

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5942 HOUSE LABOR & COMMERCE

386

canning agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products;

(5) an employee of an employer engaged in small mining operations where not more than 12 employees are employed, if the employee is employed not in excess of 12 hours a day or 56 hours a week during a period or periods of not more than 14 workweeks in the aggregate in a calendar year during the mining season, as the season is defined by the commissioner;

(6) *[Repealed, § 1 ch 45 SLA 1972.]*

(7) an employee engaged in agriculture;

(8) an employee employed in connection with the publication of a weekly, semiweekly, or daily newspaper with a circulation of less than 1,000;

(9) a switchboard operator employed in a public telephone exchange which has fewer than 750 stations;

(10) an employee of an employer engaged in the business of operating taxicabs;

(11) an employee in an otherwise exempted employment or proprietor in a retail or service establishment engaged in handling telegraphic, telephone, or radio messages for the public under an agency or contract arrangement with a telegraph or communications company where the telegraph message or communications revenue of the agency does not exceed \$500 a month;

(12) an employee employed as a seaman;

(13) an employee employed in planting or tending trees, cruising, or surveying, or bucking, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by the employer in the forestry or lumbering operations does not exceed 12;

(14) an individual employed as an outside buyer of poultry, eggs, cream, or milk in their raw or natural state;

(15) casual employees as may be liberally defined by regulations of the commissioner;

(16) an employee of a hospital whose employment includes the provision of medical services;

(17) work performed by an employee under a flexible work hour plan if the plan is included as part of a collective bargaining agreement;

(18) work performed by an employee under a voluntary flexible work hour plan if

(A) the employee and the employer have signed a written agreement and the written agreement has been filed with the department; and

(B) the department has issued a certificate approving the plan which states the work is for 40 hours a week and not more than 10 hours a day; for work over 40 hours a week or 10 hours a day under a flexible work hour plan not included as part of a collective bargaining

agreement
regular
am § 1
1972; a
SLA 19

Effect
amendm
(18).

The 1:
pital wh
vision o
hospital
Opini
Fair L
§§ 201-
AS 23.1
of whet.
from th
this sec

In th
other
whose
tially
activiti
covere
gainin
carrier
appli.
preem:

Art
and 1
minin
Labor
§§ 20
both
with
impos
void.
No. 2
390 (

Or
Alasl
hour:
than
Act.
maxi
of 2:
come
as no
Web
2245
(198)

agreement, compensation at the rate of one and one-half times the regular rate of pay shall be paid for the overtime. (§ 3 ch 171 SLA 1959; am § 1 ch 3 SLA 1962; am § 1 ch 243 SLA 1970; am § 1 ch 45 SLA 1972; am § 33 ch 127 SLA 1974; am § 1 ch 31 SLA 1980; am § 3 ch 47 SLA 1983)

Effect of amendments. — The 1980 amendment added paragraphs (17) and (18).

The 1983 amendment, substituted "hospital whose employment includes the provision of medical services" for "nonprofit hospital" in paragraph (16).

Opinions of attorney general. — The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 does not expressly preempt the AS 23.10.050 — 23.10.150 on the question of whether airline employees are excluded from the mandatory overtime directive of this section. April 15, 1980. Op. Att'y Gen.

In the case of pilots, flight crews, and other interstate air carrier employees whose activities are directly and substantially related to the transportation activities of the carrier, and who are covered by a valid existing collective bargaining agreement or agreements with the carrier, the state is precluded from applying its overtime laws due to the preemptive nature of the Railway Labor

Act, 45 U.S.C. §§ 151-188. April 15, 1980. Op. Att'y Gen.

In instances where no collective bargaining agreements apply, crews of interstate air carriers are nonetheless beyond the jurisdiction of state overtime law because of certain commerce clause implications. April 15, 1980. Op. Att'y Gen.

Nonflight personnel of interstate carriers who are not covered by valid existing collective bargaining agreements are not exempt from state law, and as to those individuals the provisions of state overtime law apply. April 15, 1980. Op. Att'y Gen.

Air carriers operating solely intrastate would not seem to fall under the exclusionary scope of either the Railway Labor Act, 45 U.S.C. §§ 151-188, or of the commerce clause absent unusual fact situations. Accordingly, the protections of AS 23.10.050 — 23.10.150 dealing with overtime extend to those individuals. April 15, 1980. Op. Att'y Gen.

NOTES TO DECISIONS

Article not void. — The Alaska Wage and Hour Act merely requires higher minimum and overtime pay than the Fair Labor Standards Act, 29 U.S.C. §§ 201-219. Although compliance with both is more expensive than compliance with the federal act, it is not, in any sense, impossible so as to make the Alaska law void. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Or preempted. — Since, under the Alaska Wage and Hour Act, the number of hours required for the overtime rate is less than that under the Fair Labor Standards Act, the Alaska act provides for a lower maximum workweek within the meaning of 29 U.S.C. § 218(a) and consequently, comes within the express saving clause so as not to be preempted by the federal law. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

State not bound to federal regulatory definitions. — AS 23.10.050 — 23.10.150 do not evince an intent to bind the state wage and hour division to federal regulatory definitions. *Dresser Indus., Inc. v. Alaska Dept of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Definition of "supervisory" in the Alaska Administrative Code, that the term as used in this section means a person who directs the activities of other employees and who does not perform duties which are regularly performed by the employees supervised, except for brief periods of time not to exceed more than eight hours in the supervisor's workweek, is reasonable and not arbitrary. *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

Sec. 23.10.065. Minimum wages. An employer shall pay to each employee wages at a rate of not less than 50 cents an hour greater than the prevailing Federal Minimum Wage Law or \$2.60 an hour, whichever is greater, for hours worked in a pay period, whether the work is measured by time, piece, commission or otherwise. An employer may not apply tips or gratuities bestowed upon employees as a credit toward payment of the minimum hourly wage required by this section. Tip credit as defined by the Fair Labor Standards Act of 1938 as amended does not apply to the minimum wage established by this section. (§ 4 ch 171 SLA 1959; am § 2 ch 2 SLA 1962; am § 1 ch 41 SLA 1974)

Cross references. — For the Fair Labor Standards Act of 1938, see 29 U.S.C. 201-219.

NOTES TO DECISIONS

This section is based on the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219, and the terms used in the Alaska Statute are defined in the same way as in the federal act. *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975), decided prior to the 1978 amendment to AS 23.10.055(5).

Prisoners as employees of the state. — See *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975), decided prior to the 1978 amendment to AS 23.10.055(5).

Article not void. — The Alaska Wage and Hour Act merely requires higher minimum and overtime pay than the Fair Labor Standards Act, 29 U.S.C. §§ 201-219. Although compliance with both is more expensive than compliance with the federal act, it is not, in any sense, impossible so as to make the Alaska law void. *Webster v. Bechtel, Inc.*, Sup. Ct. Op.

No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Concurrent coverage of minimum wage claims is not preempted by the Federal Fair Labor Standards Act. It appears that 29 U.S.C. § 218(a) was intended to allow the recovery of additional amounts under more protective state laws. It is logical that Congress contemplated that the state would allow for an action as to the whole claim, not just the increment, and, further, that Congress intended that the claims would be brought together, where possible, so that enforcement would not be costly. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Applied in *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

Cited in *Dresser Indus., Inc. v. Alaska Dep't of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Collateral references. — Validity of minimum wage statutes relating to private employment 39 ALR2d 740

Sec. 23.10.070. Exemptions from minimum wage. To the extent necessary to prevent curtailment of opportunities of employment, the commissioner may by regulations or orders provide for the employment at wages lower than the minimum wage prescribed in AS 23.10.050 — 23.10.150 of

(1) an individual whose earning capacity is impaired by physical or mental deficiency, age, or injury, at the wages and subject to the restrictions and for the period of time which is fixed by the commissioner; and

(2) an apprentice at the wages which are approved by the commissioner; or

(3) a learner at the wages and subject to the restrictions and for the periods of time which are fixed by the commissioner. (§ 5 ch 171 SLA 1959; am § 3 ch 2 SLA 1962)

Sec. 23.10.071. Wages for work therapy. (a) For work therapy, as defined in AS 47.37.270, a participant in a residential drug abuse or alcoholism treatment program designed to extend more than 120 days may be paid less than the minimum wage prescribed in AS 23.10.050 — 23.10.150 if the rate has been approved by the commissioner under this section and is in compliance with federal law.

(b) The commissioner shall adopt regulations regarding the payment of wages for work therapy. In adopting the regulations, the commissioner shall consider whether the work performed by the patient

(1) is solely for the benefit of the patient and is that which is ordinarily carried on by patients in a residential treatment program;

(2) would ordinarily be performed by full-time employees of the program;

(3) is work that may produce income to the patient, other than wages;

(4) produces goods or services the proceeds of which will economically or otherwise benefit the owners, operators, or businesses of the rehabilitation program; and

(5) creates an unfair competition with private enterprise because of lower wage standards. (§ 1 ch 58 SLA 1983)

Sec. 23.10.075. Labor standards and safety division. There is established in the department the division of labor standards and safety. The director of the division is responsible to the commissioner. The director shall administer AS 18.60.010 — 18.60.105 and AS 23.10.050 — 23.10.150. (§ 6(1) ch 171 SLA 1959; am E.O. No. 52, § 4 (1982))

Effect of amendments. — The 1982 amendment rewrote this section.

Sec. 23.10.080. Powers and duties of division. The director, or an authorized representative of the director, shall

(1) investigate and ascertain the wages and related conditions and standards of employment of any employee in the state;

(2) enter the place of business or employment of an employer at reasonable times for the purpose of inspecting payroll records which relate to the question of wages paid or hours worked;

(3) require and subpoena from an employer a statement in writing, when the director or the representative considers it necessary, of hours worked by and the wages paid to a person in the employ of the employer, and the commissioner may require the employer to make the statement under oath;

(4) question an employee in a place of employment during work hours with respect to the wages paid and the hours worked by the employees;

(5) compel the attendance of witnesses and the production of books, papers and documents by subpoena when necessary for the purpose of a hearing or investigation provided for in AS 23.10.050 — 23.10.150. (§ 6(2) ch 171 SLA 1959)

Sec. 23.10.085. Scope of administrative regulations. (a) The director may adopt, amend or rescind administrative regulations not inconsistent with the purposes and provisions of AS 23.10.050 — 23.10.150 that are necessary for the administration of AS 23.10.050 — 23.10.150.

(b) The regulations may, without limiting the generality of (a) of this section, define terms used in AS 23.10.050 — 23.10.150, and restrict or prohibit industrial homework or other acts or practices that the director finds appropriate to carry out the purpose of AS 23.10.050 — 23.10.150, or to prevent the circumvention or evasion of AS 23.10.050 — 23.10.150.

(c) The regulations may permit deductions by an employer from the minimum wage applicable under AS 23.10.050 — 23.10.150 to employees for the reasonable cost, as determined by the director on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee. (§ 6(3) ch 171 SLA 1959)

NOTES TO DECISIONS

This section and AS 23.10.095 constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and other terms can be applied consistently with AS 23.10.050

— 23.10.150. *Dresser Indus., Inc. v. Alaska Dep't of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Applied in *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

Sec. 23.10.090. Administrative procedures. Regulations adopted or hearings conducted under AS 23.10.050 — 23.10.150 shall be adopted or conducted and be subject to judicial review in accordance with the Administrative Procedure Act (AS 44.62). (§ 6(4) ch 171 SLA 1959)

Sec. 23.10.095. Adoption of federal regulations. The commissioner may adopt regulations and interpretations which are made by the administrator of the Wage and Hour Division of the federal Department of Labor and which are not inconsistent with AS 23.10.050 — 23.10.150. (§ 6(5) ch 171 SLA 1959)

NOTES TO DECISIONS

This section and AS 23.10.085 constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and other terms can be applied consistently with Alaska's Wage and Hour Act. *Dresser Indus., Inc. v. Alaska Dept of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Sec. 23.10.100. Employer to keep records. (a) An employer shall keep for a period of at least three years at the place where an employee is employed a record of the name, address, and occupation of each employee, the rate of pay and the amount paid each pay period to each employee, the hours worked each day and each workweek by each employee, and other payroll information which the commissioner may require.

(b) The commissioner or an authorized representative of the commissioner may copy the employer's records at any reasonable time. An employer shall furnish to the commissioner or the representative on demand a sworn statement of the employer's records, and the commissioner may require that the sworn statement be made upon forms the commissioner has prescribed or approved. (§ 7 ch 171 SLA 1959)

NOTES TO DECISIONS

Public policy interest and burden of proof. — If an employee produces sufficient evidence to show the amount and extent of the work for which the employee was improperly compensated, the burden shifts to the employer to come forward with evidence sufficient to negate the reasonableness of the inference drawn from the employee's evidence. Although this burden of proof in an action under the Alaska Wage and Hour Act is not binding on a bankruptcy court in a proceeding to determine the validity of a claim, it is

indicative of the public policy interest that proper records be kept by an employer and that an employee be properly compensated for any overtime worked. In re *Equipment Servs., Ltd.*, 36 Bankr. 241 (Bankr. D. Alaska 1983).

Applied in *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

Stated in *Nolan v. Sea Airmotive, Inc.*, Sup. Ct. Op. No. 2337 (File No. 5177), 627 P.2d 1035 (1981).

Sec. 23.10.105. Posting summary required. An employer subject to AS 23.10.050 — 23.10.150 shall keep a summary or abstract of these sections, approved by the commissioner, posted in a conspicuous location at the place where a person subject to them is employed. An employer shall be furnished copies of a summary by the state on request without charge. (§ 8 ch 171 SLA 1959)

Sec. 23.10.110. Remedies of employee. (a) An employer who violates a provision of AS 23.10.060 or 23.10.065 is liable to an employee affected in the amount of unpaid minimum wages, or unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages.

(b) An action to recover from the employer the wages and damages for which the employer is liable may be maintained in a competent court by an employee personally and for other employees similarly situated, or an employee may individually designate in writing an agent or representative to maintain an action for the employee. The consent shall be filed in the court in which the action is brought. At the request of a person paid less than the amount to which the person is entitled under AS 23.10.050 — 23.10.150, the commissioner may take an assignment in trust for the employee of the full amount to which the employee is entitled under this section and may bring any legal action necessary to collect the claim.

(c) The court in an action brought under this section shall, in addition to a judgment awarded to the plaintiff, allow costs of the action and reasonable attorney fees to be paid by the defendant. The attorney fees in the case of actions brought under this section by the commissioner shall be remitted by the commissioner to the Department of Revenue. The commissioner may not be required to pay the filing fee or other costs. The commissioner in case of suit has power to join various claimants against the same employer in one cause of action. (§ 9(3) ch 171 SLA 1959)

NOTES TO DECISIONS

Liquidated damages under this article must be granted as a matter of law. *Alaska Int'l Indus., Inc. v. Musarra*, Sup. Ct. Op. No. 1966 (File Nos. 3652, 3676), 602 P.2d 1240 (1979).

No conflict with 29 U.S.C. §§ 216(b) and 260. — This section, which grants mandatory liquidated damages, does not conflict with 29 U.S.C. §§ 216(b) and 260, which make such awards discretionary if the employer shows he acted in good faith. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Concurrent coverage of minimum wage claims is not preempted by the federal Fair Labor Standards Act. It appears that 29 U.S.C. § 218(a) was intended to allow the recovery of additional amounts under more protective state laws. It is logical that Congress contemplated that the state would allow for an action as to the whole claim, not just the increment, and, further, that Congress

intended that the claims would be brought together, where possible, so that enforcement would not be costly. *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Revival of agent or representative action. — The legislature plainly determined to revive the agent or representative action, where the employee individually designates in writing an agent or representative to maintain an action for him. *Nolan v. Sea Airmotive, Inc.*, Sup. Ct. Op. No. 2337 (File No. 5177), 627 P.2d 1035 (1981).

Class action procedures. — See *Webster v. Bechtel, Inc.*, Sup. Ct. Op. No. 2245 (File Nos. 3979, 4139), 621 P.2d 890 (1980).

Offsetting of award. — If suits are filed under both the federal Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and the Alaska Wage and Hour Act, AS 23.10.050 — 23.10.150, the Alaska award must be offset by any recovery under the

Sec. 23.10.115. commissioner violates or a regulation an action i enforce con lation. Upo or restrain (1959)

Sec. 23.10.115. comply wi: refuses to the witnes upon appli compel ob disobedienc a refusal t

Sec. 23.10.115. do not lin represent: of work in 23.10.150 maximum

Sec. 23.10.115. mum wa: under AS within ty this secti complain (1982)

Effect of amendment

Sec. 23.10.115. authoriz their du to admit of empl provisio

federal act. Webster v. Bechtel, Inc., Sup.
Ct. Op. No. 2245 (File Nos. 3979, 4139),
621 P.2d 890 (1980).

Sec. 23.10.115. Enforcement by injunction. If it appears to the commissioner that an employer is engaged in an act or practice which violates or will violate a provision of AS 23.10.050 — 23.10.150 or of a regulation adopted under these sections, the commissioner may bring an action in a competent court to enjoin the act or practice, and to enforce compliance with AS 23.10.050 — 23.10.150 or with the regulation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. (§ 9(4) ch 171 SLA 1959)

Sec. 23.10.120. Enforcement of subpoenas. If a person fails to comply with a subpoena issued under AS 23.10.080, or if a witness refuses to produce evidence or to testify to a matter regarding which the witness may be lawfully interrogated, a competent court shall, upon application of the commissioner or an authorized representative, compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify before it. (§ 9(5) ch 171 SLA 1959)

Sec. 23.10.125. Collective bargaining. AS 23.10.050 — 23.10.150 do not limit the right of employees to bargain collectively through representatives of their own choosing to establish wages or conditions of work in excess of the applicable minimum under AS 23.10.050 — 23.10.150 or to establish hours of work shorter than the applicable maximum under AS 23.10.050 — 23.10.150. (§ 10 ch 171 SLA 1959)

Sec. 23.10.130. Statute of limitations. An action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages under AS 23.10.050 — 23.10.150 is forever barred unless it is started within two years after the cause of action accrues. For the purposes of this section an action is considered to be started on the date when the complaint is filed. (§§ 11, 12 ch 171 SLA 1959; am § 57 ch 59 SLA 1982)

Effect of amendments. — The 1982 amendment rewrote this section.

Sec. 23.10.135. Violations. An employer violates AS 23.10.050 — 23.10.150 if the employer (1) hinders or delays the commissioner or an authorized representative of the commissioner in the performance of their duties in the enforcement of AS 23.10.050 — 23.10.150; (2) refuses to admit the commissioner or an authorized representative to any place of employment; (3) fails to keep or falsifies a record required under the provisions of AS 23.10.050 — 23.10.150; (4) refuses to make a record

accessible, or to furnish a sworn statement of the record, or to give information required for the enforcement of AS 23.10.050 — 23.10.150, upon demand, to the commissioner or an authorized representative; (5) fails to post an abstract of AS 23.10.050 — 23.10.150 as required by AS 23.10.105; (6) discharges or in any other manner discriminates against an employee because the employee has filed a complaint, or has instituted or caused to be instituted any proceeding under or related to AS 23.10.050 — 23.10.150, or has testified or is about to testify in such a proceeding. (§ 9(1) ch 171 SLA 1959)

Sec. 23.10.140. Penalty. An employer who violates a provision of AS 23.10.050 — 23.10.150, or of any regulation or order of the commissioner issued under it, upon conviction is punishable by a fine of not less than \$100 nor more than \$2,000, or by imprisonment for not less than 10 nor more than 90 days, or by both. Each day a violation occurs constitutes a separate offense. (§ 9(2) ch 171 SLA 1959; am § 1 ch 113 SLA 1972)

Sec. 23.10.145. Definitions. If not defined in this title or in regulations adopted under this title, terms used in AS 23.10.050 — 23.10.150 shall be defined as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it. (§ 2(2) ch 171 SLA 1959; am § 4 ch 47 SLA 1983)

Cross references. — For the Fair Labor Standards Act of 1938, see 29 U.S.C. 201 — 219.

Effect of amendments. — The 1983 amendment added "If not defined in AS 23

or in regulations adopted under AS 23" to the beginning of the section and deleted "where applicable" following "shall be defined."

NOTES TO DECISIONS

Applicability of federal regulatory definitions. — This section directs the courts to apply federal regulatory definitions "where applicable," and such definitions are "applicable" only when the state director of the wage and hour division and the commissioner of labor have refrained from defining terms in the state regulations, pursuant to their discretionary authority under AS 23.10.085 and

23.10.095. *Dresser Indus., Inc. v. Alaska Dep't of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

A prisoner is not an "employee" of the state under the federal act, and therefore is not so by virtue of AS 23.10.065. *McGinnis v. Stevens*, Sup. Ct. Op. No. 1207 (File Nos. 2255, 2312), 543 P.2d 1221 (1975).

Sec. 23.10.150. Short title. AS 23.10.050 — 23.10.150 may be cited as the Alaska Wage and Hour Act. (§ 1 ch 171 SLA 1959)

Secs. 23.10.155 — 23.10.320. Equal pay for women, discrimination in employment, and age discrimination. [Repealed, § 8 ch 117 SLA 1965, § 5 ch 125 SLA 1980. For present provisions, see AS 18.80.220.]

Secti
325. 1
330. 1
332. .

335.
340.

Co
2d, 1
2653
Serv

S
23.
tha
tect
abu
(\$

§
23.
vis
the
chi

(
mo
lab

E)
en
de
al
ur
re

W
n
b:
d
cc

S B

5 0 8

5/3/90

TO: Representative Lyman Hoffman

Attn: Bob Herron

Subject: Senate Bill (508)

To all members of the Labor + Commerce Committee

My concern is that impairment ratings will be determined by licensed physical or occupational therapists, and medical monitors.

Insurance companies employ such professionals and that these professionals will make recommendations based on what their employers want to hear, with no regard for what surgeons and educational teachers of the disabled person are reporting.

My husband (Robin Lantz - CASE # 8415746) was injured in Bethel, Alaska in 1984 and has had continuing surgeries and has strived to improve his education for the past 6 years. He knows the problems that arise when a vocational therapist or a medical monitor are put in charge.

Sincerely
Lerry Lantz

SBS08

May 1, 1990

Representative Dave Donley, Chairman
House Labor and Commerce Committee
House of Representatives
P.O. Box V
Anchorage, AK 99811

Reference: CSSB508

Representative Donley:

The Labor and Management Ad Hoc Committee on Worker's Compensation has, in, proposed, negotiated and agreed to the legislative changes outlined in CSSB508. Kevin Dougherty and myself jointly testified on this bill in front of the House Labor and Commerce Committee.

Unfortunately, our agreement in the Ad Hoc Committee was not properly reflected in CSSB508 due to a time problem. We received the final copy from the legislative drafting as Kevin and I were testifying in front of the Senate Labor and Commerce Committee. We, therefore, got together immediately afterward to forward the changes that were part of our agreement to you. I believe Kevin sent those to you before he left town.

It is my understanding that you are requesting we give you our intent and how each change effects the bill. Let me preface my remarks by stating that these changes don't effect the intent of the bill at all, but are housekeeping in nature. They are all due to the fact we had no time to review the committee substitute prior to the hearing.

Change #1

Page 2 line 8: Section (7) should be deleted in its entirety. Change line 11 from (8) to (7).

Reason

We have no idea where this language came from, it just appeared in the CS. It is not something labor and management ever agreed to. The language regarding medical managers that we agreed to can be found on page 6, Section 6.

Change #2

Page 3 line 24: delete "except for first 30 days"
line 29: place a period after employee and delete rest of section.

Reason

The language as drafted in the CS was confusing. We feel this makes our intent clear.

Change #3

Page 4 line 28: should read "services must be reasonable as compared to fee for"

Reason

Again, the proposed language was turned around in the drafting process. The Worker's Comp. Board can only judge "reasonableness" and are not equipped to make "comparisons". Our intent was that the fees should be reasonable as compared to similar fees.

Change #4

Page 6 line 28: delete "this chapter" and insert AS23.30.041(k), 23.30.180, 23.30.185, 23.30.190, 23.30.200, and 23.30.215.

Reason

This change better defines those compensation benefits when health insurance replacements would be allowed. It is also consistent with changes to the Act made in 1988 where we listed statutory references by number.

Change #5

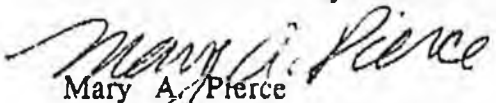
Page 8 line 9: delete "disabilities" and replace with "impairments"

Reason

"disabilities" is a term that has been replaced under the new law with "impairments". Changes in 1988 law provide for "impairment ratings" not "disability ratings." This is a change to be consistent with the new law.

The Ad Hoc Committee is in agreement that these changes will correct the bill to properly reflect our intent. Kevin Dougherty and I have formally agreed to these, and were he in town he would co-sign this letter.

Please call me if you still have questions.


Mary A. Pierce

Co-Chair Ad Hoc Committee

MAP/blb

SBS508



Anchorage
Fracture &
Orthopedic
Clinic

GEORGE B. WICHMAN, M.D.
DECLAN R. NOLAN, M.D.
RICHARD W. GARNER, M.D.
THOMAS P. VASILEFF, M.D.
RICHARD D. MCEVOY, M.D.

3546 LA TOURNEE STREET
ANCHORAGE, ALASKA 99508
(907) 563-314

Fellow American Academy of Orthopaedic Surgeons

April 25, 1990

Representative Dave Donley
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley

I have been told that if Senate Bill 508 is passed Physical Therapists
will have the legal ability to determine when a patient is medically
stable and determine their partial permanent impairment disability.

Physical Therapists and Occupational Therapists, I do not think, have
the ability to determine whether a patient is medically stable and
whether they have specific training in order to evaluate
the extent of a patient's disability. I think their understanding of
these issues is somewhat limited.

My argument that they are able to measure proportions of body
parts and record them on a form. In terms of making a clinical diagnosis
of disability and impairment, I think it would be unfair to
allow patients to be evaluated by someone who does not have specific
training in clinical diagnosis and diseases.

Therefore, I strongly oppose Senate Bill 508 and would encourage you
to vote against Senate Bill 508.

Sincerely,

T. Vasileff
Thomas P. Vasileff, M.D.

TPV/lm1

REHABILITATION MEDICINE ASSOCIATES, P.C.

2401 E. 42nd AVENUE, SUITE 304 ANCHORAGE, ALASKA 99508
(907) 563-8876 FAX (907) 563-7654

J. MICHAEL JAMES, M.D.
ROBERT FU, M.D.
MORRIS R. HORNING, M.D.
DIPLOMATES AMERICAN BOARD OF
PHYSICAL MEDICINE AND REHABILITATION

APR 11 1990

29 March 1990

Senator Richard Eliason
P. O. Box V
Juneau, Alaska 99811

RE: Senate Bill 508

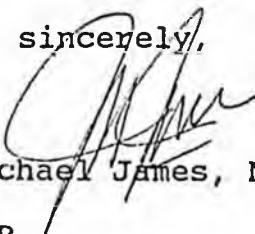
Dear Senator Eliason:

I recently had the opportunity to review the modifications of Senate Bill 508 specifically regarding the utilization of physical therapists and occupational therapists to determine physical impairment ratings as well as determine when a person is physically impaired to the degree which would require rehabilitation efforts or the lack of that physical impairment.

I do not believe that the "licensed physical therapist and occupational therapist" have the background or depth of knowledge to make an appropriate judgement with regard to the probability of permanent impairment and; more importantly, the degree of physical impairment which is what this bill would allow them to do. We have a difficult enough time educating physicians in this issue, because in a large number of patients this is extremely complex, let alone try to educate a group of people whose depth as well as breadth of knowledge is limited.

I feel this is "poor medicine" as well as poor public policy.

Yours sincerely,



J. Michael James, M.D.

sf/DNR

cc: Senator Jan Faiks
Representative Curt Menard
Representative Mike Navarre
Representative Dave Donley
Representative Ron Larson
Representative Virginia Collins



Anchorage
Fracture &
Orthopedic
Clinic

3546 LA TOUCHE STREET
ANCHORAGE, ALASKA 99508
(907) 563-3145

GEORGE B. WICHMAN, M.D.
DECLAN R. NOLAN, M.D.
RICHARD W. GARNER, M.D.
THOMAS P. VASILEFF, M.D.
RICHARD D. MCEVOY, M.D.

Fellow American Academy of Orthopaedic Surgeons

April 24, 1990

Senator Dick Eliason
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

RE: Senate Bill 508

Dear Senator Eliason:

I have already called your office and expressed my serious concern about passing Senate Bill 508.

I hope your aide communicated my thoughts to you.

The other day I heard some comments that concerned me. These comments were made to Dr. Michael James that indicated the State Medical Association and the orthopedic surgeons of the community were all in favor of this bill. Nothing could be further from the truth. It concerns me when bad information is being bandied about and an orthopedic surgeon like myself who called with serious reservations about the bill may be quoted as being in favor of it.

Disability, permanent loss of function and whether or not a patient has reached a stable clinical state are all M.D. decisions. Granted, anyone can be trained to measure movements of parts of the body and record them on a sheet of paper. However, it takes years of training, knowledge and significant experience to be able to make a clinical diagnosis of disability or impairment.

Daily I have patients in my office claiming disability who are not in the least bit disabled. However, a physical therapist, an occupational therapist or other paramedical personnel could easily be misled into writing up disability limitations which would be wrong.

I am not sure what the problem is that this bill is meant to fix. I have been told by your aide that it appears to be the insurance companies are interested in it because there is a backlog of disability ratings that need to be done. That was the first I ever heard about that. If that is the case there are many other ways to solve that problem without going the route of this bill.

TEL No.561-8314

Apr 25.90 7:54 No.001 P.03/0

Page two
Senate Bill 508
April 24, 1990

I strongly oppose the bill and I feel that if it is passed it will lead to major difficulties in the medical administration of disability claims.

Sincerely,

Declan R. Nolan, M.D.

DRN:bj
cc to: Michael James, M.D.
Alaska State Medical Society

EDWARD M. VOKE, M.D.

(A PROFESSIONAL CORP.)

AMERICAN ACADEMY OF
ORTHOPAEDIC SURGEONS

ORTHOPAEDIC SURGEON
PROVIDENCE MEDICAL OFFICE BUILDING
3340 PROVIDENCE DRIVE - SUITE 664
ANCHORAGE, ALASKA 99508
PHONE: (907) 882-2277

DIPLOMATE AMERICAN
BOARD OF ORTHOPAEDIC
SURGERY

April 25, 1990

SB 508

Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Sirs and Madames:

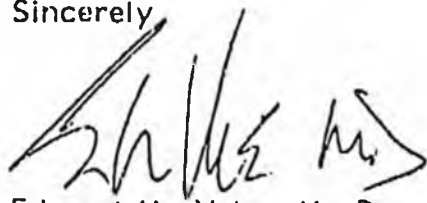
Dr. J.P. Dittrich and myself are opposed to Bill 508. Apparently this bill suggests that physical therapists and occupational therapists be allowed to complete physical capacity evaluations.

It was brought to my attention yesterday that somehow I was quoted as being in favor of this bill. I just wanted to set the record straight that this is not the case and I still feel that orthopedic surgeons are hopefully capable of and are certainly in the best position to more accurately complete this type of document.

I was unaware of the fact that a bill of this type was in the making. I am somewhat confused and do not understand why this is the case. I strongly suggest and submit that this bill be discussed with all of the orthopedic surgeons in Alaska and that they be allowed to individually state their preferences as to what they feel is appropriate. As far as I know this has not been discussed on even one occasion with any of the orthopedic surgeons that I know in Anchorage.

Your consideration is appreciated.

Sincerely



Edward M. Voke, M. D.

EMV/vh

Correspondence on
SB 508

April 30, 1990

Representative Dave Donley
Alaska State Representative
3111 "C" Street
Anchorage, Alaska 99503

RE: Senate Bill #508

Dear Representative Donley:

I have had an opportunity to review Senate Bill #508 as drafted. I have also received and reviewed a copy of the letter from the Alaska Rehabilitation Association (ARA), which supports the completion of impairment ratings by licensed Occupational or Physical Therapists.

As a Vocational Rehabilitation Counselor in Anchorage for the past four years, I agree with ARA that Occupational and Physical Therapists are generally well qualified to complete performance based physical capacities evaluations with associated measurements, are easily accessible to rehabilitation providers, etc. I do not agree with ARA, however, that for these reasons, Occupational and Physical Therapists should necessarily be given the statutory authority to perform impairment ratings.

While a performance based physical capacities evaluation can provide valuable information to the physician, it has been my understanding that this is only a piece of the information used to develop a "medical assessment of impairment." I think it is commonly accepted that impairment ratings should be based on a thorough medical evaluation, to include a complete review of the medical record and a physical examination. While it may be true that impairment ratings can eventually be reduced to a rather straightforward calculation, this calculation is only one step in the overall process. Impairment ratings, in and of themselves, are only a piece of the puzzle as it relates to comprehensive medical care and rehabilitation. As rehabilitation providers, we rely on the physician to put all of the pieces together with respect to medical stability, impairment, present and future functioning, etc.

My second concern is from the patient point of view. I believe injured parties should have the right to expect that an issue as important as degree of permanent impairment will be addressed by a licensed physician.

A third concern is from a practical point of view. A therapist completes an impairment rating, the patient does not agree, and requests a second opinion as to degree of impairment from a physician. Based on training and expertise, who do you think involved parties will defer to? Impairment ratings are expensive, and multiple ratings will only serve to increase overall claim costs.

Representative Dave Donley

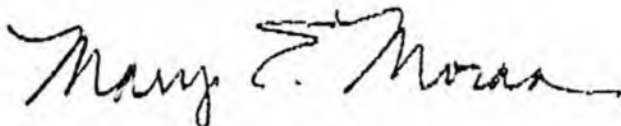
- 2 -

April 30, 1990

In summary, there is no question that Occupational and Physical Therapists have a valuable role to play in the rehabilitation process. I would not assume, however, that they have the medical expertise to warrant the authority to complete impairment ratings. Difficult as they may be to approach at times, I believe impairment ratings should remain in the physician arena.

I would urge you to delete the proposed amendment as outlined in AS 23.30.041 (e) and AS 23.30.190 (b).

Respectfully Submitted,



Mary E. Moran, M.S., CRC
Vocational Rehabilitation Counselor
Collins & Associates, Inc.
(907)522-3100

cc: State Representatives

Alaska Rehabilitation Association

3605 Arctic Blvd. #1341
Anchorage, Alaska 99503



April 20, 1990

Representative Dave Donley
Representative Office
3111 C Street
Anchorage, Alaska 99503

Re: Senate Bill 506

Dear Representative Donley:

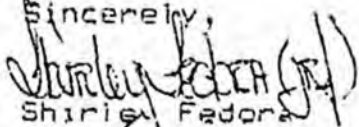
The Alaska Rehabilitation Association is a group of about 20 rehabilitation professionals who represent the State of Alaska. We have reviewed Senate Bill 506 and are writing in support of Licensed Physical and Occupational Therapists performing Physical Capacities Evaluations and Impairment Ratings under the Alaska Workers' Compensation Act.

The Vocational Rehabilitation Counselors who have worked with Licensed Physical and Occupational Therapists state they are competent at performing these tests and, in fact, do them in a very functional way with the exact measurements and data that it takes to give very accurate performance based information. They are timely in their ability to perform tests and complete reports. Because of their timeliness and our ability to communicate easily with them, we are able to move more efficiently to reemployment status with injured workers.

Most of all, injured workers benefit by going through a performance based evaluation because they can see and feel for themselves what they are able to do and have less questions about their capabilities.

Please consider this, Senate Bill 506, as a positive mover in the Workers' Compensation System

Sincerely,


Shirley Fedora
President, Alaska Rehabilitation Association

NARPPS

National Association of Rehabilitation Professionals in the Private Sector
PO Box 240654, Anchorage, Alaska 99524-0654



April 30, 1990

Mr. Dave Donley, Chairman
Alaska State House
Labor and Commerce Committee
P. O. Box V
Capitol Room 122
Juneau, AK. 99811

Dear Mr. Donley:

We would like you to be aware of some concerns we have regarding Senate Bill No. 508:

1. We support the changes in Sec. 1. AS 23.30.041 (b), (5) & (7). However, we regret that this addition will do nothing to eliminate unethical medical management from the Alaska Workers Compensation System. We believe that the Reemployment Benefits Administrator should be empowered to control the activities of medical managers by setting standards for registration of medical managers, such as CRC, CIRS, CRRN, and RN with two years experience working with rehabilitation clients, and developing standards of performance that must be met for continued registration. All other persons performing activities, such as research of prior claims, medical bill audits, and other investigative activities designed to develop information for controversions and denial of payment for services, should be classified as Investigators and should be required to identify themselves as such when contacting other parties involved in the claim. A separate set of standards should be developed for registration of Investigators.

2. We believe the proposed changes in Sec. 2. AS 23.30.041 (e) are a step in the right direction. Allowing physicians to turn this task over to a physical therapist or occupational therapist in cases where the physician does not have the time to make these predictions or requires more objective physical data for the prediction should aid the process of completing eligibility evaluations.

3. We believe the proposed changes in Sec. 3. AS 23.30.041 (k), (4), will add needed clarification to the process originally stated in the statute, however, we believe that the Reemployment Benefits Administrator should be empowered to extend the two year and \$10,000 limit in special cases where remunerative employability cannot be achieved within the above stated limitations.

4. We believe the proposed changes in Sec. 4. AS 23.30.041 (1) are unwise and will lead to the delivery of inferior reemployment services in the State of Alaska.

What you will be accomplishing by passing this change in the law, will be to give claims adjusters and employers a statutory basis for denying payment for necessary reemployment and eligibility services to injured employees in Alaska. When providers realize that payment for needed services can be denied under the law, reemployment plans requiring unusual services will not receive them and they will fail, and eligibility evaluations requiring extra time or services will not be cost effective for Rehabilitation Specialists to perform.

With this change in the statute, you will create more problems than we already have in this law. Rehabilitation Specialists will not take kindly to having persons unqualified in Rehabilitation, such as Board members and claims adjusters, determining which rehabilitation services are to be considered as "similar" to other services for purposes of determining what would be a "comparable" fee. Additionally, employers and insurance carriers are not going to be satisfied if fees are set at a higher rate than the lowest fee being charged by the most unqualified person delivering what they believe to be "similar" services.

There is nothing in this proposed change that limits the comparison of fees to professionals who have the same qualifications as required under the current statute regarding Rehabilitation Specialists. This opens the possibility that the Division of Workers Compensation may set comparable fees at a level charged by much less qualified providers, while continuing to require superior qualifications for Rehabilitation Specialists under the current statute. Rehabilitation Specialists, qualified as CRC or CRIS, will not provide services at a rate comparable to similar services provided by less educated and less experienced persons who cannot qualify as Rehabilitation Specialists under the current statutory requirements for this designation.

There is also a danger that the wages of government employees could be used as a comparison for fees for similar services. This would not be a fair comparison, because government employees do not have the expenses of operating a business. There is nothing in the wording of this proposed change to prevent this type of comparison for establishing fees of Rehabilitation Specialists.

We believe that this type of legislation will lead to inferior rehabilitation services in the state of Alaska, because it will tend to classify all services, superior as well as inferior or average, at the same level relative to

the fees that can be charged for the service. This is what happens under socialism, and is probably the reason that medical and rehabilitation services in socialistic governments are inferior to those found in free enterprise systems. Setting minimum standards for the qualifications of Rehabilitation Specialists is an appropriate function of government in a free enterprise system, but the amount of money that can be charged for a service needs to be left to the law of supply and demand and not the statutes.

Suppose the Alaska voters were able to pass a law stating that legislators would be paid comparable wages for similar services performed in the Alaska State legislature; would you be able to function, if you were paid a comparable wage to your aid when you were performing similar services or a comparable wage to a receptionist every time you answered the telephone? You probably already resent the fact that incompetent legislators are paid the same as competent ones. This is the kind of result you can expect whenever the government is allowed to socialize the free enterprise system such as would be the case if this section of SB 508 is allowed to pass.

We ask that you amend SB 508 to strike all language dealing with government regulation of fees charged by Rehabilitation Specialists.

5. We believe the proposed changes in Sec. 5. AS 23.30.041 (p), (4) need to be more specific regarding the qualifications of nurses and other health care providers authorized to perform the services of medical management. The definition of medical manager should include only Rehabilitation Specialists, CRRN, or RN with at least two years of experience providing medical management services to rehabilitation clients.

6. We believe the proposed changes in Sec. 6. AS 23.30.041, adding the new subsection (q) is a necessary and beneficial change. This will hopefully lead to delivery of better services and protect against the delivery of investigative services under the guise of medical management as is currently occurring.

7. We believe the proposed changes in Sec. 7. AS 23.30 adding Sec. 23.30.047 COMPENSATION FOR HEALTH INSURANCE, has long been needed to protect injured workers and their families from additional financial hardship from medical expenses not related to the injury, while they are suffering from a lengthy recovery. This benefit should be extended to continue beyond 18 months if the employee is participating in a reemployment plan.

8. We put forth no opinion regarding the proposed changes to Sec. 8, AS 23.30.055.

9. We believe the proposed changes in Sec. 9. AS 23.30.190 (b) will be beneficial to the injured employee and the Workers Compensation System by speeding the process for determining PPI settlements and providing for quicker delivery of settlement moneys. We ask that this section of SB 508 be passed.

10. We put forth no opinion regarding the proposed changes to Sec. 10, AS 23.30.195.

We have heard that SB 508 has come over to the house with the word that Management and Labor are in agreement on the bill and it is to be considered without ammendments. We have also heard that management lobbyists are already trying to get changes to the bill in sections not believed to be a part of Labor and Management negotiations. In particular we have heard that management is requesting a return to "usual and customary" language of Sec. 4 in a previous version of the bill. If this is the case, please refer to previous correspondence we have submitted to your committee and the legislature for our opinion and arguments relative to the effects of this phraseology.

Sincerely,



Robert M. Sullivan, M.Ed., CRC, CIRS
NARPPS Legislative Committee Chairman

cc: House Labor and Commerce Committee

MTL SERVICES

MARJORIE T. LINDER, M.A., C.R.C.
Vocational Rehabilitation Counselor

8445 Jupiter Drive
Anchorage, Alaska 99507
(907) 346-2474

April 30, 1990

Representative Dave Donnelly
State House
Juneau, Alaska

Re: SB 508

Dear Representative Donnelly:

The provisions in SB 508 (Sec. 1. AS23.30.041(b)(7), Sec.5 AS 23.30.041(p)(4), and Sec. 6 AS 23.30.041(q)) which require medical managers to identify their referral source, goals, and duties to employees, employers and physicians are consistent with the canons of ethics under the commission on rehabilitation counseling certification. Requiring medical managers to copy their reports to the Re-employment Benefits Administrator will insure that they are not misused by insurance carriers to exploit the trust and dependency of injured workers. Enclosed is a copy of the canons applicable to this bill. Please note R2.1, R2.3, R2.4, R2.5, R3.1, R3.5. If SB 508 passes, the provisions for medical management must not be amended.

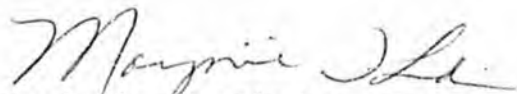
While I have your attention, I want you to know that vocational rehabilitation counseling (not the same thing as medical management) remains the "hollow pinata." All parties are invited to take a swing at it and, believe me, there is no more money left to get out of us. As you well know "rehab" was blamed for the high cost of workers' compensation and the act was reformed in '88. The numbers of workers receiving rehabilitation services have been reduced well over 90%. Rehabilitation fees spent on workers injured in FY '89 totalled less than \$150,000 in a \$150,000,000 industry. Out of 10,100 workers injured in FY '89, only 83 received eligibility evaluations and six (6) workers received "re-employment plans." Injured workers are at risk for not having a benefit designed to narrow the gap between impairment and disability and the rehabilitation industry is at risk of being "owned" by insurance companies if any further changes are made to Sec. 4 AS 23.30.041(1)(1).

You see, SB 508 invites challenges to rehabilitation bills by insurance companies, which is a way insurance companies exert professional "control". Representative Donnelly, please help

protect the autonomy of rehabilitation counselors for the sake of the "little guys." Instead of limiting the benefits owed injured workers, limit the activities of the insurance companies. Despite the sacrifice of injured workers and the rehabilitation industry, the insurance industry gave employers only a 4% rate reduction when rehabilitation was blamed for the high rates. I guess I'm saying, "It's them, not us." Let's point the finger at the real culprits, the insurance industry.

Yours truly,

MTL SERVICES



Marjorie T. Linder, M.S., CRC
Vocational Rehabilitation Counselor

CERTIFICATION UPDATE

The Commission on Rehabilitation Counselor Certification (CRCC) is pleased to announce that a revised Code of Professional Ethics for Rehabilitation Counselors has been completed and printed here for your use.

CRCC has worked closely with the American Rehabilitation Counseling Association and the National Rehabilitation Counseling Association in the revision of this Code. Both professional associations have adopted the Code, as well as the National Council on Rehabilitation Education. We anticipate that other professional associations will adopt or endorse the Code for their rehabilitation counselors.

You may recall that, in your initial application to take the CRC Examination, you signed a statement of understanding that said you would ascribe to the Code of Ethics printed on the application. The revised Code of Professional Ethics for Rehabilitation Counselors applies to all Certified Rehabilitation Counselors. Disciplinary Procedures are outlined and all CRCs are encouraged to carefully read both the Code and Disciplinary Procedures. As stated in the Preamble to the Code, CRCs are encouraged to request in writing an advisory opinion from CRCC when they require assistance in interpreting the Code. At a later date, a Guidebook will also be developed to assist CRCs in interpreting the Canons and Rules of the Code.

CODE OF PROFESSIONAL ETHICS FOR REHABILITATION COUNSELORS

The Commission on Rehabilitation Counselor Certification has adopted the Code of Professional Ethics for Certified Rehabilitation Counselors; and the following professional organizations have adopted the Code for their memberships; American Rehabilitation Counseling Association, National Rehabilitation Counseling Association, and National Council on Rehabilitation Education.

Preamble

Rehabilitation counselors are committed to facilitating personal, social, and economic independence of individuals with disabilities. In fulfilling this commitment, rehabilitation counselors work with people, programs, institutions, and service delivery systems. Rehabilitation counselors recognize that both action and inaction can be facilitating or debilitating. Rehabilitation counselors may be called upon to provide counseling; vocational exploration; psychological and vocational assessment; evaluation of social, medical, vocational, and psychiatric information; job placement and job development services; and other rehabilitation services, and so in a manner that is consistent with their education and experience. Moreover, rehabilitation counselors also must demonstrate adherence to ethical standards and must ensure that the standards are enforced vigorously. The Code of Professional Ethics, henceforth referred to as the Code, is designed to facilitate the accomplishment of these goals.

The primary obligation of rehabilitation counselors is to their clients, defined in this Code as people with disabilities who are receiving services from rehabilitation counselors. The basic objective of the Code is to promote the public welfare by specifying and enforcing ethical behavior expected of rehabilitation counselors. Accordingly, the Code consists of two kinds of standards, Canons and Rules of Professional Conduct.

The Canons are general standards of an aspirational and inspirational nature reflecting the fundamental spirit of caring and respect which professionals share. They are maxims which serve as models of exemplary professional conduct. The Canons also express general concepts and principles from which more specific Rules are derived. Unlike the Canons, The Rules are more exacting standards that provide guidance in specific circumstances.

Rehabilitation counselors who violate the Code are subject to disciplinary action. A Rule violation is interpreted as a violation of the applicable Canon and the general principles embodied thereof. Since the use of the Certified Rehabilitation Counselor (CRC) designation is a privilege granted by the Commission on Rehabilitation Counselor Certification (CRCC), the CRCC reserves unto itself the power to suspend or to revoke the privilege or to approve other penalties for a Rule violation. Disciplinary penalties are imposed as warranted by the severity of the offense and its attendant circumstances. All disciplinary actions are undertaken in accordance with published procedures and penalties designed to assure the proper enforcement of the Code within the framework of due process and equal protection of the laws.

When there is reason to question the ethical propriety of specific behaviors, persons are encouraged to refrain from engaging in such behaviors until the matter has been clarified. Certified Rehabilitation Counselors who need assistance in interpreting the Code should request in writing an advisory opinion from the Commission on Rehabilitation Counselor Certification. Rehabilitation counselors who are not certified and require assistance in interpreting the Code should request in writing an advisory opinion from their appropriate professional organization.

Rehabilitation Counselor Code of Ethics

Canon 1 - MORAL AND LEGAL STANDARDS

Rehabilitation counselors shall behave in a legal, ethical, and moral manner in the conduct of their profession, maintaining the integrity of the Code and avoiding any behavior which would cause harm to others.

Rules of Professional Conduct

- RI.1 Rehabilitation counselors will obey the laws and statutes in the legal jurisdiction in which they practice and are subject to disciplinary action for any violation, to the extent that such violation suggests the likelihood of professional misconduct.
- RI.2 Rehabilitation counselors will be thoroughly familiar with, will observe, and will discuss with their clients the legal limitations of their services, or benefits offered to clients so as to facilitate honest and open communication and realistic expectations.
- RI.3 Rehabilitation counselors will be alert to legal parameters relevant to their practices and to disparities between legally mandated ethical and professional standards and the Code. Where such disparities exist, rehabilitation counselors will follow the legal mandates and will formally communicate any disparities to the appropriate committee on professional ethics. In the absence of legal guidelines, the Code is ethically binding.

- R1.4 Rehabilitation counselors will not engage in any act or omission of a dishonest, deceitful, or fraudulent nature in the conduct of their professional activities. They will not allow the pursuit of financial gain or other personal benefit to interfere with the exercise of sound professional judgment and skills, nor will rehabilitation counselors abuse their relationships with clients to promote personal or financial gain or the financial gain of their employing agencies.
- R1.5 Rehabilitation counselors will understand and abide by the Canons and Rules of Professional Conduct which are prescribed in the Code.
- R1.6 Rehabilitation counselors will not advocate, sanction, participate in, cause to be accomplished, otherwise carry out through another, or condone any act which rehabilitation counselors are prohibited from performing by the Code.
- R1.7 Rehabilitation counselors' moral and ethical standards of behavior are a personal matter to the same degree as they are for any other citizen, except as these may compromise the fulfillment of their professional responsibilities or reduce the public trust in rehabilitation counselors. To protect public confidence, rehabilitation counselors will avoid public behavior that clearly is in violation of accepted moral and ethical standards.
- R1.8 Rehabilitation counselors will respect the rights and reputation of any institution, organization, or firm with which they are associated when making oral or written statements. In those instances where they are critical of policies, they attempt to effect change by constructive action within organizations.
- R1.9 Rehabilitation counselors will refuse to participate in employment practices which are inconsistent with the moral or legal standards regarding the treatment of employees or the public. Rehabilitation counselors will not condone practices which result in illegal or otherwise unjustifiable discrimination on any basis in hiring, promotion, or training.

Canon 2 - COUNSELOR-CLIENT RELATIONSHIP

Rehabilitation counselors shall respect the integrity and protect the welfare of people and groups with whom they work. The primary obligation of rehabilitation counselors is to their clients, defined as people with disabilities who are receiving services from rehabilitation counselors. Rehabilitation counselors shall endeavor at all times to place their clients' interests above their own.

Rules of Professional Conduct

- R2.1 Rehabilitation counselors will make clear to clients, the purposes, goals, and limitations that may affect the counseling relationship.
- R2.2 Rehabilitation counselors will not misrepresent their role or competence to clients. Rehabilitation counselors will provide information about their credentials, if requested, and will refer clients to other specialists as the needs of clients dictate.
- R2.3 Rehabilitation counselors will be continually cognizant of their own needs, values, and of their potentially influential position, vis-a-vis clients, students, and subordinates. They avoid exploiting the trust and dependency of such persons. Rehabilitation counselors make every effort to avoid dual relationships that could impair their professional judgments or increase the risk of exploitation. Examples of dual relationships include, but are not limited to, research with and treatment of employees, students, supervisors, close friends, or relatives. Sexual intimacies with clients are unethical.
- R2.4 Rehabilitation counselors who provide services at the request of a third party will clarify the nature of their relationships to all involved parties. They will inform all parties of their ethical responsibilities and take appropriate action. Rehabilitation counselors employed by third parties as case consultants or expert witnesses, where there is no pre-ense or intent to provide rehabilitation counseling services directly to clients, beyond file review, initial interview and/or assessment, will clearly define, through written or oral means, the limits of their relationship, particularly in the areas of informed consent and legally privileged communications, to involved individuals. As case consultants or expert witnesses, rehabilitation counselors have an obligation to provide unbiased, objective opinions.
- R2.5 Rehabilitation counselors will honor the right of clients to consent to participate in rehabilitation services. Rehabilitation counselors will inform clients or the clients' legal guardians of factors that may affect clients' decisions to participate in rehabilitation services, and they will obtain written consent after clients or their legal guardians are fully informed of such factors. Rehabilitation counselors who work with minors or other persons who are unable to give voluntary, informed consent, will take special care to protect the best interests of clients.
- R2.6 Rehabilitation counselors will avoid initiating or continuing consulting or counseling relationships if it is expected that the relationships can be of no benefit to clients, in which case rehabilitation counselors will suggest to clients appropriate alternatives.
- R2.7 Rehabilitation counselors will recognize that families are usually an important factor in client's rehabilitation and will strive to enlist family understanding and involvement as a positive resource in promoting rehabilitation. The permission of clients will be secured prior to family involvement.
- R2.8 Rehabilitation counselors and their clients will work jointly in devising an integrated, individualized rehabilitation plan which offers reasonable promise of success and is consistent with the abilities and circumstances of clients. Rehabilitation counselors will persistently monitor rehabilitation plans to ensure their continued viability and effectiveness, remembering that clients have the right to make choices.
- R2.9 Rehabilitation counselors will work with their clients in considering employment for clients in only jobs and circumstances that are consistent with the clients' overall abilities, vocational limitations, physical restrictions, general temperament, interest and aptitude patterns, social skills, education, general qualifications and other relevant characteristics and needs. Rehabilitation counselors will neither place nor participate in placing clients in positions that will result in damaging the interest and welfare of either clients or employers.

Canon 3 - CLIENT ADVOCACY

Rehabilitation counselors shall serve as advocates for people with disabilities.

Rules of Professional Conduct

- R3.1 Rehabilitation counselors will be obligated at all times to promote access for people with disabilities in programs, facilities, transportation, and communication, so that clients will not be excluded from opportunities to participate fully in rehabilitation, education, and society.
- R3.2 Rehabilitation counselors will assure, prior to referring clients to programs, facilities, or employment settings, that they are appropriately accessible.
- R3.3 Rehabilitation counselors will strive to understand accessibility problems of people with cognitive, hearing, mobility, visual and/or other disabilities and demonstrate such understanding in the practice of their profession.
- R3.4 Rehabilitation counselors will strive to eliminate attitudinal barriers, including stereotyping and discrimination, toward people with disabilities and will enhance their own sensitivity and awareness toward people with disabilities.
- R3.5 Rehabilitation counselors will remain aware of the actions taken by cooperating agencies on behalf of their clients and will act as advocates of clients to ensure effective service delivery.

Canon 4 - PROFESSIONAL RELATIONSHIPS

Rehabilitation counselors shall act with integrity in their relationships with colleagues, other organizations, agencies, institutions, referral sources, and other professionals so as to facilitate the contribution of all specialists toward achieving optimum benefit for clients.

Rules of Professional Conduct

- R4.1 Rehabilitation counselors will ensure that there is fair mutual understanding of the rehabilitation plan by all agencies cooperating in the rehabilitation of clients and that any rehabilitation plan is developed with such mutual understanding.
- R4.2 Rehabilitation counselors will abide by and help to implement "team" decisions in formulating rehabilitation plans and procedures, even when not personally agreeing with such decisions, unless these decisions breach the ethical Rules.
- R4.3 Rehabilitation counselors will not commit referring counselors to any prescribed courses of action in relation to clients, when transferring clients to other colleagues or agencies.
- R4.4 Rehabilitation counselors, as referring counselors, will promptly supply all information necessary for a cooperating agency or counselor to begin serving clients.
- R4.5 Rehabilitation counselors will not offer on-going professional counseling/case management services to clients receiving such services from other rehabilitation counselors without first notifying the other counselor. File review and second opinion services are not included in the concept of professional counseling/case management services.
- R4.6 Rehabilitation counselors will secure from other specialists appropriate reports and evaluations, when such reports are essential for rehabilitation planning and/or service delivery.
- R4.7 Rehabilitation counselors will not discuss in a disparaging way with clients the competency of other counselors or agencies, or the judgments made, the methods used, or the quality of rehabilitation plans.
- R4.8 Rehabilitation counselors will not exploit their professional relationship with supervisors, colleagues, students, or employees sexually or otherwise. Rehabilitation counselors will not condone or engage in sexual harassment, defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature unwanted by recipients.
- R4.9 Rehabilitation counselors who know of an ethical violation by another rehabilitation counselor will informally attempt to resolve the issue with the counselor, when the misconduct is of a minor nature and/or appears to be due to lack of sensitivity, knowledge, or experience. If the violation does not seem amenable to an informal solution, or is of a more serious nature, rehabilitation counselors will bring it to the attention of the appropriate committee on professional ethics.
- R4.10 Rehabilitation counselors possessing information concerning an alleged violation of this Code, will, upon request, reveal such information to the Commission on Rehabilitation Counselor Certification or other authority empowered to investigate or act upon the alleged violation, unless the information is protected by law.
- R4.11 Rehabilitation counselors who employ or supervise other professionals or students will facilitate professional development of such individuals. They provide appropriate working conditions, timely evaluations, constructive consultation, and experience opportunities.

Canon 5 - PUBLIC STATEMENTS/FEEES

Rehabilitation counselors shall adhere to professional standards in establishing fees and promoting their services.

Rules of Professional Conduct

- R5.1 Rehabilitation counselors will consider carefully the value of their services and the ability of clients to meet the financial burden in establishing reasonable fees for professional services.
- R5.2 Rehabilitation counselors will not accept for professional work a fee or any other form of remuneration from clients who are entitled to their services through an institution or agency or other benefits structure, unless clients have been fully informed of the availability of services from other such sources.
- R5.3 Rehabilitation counselors will neither give nor receive a commission or rebate or any other form of remuneration for referral of clients for professional services.
- R5.4 Rehabilitation counselors who describe rehabilitation counseling or the services of rehabilitation counselors to the general public will fairly and accurately present the material, avoiding misrepresentation through sensationalism, exaggeration, or superficiality. Rehabilitation counselors are guided by the primary obligation to aid the public in developing informed judgments, opinions, and choices.

Canon 6 - CONFIDENTIALITY

Rehabilitation counselors shall respect the confidentiality of information obtained from clients in the course of their work.

Rules of Professional Conduct

- R6.1 Rehabilitation counselors will inform clients at the onset of the counseling relationship of the limits of confidentiality.
- R6.2 Rehabilitation counselors will take reasonable personal action, or inform responsible authorities, or inform those persons at risk, when the conditions or actions of clients indicate that there is clear and imminent danger to clients or others after advising clients that this must be done. Consultation with other professionals may be used where appropriate. The assumption of responsibility for clients must be taken only after careful deliberation and clients must be involved in the resumption of responsibility as quickly as possible.
- R6.3 Rehabilitation counselors will not forward to another person, agency, or potential employer, any confidential information without the written permission of clients or their legal guardians.
- R6.4 Rehabilitation counselors will ensure that there are defined policies and practices in other agencies cooperatively serving rehabilitation clients which effectively protect information confidentiality.
- R6.5 Rehabilitation counselors will safeguard the maintenance, storage, and disposal of the records of clients so that unauthorized persons shall not have access to these records. All non-professional persons who must have access to these records will be thoroughly briefed concerning the confidential standards to be observed.
- R6.6 Rehabilitation counselors, in the preparation of written and oral reports, will present only germane data and will make every effort to avoid undue invasion of privacy.
- R6.7 Rehabilitation counselors will obtain written permission from clients or their legal guardians prior to taping or otherwise recording counseling sessions. Even with guardians' written consent, rehabilitation counselors will not record sessions against the expressed wishes of clients.
- R6.8 Rehabilitation counselors will persist in claiming the privileged status of confidential information obtained from clients, where communications are privileged by statute for rehabilitation counselors.
- R6.9 Rehabilitation counselors will provide prospective employers with only job relevant information about clients and will secure the permission of clients or their legal guardians for the release of any information which might be considered confidential.

Canon 7 - ASSESSMENT

Rehabilitation counselors shall promote the welfare of clients in the selection, utilization, and interpretation of assessment measures.

Rules of Professional Conduct

- R7.1 Rehabilitation counselors will recognize that different tests demand different levels of competence for administration, scoring, and interpretation, and will recognize the limits of their competence and perform only those functions for which they are trained.
- R7.2 Rehabilitation counselors will consider carefully the specific validity, reliability, and appropriateness of tests, when selecting them for use in a given situation or with particular clients. Rehabilitation counselors will proceed with caution when attempting to evaluate and interpret the performance of people with disabilities, minority group members, or other persons who are not represented in the standardized norm groups. Rehabilitation counselors will recognize the effects of socioeconomic, ethnic, disability, and cultural factors on test scores.
- R7.3 Rehabilitation counselors will administer tests under the same conditions that were established in their standardization. When tests are not administered under standard conditions, as may be necessary to accommodate modifications for clients with disabilities or when unusual behavior or irregularities occur during the testing session, those conditions will be noted and taken into account at the time of interpretation.
- R7.4 Rehabilitation counselors will ensure that instrument limitations are not exceeded and that periodic reassessments are made to prevent stereotyping of clients.
- R7.5 Rehabilitation counselors will make known the purpose of testing and the explicit use of the results to clients prior to administration. Recognizing the right of clients to have test results, rehabilitation counselors will give explanations of test results in language clients can understand.
- R7.6 Rehabilitation counselors will ensure that specific interpretation accompanies any release of individual data. The welfare and explicit prior permission of clients will be the criteria for determining the recipients of the test results. The interpretation of assessment data will be related to the particular goals of evaluation.
- R7.7 Rehabilitation counselors will attempt to ensure, when utilizing computerized assessment services, that such services are based on appropriate research to establish the validity of the computer programs and procedures used in arriving at interpretations. Public offering of an automated test interpretation service will be considered as a professional-to-professional consultation. In this instance, the formal responsibility of the consultant is to the consultee, but the ultimate and overriding responsibility is to clients.
- R7.8 Rehabilitation counselors will recognize that assessment results may become obsolete. They make every effort to avoid and prevent the misuse of obsolete measures.

Canon 8 - RESEARCH ACTIVITIES

Rehabilitation counselors shall assist in efforts to expand the knowledge needed to more effectively serve people with disabilities.

Rules of Professional Conduct

- R8.1 Rehabilitation counselors will ensure that data for research meet rigid standards of validity, honesty, and protection of confidentiality.
- R8.2 Rehabilitation counselors will be aware of and responsive to all pertinent guidelines on research with human subjects. When planning any research activity dealing with human subjects, rehabilitation counselors will ensure that research problems, design, and execution are in full compliance with such guidelines.
- R8.3 Rehabilitation counselors presenting case studies in classes, professional meetings, or publications will confine the content to that which can be disguised to ensure full protection of the identity of clients.
- R8.4 Rehabilitation counselors will assign credit to those who have contributed to publications in proportion to their contribution.
- R8.5 Rehabilitation counselors recognize that honesty and openness are essential characteristics of the relationship between rehabilitation counselors and research participants. When methodological requirements of a study necessitate concealment or deception, rehabilitation counselors will ensure that participants understand the reasons for this action.

Canon 9 - COMPETENCE

Rehabilitation counselors shall establish and maintain their professional competencies at such a level that their clients receive the benefits of the highest quality of services the profession is capable of offering.

Rules of Professional Conduct

- R9.1 Rehabilitation counselors will function within the limits of their defined role, training, and technical competency and will accept only those positions for which they are professionally qualified.
- R9.2 Rehabilitation counselors will continuously strive through reading, attending professional meeting, and taking courses of instruction to keep abreast of new developments, concepts, and practices that are essential to providing the highest quality of services to their clients.
- R9.3 Rehabilitation counselors, recognizing that personal problems and conflicts may interfere with their professional effectiveness, will refrain from undertaking any activity in which their personal problems are likely to lead to inadequate performance. If they are already engaged in such activity when they become aware of their personal problems, they will seek competent professional assistance to determine whether they should suspend, terminate or limit the scope of their professional activities.
- R9.4 Rehabilitation counselors who are educators will perform their duties based on careful preparation so that their instruction is accurate, up-to-date and scholarly.
- R9.5 Rehabilitation counselors who are educators will ensure that statements in catalogs and course outlines are accurate, particularly in terms of subject matter covered, bases for grading, and nature of classroom experiences.
- R9.6 Rehabilitation counselors who are educators will maintain high standards of knowledge and skill by presenting rehabilitation counseling information fully and accurately, and by giving appropriate recognition to alternative viewpoints.

Canon 10 - CRC CREDENTIAL

Rehabilitation counselors holding the Certified Rehabilitation Counselor (CRC) designation shall honor the integrity and respect the limitations placed upon its use.

Rules of Professional Conduct

- RI0.1 Certified Rehabilitation Counselors will use the Certified Rehabilitation Counselor (CRC) designation only in accordance with the relevant GUIDELINES promulgated by the Commission on Rehabilitation Counselor Certification.
- RI0.2 Certified Rehabilitation Counselors will not attribute to the mere possession of the designation depth or scope of knowledge, skill, and professional capabilities greater than those demonstrated by achievement of the CRC designation.
- RI0.3 Certified Rehabilitation Counselors will not make unfair comparisons between a person who holds the Certified Rehabilitation Counselor (CRC) designation and one who does not.
- RI0.4 Certified Rehabilitation Counselors will not write, speak, nor act in ways that lead others to believe Certified Rehabilitation Counselors are officially representing the Commission on Rehabilitation Counselor Certification, unless such written permission has been granted by the said Commission.
- RI0.5 Certified Rehabilitation Counselors will make no claim to unique skills or devices not available to others in the profession unless the special efficacy of such unique skills or device has been demonstrated by scientifically accepted evidence.
- RI0.6 Certified Rehabilitation Counselors will not initiate or support the candidacy of an individual for certification by the Commission on Rehabilitation Counselor Certification if the individual is known to engage in professional practices which violate this Code.

Acknowledgement

Referenced documents, statements, and sources for the development of this revised Code are as follows: National Rehabilitation Counseling Association Code of Ethics, National Academy of Certified Clinical Mental Health Counselors, and the Ethical Standards of the American Association for Counseling and Development. Portions of the Code are also derived from the American Psychological Association "Ethical Principles of Psychologists."

S B

5 1 4

SB 514: "An Act relating to the exemption of municipal utilities from APUC."

The commission believes that the changes proposed by SB 514 are contrary to sound public policy and, therefore, opposes its enactment. As currently written, AS 42.05.711(b) sets out the presumption that utilities owned and operated by political subdivisions are exempt from commission regulation as to rates and quality of service. Paragraph (2) of this subsection creates an exception in cases where such utilities directly compete with another utility. In that instance, the competing utility as well as all other utilities owned by the political subdivision become subject to regulation.

The commission believes that the existence of the current statutory language provides for a level of public protection which extends beyond the mere resolution of utility "turf wars." Subsection .711(b)(2) also protects the public from the possibility of a municipality (or other political subdivision) subsidizing its utility to thwart competition.

Under regulation, the commission provides reasonable assurance that the competitive playing field remains level. In the absence of regulation, the potential for uneconomic competition is real. Consequently, the commission supports the continuation of subsection .711(b)(2) as sound public policy but offers the modification described below.

As noted, the current statutory language requires the regulation of all utilities owned and operated by a political subdivision even if only one of them is found to be in direct competition with another utility. This provision assists the monitoring of transactions and cost allocations between utilities to ensure that cross-subsidization does not occur. The commission is satisfied, however, that its ability to investigate such issues would not be substantially impaired if noncompeting utilities owned or operated by political subdivisions were not regulated as to rates and quality of service.

Since this "catch-all" provision seems to have been the most objectionable, the commission would not oppose substitute language which still required the regulation of a competing utility but did not require the regulation of all other utilities owned by the political subdivision. The commission's proposed language is as follows:

PROPOSED COMMITTEE SUBSTITUTE FOR SB 514

*Section 1. AS 42.05.711(b) is amended to read:

(b) Except as otherwise provided in this subsection, public utilities owned and operated by a political subdivision of the state, or electric operating entities established as the instrumentality of two or more public utilities owned and operated by political subdivisions of the state, are exempt from this chapter, other than AS 42.05.221 - AS 42.05.281 and AS 42.05.385. However,

(1) the governing body of a political subdivision may elect to be subject to this chapter; and

Position Paper
SB 514
Page Two

(2) a utility or electric operating entity that is owned and operated by a political subdivision and that directly competes with another utility or electric operating entity is subject to this chapter [AND ANY OTHER UTILITY OR ELECTRIC OPERATING ENTITY OWNED AND OPERATED BY THE POLITICAL SUBDIVISION IS ALSO SUBJECT TO THIS CHAPTER].



Larry Mercurieff, Commissioner

Date: 3/6/90

LM/LW/dgl6411D
3690a

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Relating to the exemption of
municipal utilities from APUC
 Sponsor: Senate Labor & Commerce
 Requestor: Senate Labor & Commerce

Agency Affected: Commerce & Economic Dev.
 BRU: APUC
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	(4.0)	(4.0)	(4.0)	(4.0)	(4.0)	(4.0)
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: T.S. Moninski II, Executive Director
 Division: Alaska Public Utilities Commission

Phone: 276-6222
 Date: 3/5/90

Approved by Commissioner: Larry Mercurieff *LM*
 Agency: Department of Commerce & Economic Development

Date: 3/1/90

Distribution (by preparer):

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

6386D-1/3690b

Fiscal Note

ANALYSIS - FISCAL NOTE FOR SB 514

If enacted, SB 514 would operate to immediately deregulate the utilities owned by the Municipality of Anchorage (MOA) which are currently regulated by the APUC. Although only 4 of 119 regulated entities (3.4%), given their size and complexity, the MOA utilities constitute a much larger work load component. Even when factoring out those areas which will continue to be jurisdictional under other sections of AS 42.05 (i.e., certifications, interconnections, wholesale power agreements, access charges, etc.), the APUC estimates that its work load will be decreased by approximately 10% if SB 514 becomes law.

A 10% reduction in the Personal Services line item, commensurate with the anticipated work load decrease, equates to 4.0 FTE positions. The distribution of impact results in staffing reductions per the following probable scenario: 1.5 Utility Financial Analysts; .5 Utility Tariff Analyst; .5 Utility Engineer; .5 Consumer Protection and Information Officer; and 1.0 support position.

S B

5 / 5

SB515



GREATER FAIRBANKS BOARD OF REALTORS
711 Gaffney Road
Fairbanks, Alaska 99701
(907) 452-7743

March 20, 1990

Representative Dave Donley
District 11A
P. O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

I am enclosing a copy of the Greater Fairbanks Board of REALTORS' resolution regarding Senate Bill 515, relating to interest-bearing trust accounts. Our membership of 125 REALTORS believes these trust accounts should continue under the management of the trustor in accordance with existing regulations and that the type of account should remain a choice between the trustor and trustee.

The Occupational Licensing Regulations and the Real Estate Commission Regulations as outlined under 12 AAC 02 and 12 AAC 64 seem to best serve the interests of the real estate industry and the public. We rely on your support to defeat Senate Bill 515.

Please contact me if you need further information or assistance in this matter.

Sincerely,

David B. Somers
President

DBS/nf

Enclosure

**RESOLUTION OPPOSING SENATE BILL 515,
RELATING TO INTEREST-BEARING TRUST ACCOUNTS**

WHEREAS, it is the purpose of the Greater Fairbanks Board of REALTORS to foster and promote the real estate industry in the Fairbanks area, and

WHEREAS, the Greater Fairbanks Board of REALTORS membership includes 125 individuals who are also members of the Alaska Association of REALTORS, and

WHEREAS, all members of our organization use and are responsible for trust accounts which are subject to present Occupational Licensing Regulations and Real Estate Commission Regulations as outlined under 12 AAC 02 and 12 AAC 64, and

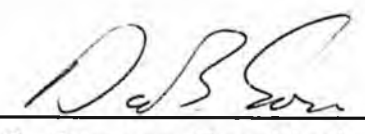
WHEREAS, current Regulations allow interest to be paid on trust accounts subject to disclosure to all parties including the trustor, and do allow that interest to go to the trustor,

NOW THEREFORE, BE IT RESOLVED by the Greater Fairbanks Board of REALTORS to encourage the Alaska State Legislature to continue to allow management of trust accounts pursuant to existing regulations and maintaining the freedom of choice by both the trustee and trustor on accounts as to whether such accounts would be interest-bearing, and, if so, how the trustor would choose to assign or donate interest earned.

PASSED and approved this 19th day of March, 1990.

GREATER FAIRBANKS BOARD OF REALTORS

By: _____


David B. Somers, President



ALASKA ASSOCIATION OF REALTORS, INC.[®]
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503
Telephone 907-563-7133

G
FYI

March 16, 1990

Dave Donley
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Representative Donley:

The Alaska Association of Realtors[®] is very interested in SB 515 introduced last week. The bill addresses interest on real estate trust accounts.

AAR respectfully requests the Alaska Legislature to delay action on SB 515 due to its ramifications for real estate brokers. We feel this proposed legislation should have thorough analysis for its cost and impact. AAR will study this bill prior to the next legislative session and make known the Realtors[®]' recommendations.

Sincerely,

A handwritten signature in cursive script that reads 'Jim McCourt'.

Jim McCourt
President



STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

Matt
1/30/90

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 1800

MEMORANDUM

February 28, 1990

SUBJECT: Real estate broker trust fund interest bill
(Work Order No. 6-2296)

TO: Senator Jay Kerttula
Attn: Matt Fishel

FROM: John B. Gaguine *JBG*
Legislative Counsel

*introduce for Budget
& audit committee*

Enclosed you will find a bill requiring real estate brokers (who under AS 08.88.331 handle all funds in a real estate transaction) to set up interest-bearing accounts for certain funds that the broker is holding on behalf of a seller, requiring the banks administering the accounts to transmit the interest to the state, and requiring the commissioner of administration to account for the funds so derived so that the legislature can appropriate them to the Older Alaskans Commission for grants to older Alaskans service programs under AS 47.65. I did not specify capital programs, because the Older Alaskans Commission does not have the authority to make capital grants. I also made the funds subject to appropriation by the legislature, in order to avoid dedicated funds problems under Article IX, Section 7 of the Alaska constitution.

I took the language of the statute from the Code of Professional Responsibility of the Alaska Bar Association; the IOLTA (Interest on Lawyers' Trust Accounts) program, which a majority of states have adopted, and which funnels trust fund interest to pro bono programs, is found in Disciplinary Rule 9-102(C). However, I did not include the part of DR 9-102 that allows lawyers (or here brokers) to opt out of the program. At least one other state has made its IOLTA program mandatory, with no opt-out option.

There may be a constitutional challenge to this bill, if it is passed, on the grounds that the state is taking property

Senator Jay Kerttula
Page 2
February 28, 1990

(interest earned on the seller's funds) without compensation. However, courts have unanimously rejected such challenges to IOLTA programs. I am enclosing a copy of a recent federal court decision rejecting such a challenge. As long as the program is limited to small amounts or very short-term deposits, as the bill provides, it should be safe. I talked with Ron Johnson, and he assured me that most of the deposits he makes into his trust fund would fall into the short-term category.

If I may be of further assistance, please advise.

JBG:pl
WKP2/102

Enclosures

[10] The defendant further argues that Speed did not testify merely as a summary witness but qualified as an expert accountant. Since Fed.R.Evid. 703⁶ allows an expert to testify based on facts otherwise inadmissible in evidence, Scrima maintains that the trial court erred in refusing to allow Speed to refer to the hearsay statement of Charles Clayton as a basis for his opinion. Rule 703, however, is not an open door to all inadmissible evidence disguised as expert opinion. Although experts are sometimes allowed to refer to hearsay evidence as a basis for their testimony, such hearsay must be the type of evidence reasonably relied upon by experts in the particular field in forming opinions or inferences on the subject. *United States v. Cox*, 696 F.2d 1294 (11th Cir.), cert. denied, 464 U.S. 827, 104 S.Ct. 99, 78 L.Ed.2d 104 (1983). Scrima made no showing that qualified accountants customarily rely on statements to casual business acquaintances when calculating net worth.

[11] The district court afforded Speed wide latitude to criticize the net worth theory and to point out what he perceived to be inconsistencies in the government's case against the defendant. The expert's testimony was precluded only where he sought to rely on Clayton's stricken testimony or on his conclusions about the veracity of the government's witnesses to support his opinion. Since assessing the credibility of witnesses is exclusively within the province of the jury, opinion testimony was properly excluded. *Steinberg v. Indemnity Ins. Co. of North America*, 364 F.2d 266 (5th Cir. 1966); *United States v. Rouco*, 765 F.2d 983, 995 (11th Cir.1985) (expert testimony properly excluded where expert could offer nothing beyond understanding and experience of average citizen). Due to the limited probative value of Speed's testimony, we find no error in the parameters placed upon his testimony by the trial court and no resulting prejudice to the defendant. See *Construction Aggregate Transport,*

Inc. v. Florida Rock Industries, Inc., 710 F.2d 752, 789 (11th Cir.1983); *Cunningham v. Rendevous, Inc.*, 699 F.2d 676, 678 (4th Cir.1983).

The defendant's convictions are
AFFIRMED.



Jean Ann CONE, as Personal Representative of the Estate of Evelyn M. Glaeser, deceased, and as representative of a class of all persons similarly situated, Plaintiff-Appellant,

v.

The STATE BAR OF FLORIDA, the Florida Bar Foundation, Inc., and Holland & Knight, Defendants-Appellees.

No. 85-3993.

United States Court of Appeals,
Eleventh Circuit.

June 19, 1987.

Class action was brought to challenge constitutionality of Florida Bar's interest on trust accounts program, through which funds held in lawyers' trust accounts are placed in interest bearing accounts to produce income for legal aid programs and other public purposes, and parties filed cross motions for summary judgment. The United States District Court for the Middle District of Florida, No. 84-1345 Civ-T-13. Seybourn H. Lynne, J., upheld IOTA program and determined that client was not entitled to interest on account, and client appealed. The Court of Appeals, Hill, Circuit Judge, held that: (1) in order to demonstrate constitutionally cognizable property

him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

6. Fed.R.Evid. 703 provides:

Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to

interest, client must demonstrate that she had specific and legitimate claims of entitlement to the \$2.25 generated on the \$13.75 held for her in attorney's IOTA, and (2) client did not have claim of entitlement to interest due to economics of running interest producing demand account and restrictions that federal banking law places upon interest producing demand accounts.

Affirmed.

1. Constitutional Law ⇨277(1)

In order to demonstrate that she had constitutionally cognizable due process property interest to the \$2.25 generated on the \$13.75 held for her in attorney's IOTA, client must identify substantive law or mutually explicit understandings which gave her legitimate claim of entitlement to interest earned on attorney's IOTA. U.S.C.A. Const.Amends. 5, 14.

2. Attorney and Client ⇨120

Where funds are held for specific client, and expected holding period makes it obvious that money could earn interest that would exceed lawyer's administrative costs and bank charges, lawyers should consult client about depositing funds in such a way as to generate interest; attorney is normally required to place trust funds in interest bearing account if client so requests.

3. Attorney and Client ⇨120

Client did not have property interest in \$2.25 interest which was generated on \$13.75 deposit held for her in attorney's IOTA, and thus, was not entitled to recover such interest from attorney, where deposit of client's funds alone would not have produced sufficient income to offset administrative charges, federal banking laws would not permit client's nominal deposit to be placed in pooled NOW account maintained in firm's name nor could deposit be placed in pool's NOW account maintained by firm as trustee for clients, in that account would be partially composed of deposits of corporate clients in violation of

federal banking laws. 12 U.S.C.A. § 1832(a)(1).

Herbert P. Schlanger, Atlanta, Ga., for plaintiff-appellant.

Thomas C. MacDonald, Jr., Craig B. Glidden, Shackelford, Farrior, Stallings & Evans, Tampa, Fla., for The Florida Bar Foundation, Inc.

F. Wallace Pope, Jr., Clearwater, Fla., for Holland & Knight.

Michael Nachwalter, Brian F. Spector, William J. Blechman, Miami, Fla., and Paul F. Hill, Gen. Counsel, Tallahassee, Fla., for The Florida Bar.

Randall C. Berg, Jr., Peter M. Siegel, National IOLTA Clearinghouse, Florida Justice Institute, Inc., Miami, Fla., L. David Shear, National IOLTA Clearinghouse, Tampa, Fla., for amicus curiae Florida Legal Services, Inc., et al.

Arthur J. England, Jr., National IOLTA Clearinghouse, Miami, Fla., for amicus curiae National IOLTA Clearinghouse, et al.

Appeal from the United States District Court for the Middle District of Florida.

Before HILL and JOHNSON, Circuit Judges, and ESCHBACH,* Senior Circuit Judge.

HILL, Circuit Judge:

This case challenges the constitutionality of the Florida Bar's Interest On Trust Accounts (IOTA) program, through which certain funds held in lawyers' trust accounts are placed in interest bearing accounts to produce income for legal aid programs and other public purposes. The parties filed cross-motions for summary judgment, supported by stipulated facts.

In February, 1969, Ms. Evelyn Glaeser retained the law firm of Holland & Knight to probate the estate of her deceased husband. Ms. Glaeser paid a cost deposit of \$100 to Holland & Knight, which was placed in a noninterest-bearing trust ac-

designation.

* Honorable Jesse E. Eschbach, Senior U.S. Circuit Judge for the Seventh Circuit, sitting by

count. When the firm's representation of Ms. Glaeser concluded in 1970, \$13.75 of the original cost deposit remained in the trust account. Holland & Knight inadvertently failed to refund this amount to Ms. Glaeser, and it remained in the firm's non-interest-bearing account until December 1, 1981.

During this period, the Supreme Court of Florida approved the IOTA program. The IOTA plan authorized, but did not require, lawyers and law firms to place nominal or short term funds into pooled interest-bearing accounts, the interest proceeds of which to be remitted by the financial institution directly to the Florida Bar Foundation. The Foundation would then allot the funds to legal aid organizations, law student scholarships, and other charitable purposes. Only deposits which could otherwise not earn interest net of expenses (because they were nominal in amount or were to be held for a short period of time) could be used to generate interest under the IOTA program.

On December 1, 1981, Holland & Knight transferred all of its nominal or short term trust account funds, including Ms. Glaeser's \$13.75, to an interest bearing IOTA account, where Ms. Glaeser's deposit remained for almost three years. After discovering its error, Holland and Knight returned the principal amount to Ms. Glaeser by check on September 26, 1984. During the time that the money was in the interest-bearing account it generated \$2.25 of interest, which was given, pursuant to the IOTA, to the Florida Bar Foundation.

Ms. Glaeser, claiming to represent all persons similarly situated, sued Holland & Knight, the Florida Bar, and the Florida Bar Foundation, to recoup this interest. She claimed that the appropriation of the interest earned on her money constituted an uncompensated taking of private property in violation of the Fifth Amendment (as applied to the states via the Fourteenth Amendment), and deprivation of her prop-

erty without due process, as well as a breach of fiduciary duty under state law. Her¹ argument was simple: any interest earned on her portion of the Holland & Knight IOTA account belonged to her.

The district court correctly perceived that the appellant's constitutional claims turned on one question, that being, whether the interest earned on nominal or short term funds held in an IOTA account was the property of the client for the purposes of the Fifth and Fourteenth Amendments. Appellant relied on the traditional property doctrine that interest follows principal. However, as the district court noted, "when Justice Johnson observed in *Himely v. Rose*, 9 U.S. (5 Cranch) 313, 319, 3 L.Ed. 111 (1809), that 'interest goes with the principle, as the fruit with the tree,' his illustration necessarily assumed the existence of a fruit-bearing tree." The district court found that in the absence of the IOTA program, Ms. Glaeser's money would not have borne any fruit, for her benefit or for anyone else's. Due to the regulations governing interest-bearing accounts, and the economic realities of attempting to produce income with such nominal or short-term deposits, the court determined that appellant's individual deposit could not have earned any interest net of expenses without the IOTA. Thus, it could not be said that she had a legitimate claim of entitlement to the interest which she claimed was taken from her without due process or just compensation. The court therefore dismissed her case, and we now affirm.²

[1] To demonstrate a constitutionally cognizable property interest appellant must show that she has a specific and legitimate "claim of entitlement" to the \$2.25 generated on the \$13.75 held for her in Holland & Knight's IOTA account. *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548 (1972). A legitimate claim of entitlement can be based on positive rules of substantive law or mutually explicit understandings. *Perry v. Sinder-*

1. Ms. Glaeser passed away during the pendency of this suit and was replaced by Jean Ann Conc, the personal representative of her estate.

2. After dismissing the federal claims the district court declined to exercise pendent jurisdiction over the state claims. This decision is not challenged on appeal.

man, 408 U.S. 593, 601-02, 92 S.Ct. 2694, 2699-2700, 33 L.Ed.2d 570 (1972). These principles are designed to protect the claimant's reasonable, often investment-backed expectations, rather than inchoate unilateral expectations. *Penn Central Transportation Co. v. The City of New York*, 438 U.S. 104, 124-25, 98 S.Ct. 2646, 2659, 57 L.Ed.2d 631 (1978). Thus, appellant must identify substantive law or mutually explicit understandings which give her a legitimate claim of entitlement to a share of the interest earned on Holland & Knight's IOTA account. The district court determined that appellant could not satisfy this requirement because of three factors: (1) ethical requirements placed upon the legal profession in dealing with any kind of trust account; (2) the economics of running an interest-producing demand account; and (3) the restrictions that federal banking law places upon interest-producing demand accounts. An examination of the history behind the IOTA account program supports this conclusion.

[2] Frequently, attorneys and law firms have the need to hold client funds, including advances for costs and expenses. The Florida Bar Code of Professional Responsibility, like the rules governing the conduct of attorneys in most states, requires that such funds be kept separate from the attorneys' own monies. Moreover, attorneys and law firms must often use available-on-demand accounts to facilitate the prompt delivery of such trust funds to the client upon request. Integration rule of Florida Bar, Rule 11.02(4); Dr. 9-102(B)(4), Fla. Bar Code of Prof. Resp. Historically, this meant that attorneys had to use noninterest-bearing accounts for such client deposits because federal law forbade the payment of interest on available-on-demand accounts in most states. See Banking Act of 1933, Ch. 39, § 11(b), Pub.L. No. 66, 48

Stat. 181 (1933). For these reasons, client trust deposits were normally pooled and maintained in a single noninterest-bearing demand account, separate from the attorney's own funds. See ABA Comm. on Ethics and Prof. Responsibility, Formal Op. 348, 68 ABA Journal 1502 (1982).³

Before the initiation of the IOTA, the only beneficiaries of the old regime were the banks, who were treated to "free" use of trust account deposits. The IOTA plan was designed to put these dormant funds to good use. Because of the various restrictions described above, the original plan for Florida's IOTA program provided that client trust funds could be deposited into a pooled savings account. This would earn interest for the Florida Bar Foundation. Funds could be immediately transferred (at the client's request) to a noninterest-bearing checking account, to facilitate the quick return of such funds to the client. *In re Interest on Trust Accounts*, 356 So.2d 799, 804 (Fla.1978). While still somewhat cumbersome, this scheme would have allowed some interest to be earned on the funds. However, this version of the program was never implemented; instead, the IOTA program was able to capitalize on the arrival of interest-bearing checking accounts, which vastly enhanced the program's feasibility.

Interest-bearing checking accounts were authorized by the Consumer Checking Account Equity Act, 12 U.S.C. § 1832(a)(1) (1982). The Act allows for interest to be paid on certain types of available-on-demand accounts, specifically, Negotiable Order of Withdrawal accounts, commonly known as "NOW" accounts. However, the statute restricts the use of NOW accounts; only funds owned by individuals, certain charitable non-profit organizations, or public entities are allowed to receive interest on their checking accounts.⁴ See 12 U.S.C.

3. Where funds are held for a specific client, and the expected holding period makes it obvious that the money could earn interest that would exceed the lawyer's administrative costs and the bank charges, the lawyer should consult the client about depositing the funds in such a way as to generate interest. See ABA Formal Op. 348, 688 ABA Journal 1503 (1982). An attorney is normally required to place trust funds in an

interest bearing account if the client so requests. *Id.*

4. The Florida IOTA program was able to utilize NOW accounts as early as 1981 via a special ruling from the Federal Reserve Board. 68 A.B.A.J. 1504 at n. 7.

§ 1832(a)(2) (1982); 12 C.F.R. §§ 217.157, 329.103, 526.1(1) (1986) (discussing eligible depositors for NOW accounts).

The IOTA program, as implemented, circumvents these restrictions. Making an eligible nonprofit charitable organization (the Foundation) the sole recipient of the interest produced by the trust funds enables the IOTA to use NOW accounts without violating 12 C.F.R. § 217.157. Making one entity the recipient of the fund also enables interest to aggregate such that it exceeds bank charges, because the bank does not need to sub-account the fund. The money produced by the IOTA may thus be used to provide legal services for the poor, and other charitable pursuits. At last count, 41 states and the District of Columbia had adopted IOTA programs.⁵

[3] In this case, the district court found that appellant's nominal deposit could not have been placed in a separate NOW account because \$13.75 fell short of the minimum balance requirements for such an account. Even assuming that the money could be deposited in an interest bearing account, the administrative costs incurred by Holland & Knight, along with the bank service charges, would have devoured the estimated \$.06 per month in gross interest produced by appellant's \$13.75 deposit. The district court concluded that as an individual account maintained by Holland & Knight for the benefit of Ms. Glaeser, appellant could not have realized any interest net of expenses on her \$13.75 deposit.

5. See National IOLTA Clearinghouse, 3 IOLTA Update (Spring 1986). The Supreme Courts of at least 30 of these states have agreed with the Florida Supreme Court that no property is taken via the establishment of an IOTA program because such programs create income which would never, under any set of circumstances, accrue to the benefit of the client. See e.g., *Matter of Interest on Trust Accounts*, 402 So.2d 389, 395 (Fla.1981); *Petition of Minnesota State Bar Association*, 332 N.W.2d 151 (Minn.1982); *Petition of New Hampshire Bar Association*, 122 N.H. 971, 453 A.2d 1258 (1982); *Matter of Interest on Lawyers Trust Accounts*, 672 P.2d 406 (Utah 1983); *In the Matter of Interest On Lawyers' Trust Accounts*, 283 Ark. 252, 675 S.W.2d 355 (1984), *reversing*, 279 Ark. 84, 648 S.W.2d 480 (1983); *Petition of Massachusetts Bar Assoc.*, 395 Mass. 1, 478 N.E.2d 715 (1985); *Carroll v. State Bar of California*, 166 Cal.App.3d 1193, 213 Cal.Rptr. 305 (4 Dist.1984), *cert. denied sub*

Moreover, the federal banking laws discussed above mean that appellant's nominal deposit could not be placed in a pooled NOW account maintained in Holland & Knight's name, because partnerships cannot maintain NOW accounts under federal banking regulations. 12 C.F.R. § 217.157. Nor could appellant's nominal deposit be placed in a pooled NOW account maintained by Holland & Knight as trustee for its clients, because the account would be partially composed of deposits of corporate clients in violation of federal banking laws. *Id.* Even assuming that Holland & Knight could maintain separate trust accounts for their corporate clients and their private, individual clients, the total cost of sub-accounting would exceed the interest earned on the aggregate fund.⁶ The district court concluded, and we agree, that:

The end result of these economic and practical impediments to individual investment of IOTA funds is to negate any reasonable unilateral expectation, much less a mutually explicit understanding, that a client such as Mr. Glaeser should receive interest generated by the IOTA program.

The sole authority cited by appellant in support of her contention that she has a substantive right to IOTA proceeds is *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 101 S.Ct. 446, 66 L.Ed.2d 358 (1980). In *Webb's*, the Supreme Court struck down a Florida law

nom. Chapman v. State Bar of California. — U.S. —, 106 S.Ct. 142, 88 L.Ed.2d 118 (1985).

6. The affidavit of Holland & Knight's comptroller, John F. Dwiggin, attached to Holland & Knight's motion for summary judgment, indicated that the cost of subaccounting a pooled fund would have far exceeded the interest earned by appellant. This was supported by the affidavit of Herbert C.M. Hoover, Senior Vice President of the NCNB National Bank of Florida, who indicated that the charge for subaccounting was \$2.00 per month for each subaccount in a pooled account, plus \$.25 per transaction. This fee would be 30 times larger than the gross interest per month produced on appellant's nominal deposit of \$13.75. Appellant did not offer any contradictory evidence on this point.

which declared interest accrued on interpleader funds deposited with the registry of a county court to be the property of the court clerk. The Supreme Court found that the Florida statute allowed the county to, "exact two tolls," because under the statute the county was allowed to charge a processing fee, and, additionally, keep all the interest accruing from money deposited with the court. Florida Stat. § 676.106(4) (1977).

The Supreme Court did base its decision in *Webb's* upon the "usual and general rule [that] any interest on an interpleaded and deposited fund follows the principal and is to be allocated to those who are ultimately to be the owners of that principal." 449 U.S. at 162, 101 S.Ct. at 451. The court noted that a recharacterization of this interest as public money was not a sufficient justification for the taking. While the court "express[ed] no view as to the constitutionality of a statute that prescrib[ed] a county's retention of interest earned, where the interest would be the only return to the county for the service it renders" in setting up the interpleader fund, it found that the double toll imposed by the Florida statute was an unconstitutional taking.

Despite the superficial similarity, the *Webb's* decision is distinguishable from this case in that the interest earned on the interpleader funds deposited pursuant to the Florida statute did give rise to a legitimate claim of entitlement. The funds were sufficient in amount, and held for a

sufficient period of time, to generate \$90,000 in interest over a year and a half. *Id.*, 449 U.S. at 158, 101 S.Ct. at 449. The district court in this case correctly concluded that, "the crucial distinction is not the amount of interest earned, but that the circumstances led to a legitimate expectation of interest exclusive of administrative costs and expenses." The district court pointed out that the Supreme Court in *Webb's* found that the challenged statute had "the practical effect of appropriating for the county the value of the use of the fund for the period in which it [was] held in the registry." *Id.*, 449 U.S. at 164, 101 S.Ct. at 452. Here, the district court concluded as a matter of law that the use of Ms. Glaeser's money had no net value, therefore there could be no property interest for the state to appropriate. We agree.⁷

In affirming the district court, we emphasize that we are not establishing a de minimis standard for Fifth Amendment takings, or due process violations. We do not wish to imply that the state may constitutionally appropriate property so long as the property is very small property. Here, there was no taking of any property of the plaintiff.⁸ Standing alone, her deposit in the IOTA account could not earn anything. By combining all such deposits, interest income has been created which was not within the legitimate expectations of the owner of any one of the principal amounts.⁹

7. Where an attorney wrongfully withholds money from a client, by law that client may or may not be entitled to interest on the wrongfully withheld funds. In such a situation the interest is in the nature of a penalty. Our affirmation of the district court is not intended to cover interest awarded in such a situation.

8. Appellant also argues that the existence of her property interest is proven by the fact that the IRS made clear it would treat IOTA income as income to the attorney's client if the client had a say in whether or how to invest the money. To avoid this result, the IOTA program was amended in 1981 to eliminate client control over the investment of the funds. We agree with the Florida Supreme Court that the IRS' opinion was based on traditional notions of assignment of income under revocable trust funds; its decision did not account for the unique circumstances of this case. See *In re Matter of Interest*

on Trust Accounts, 402 So.2d 389 (Fla.1981). Moreover, the "assignment of income" doctrine is not designed to determine who is the legal owner of specific property; rather, the purpose of the doctrine is to assure that income is taxed to he who earns it. See *McLucas v. Earl*, 281 U.S. 111, 50 S.Ct. 241, 74 L.Ed. 731 (1930).

9. Appellant also argues that, as in *United States v. Causby*, 328 U.S. 256, 66 S.Ct. 1062, 90 L.Ed. 1206 (1946), the fact that the government makes use of private property in a way that the owner could not use it does not mean that there is no taking. This argument misses the point. In *Causby*, the court found a "taking" in the government's use of air space above the claimant's land because this destroyed his ability to use his land as a chicken farm. It was undisputed that the chicken farmer in *Causby* had a property interest. The question was whether or not a "taking" occurred. The farmer was eco-

6-2296A
Gaguine
2/28/90

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT
COMMITTEE

1 IN THE SENATE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to interest on trust accounts of
7 real estate brokers."

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

9 * Section 1. AS 08.88.071(a)(3) is amended by adding a new subparagraph
10 to read:

11 (I) if a real estate broker, fails to turn over to the
12 Department of Revenue interest derived from an account estab-
13 lished under AS 08.88.356;

14 * Sec. 2. AS 08.88 is amended by adding a new section to read:

15 Sec. 08.88.356. INTEREST EARNED ON CERTAIN TRUST FUND DEPOSITS.

16 (a) A real estate broker licensed under this chapter shall establish
17 and maintain an interest bearing insured depository account into which
18 the broker shall deposit funds received by the broker on behalf of the
19 seller of real estate when the funds either are nominal in amount or
20 are expected to be held for a short period of time. A broker may not
21 deposit into this account funds that reasonably may be expected to
22 generate \$100 or more in interest before they are paid to the seller.

23 (b) Earnings from this account may not be made available to the
24 broker, and the broker does not have a right or claim to the earnings.

25 (c) A broker establishing an account under this section shall
26 direct the depository institution to

27 (1) remit the earnings from the account, less service
28 charges or fees computed according to the institution's standard
29 accounting practices, to the Department of Revenue at least four times

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

a year; and

(2) transmit with each remittance of earnings a statement showing the name of the broker on whose account the remittance is sent and the rate of interest applied, with a copy of the statement to the broker.

(d) The broker shall review the records of the account established under this section at reasonable intervals to determine if changed circumstances require further action with respect to funds in the account.

(e) The commissioner of administration shall separately account for funds deposited into the general fund by the Department of Revenue under this section. The annual estimated balance in the account may be used by the legislature to make appropriations to the Older Alaskans Commission for grants under AS 47.65.

WORK DRAFT

WORK DRAFT

WORK DRAFT

6-2296A
Gaguine
2/28/90

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE

1 IN THE SENATE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to interest ^{earned} on trust accounts of
7 real estate brokers." ¹⁹⁸⁵

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

9 * Section 1. AS 08.88.071(a)(3) is amended by adding a new subparagraph
10 to read:

11 DOES NOT
12 HAPPEN (3-20)

11 (I) if a real estate broker, fails to turn over to the
12 Department of Revenue interest derived from an account estab-
13 lished under AS 08.88.356;

14 * Sec. 2. AS 08.88 is amended by adding a new section to read:

15 Sec. 08.88.256. INTEREST EARNED ON CERTAIN TRUST FUND DEPOSITS.

16 (a) A real estate broker licensed under this chapter shall establish
17 and maintain an interest bearing insured depository account into which
18 the broker shall deposit funds received by the broker on behalf of the
19 seller ^{or buyers} of real estate when the funds either are nominal in amount or
20 are expected to be held for a short period of time. (A broker may not
21 deposit into this account funds that reasonably may be expected to
22 generate \$100 or more in interest before they are paid to the seller.)

23 (b) Earnings from this account may not be made available to the
24 broker, and the broker does not have a right or claim to the earnings.)

25 (c) A broker establishing an account under this section shall
26 direct the depository institution to

27 (1) remit the earnings from the account, less service
28 charges or fees computed according to the institution's standard
29 accounting practices, to the Department of Revenue at least four times

WORK DRAFT

WORK DRAFT

WORK DRAFT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

a year; and

(2) transmit with each remittance of earnings a statement showing the name of the broker on whose account the remittance is sent and the rate of interest applied, with a copy of the statement to the broker. *OK*

(d) The broker shall review the records of the account established under this section at reasonable intervals to determine if changed circumstances require further action with respect to funds in the account.

(e) The commissioner of administration shall separately account for funds deposited into the general fund by the Department of Revenue under this section. The annual estimated balance in the account *SHAH* ~~(may)~~ be used by the legislature to make appropriations to the Older Alaskans Commission for grants under AS 47.65.

S B

5 3 1

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 27, 1990

FURTHER REFERRALS:

Date of Committee Action: 5/3/90

The LABOR & COMMERCE Committee considered:

CSSB 531(FINANCE)

CS SB NO. 531 (Fin)

LABEL DISCLOSING FARMED SALMON

"An Act establishing certain labeling and identification requirements for food products containing farmed salmon; and providing for an effective date."

RECOMMENDATIONS:

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note HL+C
- zero with analysis _____
- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check/approp. column)

Do Not
Pass No Rec Amend

<u>Joseph Puley Donley</u>	<u>James M. Collins</u>			X
<u>William Greenberg</u>				
<u>John Boucher</u>				
<u>Paul Finckelstein</u>				
<u>Steven D. Leman</u>				

Joseph Puley Donley
~~Joseph Puley Donley~~
Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 531 (FIN)

PUBLISH DATE: 5/3/90

FISCAL NOTE

REQUEST:

Revision Date: _____	Agency Affected: <u>Environ. Conservation</u>
Title: <u>An act establishing certain labeling for food containing farmed finfish</u>	BRU: <u>Environmental Health</u>
Sponsor: <u>Labor & Commerce Committee</u>	Components: <u>Sanitation and Seafood</u>
Requestor: <u>Senator Eliason</u>	

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

ANALYSIS:

Prepared by: Rep. Dave Donley, Chair

Division: House Labor and Commerce committee

Phone: 465-4954

Date: _____

Approved by Commissioner: Rep. Dave Donley, Chair

Agency: House Labor and Commerce Committee

Date: 5/3/90

Distribution (by preparer) :

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

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 531 (FIN)
PUBLISH DATE: 4/17/90

FISCAL NOTE

REQUEST:

Revision Date: _____	Agency Affected: <u>Environ. Conservation</u>
Title: <u>An act establishing certain labeling for food containing farmed finfish</u>	BRU: <u>Environmental Health</u>
Sponsor: <u>Labor & Commerce Committee</u>	Components: <u>Sanitation and Seafood</u>
Requestor: <u>Senator Eliason</u>	

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	2.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.5	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	2.5	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND	2.5	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	2.5	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

One time costs associated with development and distribution of notification to restaurants, retail grocery stores, wholesalers, food and seafood processors of labeling and identification requirements.

Changes in CSSB 531 (Fin) have no fiscal impact. This fiscal note is appropriate. 4/11/90 vhw

Prepared by: Douglas C. Donegan
Division: Environmental Health

Phone: 465-2609
Date: 3/23/90

Approved by Commissioner: ADH
Agency: Environmental Conservation

Date: 3/23/90

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

) Changes in SB531 (L-C) have no fiscal impact. This fiscal note is appropriate.

ALASKA STATE LEGISLATURE · SENATE

SENATOR RICHARD I. ELIASON

SB531

LABOR & COMMERCE COMMITTEE, CHAIRMAN
RESOURCES COMMITTEE
RULES COMMITTEE
SPECIAL COMMITTEE ON HIGH SEAS
SALMON INTERCEPTION
SELECT COMMITTEE ON
LEGISLATIVE ETHICS



P.O. BOX 143
SITKA, ALASKA 99835

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 165-4916

FAX (907) 465-4926

M E M O R A N D U M

TO: Rep. Donley, Chairman
House Labor and Commerce Committee

FROM: Sen. Dick Eliason

DATE: April 27, 1990

RE: SB 531 Requiring the labeling of farmed salmon

SB 531, which would require that farmed salmon being sold or prepared for sale in Alaska be labelled to reveal that it is a farmed product. The bill addresses both "the consumer's right to know," and "truth in advertising." The bill passed the Senate unanimously, and has now been referred to your committee.

I would like to request that you schedule SB 531 for a hearing as soon as possible. I would also request that your committee consider zeroing out the small fiscal note that is currently attached to the bill. DEC had asked for \$2500 to cover a one-time dissemination of information to explain the new requirement, but they have said that they could manage without that. Time (and money) is running short as we approach the end of session and a zero fiscal note would preclude the need for a Finance referral.

Some back-up material is attached, and I will be happy to provide more information if you need it.

Thank you for your consideration.

Source
 Additives to the Environment of Net-Pen Reared Fish
 Pacific Marine Fisheries Commission 42nd Annual Meeting
 Seattle, Washington, October 16-18, 1989

PHD Arthur H. Whiteley and Annamarie Johnstone

We have been asked to address our remarks to the matter of additives to the environment of net-pen reared fish. In this particular forum, we assume the emphasis should be on additives that may have an impact on humans when these fish come to market, rather than the impact on the plant and animal communities in the natural environment, though these are not wholly separable.

By its very nature, net-pen rearing of salmon requires the use of numerous chemicals, sometimes in large amounts, some used in the fresh water hatcheries to produce the fry and smolts, some used in the grow-out period in the marine pens, and others used during processing of the fish for the market. Partial lists are shown in Table 1, compiled from Austin and Austin, 1987, from a 1988 report for the Nature Conservancy Council by the University of Stirling, and from other sources.

The lists include chemicals used in salmon and in other forms of fish culture, both in this country and in foreign countries. Inasmuch as farmed fish are imported from some of these other countries, inclusion of these chemicals in the lists may be relevant to the matter of seafood surveillance in the United States marketplace.

Chemotherapeutics. The most relevant additives for present purposes are antibiotics and therapeutants used to control bacterial diseases. Because of stress, disease may cause losses of 30-40%, sometimes higher. Diseases in salmon farms include *Vibrio anguillarum* (vibriosis), *Aeromonas salmonicida* (furunculosis), *Aeromonas hydrophila* (hemorrhagic septicemia), *Yersenia ruckeri* (red mouth), *Vibrio salmonicida* (Hitra disease), *Renibacterium salmonarum* (bacterial kidney disease). To combat these diseases, medicated food containing antibiotics is supplied. In Washington, the FDA approved antibiotics and therapeutants are oxytetracycline (OTC), Romet 30 (sulfadimethoxine and orhomprim) and sulfamerazine. In addition, Tribissen (sulfadiazine and trimethoprim) is used in Norway and Scotland, and in British Columbia erythromycin is used to control BKD. In Japanese fish culture a wide variety of antibiotics has been used, but has recently restricted the use of chemotherapeutics in cultured fish (Aoki, 1988, pers. comm).

In the US, Norway, BC and Scotland, doses of drugs are as indicated in Table 1B. It is anecdotal, however, that additional amounts of antibiotics are used by farmers, who may mix the drugs with feed and binders. Control of use of antibiotics in Norway and Scotland is regulated by veterinarians, and this is supposed to be the case in B.C. In the British Isles it is apparently easy to find legal loopholes to permit other antibiotics and doses to be used (Austin and Austin, 1987). In Washington fish farmers are supposed to notify the Department of Fisheries if they use antibiotics, but veterinarian supervision is not required. Generally approval exists for only therapeutic use of these

Table 1
Chemicals Used in Net Pen Culture of Fish
 (From Austin and Austin, 1986; The Nature Conservancy
 Report, Scotland, 1988; and other sources)

Chemotherapeutics

Oxytetracycline	Streptomycin
Romet 30 ^R (sulfadimethoxine and ormetoprim)	Sulfisoxazole
Sulfamerazine	Kanamycin
Tribrissen ^R (trimethoprim)	Fumequine
Erythromycin	Chloramphenicol
Penicillin G	Chloramine T
Oxolinic acid	Acriflavine
Minocycline	Acetic acid
Clindamycin	Formalin
Kitasamycin	Malachite green
Rifampicin	Iodine
Hyamine 3500	Iodophor
Copper sulfate	Benzalkonium
	Nitrofurantoin

Pesticides

Dichlorvos (Nuvan^R, an organophosphate)
 Trichlorfon (Neguvon^R, an organophosphate)
 Carbaryl (Sevin, a carbamate; used in oyster culture)
 Diquat

Antifoulants and Disinfectants

Tributyl tin - now banned
 Copper paint
 Bitumen
 Chlorine
 Chlorothalonil

Anaesthetics

MS-222 (tricaine methane-sulfonate)
 Benzocaine
 Carbon dioxide

Food additives

Colorants-canthaxanthin
 Minerals
 Vitamins
 Omega 3 fatty acids

Table 1B
Doses of Antimicrobials Commonly Used in Salmon Net-pen
Culture

Antimicrobial	Dose, mg/kg of fish/day	Days of Treatment
Oxytetracycline	75	10
Romet 30	50	5
Sulfamerazine	220	14
Tribrissen	30	10
Erythromycin	10-25, or unspecified	4-21

These regimens are repeated 2 or 3 times a year

Table 2
Mineral and Vitamin Food Additives
in Salmon Pellets
(Data from Nature Conservancy Council Report 1988, and
Moore-Clark Analysis)

Minerals

- Calcium phosphate
- Magnesium sulfate
- Sodium Chloride
- Potassium chloride
- Iron sulfate
- Zinc sulfate
- Copper sulfate
- Manganese sulfate
- Cobalt sulfate
- Chromium chloride
- Ethylenediamine dihydroiodide
- Selenium

Vitamins

- Thiamine hydrochloride
- Riboflavin
- Calcium pantothenate
- Niacin
- Pyridoxine hydrochloride .
- Biotin
- Folic acid
- Cyanocobalamin
- Inositol
- Ascorbic acid
- Choline chorlide
- Menadione
- alpha tocopherol acetate
- p-aminobenzoic acid
- Retinol acetate
- Vitamin A
- Vitamin B12
- Vitamin D3
- BHA-BHT, antioxidant

Statutes re:
Scope of
applicability of
"mis-branded"
17.20.290
17.20.340

§ 17.20.030

poisonous or
injurious to

ected in whole

or a valuable

it to increase
like it appear

an alcohol or
g, harmless
ents of one
hs of one per
es not apply
t by volume
tracts, or to
icatory sub-

r color other
hority of the

ore, or restau-
is, 96 ALR3d

redient's. A
t where the
e avoided by
application
r cannot be
he quantity
c health. A
f the appli-
he quantity
d is not, by
substance,
etermining
n food, the
e substance
article and
at or other
9)

SB
531

§ 17.20.040

FOOD AND DRUGS

§ 17.20.040

Sec. 17.20.040. Misbranded foods. Food is misbranded if



- (1) its labeling is false or misleading in any particular;
- (2) it is offered for sale under the name of another food;
- (3) it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated;
- (4) its container is made, formed, or filled so as to be misleading;
- (5) it is in package form unless it bears a label containing (A) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: however, under (B) of this paragraph reasonable variations are permitted, and exemptions for small packages shall be established by regulations prescribed by the department;
- (6) a word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed with the conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in terms which make it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (7) it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by AS 17.20.010, unless (A) it conforms to the definition and standard, and (B) its label bears the name of the food specified in the definition and standard and the common names of optional ingredients other than spices, flavoring, and coloring present in the food as required by regulation;
- (8) it purports to be or is represented as (A) a food for which a standard of quality has been prescribed by regulations, and its quality falls below that standard, unless its label bears, in the manner and form the regulations specify, a statement that it falls below that standard; or (B) a food for which a standard of fill of container has been prescribed by regulation as provided by AS 17.20.010 and it falls below the applicable standard of fill of container, unless its label bears, in the manner and form as the regulations specify, a statement that it falls below that standard;
- (9) it is not subject to the provisions of (7) of this section, unless it bears labeling clearly giving (A) the common or usual name of the food, if any, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient; except that however spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; however, to the extent that compliance with the requirements of (B) of this paragraph is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department, but the requirements of (B) of this paragraph do not

apply to food products which are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations adopted by the department;

(10) it purports to be or is represented for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties the commissioner determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for those uses;

(11) it bears or contains artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; however, to the extent that compliance with the requirements of this paragraph is impracticable, exemption shall be established by regulations adopted by the department. (§ 11 ch 129 SLA 1949)

Collateral references. — Validity and construction of regulations dealing with misrepresentation in the sale of Kosher food. 52 ALR3d 959.

Sec. 17.20.045. Misbranding halibut. No person may label or offer for sale any food fish product designated as halibut, with or without additional descriptive words, unless the food fish product is *Hippoglossus* or *Hippoglossus Stenolepis*. A person who violates this section is guilty of misbranding food under provisions of this chapter. (§ 1 ch 59 SLA 1968)

Sec. 17.20.050. Emergency permit control. When the department finds after investigation that the distribution in the state of a class of food may, by reason of contamination with microorganisms during the manufacture, processing, or packing, be injurious to health, and that the injurious nature cannot be adequately determined after the articles have entered commerce, it, in that case only, shall adopt regulations providing for the issuance of permits to manufacturers, processors, or packers of that class of food, to which shall be attached the conditions governing the manufacture, processing, or packing of that class of food, for a temporary period of time as may be necessary to protect the public health. After the effective date of the regulations, and during the temporary period, no person may introduce or deliver for introduction into commerce the food so manufactured, processed or packed by any manufacturer, processor, or packer unless the manufacturer, processor, or packer of it holds a permit issued by the commissioner. (§ 12(a) ch 129 SLA 1949)

Sec. 17.20.060. Suspension and reinstatement of emergency permit. The commissioner may suspend immediately upon notice a permit issued under AS 17.20.050 if it is found that the conditions of the permit have been violated. The holder of a suspended permit may apply for the reinstatement of the permit, and the commissioner, immediately after prompt hearing and an inspection of the estab-

adulterated or on the superior that commis- adulterated or other marking. § 25 (1981))

rated" in the first and "that" for "the" er" in the second

misbranded bargoed article the decree, be ervation of the mmissioner of ts and fees and t the claimant Order No. 51,

ie case may be" at ence.

n the adultera- ; or processing osts, fees, and d, conditioned been executed, e claimant for mmissioner of iltth and social he expense of : of the article nmissioner that and that the SLA 1949; am

ner" near the end added "appropri- oner" in the third

inated food. ble article in

any room, building, vehicle of transportation or other structure which is unsound, or contains filthy, decomposed, or putrid substance, or a substance that may be poisonous or deleterious to health or otherwise unsafe, is a nuisance. Whenever the commissioner of environmental conservation finds such an article, the commissioner shall immediately condemn or destroy it or in any other manner render it unsalable as human food. (§ 6(d) ch 129 SLA 1949; am Executive Order No. 51, § 28 (1981))

Effect of amendments. — The 1981 amendment added "of environmental con- servation" following "the commissioner" in the second sentence.

Sec. 17.20.280. Injunction proceedings. The commissioner of environmental conservation and the commissioner of health and social services may apply to the superior court for, and the court has jurisdiction to grant, a temporary or permanent injunction restraining a person from violating their respective portions of AS 17.20.290. (§ 4 ch 129 SLA 1949; am Executive Order No. 51, § 29 (1981))

Effect of amendments. — The 1981 amendment added "of environmental con- servation and the commissioner of health and social services" following "commis- sioner" and added "their respective por- tions of" following "person from violating."

Article 6. Prohibited Acts and Penalties.

Section	Section
290. Prohibited acts	320. Effect of written guaranty
300. Determination of misleading labeling or advertisement	330. Liability for dissemination of false advertising
310. Penalties	

Collateral references. — 25 Am. Jur. 2d, Drugs, Narcotics, and Poisons, § 40 et seq.; 35 Am. Jur. 2d, Food, §§ 63 et seq., 74 et seq.

Sec. 17.20.290. Prohibited acts. (a) The following acts and the causing thereof are prohibited:

- (1) the manufacture, or sale, or delivery, holding, or offering of sale of food, drug, device, or cosmetic that is adulterated or misbranded;
- (2) the adulteration or misbranding of food, drug, device or cosmetic;
- (3) the receipt in commerce of food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery of them for pay or otherwise;
- (4) the sale, delivery for sale, holding for sale, or offering for sale of an article in violation of AS 17.20.050 — 17.20.070 and 17.20.100;

(5) the dissemination of a false advertisement;

(6) the refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by AS 17.20.200;

(7) the giving of a guaranty or undertaking which is false, except by a person who relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the state from whom the person who relied on the guarantee or undertaking received the food, drug, device, or cosmetic in good faith;

(8) the removal or disposal of a detained or embargoed article in violation of AS 17.20.230 — 17.20.270;

(9) the alteration, mutilation, destruction, obliteration, or removal of the whole or part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic, if the act is done while the article is held for sale and results in the article being misbranded;

(10) forging, counterfeiting, simulating, or falsely representing, or without proper authority using a mark, stamp, tag, label or other identification device authorized or required by regulations adopted under AS 17.20.230 — 17.20.270;

(11) the using, on the labeling of a drug or in an advertisement relating to a drug, of a representation or suggestion that an application with respect to the drug is effective under AS 17.20.110 or that the drug complies with the provisions of that section;

(12) the sale or offering for sale of frozen fish as fresh fish;

(13) the improper labeling and drug substitution by pharmacists under AS 17.20.105.

(b) The commissioner of environmental conservation or a designee of the commissioner is responsible for enforcing the provisions of paragraphs (a)(1), (2), (3), (4), (6), (7), (8), (9), and (10) of this section, if the subject of the prohibited act involves food or cosmetics, and the provisions of paragraph (a)(12) of this section. This subsection does not limit the authority of peace officers.

(c) The commissioner of health and social services or a designee of the commissioner is responsible for enforcing the provisions of paragraphs (a)(1), (2), (3), (4), (6), (7), (8), (9), and (10) of this section, if the subject of the prohibited act involves drugs or devices, and the provisions of paragraphs (a)(5), (11), and (13) of this section. This subsection does not limit the authority of peace officers. (§ 3 ch 129 SLA 1949; am § 1 ch 119 SLA 1967; am § 2 ch 17 SLA 1971; am Executive Order No. 51, § 30 (1981))

Cross references. -- For adulteration of food and its sale, see AS 17.05.020.

Effect of amendments. -- The 1981 amendment added subsections (b) and (c).

Sec. 17.20.300. Determination of misleading labeling or advertisement. If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false

(2) "food bank" means an organization recognized by the state or federal government as a nonprofit organization and that operates principally to collect, inspect, and salvage donated food for free distribution to needy persons. (§ 1 ch 75 SLA 1984)

Sec. 17.20.370. Definitions. In this chapter

(1) "advertisement" means a representation disseminated, other than by labeling, for the purpose of inducing, or which is likely to induce directly or indirectly the purchase of food, drugs, devices or cosmetics;

(2) "antiseptic", in the labeling or advertisement of a drug, is a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;

(3) "contaminated with filth" means food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as necessary by all reasonable means, from foreign or injurious contamination;

(4) "cosmetic" means an article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance, and an article intended for use as a component of an article enumerated in this paragraph; except that the term does not include soap intended for cleansing purposes only;

(5) "device" except when used in AS 17.20.040(6), 17.20.090(3), 17.20.150(3), 17.20.290(a)(10) and 17.20.300 means an instrument, apparatus, and contrivance, including its components, parts, and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animal; or to affect the structure or function of the body of man or animal;

(6) "drug" means an article recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary; an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animal; an article other than food, intended to affect the structure or function of the body of man or animal; and an article intended for use as component of an article specified in this paragraph but does not include devices or their components, parts, or accessories;

(7) "federal act" means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 — 392; 52 Stat. 1040 — 1059;

(8) "food" means an article used for food or drink for man or animal, chewing gum, and articles used for components of either of them;

(9) "immediate container" does not include a package liner;

(10) "label" means a display of written, printed or graphic matter upon the immediate container of an article; however, a requirement made by or under authority of this chapter that a word, statement, or

* }

} *

the state or that operates for free distri-



other information appear on the label is not complied with unless the word, statement, or other information also appears on the outside container or wrapper of the retail package, if there is one, or is easily legible through the outside container or wrapper;

(11) "labeling" means the label and other written, printed or graphic matter upon an article or its container or wrapper accompanying the article;

(12) "new drug" means a drug the composition of which is such that it is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs as safe for use under the conditions prescribed, recommended, or suggested in the labeling of it; or a drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in these investigations, been used to a material extent or for a material time under those conditions;

(13) "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or supplements to them. (§ 2(a) — (k) (m) — (p) (r) ch 129 SLA 1949; am § 6 ch 104 SLA 1971; am § 14 ch 208 SLA 1975; am E.O. No. 51, § 41 (1981))

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.



minated, other which is likely to be used, devices or

of a drug, is a case of a drug for medicinal use as involving pro-

cedure, or cosmetic necessary by all persons;

applied, poured, applied to the skin, or otherwise as a component of that term; only;

17.20.090(3), instrument, parts, and application, treatment, or prevention to affect the

United States of the United States intended for use in the treatment of disease in which the structure of the molecule is intended to affect the structure of the molecule but does not affect the structure of the molecule; cosmetics; Cosmetic Act,

an or animal, her of them; graphic matter requirement statement, or

NOTES TO DECISIONS

The terms "food" and "drug" are not mutually exclusive. — A food may be a drug so long as it is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease. *Ross Labs v. Thies*, 725 P.2d 1076 (Alaska 1986). "Polycose" held "drug". — "Polycose," a glucose and water solution intended to be used for the treatment and mitigation of numerous diseases, is a drug within the meaning of this section. *Ross Labs v. Thies*, 725 P.2d 1076 (Alaska 1986).

"Polycose" held "drug". — "Poly-

Chapter 30. Controlled Substances.

Article

- 1. Regulation of Manufacture, Distribution, Prescription, and Dispensing of Controlled Substances (§§ 17.30.010 — 17.30.080)
- 2. Enforcement Forfeiture and Review Provisions (§§ 17.30.100, 17.30.126, 17.30.130)
- 4. General Provisions (§§ 17.30.150 — 17.30.900)

Article 1. Regulation of Manufacture, Distribution, Prescription, and Dispensing of Controlled Substances.

Section

- 10. [Repealed]
- 20. Registration requirements
- 30 — 50. [Repealed]
- 60. Records of registrants

Section

- 70. Order forms; prescriptions
- 80. Unlawful administration, prescription and dispensation of controlled substances

ALASKA SALMON

There's a big difference between imported salmon and the salmon that thrive in Alaska's cold, clear waters.

Alaska Salmon live a natural life and feed on natural food. This pure, natural diet gives Alaska Salmon a rich color, firm texture, and excellent flavor that can't be matched.

VARIETIES OF ALASKA SALMON

▲ KING (CHINOOK)

The King is the largest salmon and features a rich oil content. Kings have a deep red flesh.

▲ SOCKEYE (RED)

Sockeye shows off its rich red color when cooked, so it's popular served as steaks and fillets.

▲ SILVER (COHO)

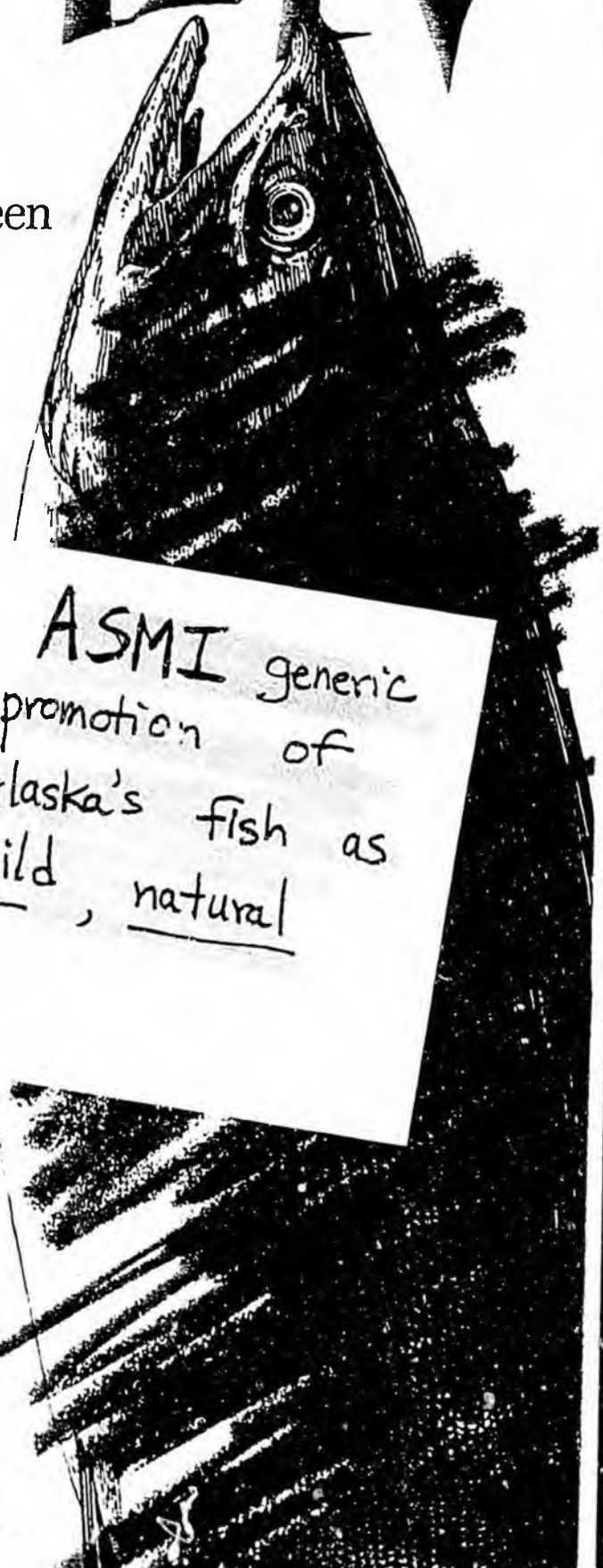
Silvers are the second largest salmon. Most are marketed as steaks and fillets.

▲ PINK

Pinks are the smallest Alaska salmon, and the most plentiful. The Pink's flesh is light in color and contains little oil.

▲ CHUM (KETA)

Chum flesh ranges from red to light pink and contains very little oil. It's a good choice for cooked dishes where color is not of prime importance.



ASMI generic
promotion of
Alaska's fish as
wild, natural



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-463-3366

AEL ISSUE PAPER - SB 531 ESTABLISHING CERTAIN LABELING AND IDENTIFICATION REQUIREMENTS FOR FOOD PRODUCTS CONTAINING FARMED FINFISH

The Alaska Environmental Lobby supports this legislation.

* In Alaska, we are fortunate to have a vast supply of fresh seafood available to consumers. The finfish commercially harvested in our state and sold in our markets and restaurants grows in its natural habitat. The product is thus not only fresh but lives in clean waters and feeds in this natural environment.

* An increasing amount of finfish marketed in Alaska comes from farms outside the state. Because Alaskans are accustomed to buying a product they assume to be natural, they may think they are purchasing fresh, ocean-grown fish when in fact the product is farmed. We believe it is the consumers' right to know what it is they are getting when they purchase finfish at the store or in a restaurant. For this reason, we support this legislation which would require any farmed finfish product sold in Alaska be labeled as such. Further, it is important that these products be labeled as not being from Alaska so that consumers can continue to trust that any non-labeled finfish they purchase is indeed a natural Alaskan product.

* Many consumers prefer to purchase and eat naturally-grown rather than farmed finfish because the latter are fed food different from what would be available in the natural habitat and are often treated with chemicals and/or hormones to insure their survival and faster growth. For these Alaskans, it is important to know whether the finfish being sold is farmed or not.

* Because this legislation protects Alaskans' right to be informed consumers, we urge legislators to support it.

April 10, 1990
Ellen Wolf
Volunteer Lobbyist

CLEAN AIR COALITION • PRINCE WILLIAM SOUND CONSERVATION ALLIANCE • ALASKA CENTER FOR THE ENVIRONMENT
ALASKA CHAPTER, SIERRA CLUB • JUNEAU GROUP, SIERRA CLUB • KNIK GROUP, SIERRA CLUB • DENALI GROUP, SIERRA CLUB
ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY • DENALI CITIZENS' COUNCIL • ALASKA FRIENDS OF THE EARTH
JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY • KENAI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY
LYNN CANAL CONSERVATION • SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER
SOUTHEAST ALASKA CONSERVATION COUNCIL • KNIK CANOERS AND KAYAKERS

S B

5 4 2

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 26, 1990

FURTHER REFERRALS:

Date of Committee Action: 5/5/90

The LABOR & COMMERCE Committee considered:

SB 542

SENATE BILL NO. 542

UNEMPLOYMENT INS. FOR SPORTS OFFICIALS

"An Act including employment of officials at certain amateur sports events for coverage under the Employment Security Act; and providing for an effective date."

RECOMMENDATIONS:

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) Senate 4/3/90
Dept of Labor
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

<u>Dave Donley</u>	<u>Steve Leman</u>		
<u>Frank Grunberg</u>			
<u>Ed Collins</u>			

Dave Donley
Chairman's Signature

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 3, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that removes the exclusion of officials at amateur sports events from unemployment insurance.

In the final hours of the 1989 legislative session, SCS CSHB 147(L&C) was amended to exclude those officials from unemployment insurance. (Ch. 100, SLA 1989.) Section 26 of the final bill amended AS 23.20.526(a) by adding a new paragraph (23) to the list of exclusions. The U.S. Department of Labor (USDOL) subsequently advised the Alaska Department of Labor that this provision creates an issue of conformity with federal law.

The Federal Unemployment Tax Act (FUTA) requires that all employees of government entities and nonprofit organizations be covered for unemployment insurance. Therefore, the exclusion of sports officials working for a government or nonprofit entity presents an issue of noncompliance with the requirements of sec. 3304(a)(6)(A) of FUTA.

Conformity proceedings against Alaska are presently pending. A final ruling by the USDOL that Alaska's law is out of conformity with FUTA carries the penalty of loss of FUTA credit to all Alaska's employers (5.4 percent of the first \$7,000 of wages), plus the loss of administrative money for our employment security division (which is federal money) and Job Training Partnership Act, Title III money. To avoid these punitive measures, I recommend repeal of the 1989 provision that excludes sports officials from unemployment insurance coverage, and I urge your early passage of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper".

Steve Cowper
Governor

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 542
PUBLISH DATE: 4/3/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act including employment of officials at amateur sports events for coverage..."
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Labor
BRU: Employment Security
Components: Employment Services
Youth Employment Services
Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: There is no fiscal impact in FY'90.

(see attached)

Prepared by: Judy Knight, Deputy Director Phone: 465-2711
 Division: Employment Security Date: 4/2/90
 Approved by Commissioner: Jim Sampson Date: 4/2/90
 Agency: Department of Labor

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

Fiscal Note Analysis
for

"An Act including employment of officials at amateur sports events..."

AS 23.20.526(a)(23) excludes sports officials at amateur sporting events from coverage under the Employment Security Act for unemployment insurance. This exclusion presents an issue with the requirements of section 3304(a)(6)(A) of the Federal Unemployment Tax Act.

Conformity proceedings against Alaska are presently pending. A final ruling by the U.S. Department of Labor that Alaska's law is out of conformity with federal law carries the penalty of loss of FUTA credit to all Alaska's employers (5.4 percent of the first \$7,000 of wages for each employee). Additional sanctions would be the loss of federal administrative funds for Employment Services (including Youth Employment Services) and Unemployment Insurance programs as well as federal program funds for Title III, Job Training Partnership Act.

S B

5 5 1

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 6, 1990

FURTHER REFERRALS:

Date of Committee Action: 5/6/90

The LABOR & COMMERCE Committee considered: CSSB 551(LABOR & COMMERCE)

CS SB NO. 551 (L&C) INVESTMENTS OF FINANCIAL INSTITUTIONS

"An Act relating to the investments of financial institutions; and providing for an effective date."

RECOMMENDATIONS:

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: Senate (Date/Dept)

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

- [] fiscal note(s) _____
[] zero fiscal note(s) DC+ED 5/2/90
[] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass
No Rec
Amend

<u>W. C. Boucher</u>			
<u>W. H. Greenberg</u>			
<u>W. H. Boyer</u>			
<u>David Donley</u>			
<u>Collins</u>			

David Donley
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Relating to the investments
of financial institutions
 Sponsor: Senate Transportation Committee
 Requestor: Senate Labor & Commerce

Agency Affected: Commerce & Economic Dev.
 BRU: Banking, Securities and
Corporations
 Components: Banking

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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 and Corporations Date: _____

Approved by Commissioner: Larry Mercurieff SM Date: 5/1/90
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

- Legislative Finance
 - Legislative Sponsor) Changes in CSSB551 (L+C)
 - Requestor) have no fiscal impact. This
 - Office of Management and Bud) fiscal note is appropriate.
 - Impacted Agency(ies)) Projections of no fiscal impac
- would continue through 1996.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Relating to the investments
of financial institutions
Sponsor: _____
Requestor: _____

Agency Affected: Commerce & Economic Dev.
BRU: Banking, Securities and
Corporations
Components: Banking

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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 and Corporations Date: _____
Approved by Commissioner: Larry Mercurieff SM Date: 4/30/90
Agency: Department of Commerce & Economic Development

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

ALASKA STATE LEGISLATURE

While in Ketchikan
352 Front Street
Ketchikan, AK 99901
907-225-9675



While in Juneau
P.O. Box V
Juneau, AK 99811
907-465-3743

Senator Lloyd Jones

April 30, 1990

MEMORANDUM

To: Representative Donley
From: Senator Jones *LJJ*
Subj: Request by state chartered banks to amend Alaska Statutes

I was just informed by a state chartered commercial bank in Ketchikan that recent federal legislation concerning the Savings and Loan bailout (FIRREA) will keep this category of institution from participating in the Federal Home Loan Bank programs for low and middle income housing loans.

The new law requires participating institutions to purchase stock in the FHLB, and current Alaska Statute doesn't allow this. This affects the three state chartered commercial banks -- First Bank of Ketchikan, Key Bank and Denali Bank.

The six word change in the statute is supported by all affected state chartered commercial banks, the Alaska Banker's Association and the Director of Banking, Willis Kirkpatrick.

Although it is very late in the session, I would like to attempt to address this problem before we adjourn in May. I would appreciate it if we could meet on this matter as soon as possible to discuss any options in regard to removing this roadblock.

Thank you for considering this request.

enclosures



**FIRST
BANK**

APR 27 1990

26 April 1990

Senator Lloyd Jones

Dear Lloyd:

I hate to bother you this late in the session with a request like this, and I am sure you hate to get letters that start like this, but we need some help.

What we need is a minor, technical amendment to the Alaska Banking Statutes to allow state chartered commercial banks to own stock in the Federal Home Loan Bank. More specifically, we need the language "or a Federal Home Loan Bank" added to paragraph (10) of subsection (a) of AS Sec. 06.05.270. Investments. I have attached a copy of the current statute with the appropriate section highlighted and the requested language written in. The Director of Banking, Willis Kirkpatrick, has told us that his department will support this change.

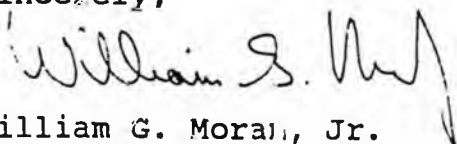
By way of background, the S & L bailout legislation known by the acronym FIRREA that was passed at the national level last fall contains a provision that allows commercial banks that meet certain qualifying asset tests to join the Federal Home Loan Bank system. However, membership in the system requires an investment in Federal Home Loan Bank stock. This is a common requirement for programs of this nature, and is the reason for the current section of State law that allows ownership of stock in a Federal Reserve Bank or the Federal National Mortgage Association.

We have several reasons why we want to join the Federal Home Loan Bank system, and why we think it will be of significant benefit to the communities we serve in Southeast Alaska. First of all, one of the primary functions of the FHLB is to finance and support the development of affordable housing for moderate and low-income families. There is no question of the need for programs of this nature in Southeast Alaska and the rest of the state. Second, the FHLB provides its members with extensive correspondent services that include providing reliable sources of short and long term funds at favorable rates, expanded residential lending opportunities, and an array of programs that improve opportunities for management of interest rate risk. In this regard, I have enclosed some supporting material that describes the benefits of membership in some detail.

I have sent this same letter to Representatives Robin Taylor and Cheri Davis. I apologize for bringing this matter up this late in the session and certainly understand that it may be too late to do anything this year. However, there shouldn't be any controversy associated with the proposed amendment, and if we can get it through this year we could start taking advantage of some of these programs this summer.

Thank you in advance for your consideration of this matter. Once you have had a chance to review this material, please let me know what your thoughts are.

Sincerely,

A handwritten signature in cursive script that reads "William G. Moran, Jr." with a long, sweeping flourish extending downwards from the end of the name.

William G. Moran, Jr.
President

Enclosures

MAY 2 1990

05/02/90

11:43

KEY BANK AK.

NO. 004

002

Key Bank of Alaska

A KeyCorp Bank

101 West Benson Boulevard
Post Office Box 100420
Anchorage, Alaska 99510-0420
(907) 564-0250



Michael J. Burns
President and
Chief Operating Officer

May 2, 1990

The Honorable Lloyd Jones
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Senator Jones:

As Legislative Chairman of the Alaska Bankers' Association, I am pleased to inform you that at today's meeting the Association enthusiastically and unanimously voted to support SB 551, "Investments of Financial Institutions."

If you have any questions regarding the Association's position, please feel free to contact either Wes Coyner or me directly.

Sincerely,

Michael J. Burns
Chairman
Alaska Bankers Association

MJB:jr

Affordable Housing

Finance Programs and Technical Assistance Services

FEDERAL HOME LOAN BANK OF SEATTLE

APRIL 1990

The Federal Home Loan Bank of Seattle is a private, wholesale bank serving lenders in the 12th District, which includes Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, Wyoming and the Territory of Guam. With assets of nearly \$10 billion, the FHLB of Seattle promotes housing finance by advancing mid- and long-term, triple-A rated credit to its member financial institutions. The FHLB of Seattle currently has advanced more than \$8 billion to housing lenders in the 12th District.

One important mission of the Bank is to finance and support the development of affordable housing for moderate- and low-income families in the 12th District. To meet this challenge, the Bank offers two specially priced advance programs to housing lenders, and provides an array of technical assistance services to financial institutions, local governments, and housing developers.

Advance Programs

The Bank's advance programs for affordable housing are the Community Investment Fund (CIF) and the Affordable Housing Program (AHP). Loans funded with CIF and AHP advances strengthen local communities and enhance lender compliance with the Community Reinvestment Act. Each one offers favorable interest rates on advances to member financial institutions that, in turn, are used to fund qualifying developments or home purchases. These programs are explained in detail on the following pages. Samples of housing developments funded by the CIF and the AHP are shown on the last page.

Technical Assistance

The Bank's Community Investment Officer provides technical assistance to financial institutions and community-based housing organizations that includes:

- Educational seminars on underwriting affordable housing and community investment loans;
- Conferences on the Community Reinvestment Act, often co-sponsored by federal financial regulators;
- *Solutions*, a quarterly newsletter addressing technical issues in community investment lending;
- Selected information on local housing markets, including properties in the Resolution Trust Corporation's (RTC) affordable housing inventory; and
- The Affordable Housing Clearinghouse to disseminate information to financial institutions about specific lending opportunities in affordable housing and community development.

For information about any of these programs or activities, please call:

Judith C. Chaney
Community Investment Officer
(206) 340-8737