies providing patient-centered health care have remained traditionally organized—that is, by the doctors' specialties, not the patients' needs. This structure is akin to organizing an auto manufacturer by its suppliers of wheels, batteries, and steel rather than by the components of the car—engine, chassis, and so on. Although the traditional organization gives the physicians a peer group, it also sets up a barrier for the many patients with cross-specialty needs, like those with back problems or chronic pain, and undermines assignment of responsibility for an outcome—because no one person is accountable.

This functional structure makes it difficult to identify the costs of a service and the relationship



| Physician | 1985 | 1986 | 1987 |
|-----------|------|------|------|
| A         |      |      |      |
| B         | 22   | 10   | 7    |
| C         |      |      |      |
| D         | 12   | 10   | 8    |
| E         |      |      |      |
| F         | 9    | 10   | 9    |
| G         |      |      |      |
| H         | 12   | 10   | 5    |
| I         |      |      |      |
| J         | 11   | 11   | 12   |

Source: Mediqual Systems, Inc.

between cost and price. Because the dispensing of a service usually cuts across many functions, cost accounting and billing become horrendously complicated. The absence of accurate cost-accounting data forced the federal government to derive its DRG system through econometric analysis.

The Cleveland Clinic Foundation has one of the few institutions with enough cost-accounting and control competence to permit it to quote fixed prices for 17 procedures, including all physician and hospital costs. Virtually no other hospital can quote a fully bundled price. The clinic's concentration in certain medical specialties such as cardiology simplifies its cost accounting. While a few other hospitals are also specialized, like Shouldice Surgery near Toronto that treats only hernias (and tracks work requiring correction to the surgeon involved), most are multifunctional and so cannot derive the economies and other managerial benefits of concentration.

Having good cost-accounting data can cut costs. For example, Cardinal Distribution, a successful regional wholesaler located in Ohio, developed a PC-based inventory control system for its client pharmacies. The system tripled inventory turnover and reduced the necessary number of employees for purchasing and billing.

Having good clinical data can significantly improve patient care. The table shows the results when a hospital installed a quality monitoring system. Over a two-year period, the incidence of illness, after treatment for heart failure and shock, in the patients of the ten staff physicians declined generally, and in several instances dropped sharply.

Control difficulties can plague biotechnology companies that are organized according to scientists

specialties, like molecular biology, rather than by product line or disease category. This structure inhibits product development. Sometimes it appears to exist mainly to help a fledgling company dazzle potential investors with seductive but cryptic displays of scientific wonders. Many of these startups lack the cost-accounting ability to control their cash "burn rate," so they can fail if the equity market collapses.

**Management Philosophy.** Some health care entrepreneurs, especially those in service delivery, are sheepish about their business status—perhaps because of the academic doctors' frequent attacks on the "medical-industrial complex." Typical is the attitude of Keith Brodie, a psychiatrist who is president of Duke University. In a lecture he lambasted "the bête noire of rampant entrepreneurialism" in health care. Such scorn leads to denigration of a business focus and a sensible managerial viewpoint.

Some health care executives proudly declare that they embrace a philosophy: they are decentralized. But their espousal may represent an easy out of the tough job of managing (or a bow to pop management), not a thoughtful response to the organization's needs. Often they lack the management control systems that make decentralization work. One large hospital chain I studied operated on a decentralized basis, but its "model" information system could not identify the key group of doctors who admitted more than 40% of its patients.

Tight centralization, however, was the philosophy of David Jones, who built Humana to the point where at one time the company earned nearly as much from its 80 hospitals as its largest rival, HCA, did from its 350. Humana boasted excellent management control systems. Jones, a CPA, pored over minutely detailed reports and created probing internal competitive devices such as a monthly ranking of all hospitals according to profit margins, receivables turnover ratios, and bad debt rates. When utilization fell, the chain used its information system to help it design new insurance products whose price was based on the low marginal cost of a day in a Humana hospital.

It would be gratifying to be able to report that Humana had reaped its just rewards. But it lost nearly a quarter of a billion dollars from its insurance products. The centralization philosophy left too little room for development of managers capable of running the new business, and Humana's top managers could not respond appropriately to the needs of the fast-growing, dispersed markets they had entered. Maxicare, an HMO, ran into the same problem. Its carefully crafted centralized management system could not keep up with the company's growth and Maxicare too had no bench of management stars to

## Ideas for Future Health Care Entrepreneurs

| Category          | New Technologies  | New Consumers  |
|-------------------|---|--|
| Case Management   | Asynchronous care<br>Telemedicine<br>Patient health<br>monitoring | Work-site health<br>plans (dentistry,<br>lower back pain,<br>management,<br>hypertension<br>control); care for<br>sick children;<br>elder care |
| Facilities        | Specialized<br>ambulatory care<br>service for<br>pain control     | Focused facilities<br>(foot care,<br>back pain, breast<br>care, headaches)   |
| Consumer Services | Home care<br>services   | Adopt a "grannie"<br>service   |
| Pharmaceuticals   | Generic drugs<br>development                                      | Pharmaceutical<br>development<br>center in<br>rural area   |
| Home Health       | Home health<br>care   | Home health<br>care by<br>shopping<br>network  |

Author's note: I have compiled this table with the help of many generous colleagues, businesspeople, venture capitalists, and students.

offset the systems' limitations. Maxicare is teetering on the brink of bankruptcy.

Regional cost variances in health care compounded these companies' difficulties. Per capita expenses in New England, for instance, exceed those of the Mountain states by 40% for hospital service and 50% for nursing home care. Operating a closely centralized organization in such an environment, particularly during a time of fast growth, is difficult. Recognizing this truth, Humana eventually scaled back to the few regions in which it owned hospitals and to a level at which its centralized systems could comfortably operate. The company has posted big earnings gains in the last two years.

Author's note: I am grateful to Larry N. Brown for his assistance in the preparation of this article.

A few health care companies have benefited from decentralization. Bristol-Myers' notably graceful acquisition of many companies over the years was made possible by a management philosophy that enabled each new unit to maintain those features central to its success. So, in 1986, when Bristol-Myers spent \$300 million to buy Genetic Systems, a biotech company, Wall Street did not view the investment as particularly risky, despite the ostensible handicap that the company's only assets, its scientists, were not owned.

Bristol's philosophy recognizes that its many businesses, spanning hair care products to cancer drugs to Bufferin, require quite different management styles. This is a notion that even much smaller health care concerns have not recognized. The consequences have not always been advantageous to the business, as the case of Beverly Hospital shows.

To distinguish itself from other small community hospitals north of Boston, Beverly Hospital decided to diversify. A part of this successful program was a birthing center that featured a supportive environment for mothers delivering naturally, without medication. Running the center was a team of nurse-midwives whose clinical training and shared counterculture values made them ideal supervisors of this alternative birthing site.

But the hospital's administration did not see eye to eye with the nurse-midwives. Management's insistence on a hierarchy, despite the nurses' view of themselves as equal partners in a flat organization, sparked an irreconcilable conflict. Finally, the senior nurse-midwife in charge (also a founder) resigned, "protesting the encroachment of hospital standards" on midwives' services."

## The Second Stage

The American health care system still offers great opportunity for innovation—possibly as much today as in the recent past. As one starting point for future adventurous health care entrepreneurs, the second table lists some suggestions. Blossoming innovation

that improves productivity and cuts costs is timely, for the cost of caring for the rising number of the elderly and catastrophically ill is expected to shoot up to as much as 15% to 20% of GNP.

The next wave of entrepreneurial enterprises may learn from the painful experiences of their predecessors. If so, they will be more focused and more businesslike in managing their organizations. Like Humana, they will exert strong financial controls. Like Health Stop, they will share power and rewards with employees. Like Brigham and Women's Hospital, they will recognize the importance of employees' professional and personal development.

The new generation of entrepreneurial managers, one hopes, will resist the seductive temptation to buoy earnings temporarily with financing and marketing schemes and instead will aim for substance, carefully building a sound structure. In the second wave of the health care revolution, the rewards will come to those who structure operations that can deliver what the marketing message promises, to those who create comprehensive control systems, and to those who put into effect managerial philosophies that reflect organizational purposes.

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Reprint 89207

HB

48

Work session

2-2-89

Present: Nonley  
Collins: ~~Members~~  
Lemar  
Boyer  
Boucher  
Spohnholz

Absent: ~~Arce~~

000

Jim Fisher  
6645 H. Douglas  
Juneau AK

AK. Legal Services  
Supports

HB 48: Concept Lower rates for lower income  
parties

094 Dave Hutchins Ex Dir REC

HB 72 submitted amendments

Limited Competition  
Fixed Overhead

Continuing Property Rights  
add subsection Dies & Supp'd. be tax exempt  
due to Lobbying

Comments of Lee Num:  
exclude Liberally Constructed

Object to fees chgd to Utilities & passed  
on to Consumer.

Funding for PUC go through normal process

# Teleconference

APUC  
#72

Mike Downs Wasilla

① Commercial Refuse license

② Unable to obtain till Sunset Bill

deregulate reviewed.

③ Suggest APUC check into persons wishing to allow open competition

336 Leman: Concern of APUC regulation of solid waste disposal

APUC felt one way to reduce costs - disallow having to regulate solid waste at all.

Mr. Downs felt some control was needed. Didn't think state should control who can obtain license & who can't. Should be put out to a competitive bid process.

370 Paul Robinson Valley Refuse  
Would like deregulated so there could be competitive bidding.

Incl. <sup>refuse</sup> Bus. regulated to size of building by APUC.

PUC Ties hands of om. Business.

409 Leman responded which company has monopoly? Inquired about their <sup>one business</sup> area for service

Wasilla refuse 20%

Brough Landfill used for dumping

Leman: Are rates you're charged same for everyone?

No charge to anyone - Limits on what you can dump.

Number 457 Case against APUC

Private carrier could not be carrier of last resort.



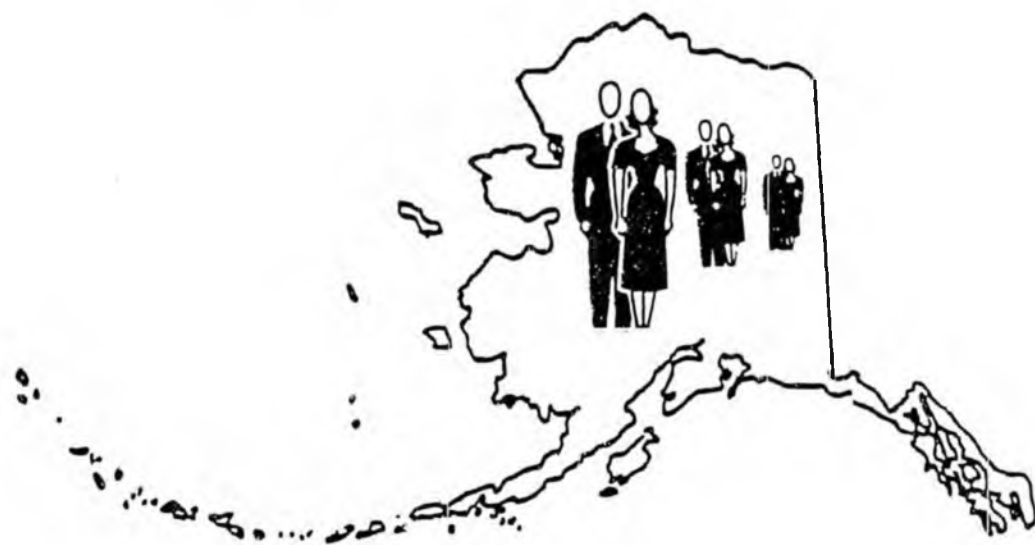


# **CORRECTION**

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



# **GUIDE TO ALASKA'S PUBLIC ASSISTANCE**



# **PROGRAMS**

Alaska Department of Health and Social Services  
Division of Public Assistance

## AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC)

- Citizenship: U.S. citizen or legally-admitted alien.
- State Residency: Present in Alaska with intent to remain.
- Age: The adult relative receiving payment may be of any age. Dependent children must be under 18. Pregnant women with no other AFDC children can receive payments in last trimester.
- Enumeration: Must have or apply for a Social Security Number.
- Work Requirements: In Fairbanks, Anchorage, Wasilla, Kenai, and Juneau, any otherwise-eligible adult whose youngest child is 6 or older (and who doesn't meet other exemption criteria) must register for the work programs and pursue employment.
- "Categorical" Requirements: One or both parents of a child under 18 must be absent from the child's home, or one must be incapacitated. The child(ren) must be living in the home of a parent or any federally-specified relative (including first cousins, aunts, uncles grandparents, step parents). Non-parent specified relatives may be included in the AFDC grant if they are "needy", i.e., meet income and resource tests below.
- Resources:
- a. House, personal belongings, identifiable Alaska Native Claims Settlement Act savings, and Limited Entry Fishing Permits in use do not count as resources. Resources of a step-parent do not count if he or she is not included in the AFDC grant.
  - b. "Motor Vehicle" (car, boat, snowmachine, etc.) equity value over \$1500 counts against resource limit, as does value of any stock, bond, savings account, non-home real property, etc.
  - c. Resource limit is \$1,000 per AFDC family unit.
- Income:
- a. Portions of student loans used for tuition, fees, and books is disregarded.

- b. The first \$2,000 per person per year of Native corporation dividends do not count as income. Most costs of doing business for self-employed are deductible. Earned income disregards are \$75 of gross, actual child care costs up to \$160 per month per child, an additional \$30, plus an additional 1/3 of the remainder. (Last two are given only for federally-limited number of months.) If new applicant's gross earned and unearned income does not exceed 185% of appropriate income limit below, disregards are applied to earned income gross to determine if income is under the limits below.
- c. Child support is counted against the standard. Recipients whose absent spouse makes current child support payments receive up to \$50 in a "pass-through" AFDC check which does not reduce the regular AFDC grant. Step-parents income counts after certain personal disregards are given.
- d. Qualifying Limits:

|  |            |
|--|------------|
| Pregnant woman                                     | \$437      |
| Needy adult plus one child                         | \$692      |
| \$ 87 added for each additional child              |            |
| \$162 added for incapacitated spouse               |            |
| No needy specified relative,<br>first two children | \$275 each |
| \$87 added for each additional child               |            |

Other Factors:

- a. One-time "windfall" payments (inheritances, legal settlements, bingo winnings, etc.) are divided by need standards, and family is ineligible for resulting number of months.
- b. Must cooperate with Child Support Enforcement Division in identifying and locating absent parent(s).
- c. Cannot be on strike on last day of month.
- d. Must pursue entitlement program benefits (unemployment, social security, etc.).
- e. Must file a mandatory report of last month's income and other circumstances between 1st and 5th of each month.

Payment Levels:

Maximum payment for families with no countable income is the same as qualifying limit (above). First month benefits are prorated from day application is filed. After first two months, payment is computed based on income received two months earlier (e.g., June 1 payment is based on April's income). No payment is made if AFDC benefits are less than \$10.

Effects of  
Counting PFD:

If PFD-Hold Harmless coverage were to end, each AFDC case receiving one or more dividends would be suspended from AFDC two months later. Eligibility in subsequent months would depend upon how quickly the household spent the dividends down below the \$1,000 resource limit.

Cross-Program  
Effects:

- a. Cannot receive SSI, Adult Public Assistance or General Relief while receiving AFDC.
- b. AFDC payment counts as income for Food Stamps, ASHA and Section 8 housing.
- c. AFDC eligibility for \$1 or more results in automatic eligibility for Medicaid. Medicaid continues for varying periods of time after AFDC eligibility ends as a result of increase in child support, increase in earned income, or loss of earned income disregards.

## ADULT PUBLIC ASSISTANCE (APA)

Old Age Assistance  
Aid to the Disabled  
Aid to the Blind

- Citizenship: U.S. Citizen or alien admitted for permanent residence.
- State Residency: Present in Alaska with intent to remain.
- Age: Must be at least age 18 for Aid to the Disabled or Aid to the Blind; age 65 or older for Old Age Assistance.
- Enumeration: Not required for Adult Public Assistance. However, the benefit package includes Medicaid assistance, which requires a social security number.
- Work Requirements: None. Individuals referred for Vocational Rehabilitation services must participate.
- "Categorical" Requirements: For Aid to the Blind, must be legally blind. For Aid to the Disabled, must be unable to perform substantial gainful activity because of a physical or mental impairment expected to result in death or to be of at least 12 months' duration. No categorical requirement except age for Old Age Assistance. These requirements are identical to federal SSI program.
- Resources:
- a. Home, household goods and personal effects, certain property necessary for self-support, identifiable Alaska Native Claims Settlement Act savings, Limited Entry Fishing permits which are in use, and one necessary motor vehicle do not count as resources.
  - b. Additional vehicles, non-home real property, stocks, bonds, savings accounts, mortgage contracts, life insurance over \$1500 face value per individual, other saleable assets count against resource limit.
  - c. 24-month disqualification for disposal of excess resources to make oneself eligible.

- d. Resources of a spouse living in the same home count as available resources. Resource limit is \$1900 for an individual, \$2850 for a couple; will increase to \$2000/\$3000 on 1-1-89. Resource standards are identical to SSI program.

Income:

- a. Native corporation dividends do not count as income, up to \$2,000 per person per year. Most costs of doing business for self-employed are deductible. Work expenses of the blind are deductible. Impairment related work expenses, (e.g., special equipment or prostheses) of disabled are also deductible. Standard monthly disregard of \$65 plus 1/2 of the remainder is applied to gross earned income. The first \$20 per month of all income except SSI or VA pension is also disregarded. Income after disregards is compared to limits below to determine eligibility and calculate payment.

- b. Qualifying limits:

|  |       |
|--|-------|
| Individual, independent living             | \$659 |
| Couple, both eligible, independent living  | 976   |
| Couple, one eligible, independent living   | 791   |
| Independent, in another's household        | 545   |
| Couple, both eligible, another's household | 811   |
| Couple, one eligible, another's household  | 625   |

Other Factors:

- a. Adult Public Assistance is Alaska's state-funded supplement to the federal SSI program, which covers the same categorical groups.
- b. Must pursue entitlement program benefits (Supplemental Security Income (SSI), Social Security, Veterans' Administration, as well as private pensions, annuities, disability benefits).
- c. Interim Assistance benefits (\$280 per month) available to individuals applying for SSI benefits, pending the SSI eligibility decision.
- d. Longevity Bonus payments to individuals not grandfathered into exempt category by October 1985 are treated as countable income by SSI and Medicaid programs. Lost SSI benefits are replaced by Adult Public Assistance funds. Individuals who lose Medicaid due to counting ALB receive 100% state-funded medical coverage.

Payment  
Levels:

Maximum payment is the same as qualifying limit (above). Few individuals or couples are paid at maximum level. The program is essentially supplemental to other entitlement programs. Most recipients receive SSI and/or Social Security benefits, along with state payment to bring total monthly income up to Adult Public Assistance payment level.

Maximum payment level for nursing home residents is \$70 per month.

Effects of  
Counting PFD:

If PFD Hold-harmless were to end, recipients could lose Medicaid eligibility for the month of dividend receipt. SSI recipients would lose eligibility for SSI payment for the month of receipt. Current statutory language prohibits counting PFD payments as income for state-funded assistance; were this to change, Adult Public Assistance recipients would lose eligibility for the month of receipt.

Cross-program  
Effects:

- a. Cannot be included in AFDC grant while receiving Adult Public Assistance, but dependent children may receive AFDC. Cannot receive General Relief while receiving Adult Public Assistance.
- b. Adult Public Assistance counts as income for Food Stamps, ASHA and Section 8 housing.
- c. Adult Public Assistance eligibility for \$1 or more results in automatic eligibility for Medicaid. Medicaid continues for certain individuals who lose eligibility due to increased earnings, if SSI puts them into special protected status.

## GENERAL RELIEF ASSISTANCE (GRA)

- Citizenship: U.S. citizen or a legally admitted alien.
- State Residency: Must be physically present within the State of Alaska at the time of application.
- Age: Must be an adult or eligible minor.
- Enumeration: No requirement.
- Work Requirements: Implementation of this criterion is pending an agreement with the state Department of Labor. Currently, applicant households are not required to register for work.
- Categorical Requirements: Must have an immediate and specific need for such items as food, clothing, utilities, shelter, or burial and lack the financial means to meet the need(s).
- Resources:
- a. The following resources do not count:
    1. Applicant's residence and land on which it stands, property actively up for sale, producing income, or essential to employment.
    2. Identifiable Alaska Native Claims Settlement Act savings and Permanent Fund Dividend savings.
    3. A Limited Entry Fishing permit (if used during the most recent season)
    4. One motor vehicle (two if applicant resides in an area which requires an alternative means of transportation). e.g., a car and a boat, or a boat and a snowmachine.
- Resources:
- a. All personal and real property (not listed in (a. above) such as, cash on hand, savings, stocks, bonds, excess motor vehicles, and non-home real property will count against the resource limit.
  - b. Resource limit is \$500.

Income:

- a. Permanent Fund Dividends, Alaska Native Claims Settlement Act distributions, and certain allowable deductions from earned income and student loans do not count as income.
- b. All other money received in the month of application is considered as income.
- c. Qualifying Limits: The net adjusted income and household size is compared to the following need standard chart:

| <u>Number of Persons</u> | <u>Maximum Need Standard</u> |
|--------------------------|------------------------------|
| 1                        | \$300                        |
| 2                        | 400                          |
| 3                        | 500                          |

\$100 is added for each additional household member.

Payment Levels:

Amount of the specific need(s) up to a limit of \$120 per household member.

Effects of  
Counting PFD:

PFD is exempt as income or a resource.

Cross-Program  
Effects:

Clients are required to apply for any other benefits for which they are eligible before applying for General Relief Assistance. Vendor payments made under the General Relief assistance program are generally not countable as income in other programs, except Food Stamps.

## FOOD STAMP PROGRAM

- Citizenship: U.S. citizens, legally permanent aliens, and certain other legal aliens are eligible.
- State Residency: Must live in the state to receive coupons from that state.
- Age: No specific age limits; if minor applies, must be emancipated.
- Enumeration: Must provide SSN for every household member. If a member does not have one, must apply for one. While waiting for the SSN, members may participate.
- Work Requirements: With certain exceptions, able-bodied people between 18 and 60 must register for work, participate in training programs if offered in their area, accept an offer of suitable employment, and not quit a job without good cause.
- Categorical Requirements.
- a. In most circumstances, the income and resources of each person in the household are included in the food stamp determination.
  - b. The following items are required to be provided at time of application: ID showing name and address; SSN; proof of monthly earnings, proof of unearned income - SSI, SSA, pension; if not a citizen, proof of legal alien status; bank book or current bank statement; receipts of child care costs; utility and rent receipts.
- Resources:
- a. Disregarded resources - home and surrounding property, household goods, burial plot, cash value of life insurance, property which annually produces income consistent with its fair market value, irrevocable trust funds, real property that is for sale, ANCSA dividends (up to \$2,000 per year).
  - b. Countable resources - cash on hand, money in checking/savings accounts, certificates, stocks, bonds, IRA's, lump sum payments, vehicles valued over \$4,500, some property.
  - c. Limits - resources cannot exceed \$2,000 for most households; resources cannot exceed \$3,000 for households containing a member who is 60 years or older.

Income:

- a. Disregarded income - educational loans and scholarships used for tuition and mandatory school fees, loans for specific purposes, reimbursements, earnings of students under 18, Native dividends (up to \$2,000 per year).
- b. Countable income - earned income from all members, other money received on a regular or irregular basis, public assistance grants, child support, pensions, social security, SSI, ALB.
- c. Limits - Two income tests for most households:

Income Test A

For Households that do not have  
Elderly or Disabled Members

Monthly Gross Income Limits

| <u>Household Size</u> | <u>Monthly Gross Income</u> |
|-----------------------|-----------------------------|
| 1                     | \$ 744                      |
| 2                     | 1,001                       |
| 3                     | 1,259                       |
| 4                     | 1,517                       |

Eff: July 1987  
(Changes Annually)

Income Test B

For all Households

Monthly Net Income Limits

| <u>Household Size</u> | <u>Monthly Net Income</u> |
|-----------------------|---------------------------|
| 1                     | \$ 572                    |
| 2                     | 770                       |
| 3                     | 969                       |
| 4                     | 1,167                     |

Eff: July 1987  
(Changes Annually)

Other Factors:

Strikers - Households with persons who are on strike are not eligible unless they were eligible the day prior to the strike.

Students - Most college students are not eligible to receive food stamps. Able-bodied students between 18-60 enrolled at least half time are eligible only if they are: a) receiving AFDC; b) working at least 20 hours a week or participating in a federal work-study program; c) caring for a dependent under age 6; or d) caring for a dependent between age 6 and 12 where adequate child care is not available.

Benefit Levels:

Benefit levels for all households depend on the number of people in the household and the household's net income.

Generally, the more people, the larger the benefit; the lower the net income, the larger the benefit. Benefit levels in Alaska also depend on location. Households in rural areas receive higher allotments than like households in urban areas.

Below is a chart of the maximum amount a household can receive per month. This is based on a net income of zero.

| <u>HH Size</u> | <u>Urban</u> | <u>Rural I</u> | <u>Nenana</u> | <u>Rural II</u> |
|----------------|--------------|----------------|---------------|-----------------|
| 1              | 113          | 144            | 158           | 176             |
| 2              | 207          | 265            | 290           | 322             |
| 3              | 297          | 379            | 415           | 462             |
| 4              | 378          | 482            | 527           | 586             |

Effective:  
Oct 1987

Each Additional Member: + 85 Urban  
+ 108 Rural I  
+ 132 Rural II  
+ 119 Nenana

Effects of Counting PFD:

The PFD counts as a resource. When the PFD plus any other countable resources exceed the Food Stamp Program's resource limit, the household is placed on a state-only hold harmless program for up to four months.

Cross-Program Effects

Receipt of food stamps does not count as income or a resource in any state or federal program.

## ENERGY ASSISTANCE PROGRAM

- Citizenship: Not a requirement.
- State Residency Must live in Alaska and be vulnerable to energy expenses.
- Age No age restriction.
- Enumeration Social Security Number is requested.
- Work Requirements: No requirement.
- Categorical Requirements: Must be vulnerable to energy expenses. Both homeowners and renters can apply.
- Resources: Do not count resources.
- Income: Eligibility will be based on the applicant's average gross monthly income for the last 90 days. Applicants with income at or below the appropriate level will be eligible for energy assistance:

| <u>Household Size</u> | <u>Average Gross Monthly Income</u> | <u>Gross Income For Past 90 Days</u> |
|-----------------------|-------------------------------------|--------------------------------------|
| 1                     | \$ 994                              | \$2,982                              |
| 2                     | 1,300                               | 3,900                                |
| 3                     | 1,606                               | 4,818                                |
| 4                     | 1,912                               | 5,736                                |
| 5                     | 2,218                               | 6,654                                |
| 6                     | 2,524                               | 7,572                                |

For each additional member add approximately \$57, or \$171 for 90 days.

Households containing an individual receiving Aid to Families with Dependent Children (AFDC), Food Stamps, Supplemental Security Income (SSI), or certain income-tested VA benefits are automatically eligible for energy assistance benefits upon application.

Energy Assistance Program:

EAP is 100% Federally funded.

Households eligible for or receiving benefits from a tribal organization administering a Low Income Home Energy Assistance Program will not be eligible for benefits under the State EAP, except where an agreement to the contrary exists between the State and tribal organization.

EAP pays most benefits to the household's home energy supplier.

Eligible households with home energy crises can be served in an expedited manner.

Payment or  
Benefit Levels

The benefits given to an eligible household are based on the family's gross monthly income, home heating costs, housing type, and the geographic region in which it lives. Maximum grant amounts will vary in different regions of the state, ranging from \$200 to \$840. EAP grants are given once per program year per household. The program year runs from November 1, 1987 through June 30, 1988.

PFD Impact:

None

Cross-  
Program Effects:

EAP does not count as income for any other assistance program, except in those few instances where cash is granted, rather than a vendor payment.

## EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)

### Program Purpose

This part of the Medicaid program is a preventive health program for children of eligible low-income families. Health problems left untreated or not treated early may lead to permanent disability and greater medical costs in the future. The earlier they are found, the easier they are to correct or stop from becoming serious problems. This program encourages regular health checkups for children in low-income families.

### Requirements for Eligibility

All children and young people under the age of 21 who are eligible for Medicaid may have health screening (checkups) as part of their medical coverage under the EPSDT program. EPSDT services may be requested at any time as long as their eligibility continues.

Health screening is provided by Public Health Nurses, and any doctor or dentist who will accept Medicaid patients. The Public Health Nurse will help make appointments and arrange transportation for checkups and/or treatment if necessary.

### Benefits

EPSDT offers all of the coverage available under Medicaid as well as the following special services:

1. screening services -- including a complete health, developmental and nutritional history; a "head to toe" examination; vision and hearing tests; measurement of height and weight; urine, blood, and TB tests; immunizations if needed; other tests as necessary and a separate dental check for all children three years of age and older,
2. dental care, and
3. health and nutrition counseling.

Babies may be screened five times during the first year, and then once a year thereafter until age 4. Children and youth age 4 and over receive a health screening every three years up to age 21. Assistance will be provided in obtaining medical and dental care needed for any problems which are found. There will be no charge for treatment when the services are covered under Medicaid or GRM.

More information about EPSDT is available at all Division of Public Assistance offices. Office addresses are listed on page 3 of this booklet, or you may contact the Public Health Nurse in your area.

MEMO

RE: CS for HB48, Lifeline Rates

Both HB 48 as written and the CS allow telephone utilities to provide DISCOUNTED SERVICES and/or REDUCED RATES.

HB 48 does it by adding two new subsections to existing statute. The first subsection is added the existing Rate Discrimination section of the statute. The second subsection adds language that is identical to the first subsection to the Service Discrimination section of the statute. Summarily, HB 48 adds identical paragraphs to two different sections in the statutes.

Gruenberg's CS does the same thing in a different way. Instead of adding two new subsections like HB 48 does, it adds one new section that combines the Discounted Service and Reduced Rate provisions. (See CS Sec 2). This new section is designated 42.05.306.

The other two sections of the CS simply add the referral phrase, "except as provided in AS 42.05.306, " to the existing Rate Discrimination and Service Discrimination sections.

In addition, the Gruenberg CS makes several changes in the wording of the operative portion of the bill, as indicated below.

A public utility may provide [PROPOSE] a discounted service or a reduced rate for essential telecommunication services for the benefit of its [LOW-INCOME] customers who receive benefits from [QUALIFY FOR] a means test social services assistance program administered by the local, state or federal government. The commission may not require a utility to provide a discounted service or reduced rate [UNDER THIS SUBSECTION. THE COMMISSION MAY NOT REQUIRE A TELEPHONE UTILITY] or to incur uncompensated costs or administrative burdens [THAT ARE NOT RECOVERABLE THROUGH AN APPROVED TARIFF IF THE UTILITY PROVIDES A DISCOUNTED SERVICE OR REDUCED RATE APPROVED BY THE COMMISSION] for services provided under this section.

STANDARDS AND MAXIMUM PAYMENTS - Revised Edition

| AFDC   | 11/2%<br>7/1/81 | 7.4%<br>7/1/82 | STDS.<br>CHG.<br>1/1/83 | 3.5%<br>1/1/84 | 3.5%<br>1/1/85 | 3.1%<br>1/1/86 | 7/1/86        | 1.3%<br>1/1/87 | 4.2%<br>1/1/88 | 4.0%<br>1/1/89 |
|--|-----------------|----------------|-------------------------|----------------|----------------|----------------|---------------|----------------|----------------|----------------|
| A1 2   | 508             | 546            | 597                     | 617            | 638            | 657            | 657           | 665            | 692            | 719            |
| 3  | 571             | 614            | 674                     | 696            | 719            | 740            | 740           | 749            | 779            | 809            |
| 4  | 634             | 682            | 751                     | 775            | 800            | 823            | 823           | 833            | 866            | 899            |
| 5  | 697             | 750            | 828                     | 854            | 881            | 906            | 906           | 917            | 953            | 989            |
| 6  | 760             | 818            | 905                     | 933            | 962            | 989            | 989           | 1001           | 1040           | 1079           |
| 7  | 823             | 886            | 986                     | 1012           | 1043           | 1072           | 1072          | 1085           | 1127           | 1169           |
| EA ADD   | 63              | 68             | 77                      | 79             | 81             | 83             | 83            | 84             | 87             | 90             |
| ANI 1  | 222             | 238            | 238                     | 246            | 254            | 261            | 261           | 264            | 275            | 286            |
| 2  | 445             | 476            | 476                     | 492            | 508            | 522            | 522           | 528            | 550            | 572            |
| 3  | 508             | 544            | 553                     | 571            | 589            | 605            | 605           | 612            | 637            | 662            |
| 4  | 571             | 612            | 630                     | 650            | 670            | 688            | 688           | 696            | 724            | 752            |
| 5  | 634             | 680            | 707                     | 729            | 751            | 771            | 771           | 780            | 811            | 842            |
| 6  | 697             | 748            | 784                     | 808            | 832            | 854            | 854           | 864            | 898            | 932            |
| 7  | 760             | 816            | 861                     | 887            | 913            | 937            | 937           | 948            | 985            | 1022           |
| EA ADD   | 63              | 68             | 77                      | 79             | 81             | 83             | 83            | 84             | 87             | 90             |
| SINGLE ADULT/<br>PREGNANT WOMAN*<br>11/1783                      | 286             | 308            | *359<br>*382            | *391           | 404            | 416            | 416           | 421            | 437            | 453            |
| **ADDITIONAL<br>INCREMENT FOR<br>INCAP. SPOUSE                   |                 |                |                         | **145          | **150          | **154          | **154         | **156          | **162          | **168          |
| APA  |                 |                |                         |                |                |                | WASKY<br>SUIT |                |                |                |
| INDIV. -35   | 426             | 426            | 546                     | 566            | 586            | 605            | 624           | 632            | 659            | 685            |
| +35  | 526             | 526            |                         |                |                |                |               |                |                |                |
| COUPLE -35   | 638             | 638            | 802                     | 830            | 859            | 867            | 925           | 937            | 976            | 1015           |
| +35  | 773             | 773            |                         |                |                |                |               |                |                |                |
| N.H.P. NEEDS:  | 35              | 70             | 70                      | 70             | 70             | 70             | 70            | 70             | 70             | 75 75          |
| -INDIV. B  |                 |                | 451                     | 466            | 482            | 497            | 516           | 523            | 545            | 567            |
| -B ELIG. COUPLE  |                 |                | 660                     | 683            | 707            | 730            | 768           | 778            | 811            | 843            |
| -A COUPLE, 1 INELIGIBLE  |                 |                | 660                     | 683            | 707            | 730            | 749           | 759            | 791            | 823            |
| -B COUPLE, 1 INELIGIBLE  |                 |                | 518                     | 536            | 555            | 573            | 592           | 600            | 625            | 650            |
| -NURSING HOME 300% CASES   |                 |                |                         | 942            | 975            | 1008           | 1020          | 1020           | 1062           | 1104           |
| SSI STANDARDS:   |                 |                |                         |                |                |                |               |                |                |                |
| -INDIV. "A" LVC. ARR.  |                 |                |                         | 314            | 325            | 336            | 336           | 340            | 354            | 360            |
| -INDIV. "B" LVC. ARR.  |                 |                |                         | 209.34         | 216.67         | 224            | 224           | 226.67         | 236            | 245.34         |
| -COUPLE "A"  |                 |                |                         | 472            | 488            | 504            | 504           | 510            | 532            | 553            |
| -COUPLE "B"  |                 |                |                         | 314.67         | 325.34         | 336            | 336           | 340            | 354.67         | 368.67         |
| -SSI - LONG TERM N.H.  |                 |                |                         |                |                |                |               |                | 25 30 30       |                |
| APA-SSI<br>RESOURCE LIMITS                                       |                 |                |                         |                |                |                |               |                |                |                |
| - INDIVIDUAL   |                 |                |                         | 1500           | 1600           | 1700           | 1700          | 1800           | 1900           | 2000           |
| - COUPLE   |                 |                |                         | 2250           | 2400           | 2550           | 2550          | 2700           | 2850           | 3000           |
| 100% of Federal<br>Poverty Level -<br>Alaska Monthly<br>Standard |                 |                |                         |                |                |                | HH            |                | 2/12/86        |                |
|  |                 |                |                         |                |                |                | 1             |                | 600            |                |
|  |                 |                |                         |                |                |                | 2             |                | 805            |                |
|  |                 |                |                         |                |                |                | 3             |                | 1009           |                |
|  |                 |                |                         |                |                |                | 4             |                | 1213           |                |
|  |                 |                |                         |                |                |                | 5             |                | 1417           |                |
|  |                 |                |                         |                |                |                | 6             |                | 1621           |                |
|  |                 |                |                         |                |                |                | 7             |                | 1825           |                |
|  |                 |                |                         |                |                |                | 8             |                | 2030           |                |
|  |                 |                |                         |                |                |                | Each AD       |                | 204            |                |

# HOUSE COMMITTEE REPORT

(5)

Date Referred: January 9, 1989

FURTHER REFERRALS: LABOR & COMMERCE  
FINANCE

Date of Committee Action: \_\_\_\_\_

The STATE AFFAIRS Committee recommends that:

HOUSE BILL NO. 48 [LIFELINE PHONE RATES]

"An Act relating to reduced rates and discounted service for certain low-income telecommunication customers."

- [ ] be replaced with \_\_\_\_\_ [ ] the same title  
[ ] a new title
- [ ] have attached amendment(s)
- [X] do pass  
[ ] do not pass  
[ ] no recommendation  
[ ] individual recommendations  
[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [ ] fiscal impact  
[X] zero fiscal note  
[ ] zero with analysis

APPROVES PREVIOUS:

- [ ] fiscal note(s) published:  
\_\_\_\_\_  
[ ] zero fiscal notes(s) published:  
\_\_\_\_\_

SIGNING DO PASS:

W.A. Bush  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNING OTHER THAN DO PASS:  
(Do Not Pass, No Recommendation, Amend)

Deeley NO REC  
George NO REC  
C. H. [unclear] - NR  
Chim [unclear] - NO REC  
Richard P. MacLean - NO REC  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

W.A. Bush  
Chairman's signature

STATE OF ALASKA  
THE LEGISLATURE

FOUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
707 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 23, 1989

SUBJECT: Sectional analysis of HB 48  
(Reduced rates and discounted service for  
low-income customers)

TO: Representative H. A. "Red" Boucher

FROM: Teresa B. Cramer *TBC*  
Legislative Counsel

You have requested a sectional analysis of the above de-  
scribed bill.

As a preliminary matter, note that a sectional analysis or  
summary of a bill should not be considered an authoritative  
interpretation of the bill and the bill itself is the best  
statement of its contents.

Section 1 permits a public utility to grant discounted  
service to low-income customers for essential telecommunica-  
tion services. Participation by a public utility is volun-  
tary. The commission must allow a utility providing reduced  
rates or discounted service to include the costs and admin-  
istrative burdens of the program in the tariffs it charges.

Sec. 2 permits a public utility to grant reduced rates to  
low-income customers for essential telecommunication ser-  
vices. Participation by a public utility is voluntary. The  
commission must allow a utility providing reduced rates or  
discounted service to include the costs and administrative  
burdens of the program in the tariffs it charges.

If I may be of further assistance, please advise.

TBC:kb  
wkk1/068

**Alaska Telephone Association**

201 E. 56th Avenue / Suite 280  
Anchorage, Alaska 99518  
(907)563-4000 / FAX (907)562-3776

W. D. Pyron  
President

Gordon Parker  
Executive Director

January 24, 1989

Hon. H.A. Boucher  
House of Representatives  
102 Capitol Building, Pouch V  
Juneau, Alaska 99811

Dear Representative Boucher:

I understand that a hearing on HB 48 is being held. Unfortunately a previous commitment prevents my attendance. I did, however, want to advise you and your Committee that the Alaska Telephone Association supports HB 48.

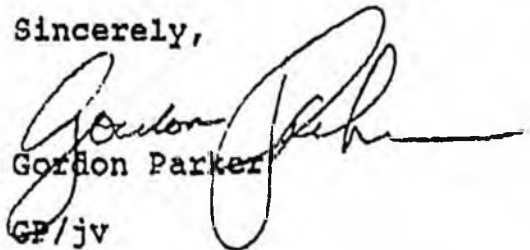
As you know, ATA worked with you in drafting this legislation originally. We continue our support because we believe it represents a step toward providing assistance to those among us who need it while protecting the interests of our remaining customer base.

We support this legislation because it allows utilities, in conjunction with the APUC, to develop lifeline rates desirable to the customer base of individual companies.

The legislation also presents a clear definition of eligible recipients. We support this provision as it presents a clear target population, will serve to prevent abuse and takes away the threat of the utility being placed in the position of establishing arbitrary qualifications.

We commend you for your continued support of this legislation. Upon my return, I will be available to participate in future hearings as the bill makes its way through the legislative process.

Sincerely,

  
Gordon Parker

GP/jv

Flem 4

STEVE COWPER, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

420 L STREET  
SUITE 100  
ANCHORAGE, ALASKA 99501  
(907) 276-6222

December 23, 1988

Ms. Kathy Anders  
Office of Representative Red Boucher  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Dear Kathy:

Per your request, I am writing to provide you the Commission's preliminary comments on two bills which Representative Boucher is considering reintroducing.

The Commission continues to support HB5, the universal service bill. A minor suggestion we would offer is that it may be desirable to add a clause such as "at a minimum" or "at least" after "further" so as not to limit the criteria to be considered in assuring universal service.

With respect to HB23, the lifeline bill, the Commission has two independent comments. First, based on its consideration of a related subject (namely, economic development incentive rates), the Commission believes that it is preferable to approach discounted or reduced rates generically rather than through specific legislation by type of rate or utility. Thus, we would recommend this approach rather than the one used in HB23, and I have attached the sample language previously provided to you for illustration purposes.

Second, if specific telephone lifeline legislation is preferred nonetheless, then we would offer the following editorial suggestions on HB23:

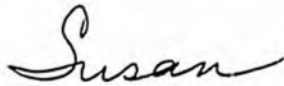
(1) The second sentence of sections 1 and 2 should be eliminated. It is sound, if not fundamental, public policy to give regulators at least the same level of discretion which is provided to the regulated to evaluate whether or not discounted or reduced rates are in the public interest. This important initiative should not be limited to utilities, particularly if the universal service bill passes. In addition, utilities are financially protected by any actions the Commission may take by the third sentence insulating them from the financial burdens of such rates.

Kathy Anders  
December 23, 1988  
Page 2 of 2

(2) The last clause of sections 1 and 2 should be changed from "if the utility provides a discounted service or reduced rate" to "if the commission approves a discounted service or reduced rate" to clarify the language and the respective roles of the utility and the commission in the process.

I hope that these comments are helpful. We look forward to working with Representative Boucher on these bills and on any alternate operator services legislation that may be proposed. Please give me a call if you have any questions. Thanks.

Sincerely yours,

A handwritten signature in cursive script that reads "Susan".

Susan M. Knowles  
Chairman

Enclosure

Sample general language authorizing reduced or  
discounted rates

Nothing in this section prevents a public utility from charging reduced rates upon such terms as are just and reasonable to any potential or present customer which are designed to encourage or maintain the customer as a consumer of the utility's services, provided the Commission finds that allowing the reduced rate is in the public interest, that the customer would not subscribe or continue to subscribe to the utility's services without the reduced rate, and that the reduced rate will not result in higher rates to other customers of the utility than would result if the customer did not subscribe to the utility's services, unless the reduced rate will either enhance the value of the utility's services to other customers or produce a public benefit to other customers that is greater than any higher rates.

6-0188P ✓  
Chenoweth  
2/7/89

Original sponsors: Donley, Gruenberg,  
Boucher, et al.

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 36 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the rights, entitlements, and  
7 services that are due to victims of crime, and to  
8 ~~survivors~~ service of process on prisoners; and amending Rules  
9 32 and 35 of the Alaska Rules of Criminal Procedure."

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

11 \* Section 1. AS 09.05 is amended by adding a new section to read:

12 Sec. 09.05.050. SERVICE OF PROCESS ON STATE PRISONERS. (a) In  
13 a civil action to which a person committed to the custody of the  
14 commissioner of corrections is a party or witness, service of process  
15 shall be made by delivering a copy of the summons and the complaint or  
16 pleadings, together with a form for affidavit of proof of service, to  
17 the shift supervisor of the correctional facility in which the person  
18 is housed. The shift supervisor shall

19 (1) immediately hand deliver the summons and complaint or  
20 pleadings to the person whose name appears on the summons; and

21 (2) promptly complete the affidavit of proof of service on  
22 the form provided and return it to the party requesting service of  
23 process.

24 (b) A party requesting service of process under this section may  
25 locate a person committed to the custody of the commissioner of cor-  
26 rections by contacting the chief classification officer of the Depart-  
27 ment of Corrections during that officer's regular hours of work.

28 \* Sec. 2. AS 12.47 is amended by adding a new section to read:

29 Sec. 12.47.095. NOTICE TO VICTIMS. (a) If an offender has been

1 committed to the custody of the commissioner of health and social  
2 services under AS 12.47.090, the victim of that crime is entitled to  
3 notice of a pending change in the status of the offender. The commis-  
4 sioner of health and social services shall give notice as required by  
5 this section if

6 (1) the offender has been continued in commitment following  
7 expiration of the maximum term of imprisonment under AS 12.47.090(f)  
8 and the commissioner gives notice of release of the offender;

9 (2) the court is to consider modification of an order of  
10 conditional release for the offender under AS 12.47.092(e);

11 (3) a court is to consider conditional release of the  
12 offender under AS 12.47.090(k) and 12.47.092(a); or

13 (4) the offender petitions for discharge under AS 12.47.-  
14 092(f).

15 (b) If a victim desires notice under this section, the victim  
16 shall maintain a current, valid mailing address on file with the  
17 commissioner of health and social services. The commissioner shall  
18 send the notice required by this section to the victim's last known  
19 address. The victim's address may not be disclosed to the offender or  
20 offender's attorney.

21 (c) The commissioner of health and social services is required  
22 to give notice of a change in the status of an offender under this  
23 section to any victim who has requested notice.

24 (d) If more than one person who qualifies as a victim under  
25 AS 12.55.185 desires notice, the commissioner of health and social  
26 services shall designate one person for purposes of receiving any  
27 notice required and exercising the rights granted by this section.

28 (e) In this section

29 (1) "offender" has the meaning given in AS 12.61.020;

1 (2) "victim" has the meaning given in AS 12.55.185.

2 \* Sec. 3. AS 12.55 is amended by adding a new section to read:

3 Sec. 12.55.023. PARTICIPATION BY VICTIM IN SENTENCING. (a) If  
4 a victim requests, the prosecuting attorney shall provide the victim  
5 with a copy of the following portions of the presentence report:

6 (1) the summary of the offense prepared by the Department  
7 of Corrections;

8 (2) the defendant's version of the offense;

9 (3) all statements and summaries of statements of the  
10 victim; and

11 (4) the sentence recommendation of the Department of Cor-  
12 rections.

13 (b) A victim may submit to the sentencing court a written state-  
14 ment that the victim believes is relevant to the sentencing decision.

15 \* Sec. 4. AS 12.55.088 is amended by adding new subsections to read:

16 (d) A victim has the right to comment in writing to the court on  
17 a motion to modify or reduce a sentence filed by the person who perpe-  
18 trated the offense against the victim.

19 (e) If a motion is filed to modify or reduce a sentence by a  
20 defendant who perpetrated a crime against a person, the court shall,  
21 if feasible, send a copy of the motion to the Department of Correc-  
22 tions sufficiently in advance of any scheduled hearing or briefing  
23 deadline to enable the department to notify the victim of that crime.  
24 If that victim has earlier requested to be notified, the Department of  
25 Corrections shall send the victim a copy of the motion and inform the  
26 person of that person's rights under this section, the deadline for  
27 receipt of written comments, the hearing date, and the court's ad-  
28 dress.

29 (f) The court shall provide copies of the victim's comments to

1 the prosecuting attorney, the person filing the motion to reduce or  
2 modify a sentence, and that person's attorney

3 (g) In deciding whether to modify or reduce a sentence, the  
4 court shall consider the victim's ~~written~~ comments, when relevant, and  
5 any response by the prosecuting attorney and the person filing the  
6 motion.

7 (h) If a victim desires notice under this section, the victim  
8 shall maintain a current, valid mailing address on file with the  
9 commissioner of corrections. The commissioner shall send the notice  
10 to the victim's last known address. The victim's address may not be  
11 disclosed to the offender or to the offender's attorney.

12 \* Sec. 5. AS 12.55 is amended by adding a new section to read:

13 Sec. 12.55.172. DESIGNATION OF REPRESENTATIVE. If more than one  
14 person who qualifies as a victim under AS 12.55.185 desires notice  
15 under AS 12.55.088, the prosecuting attorney shall designate one  
16 person to represent all victims for purposes of receiving the notice  
17 required and exercising the rights granted under this chapter.

18 \* Sec. 6. AS 12.55.185 is repealed and reenacted to read:

19 Sec. 12.55.185. DEFINITIONS. In this chapter, unless the con-  
20 text requires otherwise,

21 (1) "crime against a person" has the meaning given in  
22 AS 33.30.901;

23 (2) "dangerous instrument" has the meaning given in AS 11.-  
24 81.900;

25 (3) "firearm" has the meaning given in AS 11.81.900;

26 (4) "first felony conviction" means that the defendant has  
27 not been previously convicted of a felony;

28 (5) "judicial officer" has the meaning given in AS 11.56.-  
29 900;

1 (6) "pecuniary gain" means the amount of money or value of  
2 property at the time of commission of the offense derived by the  
3 defendant from the commission of the offense, less the amount of money  
4 or value of property returned to the victim of the offense or seized  
5 by or surrendered to lawful authority before sentence is imposed;

6 (7) "second felony conviction" means that the defendant  
7 previously has been convicted of a felony;

8 (8) "serious physical injury" has the meaning given in  
9 AS 11.81.900;

10 (9) "third felony conviction" means that the defendant has  
11 been at least twice previously convicted of a felony;

12 (10) "unconditional discharge" means that a defendant is  
13 released from all disability arising under a sentence, including  
14 probation and parole;

15 (11) "victim" means

16 (A) a person against whom an offense has been perpe-  
17 trated;

18 (B) one of the following, not the perpetrator, if the  
19 person specified in (A) of this paragraph is a minor, incompe-  
20 tent, or incapacitated:

21 (i) an individual living in a spousal relation-  
22 ship with the person specified in (A) of this paragraph; or

23 (ii) a parent, adult child, guardian, or custodian  
24 of the person;

25 (C) one of the following, not the perpetrator, if the  
26 person specified in (A) of this paragraph is dead:

27 (i) a person living in a spousal relationship  
28 with the deceased before the deceased died;

29 (ii) an adult child, parent, brother, sister,

1 grandparent or grandchild of the deceased; or

2 (iii) any other interested person, as may be des-  
3 ignated by a person having authority in law to do so.

4 \* Sec. 7. AS 12.61.010 is amended to read:

5 Sec. 12.61.010. RIGHTS OF CRIME VICTIMS. (a) Victims of crimes  
6 have the following rights:

7 (1) the right to be informed by the appropriate law en-  
8 forcement agency or the prosecuting attorney of the date of trial and  
9 the date of sentencing of the case in which the victim is involved;

10 (2) the right to be notified that a sentencing hearing or a  
11 court proceeding to which the victim has been subpoenaed will not  
12 occur as scheduled;

13 (3) the right to receive protection from harm and threats  
14 of harm arising out of cooperation with law enforcement and prosecu-  
15 tion efforts, and to be provided with information as to the protection  
16 available;

17 (4) the right to be informed of the procedure to be fol-  
18 lowed to apply for and receive any [VICTIM] compensation under AS 18.-  
19 67;

20 (5) at the request of the prosecution or a law enforcement  
21 agency, the right to cooperate with the criminal justice process  
22 without loss of pay and other employee benefits except as authorized  
23 by AS 12.61.017 and without interference in any form by the employer  
24 of the victim of crime; [AND]

25 (6) the right to obtain access to immediate medical assis-  
26 tance and not to be detained for an unreasonable length of time by a  
27 law enforcement agency before having medical assistance administered;  
28 however, an employee of the law enforcement agency may, if necessary,  
29 accompany the person to a medical facility to question the person

1 about the criminal incident if the questioning does not hinder the  
2 administration of medical assistance;

3 (7) the right to make a written or oral statement for use  
4 in preparation of the presentence report of a felony defendant;

5 (8) if the crime for which the defendant was convicted was  
6 a felony or a domestic violence assault, the right to appear person-  
7 ally at the defendant's sentencing hearing to present a written or  
8 oral statement; and

9 (9) the right to be informed by the prosecuting attorney,  
10 at any time after the defendant's conviction, about the complete  
11 record of the defendant's convictions.

12 (b) Law [VICTIMS' EMPLOYERS, LAW] enforcement agencies, prosecu-  
13 tors, and the courts shall make every reasonable effort to ensure that  
14 victims of crimes have the rights set out in (a) of this section.  
15 However, a failure to ensure these rights does not give rise to a  
16 separate cause of action against [VICTIMS' EMPLOYERS,] law enforcement  
17 agencies, other agencies of the state, or a political subdivision of  
18 the state.

19 \* Sec. 8. AS 12.61 is amended by adding new sections to read:

20 Sec. 12.61.015. DUTIES OF PROSECUTING ATTORNEY. (a) If a  
21 victim of a felony or a domestic violence assault requests, the pros-  
22 ecuting attorney shall make a reasonable effort to

23 (1) confer with the person against whom the offense has  
24 been perpetrated about that person's testimony before the defendant's  
25 trial;

26 (2) in a manner reasonably calculated to give prompt actual  
27 notice, notify the victim

28 (A) of the victim's right in a case that is a felony  
29 to make a written or oral statement for use in preparation of the

(A)  
reinsert

1 defendant's presentence report, and to appear personally at the  
2 defendant's sentencing hearing to present a written or oral  
3 statement;

4 (B) of the address and telephone number of the office  
5 that will prepare the presentence report; and

6 (C) of the time and place of the sentencing proceed-  
7 ing;

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

10 (b) The notice given under (a)(2) of this section must inform  
11 the victim that the statement of the victim may contain any relevant  
12 information including

13 (1) an explanation of the nature and extent of physical,  
14 psychological, or emotional harm or trauma suffered by the victim;

15 (2) an explanation of the extent of economic loss or prop-  
16 erty damage suffered by the victim;

17 (3) an opinion of the need for and extent of restitution  
18 and whether the victim has applied for or received compensation for  
19 loss or damage; and

20 (4) the recommendation of the victim for an appropriate  
21 sentence.

22 (c) The state and the prosecuting attorney may not be held  
23 liable in damages for any failure to comply with the requirements of  
24 this section.

25 Sec. 12.61.017. INTERFERENCE BY VICTIM'S EMPLOYER. (a) An  
26 employer may not penalize or threaten to penalize a victim because the  
27 victim is subpoenaed or requested by the prosecuting attorney to  
28 attend a court proceeding for the purpose of giving testimony. In  
29 this section, "penalize" means to take action affecting the employment

1 status, wages, and benefits payable to the victim, including:

2 (1) demotion or suspension;

3 (2) dismissal from employment; and

4 (3) loss of pay or benefits, except pay and benefits that  
5 are directly attributable to the victim's absence from employment to  
6 attend the court proceeding.

7 (b) A person who violates (a) of this section is guilty of a  
8 violation.

9 (c) A victim who suffers a pecuniary loss as a result of an  
10 employer's act prohibited by this section may bring a civil action to  
11 recover actual damages and punitive damages of three times the actual  
12 damages sustained.

13 \* Sec. 9. AS 12.61 is amended by adding a new section to read:

14 Sec. 12.61.030. DESIGNATION OF REPRESENTATIVE. If more than one  
15 person who qualifies as a victim under AS 12.55.185 makes a request  
16 under this chapter, the prosecuting attorney shall designate one  
17 person for purposes of receiving the notice required and exercising  
18 the rights granted under this chapter.

19 \* Sec. 10. AS 12.61 is amended by adding a new section to read:

20 Sec. 12.61.900. DEFINITIONS. In this chapter

21 (1) "domestic violence assault" means an assault under  
22 AS 11.41.200 - 11.41.230 or 11.41.410 - 11.41.425 constituting a  
23 domestic violence offense under AS 25.35.060;

24 (2) "victim" has the meaning given in AS 12.55.185.

25 \* Sec. 11. AS 33.16.120(a) is repealed and reenacted to read:

26 (a) If the victim of a crime against a person requests notice of  
27 a scheduled hearing to review or consider discretionary parole for a  
28 prisoner convicted of that crime, the board shall send notice of the  
29 hearing to the victim at least 30 days before the hearing. The notice

1 must be accompanied by a copy of the prisoner's application for parole  
2 submitted under AS 33.16.130(a). However, the copy of the application  
3 sent to the victim may not include the prisoner's proposed residence  
4 and employment addresses.

5 \* Sec. 12. AS 33.16.120(b) is repealed and reenacted to read:

6 (b) A victim who requests notice under this section shall main-  
7 tain a current, valid mailing address on file with the board. The  
8 board shall send the notice required by this section to the last known  
9 address of the victim. The victim's address may not be disclosed to  
10 the prisoner or the prisoner's attorney.

11 \* Sec. 13. AS 33.16.120(c) is amended to read:

12 (c) The victim has a right to attend meetings of the parole  
13 board in which <sup>the status</sup> ~~parole~~ of the prisoner convicted of the crime against  
14 that victim is considered and to comment, in writing or in person, on  
15 the proposed action of the board. Copies of any written [THE] com-  
16 ments shall be provided to the prisoner and the prisoner's attorney  
17 before action by the board.

18 \* Sec. 14. AS 33.16.120(e) is repealed and reenacted to read:

19 (e) If the victim requests, the board shall make every reason-  
20 able effort to notify the victim as soon as practicable in writing of  
21 its decision to grant or deny discretionary parole or to release the  
22 prisoner under AS 33.16.010(c). The notice under this subsection must  
23 include the expected date of the prisoner's release, the geographic  
24 area in which the prisoner is required to reside, and other pertinent  
25 information concerning the prisoner's conditions of parole that may  
26 affect the victim.

27 \* Sec. 15. AS 33.16.150(b) is amended to read:

28 (b) The board may require as a condition of discretionary or  
29 mandatory parole that a prisoner released on parole

- 1 (1) meet family obligations;
- 2 (2) pursue employment, education, counseling, or training;
- 3 (3) remain within stated geographic limits unless written  
4 permission to depart from the stated limits is granted the parolee;
- 5 (4) report upon release to the parole officer assigned to  
6 the parolee;
- 7 (5) report as required to the parole officer assigned to  
8 the parolee;
- 9 (6) reside at a stated place and notify the board of any  
10 change in place of residence;
- 11 (7) not possess or control firearms or other dangerous  
12 weapons;
- 13 (8) refrain from possessing or consuming alcoholic beverages;  
14
- 15 (9) submit to reasonable searches and seizures by a parole  
16 officer, or a peace officer acting under the direction of a parole  
17 officer;
- 18 (10) submit to appropriate medical, mental health, or controlled  
19 substance or alcohol examination, treatment, or counseling;
- 20 (11) submit to periodic examinations designed to detect the  
21 use of alcohol or controlled substances;
- 22 (12) make restitution ordered by the court [TO A VICTIM OF  
23 THE PRISONER'S CRIME,] according to a schedule established by the  
24 board;
- 25 (13) refrain from opening, maintaining, or using a checking  
26 account or charge account;
- 27 (14) refrain from entering into a contract other than a  
28 prenuptial contract or a marriage contract;
- 29 (15) refrain from operating a motor vehicle;

1 (16) refrain from entering an establishment where alcoholic  
2 beverages are served, sold, or otherwise dispensed;

3 (17) refrain from participating in any other activity or  
4 associating with any other person that the board determines is rea-  
5 sonably likely to diminish the rehabilitative goals of parole, or that  
6 may endanger the public.

7 \* Sec. 16. AS 33.16 is amended by adding a new section to read:

8 Sec. 33.16.260. DESIGNATION OF REPRESENTATIVE. If more than one  
9 person who qualifies as a victim under AS 12.55.185 requests notice  
10 under this chapter, the commissioner shall designate one person for  
11 purposes of receiving the notice required and exercising the rights  
12 granted by this chapter.

13 \* Sec. 17. AS 33.20.080 is amended to read:

14 Sec. 33.20.080. BOARD OF PAROLE TO INVESTIGATE APPLICATIONS FOR  
15 EXECUTIVE CLEMENCY. The governor may refer applications for executive  
16 clemency to the board of parole. The board shall investigate each  
17 case and submit to the governor a report of the investigation, to-  
18 gether with all other information the board has regarding the appli-  
19 cant. When the report or investigation is submitted, the board shall  
20 also transmit to the governor the comments it has received under (b)  
21 of this section.

22 \* Sec. 18. AS 33.20.080 is amended by adding new subsections to read:

23 (b) If requested by the victim of a crime against a person, the  
24 board shall send notice of an application for executive clemency  
25 submitted by the state prisoner who was convicted of that crime. The  
26 victim may comment in writing to the board on the application for  
27 executive clemency.

28 (c) If the victim desires notice under (b) of this section, the  
29 victim shall maintain a current, valid mailing address on file with

1 the board. The board shall send the notice required under this sec-  
2 tion to the victim's last known address. The victim's address may not  
3 be disclosed to the applicant for executive clemency or the appli-  
4 cant's attorney.

5 (d) In this section,

6 (1) "crime against a person" has the meaning given in  
7 AS 33.30.901;

8 (2) "victim" has the meaning given in AS 12.55.185.

9 \* Sec. 19. AS 33.30 is amended by adding a new section to read:

10 Sec. 33.30.013. COMMISSIONER TO NOTIFY VICTIMS. (a) The com-  
11 missioner shall notify the victim if the offender

12 (1) escapes from custody;

13 (2) is released to the community on a furlough; or

14 (3) is released on an early release program.

15 (b) The commissioner is required to give notice of a change in  
16 the status of an offender under this section only if the victim has  
17 requested notice of the change.

18 (c) A victim who has requested notice under (b) of this section  
19 shall maintain a current, valid mailing address on file with the  
20 commissioner. The commissioner shall send the notice from the depart-  
21 ment required by this section to the victim's last known address. The  
22 victim's address may not be disclosed to the offender or the offend-  
23 er's attorney.

24 (d) The state may not be held liable in damages for the failure  
25 of the commissioner to comply with the requirements of this section.

26 \* Sec. 20. AS 33.30.111(f) is repealed and reenacted to read:

27 (f) If the commissioner considers a prisoner convicted of a  
28 crime against a person for a prerelease furlough and the victim has  
29 requested notice under AS 33.30.013, the commissioner shall send

1 notice of intent to consider the prisoner for a prerelease furlough to  
2 the victim. The victim may comment in writing on the commissioner's  
3 intent to release the prisoner on prerelease furlough status. The  
4 commissioner shall consider the victim's comments before making a  
5 final decision to release a prisoner on a prerelease furlough. The  
6 commissioner shall make a reasonable effort to notify the victim of an  
7 intent to release the prisoner on a prerelease furlough. The notice  
8 must contain the expected date of the prisoner's release, the geo-  
9 graphic area in which the prisoner will reside, and other pertinent  
10 information concerning the prisoner's release that may affect the  
11 victim.

12 \* Sec. 21. AS 33.30 is amended by adding a new section to read:

13 Sec. 33.30.292. DESIGNATION OF REPRESENTATIVE. If more than one  
14 person who qualifies as a victim under AS 12.55.185 requests notice  
15 under this chapter, the commissioner shall designate one person for  
16 purposes of receiving the notice required and of exercising the rights  
17 granted by this chapter.

18 \* Sec. 22. AS 44.23.020(b) is amended by adding a new paragraph to  
19 read:

20 (9) establish and maintain an assistance program to ensure  
21 that crime victims receive information about the rights, entitlements,  
22 and services that are provided by law.

23 \* Sec. 23. AS 47.10 is amended by adding a new section to read:

24 Sec. 47.10.072. ACCESS TO HEARING BY VICTIM. (a) If a crime  
25 was committed by a minor who is scheduled for a hearing under AS 47.-  
26 10.070, the victim may request from the court permission to attend the  
27 hearing. If the victim requests, the department shall provide techni-  
28 cal assistance to the victim in preparing a written submission to the  
29 court requesting access to the hearing. The department shall make

1 reasonable efforts to inform victims of the availability of this  
2 assistance.

3 (b) If more than one person who qualifies as a victim under  
4 AS 12.55.185 makes a request, the commissioner of health and social  
5 services shall designate one person for purposes of receiving the  
6 notice and exercising the rights granted by this section.

7 (c) In this section, "victim" has the meaning given in AS 12.-  
8 55.185.

9 \* Sec. 24. AS 12.61.020(e)(2) is repealed.

10 \* Sec. 25. Rule 32(d)(1), Alaska Rules of Criminal Procedure, is amend-  
11 ed to read:

12 (1) WHEN MADE. The probation service shall make a presen-  
13 tence investigation and report before the court imposes sentence or  
14 grants probation. The presentence investigation and report shall be  
15 completed and made available to the court. The report shall not be  
16 disclosed to any one except counsel unless the defendant has tendered  
17 a plea of guilty or nolo contendere or has been found guilty. If the  
18 crime for which the person is to be sentenced is a felony, the con-  
19 tents shall be disclosed to counsel for the parties before the time of  
20 the hearing on the aggravator and mitigator factors and sentencing.  
21 The court may utilize the report in determining if a bargained sen-  
22 tence recommendation will be followed pursuant to Rule 11. In the  
23 event the attorneys for the parties request the preparation of a  
24 presentence report to aid them in plea bargaining the court may order  
25 such report to be made prior to the time stated in this rule.

26 \* Sec. 26. Rule 32, Alaska Rules of Criminal Procedure, is amended by  
27 adding new paragraphs to read:

28 (g) WRITTEN STATEMENT SUBMITTED BY VICTIM OR VICTIM'S REPRESENTATIVE.  
29 If a written statement is prepared and submitted by the

1 victim of a felony offense or a domestic violence assault under  
2 AS 12.55.023, the trial court

3 (1) shall take the content of the written statement into  
4 consideration

5 (A) when preparing those elements of the sentencing  
6 report required by AS 12.55.025 that relate to the effect of the  
7 offense on the victim;

8 (B) when considering the need for restitution under  
9 AS 12.55.045; and

10 (2) may take the content of the written statement into  
11 consideration in any other circumstance that the court believes neces-  
12 sary.

13 (h) In (g) of this rule,

14 (1) "domestic violence assault" has the meaning given in  
15 AS 12.61.900;

16 (2) "victim" has the meaning given in AS 12.55.185.

17 \* Sec. 27. Rule 35, Alaska Rules of Criminal Procedure, is amended by  
18 adding new paragraphs to read:

19 (c) The victim may comment on motions made under this rule as  
20 follows:

21 (1) When an individual convicted of a crime against a  
22 person files a motion to modify or reduce a sentence, the court shall,  
23 if feasible, send a copy of the motion to the Department of Correc-  
24 tions sufficiently in advance of any scheduled hearing or briefing  
25 deadline to enable the department to notify the victim, as directed by  
26 AS 12.55.088(e).

27 (2) The court shall provide copies of the victim's comments  
28 to the prosecuting attorney and to the person filing the motion to  
29 reduce or modify a sentence, or the person's attorney.

1           (3) The court shall consider the comments of the victim  
2 when relevant, and any response offered by the prosecuting attorney or  
3 the person filing the motion, in deciding whether to reduce or modify  
4 a sentence.

5           (4) If more than one person who qualifies as a victim under  
6 paragraph (d)(2) of this rule requests the opportunity to exercise  
7 rights under this paragraph, the court shall allow the person  
8 designated under AS 12.55.172 to exercise those rights, or if a person  
9 has not been designated under AS 12.55.172, the court shall designate  
10 one person for purposes of exercising rights under this paragraph.

11           (d) In this rule,

12                 (1) "crime against a person" has the meaning given in  
13 AS 33.30.901;

14                 (2) "victim" has the meaning given in AS 12.55.185.

15         \* Sec. 28. APPLICABILITY. The provisions of this Act prescribing the  
16 rights of a crime victim and of a crime victim's relative or survivor  
17 during the course of criminal, civil, and administrative proceedings apply  
18 to proceedings against defendants initiated on or after the effective date  
19 of this Act.  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

HB

67

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Econ. Dev.  
 Title: An Act relating to leases of  
personal property under the Uniform Commercial Code  
 Sponsor: Rules Committee  
 Requestor: Governor  
 BRU: Banking, Securities & Corporations  
 Components: \_\_\_\_\_

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

| OPERATING         | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRAITS, CLAIMS    |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   | 0     | 0     | 0     | 0     | 0     | 0     |
| CAPITAL           | 0     | 0     | 0     | 0     | 0     | 0     |
| REVENUE           | 0     | 0     | 0     | 0     | 0     | 0     |

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Willis F. Kirkpatrick, Director  
 Division: Banking, Securities & Corporations

Phone: 465-2521  
 Date: 12-23-88

Approved by Commissioner: [Signature]  
 Agency: Commerce and Economic Development

Date: 12/23/88

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

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to leases of personal  
property under the Uniform Commercial Code."  
Sponsor: Rules Committee  
Requestor: Governor

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRANTS, CLAIMS    |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |
| CAPITAL           |       |       |       |       |       |       |
| REVENUE           |       |       |       |       |       |       |

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director

Division: Administrative Services

Phone: 465-3672

Date: October 21, 1988

Approved by Commissioner: Grace Berg Schlaible, Attorney General

Agency: Department of Law

Date: October 21, 1988

Distribution (by preparer):

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

## Fiscal Note Analysis

This bill, which has been recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Legal Institute (ALI), adds an entire new chapter to the state's Uniform Commercial Code contained in Title 45, dealing with personal property leasing.

Changes in leasing transactions in recent years have made it clear that modernization is long overdue. Leasing personal property has become a major business in this country covering an extremely wide range of kinds of property and raising numerous legal issues. States now depend on the common law to resolve disputes over lease contracts. This creates great uncertainty, particularly for companies that conduct business in more than one state, because case law conflicts from state to state. Additionally, some important issues have never been adequately addressed in the common law, and this bill is intended to answer these immediate needs.

This proposed bill provides for the fundamentals of the leasing contract including the formation of the contract, provisions for express and implied warranties, and damages for breach of a leasing contract. This framework of remedies for lessors and lessees is currently absent from the state's UCC.

Most of the transactions contemplated by this bill involve commercial transactions between private parties. Consequently, a fiscal impact on the Department of Law is not anticipated. The state's UCC does supplement the state's Procurement Act in Title 36. To the extent that the bill's provisions serve their intended purpose, to clarify personal property leasing rights, state procurement disputes involving such leases should be resolved more easily.

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: HB 67  
PUBLISH DATE: HOUSE 1/9/89

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Leases of Personal Property under  
the Uniform Commercial Code  
Sponsor: Rules  
Requestor: Governor

Agency Affected: Department of Revenue  
BRU: Treasury

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

|                        | FY 89    | FY 90    | FY 91    | FY 92    | FY 93    | FY 94    |
|------------------------|----------|----------|----------|----------|----------|----------|
| <b>OPERATING</b>       |          |          |          |          |          |          |
| PERSONAL SERVICES      | 0        | 0        | 0        | 0        | 0        | 0        |
| TRAVEL                 | 0        | 0        | 0        | 0        | 0        | 0        |
| CONTRACTUAL            | 0        | 0        | 0        | 0        | 0        | 0        |
| SUPPLIES               | 0        | 0        | 0        | 0        | 0        | 0        |
| EQUIPMENT              | 0        | 0        | 0        | 0        | 0        | 0        |
| LANDS & STRUCTURES     | 0        | 0        | 0        | 0        | 0        | 0        |
| GRANTS, CLAIMS         | 0        | 0        | 0        | 0        | 0        | 0        |
| MISCELLANEOUS          | 0        | 0        | 0        | 0        | 0        | 0        |
| <b>TOTAL OPERATING</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |
| <b>CAPITAL</b>         | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |
| <b>REVENUE</b>         | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Milt Barker MB  
Division: Treasury

Phone: 465-2350  
Date: December 29, 1988

Approved by Commissioner: Hugh Malone  
Agency: Department of Revenue

Date: December 29, 1988

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Leasing under UCC  
Sponsor: Rules Committee  
Requestor: Governor Cowper

Agency Affected: Natural Resources  
BRU: Management and Administration

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|-------------------|-------|-------|-------|-------|-------|-------|
| 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  |     |     |     |     |     |     |
| FEDERAL FUNDS |     |     |     |     |     |     |
| OTHER         |     |     |     |     |     |     |
| TOTAL         | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL-TIME |  |  |  |  |  |  |
| PART-TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

ANALYSIS : (Attach a separate page if necessary)

This bill does not affect the Department of Natural Resources.

Prepared by: Carol Wilson Phone: 465-2400  
Division: Commissioner's Office Date: 11/28/88  
Approved by Commissioner: *Sammie Gorseuk* Date: 11-28-88  
Agency: Natural Resources

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

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 12, 1989

Honorable Dave Donley, Chair  
House Labor and Commerce Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701-4679

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

Re: Amendment of HB 67 (UCC, leasing  
of personal property)  
Our file: 773-89-0061

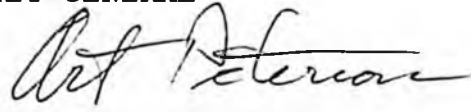
Dear Representative Donley:

Continuing review of this bill has brought to light the advisability of amending proposed AS 45.12.104, regarding leases subject to other statutes. To assure that there is no conflict between the provisions of this bill and the provisions of the State Procurement Code (AS 36.30), we have prepared the attached amendment. It makes the procurement code control.

We urge your committee to adopt this amendment and favorably report out HB 67. Thank you.

Yours truly,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:   
Arthur H. Peterson  
Assistant Attorney General

AHP:cb

Enclosure

cc w/encl: Robert A. Evans  
Legislative Liaison  
Office of the Governor

Bob Link, Director  
Div. of General Services & Supply  
Department of Administration

James L. Baldwin  
Assistant Attorney General  
Juneau

A M E N D M E N T

OFFERED IN THE HOUSE

BY \_\_\_\_\_

TO: HB 67

Page 10, line 29:

Delete the "or."

Page 11, line 1:

Change the period to a semi-colon, and add "or."

Page 11, between lines 1 and 2:

Insert "(5) provision of the State Procurement Code  
(AS 36.30)."

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701-4679

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

January 19, 1989

G.  
Pyi

Honorable Dave Donley, Chair  
House Labor and Commerce Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: HB 67 -- Leases of personal  
property under Uniform  
Commercial Code  
(Our file: 773-89-0061)

Dear Representative Donley:

When you and I discussed this bill by telephone on January 12, 1989, you mentioned that you wanted to read the bill before asking me for the background material from the National Conference of Commissioners on Uniform State Laws. I thought you might find it helpful to see the following list of material that I have readily available:

- a fact sheet on the new UCC Article 2A, leasing;
- a four-page summary of the new article;
- a four-page explanation of why states should adopt the new article;
- a magazine article entitle "Old Wine in New Bottles: UCC Article 2A-Leases," by Edwin E. Huddleson, III, Esq., from The Journal of Equipment Lease Financing;
- the National Conference of Commissioners on Uniform State Laws' and American Law Institute's publication of the new Article 2A, including the official commentary.

To provide the Alaska Legislature with the best information on this bill and with the best expertise on this subject,

Honorable Dave Donley, Chair  
House Labor and Commerce Committee

January 19, 1989  
Page 2

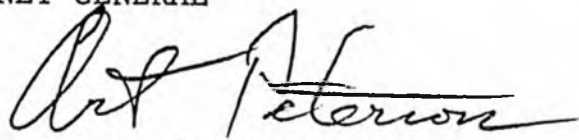
it will be necessary for me to coordinate committee hearings with the National Conference.

Please let me know when you would like to discuss this matter. Thanks.

Yours truly,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:



Arthur H. Peterson  
Assistant Attorney General

AHP/lg

cc: Bob Evans  
Legislative Liaison  
Office of the Governor

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
 Title: An Act relating to leases of personal property under the Uniform Commercial Code  
 Sponsor: Rules Committee  
 Requestor: Governor  
 Agency Affected: Commerce & Econ. Dev.  
 BRU: Banking, Securities & Corporations  
 Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|-------------------|-------|-------|-------|-------|-------|-------|
| 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           | 0     | 0     | 0     | 0     | 0     | 0     |

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Willis F. Kirkpatrick, Director Phone: 465-2521  
 Division: Banking, Securities & Corporations Date: 12-23-88  
 Approved by Commissioner: [Signature] Date: 12/23/88  
 Agency: Commerce and Economic Development

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

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to leases of personal property under the Uniform Commercial Code."  
 Sponsor: Rules Committee  
 Requestor: Governor  
 Agency Affected: Department of Law  
 BRU: Legal Services  
 Components: Operations

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

| OPERATING         | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRANTS, CLAIMS    |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| CAPITAL |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| REVENUE |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

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

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

Please see the attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672  
 Division: Administrative Services Date: October 21, 1988  
 Approved by Commissioner: Richard I. Peques / FOR /  
Grace Berg Schaible, Attorney General Date: October 21, 1988  
 Agency: Department of Law

**Distribution (by preparer):**

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

## Fiscal Note Analysis

This bill, which has been recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Legal Institute (ALI), adds an entire new chapter to the state's Uniform Commercial Code contained in Title 45, dealing with personal property leasing.

Changes in leasing transactions in recent years have made it clear that modernization is long overdue. Leasing personal property has become a major business in this country covering an extremely wide range of kinds of property and raising numerous legal issues. States now depend on the common law to resolve disputes over lease contracts. This creates great uncertainty, particularly for companies that conduct business in more than one state, because case law conflicts from state to state. Additionally, some important issues have never been adequately addressed in the common law, and this bill is intended to answer these immediate needs.

This proposed bill provides for the fundamentals of the leasing contract including the formation of the contract, provisions for express and implied warranties, and damages for breach of a leasing contract. This framework of remedies for lessors and lessees is currently absent from the state's UCC.

Most of the transactions contemplated by this bill involve commercial transactions between private parties. Consequently, a fiscal impact on the Department of Law is not anticipated. The state's UCC does supplement the state's Procurement Act in Title 36. To the extent that the bill's provisions serve their intended purpose, to clarify personal property leasing rights, state procurement disputes involving such leases should be resolved more easily.

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: HB 67  
PUBLISH DATE: HOUSE 1/9/89

## FISCAL NOTE

## REQUEST:

Revision Date: \_\_\_\_\_  
Title: Leases of Personal Property under  
the Uniform Commercial Code  
Sponsor: Rules  
Requestor: Governor

Agency Affected: Department of Revenue  
BRU: Treasury

Components: \_\_\_\_\_

## EXPENDITURES/REVENUES: (Thousands of Dollars)

|                        | FY 89    | FY 90    | FY 91    | FY 92    | FY 93    | FY 94    |
|------------------------|----------|----------|----------|----------|----------|----------|
| <b>OPERATING</b>       |          |          |          |          |          |          |
| PERSONAL SERVICES      | 0        | 0        | 0        | 0        | 0        | 0        |
| TRAVEL                 | 0        | 0        | 0        | 0        | 0        | 0        |
| CONTRACTUAL            | 0        | 0        | 0        | 0        | 0        | 0        |
| SUPPLIES               | 0        | 0        | 0        | 0        | 0        | 0        |
| EQUIPMENT              | 0        | 0        | 0        | 0        | 0        | 0        |
| LANDS & STRUCTURES     | 0        | 0        | 0        | 0        | 0        | 0        |
| GRANTS, CLAIMS         | 0        | 0        | 0        | 0        | 0        | 0        |
| MISCELLANEOUS          | 0        | 0        | 0        | 0        | 0        | 0        |
| <b>TOTAL OPERATING</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |
| <b>CAPITAL</b>         | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |
| <b>REVENUE</b>         | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |

## FUNDING: (Thousands of Dollars)

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

## POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Milt Barker MB  
Division: Treasury

Phone: 455-2350  
Date: December 29, 1988

Approved by Commissioner: Hugh Malone  
Agency: Department of Revenue

Date: December 29, 1988

## Distribution (by preparer):

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

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Natural Resources  
 Title: Leasing under UCC BRU: Management and Administration  
 Sponsor: Rules Committee Components: \_\_\_\_\_  
 Requestor: Governor Cowper

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

| OPERATING              | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES      |       |       |       |       |       |       |
| TRAVEL                 |       |       |       |       |       |       |
| CONTRACTUAL            |       |       |       |       |       |       |
| SUPPLIES               |       |       |       |       |       |       |
| EQUIPMENT              |       |       |       |       |       |       |
| LAND & STRUCTURES      |       |       |       |       |       |       |
| GRANTS, CLAIMS         |       |       |       |       |       |       |
| MISCELLANEOUS          |       |       |       |       |       |       |
| <b>TOTAL OPERATING</b> | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |
| <b>CAPITAL</b>         | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |
| <b>REVENUE</b>         |       |       |       |       |       |       |

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL-TIME |  |  |  |  |  |  |
| PART-TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

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

This bill does not affect the Department of Natural Resources.

Prepared by: Carol Wilson Phone: 465-2400  
 Division: Commissioner's Office Date: 11/28/88  
 Approved by Commissioner: *Dennis Gorsuch* Date: 11-28-88  
 Agency: Natural Resources

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

**MEMORANDUM** (Brief Communications)

State of Alaska

|        |  |   |                        |
|--------|--|---|------------------------|
| TO:    | Name<br>Ginger Baim                    | Dept./Div./Sect.<br>Legislature / Hse. Lab. + Com. Com. | Mail Stop              |
| FROM:  | Name<br>Art Peterson                   | Dept./Div./Sect.<br>Law / Civil / Legis. + Regs.        | Telephone<br>465-3600  |
| SUBJ.: | HB 67 (UCC, basing) - background matk. |   | Date<br>April 12, 1989 |

As you requested this morning, you will find attached a copy of each of the 5 items mentioned in my January 19, 1989 letter to Rep. Donley, pertaining to H-B 67.

A Few Facts About

THE UNIFORM COMMERCIAL CODE, ARTICLE 2A - LEASES

PURPOSE: To provide states with a legal framework for any transaction, regardless of form, that creates a lease.

ORIGIN: Completed by the Uniform Law Commissioners in 1986.

ENDORSED BY: American Bar Association  
American Law Institute

STATE  
ADOPTIONS: Oklahoma

1988  
INTRODUCTIONS: California Minnesota  
Colorado New Hampshire  
Delaware New York  
Illinois Rhode Island  
Massachusetts Utah  
Michigan Washington  
West Virginia

NEED A  
SPEAKER? These persons are available to provide testimony or give presentations on the Article 2A Amendments:

Marion Benfield, Jr.  
Champaign, Illinois  
Drafting Committee

Fred H. Miller  
Norman, Oklahoma  
Drafting Committee

For information on arranging a speaker, contact John McCabe or Katie Robinson at 312-915-0195.

## UNIFORM COMMERCIAL CODE, ARTICLE 2A - LEASES

The Uniform Commercial Code (UCC) Article 2A - Leases, governs any lease of personal property, whether the transaction is a "true lease" or a "finance lease." The former occurs when the lessor gives possession and right to use the personal property to the lessee for a fixed period of time in return for rent. The title to the property remains with the lessor.

A "finance lease" occurs when the lessor is not the fundamental supplier of the goods leased, but leases goods to lessees as a means of financing their sale.

UCC - 2A is largely derived from the sales article of the UCC - Article 2. It provides basic contract rules, including matters of offer and acceptance, statutes of frauds, warranties, assignment of interests, and remedies upon breach of contract. There are five parts to the UCC - 2A: (1) General Provisions, (2) Formation and Construction of a Lease Contract, (3) Effect of a Lease Contract, (4) Performance of a Lease Contract, and (5) Default.

### GENERAL PROVISIONS

The General Provisions include the large, general definitions section and general rules pertaining to the construction of leasing contracts, including conflict of law provisions, choice of forum rules, and interpretation of remedies. Most of these provisions are drawn from Article 2 of the UCC.

UCC - 2A creates an entity called the "lessee in the ordinary course of business." The definition parallels the "buyer in the ordinary course of business" in the UCC. Both take property free of prior encumbrances, under the appropriate conditions, and are essential to commercial enterprise.

UCC - 2A also defines "supplier" as "a person from whom a lessor buys or leases goods to be leased under a finance lease." This definition is important because goods in a "finance lease" must come from another source than a lessor.

### FORMATION AND CONSTRUCTION OF A LEASE CONTRACT

In a sale transaction, the UCC provides warranties of title and against infringement by any claims of another person. There are similar warranties in UCC - 2A, although title is not protected, since title remains in the lessor. But the lessor does warrant the lessee's enjoyment of the leasehold interest against "a claim to or interest in the goods that arose from an

act or omission of the lessor. " This warranty applies to all lease contracts. Infringement, however, is not warranted against in finance leases, and this warranty only binds a merchant-lessor, who deals regularly in goods of the kind.

Implied warranties are of two kinds, merchantability and fitness for a particular purpose. Both kinds of implied warranty are directly derived from the Article 2 of the UCC. The warranty of merchantability operates between merchants, and assures the resalability of goods. The fitness warranty presumes a purpose and reliance upon the lessor to supply goods fit for the purpose. Both kinds of implied warranties can be excluded or modified by agreement.

Implied warranties do not, however, apply to finance leases. Remember that the lessor in a finance lease is more like a lender than a supplier. Therefore UCC - 2A passes the implied warranties of the supplier-seller to the lessor-buyer to the lessee. The lessor warrants nothing, directly.

#### EFFECT OF A LEASE CONTRACT

Generally, a lessee's rights under a lease contract or the residual rights of a lessor are freely transferable, unless the contract prohibits the transfer or unless transfer risks the other party's contract rights. An assignment, so-called, of lease rights is treated as any transfer is, and is presumed to transfer both rights and obligation, unless otherwise specified in the agreement.

If a subsequent lease is entered when there is an existing lease, the subsequent lease is subject to the prior lease. However, a subsequent "lessee in the ordinary course of business," who deals with a lessor who is a merchant dealing in goods of the kind leased and to whom the goods are entrusted under the prior lease, will take goods free of the prior, existing lease contract.

Another third party issue dealt with in Part 3 of UCC - 2A is lien priorities. Here, UCC - 2A becomes analogous to provisions in UCC, Article 9. A statutory materialmen's lien has priority over any interest in a lease contract, unless other law sets a different priority. Otherwise, lessee's creditors take subject to the lease contract. Lessor's creditors with prior interests to those arising under a lease contract, generally, take priority over interests arising under the contract.

However, a "lessee in the ordinary course of business" takes free of any prior perfected security interests, unless the lessee has specific knowledge of their existence. A prior interest of a lessee takes priority over a subsequent interest of a lessor's creditor. But there are special instances in which a creditor of a lessor has priority over a lessee's interest, even though the

lease interest is prior in time. Included are instances in which depriving the creditor of possession of the collateral would be fraudulent to the creditor "under any statute or rule of law."

Goods that become fixtures present priority problems when leased. Fixtures are defined as goods "so related to particular real estate that an interest in them arises under real estate law." Who has priority between the lessor and those holding the real estate interests?

Generally, if goods are leased and become fixtures, the lessor with prior interest in them has priority over those with the real estate interests - if the lessor perfects his or her prior interest with a fixture filing under Article 9 of the UCC. A fixture filing is made by placing an appropriate financing statement in the real estate records. There are instances in which a lessor can retain an interest against the real estate holder without filing, but a fixture filing will generally be essential.

"Accessions" also present a special problem. An "accession" occurs when leased goods "are installed in or affixed to other goods." Any existing rights in a lease contract are superior to any rights in the whole in which leased goods become accession after the lease contract is entered. If the lease contract arises at the time goods become accessions or after, earlier interests in the whole have priority. If someone purchases the whole after a lease contract, rights under the lease contract take priority over the purchaser's rights. However, a "buyer in the ordinary course of business," or a prior creditor who makes advances without knowledge of the lease contract, takes priority over a lessor or lessee, even though the lease contract precedes the purchase or advance in time.

#### PERFORMANCE OF A LEASE CONTRACT

Part 4 of UCC - 2A deals with performance and repudiation of a contract, with substituted performance and with excused performance. If performance is to be impaired, however, UCC - 2A gives contracting parties the latitude to minimize losses.

For example, a party to a lease contract who has reasonable grounds for insecurity as to the performance of the other party, may demand written assurance of performance. Until written assurance is provided, the demanding party may suspend his or her performance. If assurance is not given in a reasonable time, the contract may be treated as repudiated.

When performance is impaired without the fault of either party, because of such events as failure of an agreed means of transport, a commercially reasonable substitute must be accepted. There are instances in which performance may be excused: "If performance as agreed has been made impracticable by the

occurrence of a contingency the non-occurrence of which was basic assumption on which the lease contract was made." The lessor must notify the lessee (and the supplier if there is a finance lease) of delay or non-delivery. These are examples of the options open to contracting parties.

#### DEFAULT

Upon default, UCC - 2A provides remedies in Part 5, including damages and equitable remedies, such as specific performance. UCC - 2A permits cover. That is, a party may seek goods from another source to limit losses. Mitigation of damages is encouraged. The general measure of any damage is actual loss.

#### LEASE TRANSACTIONS AS SECURED TRANSACTIONS

The last issue of importance addressed in UCC - 2A is an added appendix, consisting of a crucial amendment to Section 1-201(37) of the UCC, which defines the term security interest. If a lease involves a "security interest," it is subject to Article 9 of the UCC. A lease involves a security interest, dependent upon four alternative factors or characteristics.

If the term of the lease is equal or greater than the remaining economic life of the goods; if there is a renewal option for no additional consideration or nominal consideration; if there is mandatory renewal or the lessee becomes owner at the end of the lease term; or if the lessee has the option to purchase at the end of the lease term for no additional consideration, or any combination of these factors, the lease would tend to be treated as creating a security interest and would be subject to Article 9.

#### CONCLUSION

UCC - 2A is comprehensive, dealing with every phase of leasing transactions. It draws a great share of its concepts from Article 2 of the UCC, but it is adapted to the peculiarities of the leasing form. It is an important advance in commercial law.

WHY STATES SHOULD ADOPT ARTICLE 2A  
OF THE UNIFORM COMMERCIAL CODE - LEASES

The leasing of large scale items ranging from oil-drilling platforms to automobiles is big business in this country, with an estimated dollar volume reaching \$150 billion. Yet the laws governing leasing have not kept pace with the intricacies of today's leasing arrangements, resulting in considerable uncertainty for lessors and lessees alike.

To fill this gap, the Uniform Law Commissioners approved a new amendment to the Uniform Commercial Code: Article 2A - Leases. UCC-2A provides for the fundamentals of the leasing contract, including the formation of the contract, provisions for express and implied warranties, and damages for breach of a leasing contract.

Historically, we have thought of financed purchase transactions as conditional sales. As sales, such transactions fall under the UCC, particularly Articles 2 and 9. But a leasing transaction, even though very similar to a conditional sale in many ways, is not clearly subject to the UCC. The rights and remedies of the lessor and lessee, therefore, are not well defined, and courts have characterized these transactions differently from jurisdiction to jurisdiction. Many troubling issues have been extensively and confusingly litigated.

UCC-2A gives leasing transactions an appropriate underpinning in the law. Because of the broad similarities between lease and sales transactions, that underpinning is largely derived from the sales article of the UCC - Article 2. Hence the new article is 2A, indicating its relationship to Article 2. Article 2 has been adopted in every state except Louisiana.

There are a number of reasons all states should adopt UCC - Article 2A, Leases:

LEASES SHOULD BE A PART OF THE UCC

Since leases are an important part of business and commercial law, they should be governed by the Uniform Commercial Code. Further, the leasing business is interstate in character. Uniformity is as important to the conduct of leasing transactions as it is to sales transactions.

## LEASES AS SECURED TRANSACTIONS

Perhaps the most important question answered in UCC-2A is when leases are subject to UCC-Article 9 on "Secured Transactions." Certain lease contracts establish what effectively are conditional sales, in which the lessor is no different from a creditor subject to Article 9.

The prior law has never effectively dealt with the issue, and concrete standards are established in UCC-2A and an accompanying amendment to UCC-1-201(37), which is a basic definition section in the UCC. Under these provisions, a secured transaction occurs when the lessor has no meaningful residual rights in goods when the lease expires. In a true lease, the rights to the goods revert to the lessor when the lease term ends. But if the contract terms indicate that the rights to this residue are valueless, then it can be inferred that the lease really amounted to a conditional sale of the goods. Article 9 then should and would apply.

## FINANCE LEASES

UCC-2A creates a separate category of leases called "finance leases" to eliminate existing confusion over the rights of parties in such leases. Finance leases are characterized by the unique position of the lessor - as purchaser of goods only for the purpose of delivering them to a lessee pursuant to a lease contract.

Because the lessor is not the real supplier of the goods, and acts merely to finance the goods in the hands of the lessee, certain of lessee's rights are best served by imposing obligations on the real supplier and by limiting some rights against the lessor. UCC-2A does not give a lessee implied warranties against a lessor in a finance lease, but passes the lessor's warranties against the real supplier under Article 2 on the lessee.

UCC-2A also further limits a lessee's already limited rights to reject goods, once accepted under the contract, or to cancel, terminate, modify, excuse or substitute performance under the lease contract. The lessee relies upon warranty rights against the supplier, and the lessor is treated as the financing entity it really is.

## REMEDIES

Prior law does not provide clear remedies for leasing transactions. Because the parties to lease contracts share substantial characteristics with the parties to sales contracts,