ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

6414 SENATE LABOR & COMMERCE 8/8

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

AVRUM M. GROSS
SUSAN A. BURKE

(907) 586-2777

March 12, 1990

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

Dear Senator Eliason,

I appreciate the fact that you have requested my comments on SB 451 and specifically on the provisions in the bill that have not been a part of past tort reform legislation. I will review the most significant sections of the bill here and specify which parts are new and which have been a part of previous bills.

Section 1 contains the same kinds of legislative "findings" concerning the relationship between the existing tort system and high insurance rates that have been included in past bills. One unique aspect of this bill, however, is that even though Section 1 includes the "findings," section 21 of this same bill includes a requirement that the Department of Commerce and Economic Development "study closed insurance claims" and report to the legislature on "the extent to which the legal system has or has not been the cause of dramatic liability insurance increases or decreases and coverage reduction in crisis lines in the state." Generally speaking, this kind of internal contradiction in a bill would not be worth mentioning. I do it here only because the "study" requested has now, in fact, been completed. A massive amount of data has been compiled and summarized by the House interim committee to study tort reform and that data is available now. The information demonstrates that national efforts at tort reform, even when they have included major changes in the tort system have had little impact on insurance rates. I urge the members of the committee, before they vote on a final bill, to at least review the information that this bill acknowledges is necessary to legislative deliberations.

Section 2 of SB 451 is probably the major change from previous legislation. That section provides that no claims for death or injury may be filed more than six years after the purchase of a product that causes an injury, the completion of construction that causes death or injury, or the last act of any kind that causes the death or injury. This kind of prohibition is called a statute of repose. It is not like a statute of limitation, which sets some period (presently two years) after which a person who has been injured can file a lawsuit. Statutes of limitation insure that people who claim damages must sue within some reasonable time period following injury. Statutes of repose have nothing to do with the time that someone is injured; they stand as absolute bars to suits against contractors, architects, doctors, lawyers and anyone else six years after they have done whatever it is that was alleged to have been negligent whether or not anyone finds out about the negligence or is injured during the six year period. For instance, suppose an architect designs a house for a certain maximum snow load. Seven years later, for the first time the house is subjected to that maximum snow load and the roof collapses. The architect has been fully compensated for a faulty design, yet there is no remedy for the homeowner. Similarly, suppose you hire a lawyer to draw a will leaving everything to your wife. Ten years later you die and your wife finds out that the lawyer didn't know that witnesses were required. The will is void. Your wife now only receives half of your estate but she has no remedy against the attorneys. A drug company manufactures and sells IUDs and after eight years, 60% of the women who used them have developed cervical cancer or have become sterile. They have no remedy, even though there is no way they could have even understood there was anything wrong until after the period when they could have sought damages from the manufacturer.

I could conceive of this kind of bill finding some support in a state that produces large numbers of products and consumes very little. But in Alaska, why would we want to bar people from seeking damages for negligence solely on the basis that six years has passed since the product was manufactured or the service performed. Many products, treatments or services are supposed to last much longer than six years. People who sell products, services or treatments are compensated on the assumption that what they sell will last longer than six years. Should they not bear responsibility for the quality of that product or service beyond six years? Statutes of repose have been a part of the law in this state only briefly; one was passed to insulate "design professionals" years ago and was struck down as unconstitutional. Even that statute only tried to protect a few people from their own negligence -- this one is a wholesale violation of the rights of injured parties.

Sections 3 and 4 of SB 451 attempt to make a major change in the existing statute of limitations by depriving infants and incompetents of their right to sue. Existing law provides that once people are injured and know of their injury, they have two years to bring a suit. If they sleep on their rights, they lose them. But to my knowledge everywhere in the country, the rule has been that the two years starts to run only when the injured party has the ability to do something to enforce their rights in court. In the case of minors or incompetents, that means when they reach the age of majority or when they cease to be incompetent. Section 4 provides that the two year statute of limitation (rewritten in section 3) will apply "notwithstanding AS 09.10.140." AS 09.10.140 is the present law that authorizes minors and incompetents to bring suits two years after they are capable of bringing suit. If AS 09.10.140 is eliminated, it will mean that a child who is injured at birth will have to bring a lawsuit before he is two or he will forever lose his rights. A person who is in a coma, as a result of another's negligence, also will have the obligation to bring a suit within two years, or he will lose his rights. That is a drastic limitation on the rights of injured infants and incompetent individuals.

Section 5 of the bill makes it more difficult to obtain punitive damages. As a general rule, "reckless indifference to the interest of another" is the test for punitive damages. If somebody <u>knows</u> that a product is defective and sells it under the assumption that maybe they will get away with it or possibly make enough money to handle any lawsuits, he is obviously "recklessly indifferent" and is subject to have punitive damages assessed. This bill adds the requirement that the "recklessly indifferent" individual also have "malice" and perform "conscious acts" showing "deliberate disregard," whatever that means. I think if you bought a car with a fuel tank that the manufacturer <u>knew</u> could explode under certain unusual but nonetheless "anticipated" conditions, and the manufacturer kept that information quiet so he could sell the product and people you cared for died as a result, you would agree with me that something more than simple damages would be required to make sure that manufacturers didn't put products like that on the market. That's all that punitive damages are about. They almost never occur, but when "reckless indifference" does exist, juries should act be able to act punitively.

Sections 6 & 7 deal with people being injured or injuring others while committing crimes. Section 7 is new and allows people who are injured while they are committing crimes to recover against defendants who are also committing crimes when they cause the injury. The number of real cases like this are minimal; the passage of these sections will have little or no impact on insurance or the tort system as a whole. The only moral we can perhaps draw from these two sections is that in these limited instances, two wrongs somehow make a right.

Section 8 contains one provision that you have seen before and one that is new. The first portion of Section 8, like previous legislation, authorizes the defendant in a civil action to make the decision as to whether he will pay his judgment to the plaintiff in periodic payments rather than in a lump sum. The section also includes a new provision -- one that provides that if payments are made on a periodic basis, the portion of the judgment owed to an attorney under a contingent fee will be "reduced to present value" and paid in a lump sum. This latter provision simply makes no sense. Under changes previously made by the legislature, the judgment is always reduced to present value regardless of whether the attorney is paid a contingent fee, or an hourly basis. Accordingly an attorney fee based on a percentage of the present value has, itself, already been reduced to present value. I frankly don't know what this section means, nor do I think the drafters really understand what it means.

The part in section 8 that allows the defendant who must pay damages to determine that the plaintiff will receive that payment in periodic payments rather than a lump sum is also inconsistent with what the legislature has previously done in this area of law. The initial fight over periodic payments was, in part, to insure that the plaintiff would not get a lump sum judgment today of inflated dollars, which were really intended to compensate him for future loss. The tort reform bill enacted in 1986 included a requirement that all lump sum judgments which are in part composed of payments for future losses must be reduced to present value. Accordingly, there is no longer any economic justification for insisting that the payments be periodic. Even with periodic payments, the plaintiff is always entitled to the full amount of the judgment; that is, even if he dies, the remaining amount due must be made to his estate. Therefore, whether payments are made periodically or in one lump sum, they will always equal the same amount. The only basis for requiring periodic payments then is the view that the plaintiff really can't be trusted with all that money at once and steps must be taken to dole it out to him bit by bit. But if that is such a good idea, why can't a plaintiff be trusted to act in his own best interest? Why is this situation different from any other in which one obtains a lump sum of money? And equally important, when payments are periodic, there is always a chance they won't actually be paid. Insurance companies that sell annuities to pay future periodic payments, do go broke; those who sell annuities cheaply to defendants who look for cheap annuities to pay judgments go broke faster. Why should the injured party have to take that risk?

Section 11 of the bill is a new provision that deals with collateral sources -- those received from parties other than the defendant as a result of the injury. This section replaces the collateral benefits statute enacted by the Legislature in 1986. Under this new proposal, instead of being considered at a post-trial hearing, collateral benefits would now be considered by the jury so they could reduce the recovery. The 1986 statute allowed a judge to reduce compensation to victims, but it at least directed the judge to consider not only collateral benefits but countervailing costs to the claimant such as the actual costs and fees he had to incur to bring litigation in the first place. Those can reach 40% of the award. This section makes no allowance for a plaintiff's costs -- it only focuses on what he receives with the result that the jury will get a distorted picture of what benefits he will really receives when a case is all over.

Section 11 also requires the jury to be instructed about the tax implications of any damage awards. The IRS does not tax injury damages because they are compensation that simply replaces what the victim lost. If your house burns down, the insurance money you collect is not taxable. Damages are replacement of capital, not new income. The judge or jury decides the amount of the loss. Taxability or non-taxability has nothing to do with that loss. This provision seeks to confuse juries with irrelevant information so they will impose their own "tax" on that which is not legally taxable, by reducing the damages they award. It also allows juries to make assumptions about what taxes will be in the future -- the period for which they are awarding damages. Those assumptions would be nothing but pure speculation.

Section 12 reduces the interest rate on judgments from 10.5% to 8%. It's only common sense to insist that the rate of interest paid by insurers or other defendants on money owed to an injured party be at the prevailing market rate -- that rate that you could earn if you lent your money to others. If it is not that rate, insurance companies have no incentive to pay the money. The longer they can hold your money and invest it, at say 12% and subsequently pay you 8%, the better it is for them. The provision is not only unfair, it will make it much more difficult to settle claims and will clog the court system with delays.

Sections 14 and 15 of this bill allows survivors to collect damages in lawsuits related to wrongful death for the full amount of lost wages and other pecuniary loss but limits damages in a wrongful death case for non-pecuniary loss to $50,000. The idea of limiting non-pecuniary damages is not unique to this bill, but the $50,000 limit is way out of line with anything the legislature has seriously considered in the past. I, frankly, do not totally understand this section. It is unclear to me just what is limited by the $50,000 and what is not. But it appears to me that the limits would apply to the value of any services performed by the deceased for his dependents that were not in the form of cash. If that is true, this proposal takes no account of the large number of people who live in villages in Alaska that do not have cash economies and who support others through subsistence. If a twenty-five year old resident of Kiana is killed by a defective kerosene stove that explodes he may have little earning history, so the wrongdoer will pay medical expenses plus $50,000 and the state will pick up the rest of the enormous loss to his dependents through welfare and other state programs. Housewives also have no wage history so they are worth no more than $50,000 either, even though their death will mean that much more than $50,000 will be spent by survivors to replaced the "non-pecuniary" services they have lost. This appears to be a blatantly discriminatory and unfair provision.

Section 17 is a new provision that attempts to overrule the Alaska Supreme Court's decision in Jackson v. Powers. In Jackson, the court held that a hospital that maintains an emergency room is liable for the negligence of the doctors who work there, regardless of the efforts of the hospital to separate the emergency room from its general operation through such mechanisms as separate incorporation and other legal devices. This section attempts to reverse that decision by allowing the hospital to avoid liability if it posts a notice on its emergency room that states that certain doctors in the emergency room are "independent contractors" and not hospital employees.

If you believe that someone who has a broken arm or leg, or is bleeding profusely from a wound and is rushed to the hospital can make a reasoned decision after reading the sign to either stay where he is or take his problem elsewhere (assuming there is an "elsewhere") then this section makes sense. Even if you do believe that, how do infants read the sign? How do people who are unconscious make intelligent decisions? I don't profess to be an expert on hospital liability or physician care in emergency rooms, but this section makes no logical sense. If hospitals should be liable, posting a sign should make no difference unless people can make reasonable decisions on the basis of the signs. In an emergency room setting, that is often impossible.

Having said my peace about the general tort bill, let me say something about the problems which give rise to bills like SB 451. I have listened to testimony for nearly six years on this subject. It is the same every year. Doctors, and sometimes other professionals, come and testify about the outrageous costs of insurance and how it is hurting their practice or their business. In many cases, I have not been particularly impressed. If a doctor is making $500,000 or $600,000 a year as a surgeon, it does not offend me that $50,000 or $100,000 of his profits should be dedicated to insuring that people who pay him fees for his services should be protected against his negligence. It seems to me in those kind of situations, that doctors, architects or other successful professionals are not really complaining about insurance; they are complaining about their unhappiness with lawsuits. I can certainly understand their concern but that without more should not justify drastic reductions in the rights of injured parties.

There is a group of physicians, however, who obviously have serious problems beyond mere irritation with lawyers. These are physicians who either practice a high risk specialty without corresponding great rewards in an urban setting, or physicians who practice in some communities where the amount of revenue generated by the practice simply cannot sustain the high rates for malpractice insurance. The alternative for these doctors is to either terminate their practice, which leaves the community without any medical assistance or to practice uninsured, which means that if someone really is badly injured by negligence, the injured party will have no source of recovery. Neither of these options is acceptable, in my view.

The testimony I have heard from doctors in these high risk specialties and in rural communities concerns insurance rates that are not merely high -- they are prohibitive. People who testify are not asking that rates hold steady or be reduced by amounts like 5% or 6%; they are looking for massive reductions. People have not used percentage reduction figures in their testimony, but it's clear when they talk about the staggering increases from what they believe were reasonable in the past that these people are looking for reductions of 50% or even more. The difficulty here is that, even if you believe fervently in tort reform and even if you pass everything even remotely reasonable that has been suggested, none of the studies I have seen, pro or con, suggests that there will be anything more than a minimal reduction in insurance rates. Insurance rates are driven by so many other factors that changing the rules of liability simply will not have that great of an impact unless you literally destroy the rights of injured parties. Each year the legislature hears about very real problems from people in real trouble, but they spend hours debating legislation, which even if accepted, will not solve the problem. When I first got involved in this matter, that seemed curious; now it seems like a colossal waste of everyone's time. And more important, it precludes any real effort to deal with something that is obviously wrong.

I have no simple answers, but I do have a few suggestions. The first and most obvious would be some kind of subsidization of medical insurance rates in areas where the state believe it is in the public interest to do so. If, for instance, the legislature believes that it is in the public interest to make sure that there are doctors in rural areas or doctors practicing certain specialties in any area and present insurance rates are preventing that, then there could be some mechanism set up to assist those doctors in obtaining insurance in specified situations. The legislature could specify, for instance, that communities of a particular size would qualify for assistance programs for doctors, and that certain specialties would receive assistance. Legislation could establish an administrative system to provide different levels of assistance depending on the financial situation of the doctors who seek the assistance. Considering the number of doctors who might need assistance, there would not be much money involved here. In addition, this type of approach has already been used in different forms in Alaska. Many communities, including Juneau, have sought doctors in specialties of one sort or another for years and have provided incentives to encourage physicians to move to the community. This suggestion is simply another form of incentive -- in this case, a direct subsidy for insurance rates for those who need it.

A second suggestion would be to change the basic nature of the tort system, but only in those areas where it is absolutely required. The Governor, for instance, has introduced HB 345, which sets up a no-fault system for all medical malpractice cases. I think the Governor's bill is seriously flawed in many ways, but at least it represents some new thinking on the problem. I do not know the extent to which one medical specialty may be separated from another, whether different types of medical situations could be treated differently by the law or how a no fault system would work in practice or how physicians would feel about a no-fault system, but it is at least an idea worthy of consideration. Worker's compensation took years to achieve, but we know that it does work. If the traditional tort system creates social consequences that are undesirable in the sense that we lose physicians' care, a no fault system may be one way of dealing with the situation. The tort reform measures put forward in SB 451, however, will not change the situation; they will simply lessen an injured party's ability to receive adequate compensation while leaving the basic problem exactly where it is, and that will do no one any good.

Thank you for requesting my comments on this bill. I hope they are of some assistance to you and other members of the committee.

Yours very truly,

GROSS & BURKE

Avrum M. Gross

AMG:ddp

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: [illegible]/8/90 FURTHER: Finance

Date of 5-Day Notice: 3/15/90
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/22/90

Labor & Commerce Committee considered SB 455

"An Act prohibiting advertising to promote the use or sale of alcoholic beverages on the satellite television project."

and recommended:

[ ] replace with ______ CS ______ [ ] same title [ ] new title

[ ] attached amendment(s)

[ ] ______ letter of intent adopted

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to ______

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

[✓] fiscal note(s) Dept of Admin 3/20/90

Department(s)/Date:

[ ] zero fiscal note(s) ______

[ ] appropriation-no fiscal note

[ ] Governor's bill w/fiscal note

SIGNING DO PASS:

[illegible signature]

Patrick Rodey

J K[illegible]

OTHER RECOMMENDATIONS:

Do Not Pass - [illegible signature]

[illegible signature] Do pass

Chair: Signature and Recommendation

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : SB 455
PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date: March 20, 1990
Title : Prohibiting Alcohol Advertising on RATNet
Sponsor : Senator Binkley
Requestor :

Agency Affected : Administration
BRU : Information Services
Components : RATNet

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	45.1	46.6	48.0	49.6	51.3	53.0
TRAVEL	12.0	12.0	12.0	12.0	12.0	12.0
CONTRACTUAL	1825.2	1825.2	1825.2	1825.2	1825.2	1825.2
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	1882.3	1883.8	1885.2	1886.8	1888.5	1890.2

CAPITAL	0	0	0	0	0	0

REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	1882.3	1883.8	1885.2	1886.8	1888.5	1890.2
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	1882.3	1883.8	1885.2	1886.8	1888.5	1890.2

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

See analysis attached:

Paul Monette

Prepared by : Paul Monette, Director
Phone : 465-2220
Division : Information Services
Date : 3/20/90

Gary M. Bader for

Approved by Commissioner : Frank S. Baxter
Date : 3/20/90
Agency : Administration

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

SB 455 -- Fiscal Note

SB 455 is not expected to have any fiscal impact during FY 90. Starting in FY 91, however, and for each succeeding fiscal year, the bill's fiscal impact would be substantial, at approximately $1,882,300 per year.

The major component of the impact after FY 90 would be the cost of replacing sports and evening entertainment programming that currently is obtained free, with programming purchased from syndicated sources. Purchase of the programming would be necessary because a major requirement of the free programming currently obtained from network affiliates is that it is transmitted in its entirety from start to finish, with no deletion of information (including commercials) within the program.

The cost of purchasing the programming is estimated at roughly $1,825,200 annually. This figure is based on an informal review of RATNet programming for the month of February 1990, which showed that an average of approximately 5.5 hours per night of weekday programming, and an average of 15.5 hours per day of weekend programming, carried alcohol advertising. At an estimated purchase price of $600 per hour for syndicated commercial programming, the calculation of total annual purchase costs is as follows:

Weekday:	5.5 hours x 5 days x $600/hr.=	$16,500
Weekend:	15.5 hours x 2 days x $600/hr.=	$18,600
	Estimated Weekly Cost=	$35,100
	Estimated Annual Cost=	$1,825,200

In addition to these purchase costs, there also would be the personnel cost of one new position that would be required at the Anchorage Tape Delay Center to coordinate the identification and purchasing of this programming. The total personnel cost of such a project assistant, at a Range 16A salary level, would be approximately $45.1 thousand first year cost.

One additional RATNet Council meeting would be required since the potential for major programming issues will impact its Council's decision process. In addition to network offerings, the Council will select programs from a wide variety of syndicators. The additional volume of programming decisions will require at least one additional Council meeting each year.

Total annual costs:	RATNet Council Meeting	12.0
	Personal Services	45.1
	Contractual	1,825.2
		1,882.3

ISSUE STATEMENT
SB 455
Division of Information Services
Department of Administration
March 21, 1990

SB 455 prohibits the Satellite Television Project, known as the Rural Alaska Television Network (RATNet), from broadcasting programs which include advertising that promotes the use or sale of alcoholic beverages. If the bill is enacted, programming that includes alcohol advertising may not be broadcast on RATNet.

Issues raised by this proposed legislation include:

• Enactment of SB 455 could jeopardize the current method of acquiring and distributing programming from network affiliated stations to rural Alaskan communities. Potentially, this could affect as much as 66% of the programming currently aired. Schedules of programs sponsored by the alcoholic beverage industry cannot be created in advance, since local broadcasters do not know who the national sponsors are until a day or two before air time, and often not even then.

• Dismantling the current programming distribution method could limit programming choices currently available, impact the current selection process and possibly dilute the ability of the RATNet Council to choose programming that is desired by the rural viewers.

• Nationally, many groups such as Mothers Against Drunk Drivers are lobbying Congress to address this issue. Although the final outcome is yet to be known, lobbying efforts on similar issues, such as eliminating hard alcohol and cigarette advertising on television, have met with success. Perhaps the final, long-term solution for eliminating alcohol ads will be the result of Congressional action.

• Changing the method of choosing and acquiring programs to be aired on RATNet could create a period of adjustment for viewers who have become accustomed to network programs since 1971. A transition period could develop while the RATNet Council attempts to select and schedule alternative programs to viewer satisfaction. This would probably require more Council meetings than the one a year for which current funds provide, as noted in the attached fiscal note.

ISSUE DISCUSSION

Informal reviews of programming and advertising during February, 1990 indicate that much of the programming between 7:00 p.m. and 1:30 a.m., Monday through Friday, and 10:00 a.m. through 1:30 a.m., Saturday and Sunday, carries alcohol advertising. **In addition, an alcohol disclaimer is aired three to four times each day.** Because it is not possible to identify in advance which programs will be sponsored by the alcohol industry, there is no mechanism to select or reject programs based upon sponsorship.

This review has led to the following findings: 1) most sports and prime-time programming will be lost because there is no way to identify programs containing alcohol advertising; 2) programs such as national and statewide news, along with the Alaska weather report, (typically aired between 5:00 and 7:00 p.m. each week night), carry no alcohol ads; 3) if the current method of distributing programming is changed by SB 455, RATNet would likely be limited to programs that must be acquired from syndicated sources, rather than from the major networks, and 4) live sports programs are very popular with RATNet viewers; should SB 455 become law, it would be difficult to preserve those live programs since many of them are sponsored by alcohol beverage companies.

Programs purchased from syndicates are estimated at $600.00 per hour. As noted in the fiscal note analysis, a new position would be necessary to handle the increased program acquisition duties, such as locating programs and coordinating purchases.

Senator Johne Binkley

Senate Finance Committee
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985

Finance Committee
Co-Chairman

MEMORANDUM February 23, 1990

TO: Senator Dick Eliason, Chairman
Senate Labor and Commerce Committee

FROM: Senator Johne Binkley Johne

RE: SB 455, prohibiting alcohol advertising on RATNet

The above-referenced bill has been referred to your committee. It ar[illegible] statutes regarding RATNet to state that the network may not broadcast nor [illegible] ior broadcast any programming which contains advertising promoting the us[illegible] ale of alcoholic beverages.

I've enclosed for the committee members' files copies of RATNet [illegible]hedules and a copy of the memo prepared for my office by the Legislative Research Agency on this issue. We have asked Legal Services to answer the question regarding the continuing validity of the 1977 verbal agreement referenced in that memo. The attorney has offered an initial opinion that the agreement would no longer be valid due at least in part to the change in technology since that time.

I would appreciate your scheduling this bill for a hearing in your committee as soon as possible. Please let Janice Adair in my office (4985) know when that might be. Also, don't hesitate to get in touch with us if you have any questions or would like additional information.

Alaska State Legislature

Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 465-3991
Fax: (907) 465-3351

January 8, 1989

MEMORANDUM

TO: Senator Johne Binkley

ATTN: Janice Adair

FROM: Sheila F. Helgath SFH
Legislative Analyst

RE: Alcohol Advertising on RATNET
Research Request 90.052

You requested this agency to investigate the possibility of removing alcohol advertisements from programing broadcast by Rural Alaska Television Network (RATNET). Also you requested that a House Research Agency memorandum to Representative Clocksin on liquor advertising be updated. Finally, you wanted to know the arguments that are made for and against alcohol advertising.

Three arguments have been advanced by RATNET staff and representatives of local television stations (network affiliates) against the removal of alcohol advertising from RATNET: (1) a contract between the state of Alaska and the networks and separate contracts between affiliates and the networks prohibit removal; (2) Alaska state law and Federal Communications Commission (FCC) regulations prohibit removal of advertising in programing; and (3) the technical feasibility of removing all the advertisements would make the costs prohibitive. Each argument is discussed below. They may be surmountable if the state of Alaska desires to remove alcohol advertising from RATNET.

RATNET BROADCAST TECHNOLOGY AND THE "CONTRACTS"

RATNET staff and network affiliates say that two sets of contracts exist which prohibit the removal of advertising from RATNET programing. The first is a verbal agreement between the state of Alaska, the affiliates and the networks. The second is a set of operating agreements between the affiliates and the networks. The origin of these contracts and changes in technology and corporate structure affecting them are explained below.

RATNET is the state-subsidized television system which transmits programs to areas of Alaska that do not receive commercial television. Programs are obtained from the networks (ABC, CBS, and NBC) through their local affiliates (stations) in Anchorage. At present, programs are transmitted from the networks' television satellite to the RATNET center located in Anchorage. These transmissions are redirected to receivers in rural Alaska.

Satellite transmissions did not exist in 1977 when the of Alaska agreed to buy tapes of network news programs and some sporting events. These tapes were then broadcast in urban areas by the affiliate network stations and in rural Alaska by RATNET. In return, the networks gave other programming free of charge to the of Alaska for use on the RATNET system. There was a "gentlemen's agreement" that the would accept the programing from beginning to end, or "credit to credit", including the advertising. This verbal agreement was reached in 1977 among state personnel, representatives of local affiliates and representatives of the networks at a meeting in New York.
I have made repeated requests for copies of any written material which would confirm that a verbal agreement existed. Staff of neither RATNET or the affiliates were able to provide written documentation. However, both RATNET and affiliate staff affirm that a "gentleman's agreement" existed that bound the state to use programing "credit to credit." After 1984, when direct satellite transmission became available to the affiliates, it was no longer necessary to use and therefore purchase tapes. The continuing validity of this verbal agreement, with the passage of time and many changes in technology since it was made, should be carefully analyzed by legal staff.

The other set of contracts that may inhibit the affiliates' cooperation in the removal of alcohol advertisements is between the affiliates and the networks. The affiliates argue that in their contracts with the networks they have agreed to protect the programs from credit to credit, including advertising. Recent corporate changes at the networks have given the affiliates greater freedom to control programing. According to a New York-based network executive, who requested anonymity, the affiliates have considerable latitude in this area. Because these are contracts between private parties, copies of the contracts were not made available to verify these assertions.

RATNET officials and affiliate management also argue that "common practices exist in broadcasting" which prohibit using part of a program without presenting all of the program including advertising. Some of the broadcasters at the Anchorage stations implied that if the advertising were removed, the networks might be inclined to revoke permission for the to use any of their programing. I was unable to obtain written documentation that the networks would respond in this manner or to otherwise verify this possibility.

ALASKA LAW AND FCC REGULATIONS

Alaska State Statutes and Federal Communication Commission Regulations have been advanced as reasons why the state can not prohibit alcohol advertising on RATNET.

Alaska Statutes

John Morrone, Deputy Director for the Division of Telecommunications, stated that Alaska law would prevent removal of advertising from RATNET, even if there were no contract obligations, unless the RATNET Council agrees. He referred to AS 44.21.320 (c) and (d) which state:

> (c) Decisions and policies relating to programming under the satellite television project, including scheduling and allocation policies, may not be made by the department, but may only be made by a network that is representative of participating rural television users, by commercial broadcast users or by other affected participating user groups and entities under procedures provided by statute or, if no statute applies, then by agreement of the affected user networks or groups. The department shall assist users in preparing agreements that may be required under this subsection.
>
> (d) The department may not engage in any activity which interferes with a contract or program right relating to commercial television programming, including but not limited to any right protected by copyright.

According to Mr. Morrone, Subsection (c) means that only the RATNET Council has the authority to control programing subject to any agreements that have been made with affected networks or groups. The issue of removing alcohol advertisements was brought before the RATNET Council on February 19, 1988. The council heard from Mr. Morrone who presented the three arguments stated earlier in this memorandum against removal of advertisements. No action was taken by the council. However, attorneys at both the Attorney General's Office and Legislative Legal Services have indicated that the legislature could specifically direct the RATNET Council to prohibit alcohol advertising with a simple amendment to this subsection.

Subsection (c) refers to contracts and program rights which have the potential to affect removal of alcohol advertisements. As suggested earlier, the validity of a twelve-year-old verbal agreement may be questionable. Similarly subsection (d) hinges on whether a valid contract between the state and network exists and what is implied in programing rights. Legislative Legal Services might be requested for an opinion on the validity of the verbal contract and how subsection (d) relates.

Federal Communication Commission (FCC) Regulations

Transmissions across state boundaries are regulated by FCC. Several of the broadcast affiliates, RATNET personnel, and House Research memoranda have asserted that FCC regulations exist which prohibit removal of advertisements.

I have asked the above parties to identify the regulation, but no one can cite the reference. Louise Stewart, Public Affairs Specialist for the FCC in Anchorage, said that FCC regulations would not prohibit the state of Alaska from removing liquor advertisements. The FCC considers what happens to programing to be a transaction between "private parties"--in other words it is an unregulated agreement between the of Alaska, the affiliates and the networks. I also spoke with staff in Senator Glenn's office. Senator Glenn is chair of the Governmental Affairs Committee which has oversight of the FCC. It was their opinion that there is nothing in the FCC law that prevents the state from removing alcohol advertising.

TECHNICAL FEASIBILITY AND COST

The final case against removing liquor advertising from RATNET is the technical difficulty and expense of doing so.

Technically, there are two ways to eliminate alcohol advertising from RATNET. The most expensive means is to "tape delay" the programing. The station would tape all the programs coming off the satellite and then edit it and remove alcohol advertisements. It is the most effective way to insure all of the targeted advertising is removed. RATNET staff object to this approach because they are trying to bring current programing, such as live football and news telecasts, to rural residents.

The other way to remove the advertising is to have an engineer at the RATNET Alaska receiving station remove the advertisements as they are being transmitted from the satellite to the other stations. RATNET staff object to this approach because it would leave gaps in the programing which would be difficult and expensive to fill. RATNET officials say it would be difficult to toggle 100 percent of the advertisements since they do not know when alcohol advertisements will come through in the programing. Nancy Long, Production Manager for KTOO, offered this suggestion. RATNET staff could target evenings, weekends, and sports events. This method would require additional equipment such as a tape machine, time base corrector, and switches, costing about $100,000 and an engineer to toggle the switches and put the replacement tapes on the air. RATNET memoranda state that it would require five AV Technicians I and two editing bays for a cost of $255,440 the first year (see attached memorandum). Selective targeting of weekend sports and evening programing might reduce these costs and get the majority of the advertisements out of the programs.

Other technical and cost reduction possibilities exist and could be explored. Senator Glenn's staff told of a barcoding mechanism which would warn the receivers ahead of time when alcohol advertisements were being transmitted. Beer marketing executives said they had mechanisms (used to test the effectiveness of commercials) which selectively send and receive advertisements. These are some of the technological possibilities available to RATNET staff to remove the majority of alcohol advertisements from programming. Federal grant money might be used to reduce the cost of alternative programing. The Center for Science in the Public Interest has identified federal funding for anti-drinking public service announcements that target minority groups. RATNET or another entity in the state might be able to use grant funds to produce public service announcements. Use of federal grant money would lower the cost of filling the gaps left by eliminating alcohol advertisements.

PRO ALCOHOL ADVERTISING POSITIONS

The primary lobbying position of the alcohol industry is that it self-regulates its advertising and therefore government should not. The spirits industry allows coolers (6% or less alcohol in content) and beer to be advertised in the broadcast media. The industry is very concerned about any legislation that might set a precedent. Therefore they oppose limiting alcohol advertising in areas that are "dry" such as rural Alaska.[1] Industry spokesmen claim that there is no scientific evidence showing that advertising promotes drinking to "excess." It is their claim that they are advertising only for a market share of people who already drink.

The industry maintains that controlling advertising violates free speech. The industry has aggressively challenged attempts to control limitations on free speech through court challenges. Attached is the "briefing book" obtained from the Anheuser Busch lobbyist which documents the industry positions and includes a list of the court cases that have been favorable to its position. The state of Alaska could expect a court challenge by the industry to any efforts to remove advertising. Issues in such a challenge might include the following: Is the removal of advertisements from a state subsidized television broadcast an inhibition of an individual's right to free speech or control of commercial speech? Does the state's right to protect the welfare and health of its citizenry counterbalance the free speech issue? Does the local options law which allows communities to control the sale and possession of alcohol affect this issue?

ANTI-ALCOHOL ADVERTISING PERSPECTIVE

Those who oppose any form of alcohol advertising on television believe that alcohol advertising is targeted at non-drinkers, light drinkers, ethnic

---

[1]The Beer Institute is the lobbying group that represents the pro-alcohol advertising stance. I was directed by institute staff to contact the Anheuser Busch company which is the largest beer advertiser.

minorities, women and youth. Those targeted have traditionally had low per capita consumption. The Center for Science in the Public Interest (CSPI) has written a short but pointed book titled The Booze Merchants: The Inebriating of America which details the advertising strategies of the alcohol industry[2]. Excerpts from this book are attached. The authors stress the use of marketing which promotes the use of alcohol to obtain a glamorous lifestyle. Researchers identify patterns of values, norms, and behaviors in a sub-group of the population which marketing specialists then tie to their product through advertising. For example, if a young person wanted to be successful with friends and the opposite sex, the car or a beverage being sold is associated with a party.

Other alcohol advertisements encourage people who already drink to drink on a daily basis and at times other than the "normal" times such as weekends, parties, or special events. These advertisements are designed to encourage people to drink every day and promote the idea that alcohol beverages are like soft drinks, fruit juice and similar beverages. The Booze Merchant authors also pointedly suggest that advertisements are targeted at heavy drinkers to convince them to continue drinking. If heavy drinking were eliminated, a 40% drop in sales would occur. In short, CSPI refutes the claims made by the industry that advertising is for a market share. CSPI asserts that alcohol advertising is for market expansion.

The free speech arguments seem the least troubling to anti-alcohol advertising advocates. A precedent has been set nationally with the removal of cigarette advertisements from broadcast media. CSPI staff suggested that the argument about free speech might be countered with an argument for the state's right to protect the health and safety of the public. Further they argue that two recent Supreme Court Cases clearly delineate the right to control commercial speech versus the right of individual speech. These cases are Posadas de Puerto Rico Association vs. Tourism Company Puerto Rico 478 US 328 1986 and Board of Trustees of University vs. Fox 57 USLW 5015 (June 29, 1989)[3].

---

[2]The Center for Science in the Public Interest is the lead lobbying group nationally against alcohol advertising. CSPI is a non-profit health advocacy group with ties to the American Medical Association, National Council on Alcoholism, the National Parent Teachers Association, the American Academy of Pediatrics and others.

[3]Legislative Research Agency is in the process of obtaining an analysis of these two cases.

SUGGESTIONS FOR FURTHER ACTION

Arguments advanced against the legality and practicality of removing liquor advertisements, although forcefully made, may not be definitive in the opinion of some knowledgeable people with whom I spoke.

If further investigation of this matter is pursued, it might include:

. legal research into the nature of contractual agreements between the of Alaska and the networks, and between the networks and affiliates;

. legal interpretation and possible amendment to AS 44.21.320;

. analysis of the fiscal impact on RATNET of editing transmissions.

PERSONAL COMMUNICATIONS

Bramstedt Jr., Al, Channel 2 Anchorage Broadcaster, Telephone Conversation September 9, 1989.

Hiebert, Augie, Channel 11 Anchorage Broadcaster, Telephone Conversation, September 9, 1989.

Cramer, Terry, Legal Services Lawyer, Legislative Affairs Agency, Telephone Conversation, December 26, 1989.

Lauber, Richard, Lobbyist, Anheuser Busch Inc., Interview and Telephone Conversations, September-December, 1989.

Long, Nancy, KTOO Production Manager, Telephone Conversation, September 1989.

Morrone, John, Deputy Director Division of Telecommunications, Interview about RATNET on September 9, 1989.

Randelett, B. J., Channel 13 Anchorage Broadcaster, Telephone Conversation September 12, 1989.

Stewart, Louise, Public Affairs Specialist, Federal Communications Commission, September 9, 1989.

Taylor, Pat, Director, Alcohol Policies Project, Center For Science in the Public Interest, Telephone Conversations, September-December, 1989.

Wagner, Tom, Assistant Attorney General, Alaska Attorney General's Office, Telephone Conversation, December 26, 1989.

TABLE 1
RATNET PROGRAMMING SCHEDULES FOR SAMPLE WEEKS

March 14 - 20, 1988	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
5 30	20 Minute Workout	20 Minute Workout	20 Minute Workout	20 Minute Workout	20 Minute Workout	All Night Programming 2-6 am	All Night Programming 2-6:30 a.m.
6 00	ABC World News	ABC World News	ABC World News	ABC World News	ABC World News	Cartoons	
6 30							Sunday Today
7 00	Good Morning America	Good Morning America	Good Morning America	Good Morning America	Good Morning America		
7 30							
8 00							Cartoons
8 30							
9 00	Wheel of Fortune	Wheel of Fortune	Wheel of Fortune	Wheel of Fortune	Wheel of Fortune		Sesame Street
9 30	Sally Jessy Rafael	Sally Jessy Rafael	Sally Jessy Rafael	Sally Jessy Rafael	Sally Jessy Rafael		
10 00	Muppet Babies	Mighty Mouse	Flintstones	Fraggle Rock	Flintstones	College Basketball	College Basketball
10 30	Muppet Babies	NASA Launch Vehicle Prep	Mighty Mouse	The New Archies	She Ra		
11 00	Sesame Street		Sesame Street	ID/Sesame Street	Sesame Street		
11 30		Dennis the Menace					
12 00	All My Children	All My Children	All My Children	All My Children	All My Children	College Basketball	
12 30							
1 00	The Price is Right	The Price is Right	The Price is Right	The Price is Right	The Price is Right		
1 30							
2 00	General Hospital	General Hospital	General Hospital	General Hospital	General Hospital		
2 30						College Basketball	
3 00	Mr. Rogers	Mr. Rogers	Mr. Rogers	Mr. Rogers	Mr. Rogers		
3 30	Governor's Window	Governor's Window	Governor's Window	Governor's Window	Governor's Window		
4 00	3-2-1 Contact	3-2-1 Contact	AK Delegation Report	3-2-1 Contact	3-2-1 Contact		
4 30	News Clips	News Clips	News Clips	News Clips	News Clips		
5 00	Capital '88	Capital '88	Capital '88	Capital '88	Capital '88	Star Trek: The Next Generation	Lorne Greene's Wilderness
5 30	Bewitched	Mr. President	Growing Pains	Full House	227		1987 Native Musical
6 00	NBC News Nightly	NBC News Nightly	NBC News Nightly	NBC News Nightly	NBC News Nightly	NBC News Nightly	NBC News Nightly
6 30	KIMO News 13	Channel 2 News	Channel 2 News	KIMO News	KIMO News	Channel 2 News	Channel 2 News
7 00	Alaska Weather	Alaska Weather	Alaska Weather	Alaska Weather	Alaska Weather	Dolly	Sixty Minutes
7 30	A Different World	Hooperman	All	Movie	Cosby Show		
8 00	Superman's 50th Birthday	Arctic Winter Games	Arctic Winter Games		Dallas	Day By Day	Arctic Winter Games
8 30		Our House, Pt. 1	Iditarod Finish			Arctic Winter Games	Day By Day
9 00	Iditarod Update/Movie				20/20	MacGyver	Movie
9 30		Cheers	Arctic Games/Amen				
10 00		Iditarod Update/Moonlighting	Dynasty		Arctic Winter Games	L.A. Law	
10 30				Arctic Winter Games	North America Sled Dog Race		
11 00	Channel 2 News	Channel 2 News	Channel 2 News	Channel 2 News	Channel 2 News	N Amer. Sled Dog Race	N. Amer. Sled Dog Race
11 30	Matlock	ABC Nightline	Perfect Strangers	Mama's Family	Miami Vice	Boys Will Be Boys	She's the Sheriff
12 00		Married With Children	Slap Maxwell	Thirtysomething		St. Elsewhere	Hunter
12 30	Spenser: For Hire	Sonny Spoon	Late Night Space Hunter		Friday Night Videos		
1 00				Tracey Ullman		Night Court	Werewolf
1 30	ID and Disclaimer	ID and Disclaimer	ID and Disclaimer	ID and Disclaimer		ID & Alcohol Disclaimer	ID & Disclaimer
2 00	UAA TAPE FEED		UAA TAPE FEED	All Night Programming	All Night Programming	All Night Programming	

TABLE 1 (Continued)
RATNET PROGRAMMING SCHEDULES FOR SAMPLE WEEKS

July 4 - 10, 1988	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
5:30	20 Minute Workout	20 Minute Workout	20 Minute Workout	20 Minute Workout	20 Minute Workout	All Night Programming 2-6 am	All Night Programming 2-6:30 am
6:00	ABC World News	ABC World News	ABC World News	ABC World News	ABC World News	Cartoons	
6:30	Business This Morning	Business This Morning	Business This Morning	Business This Morning	Business This Morning		Sunday Today
7:00	Today Show	Today Show	Today Show	Today Show	Today Show		
7:30							
8:00							ID & Schedules
8:30							
9:00	Wheel of Fortune	Sale of the Century	Scrabble	Wheel of Fortune	Wheel of Fortune		Sesame Street
9:30	Sally Jessy Rafael	Sally Jessy Rafael	Sally Jessy Rafael	Sally Jessy Rafael	Sally Jessy Rafael	Major League Baseball	
10:00	Muppet Babies	Muppet Babies	Flintstones	Mighty Mouse/Popeye & Son	All "Cartoon"		Cable Kitchen
10:30			She Ra		Animal Crack-ups		Sports World
11:00	Sesame Street	Sesame Street	Sesame Street	Sesame Street	Sesame Street		
11:30							
12:00	All My Children	All My Children	All My Children	All My Children	All My Children		Anheuser-Busch Golf
12:30						Anheuser Busch Golf	
1:00	Sale of the Century	The Price Is Right	The Price is Right	The Price is Right	The Price is Right		
1:30	Scrabble						
2:00	General Hospital	General Hospital	General Hospital	General Hospital	General Hospital	Seahunt	Cartoons: Bullwinkle
2:30						Disney Magic	Alaskan River
3:00	Mr. Rogers	Mr. Rogers	Mr. Rogers	Mr. Rogers	Mr. Rogers		Racing the Wind
3:30	Governor's Window	Governor's Window	Governor's Window	Governor's Window	Governor's Window		Mt. Marathon Race
4:00	3-2-1 Contact	3-2-1 Contact	AK Delegation Report	3-2-1 Contact	3-2-1 Contact		NOVA: Land of Polar Bears
4:30	Andy Griffith	Gilligan's Island	Eight Is Enough	Bugs Bunny & Tweety	I Dream of Jeannie	Alaska in Action	
5:00	Twilight Zone	Lassie		Double Dare	I Love Lucy	Star Trek: The Next Generation	Lorne Greene's Wilderness
5:30	Bewitched	My Two Dads	Growing Pains	Full House	NBC Special: The Big Five		A Different World
6:00	NBC News Nightly	NBC News Nightly	NBC News Nightly	NBC News Nightly	ABC News	NBC National News	ABC National News
6:30	KIMO News 13	KIMO News 13	KIMO Statewide News	KIMO News	KIMO News	Channel 2 News	Channel 2 News
7:00	Alaska Weather	Alaska Weather	Alaska Weather	Alaska Weather	Alaska Weather	Mountain High Rangers	Sixty Minutes
7:30	Highway to Heaven Special	Our House	Head of the Class	Family Ties	Cosby Show		
8:00			All	Movie	The Love Boat	Best of Bloopers	Austin City Limits
8:30		Hooperman	Amen				
9:00	Movie	Golden Girls	Blue Skies		20/20	Drugs: A Plague on the Land	Movie
9:30		Cheers					
10:00		Moonlighting	O'Hara		Miami Vice	L.A. Law	
10:30							
11:00	Channel 2 News	Channel 2 News	Channel 2 News	Channel 2 News	Channel 2 News	Movie	Tour of Duty
11:30	Matlock	ABC Nightline	America's Most Wanted	Summer Showcase	Thirtysomething		
12:00		Married With Children	Late Night, Many Happy Returns				Hunter
12:30	Spenser: For Hire	Sonny Spoon		Dirty Dozen	Friday Night Videos		
1:00			Slap Maxwell			Night Court	Werewolf
1:30	ID and Disclaimer	ID and Disclaimer	Schedules	Schedules	ID & Alcohol Disclaimer	ID & Alcohol Disclaimer	ID & Disclaimer
2:00				All Night Programming	All Night Programming	All Night Programming	

TABLE 1 (Continued)
RATNET PROGRAMMING SCHEDULES FOR SAMPLE WEEKS

October 10 - 16, 1988	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
5:30	20 Minute Workout	20 Minute Workout	20 Minute Workout	20 Minute Workout	20 Minute Workout	All Night Programming 2-6 am	All Night Programming 2-6:00 a.m.
6:00	ABC World News	ABC World News	ABC World News	ABC World News	ABC World News	Cartoons: Beany & Cecil	Sunday Today
6:30	Business This Morning	Business This Morning	Business This Morning	Business This Morning	Business This Morning	Winnie the Pooh	
7:00	Good Morning America	Good Morning America	Good Morning America	Good Morning America	Good Morning America		
7:30						The Real Ghostbusters	ID & Schedule Roll
8:00	Nat'l League Baseball						
8:30						Garfield & Friends	NFL Today
9:00		Family Feud	Family Feud	Family Feud	Family Feud	Hey Vern, It's Ernest	NFL Doubleheader
9:30		Wheel of Fortune	Wheel of Fortune	Wheel of Fortune	Wheel of Fortune	Flip	
10:00		Kissyfur	My Pet Monster/	Muppet Babies	Mighty Mouse/	Sports Special	
10:30		Ducktales	Flintstone Kids	Ducktales	Popeye & Son	College Football	
11:00		Sesame Street	Sesame Street	Sesame Street	Sesame Street		
11:30	General Hospital						
12:00	Cartoons: Kissyfur	All My Children	All My Children	All My Children	All My Children		
12:30	Flintstones						
1:00	Growing Pains (Home KIMO Sub)	The Price is Right	The Price is Right	The Price is Right	The Price is Right		
1:30	Too Close for Comfort						
2:00	The Price is Right	General Hospital	General Hospital	General Hospital	General Hospital	Cartoons: Garfield	
2:30						Hey Vern, It's Ernest	
3:00	Mr. Rogers	Mr. Rogers	AK Delegation Report	Mr. Rogers	Mr. Rogers	Afterschool Special: Date Rape	Cartoons: Garfield
3:30	Governor's Window	Governor's Window	Governor's Window	Governor's Window	Governor's Window		Hey Vern, It's Ernest
4:00	3-2-1 Contact	Nat'l League Football	Nat'l League Football	3-2-1 Contact	3-2-1 Contact	World Series Baseball	World Series Baseball
4:30	Andy Griffith			Full House	Double Dare		
5:00	T[illegible]ht Zone			Presidential Debate	Finders Keepers		
5:30	[illegible]ched				I Dream of Jeannie		
6:00	KIMO Statewide News				KIMO Statewide News		
6:30	NBC News Nightly				NBC News Nightly		
7:00	NFL Football			KIMO Statewide News	Alaska Weather	Webster	National Geographic Special
7:30		KIMO Statewide News/	KIMO Statewide News	Alaska Weather	Cosby Show	Cadets	
8:00		AK Weather Update	Special: Wonders of the Circus	Murder, She Wrote	Charlie Brown Special	Disney Magic	Sixty Minutes
8:30		Alf					
9:00		Movie	Live Dick Clark Presents	Movie	20/20		Movie
9:30							
10:00	The Hogan Family		Simon & Simon		Air Wolf	Special: Back on the Road With Charles Kuralt	
10:30	Perfect Strangers						
11:00	Channel 2 News	Channel 2 News	Channel 2 News	Channel 2 News	Channel 2 News	Movie	Sonny Spoon
11:30	Country Music Awards Special	ABC Nightline	America's Most Wanted	Unsolved Mysteries	Rodney Dangerfield Show		
12:00		Married With Children	Late Night: Night Heat				Special: Tonight Show, 26th Anniversary
12:30		Rawhide		The Reporters	Friday Night Videos		
1:00			Mama's Family			She's the Sheriff	
1:30	ID and Disclaimer	ID and Disclaimer	Schedules	Schedules	ID & Alcohol Disclaimer	ID & Alcohol Disclaimer	ID & Schedules
2:00				All Night Programming	All Night Programming	All Night Programming	

Note: Actual programming occasionally varies due to sports or news events running over their allotted times.

Source: Department of Administration/Division of Telecommunications programming logs.

Prepared by the Legislative Research Agency, November 1989 (90.032A,B,C).

REVISION DATE: 3/20/89

RATNET

MEMBER		APPT	REAAPT	REAPPT	TERM
Linda Maniilag Assoc., Box 256 Kotzebue 99752 Maniilag	Davidovics	0/00/00	0/00/00	0/00/00	0/00/00
Chris P.O. Box 124 Gakona 99586 Copper River Assoc.	Gene	0/00/00	0/00/00	0/00/00	0/00/00
Gary Box 1105 Chickaloon 99674 Cook Inlet	Harrison	0/00/00	0/00/00	0/00/00	0/00/00
Harold Box 245 Haines 99827 Public	Hopper	81/10/30	0/00/00	0/00/00	0/00/00
Isaac Box 27 Barrow 99723 Inupiat Community	Kayutak	0/00/00	0/00/00	0/00/00	0/00/00
Rhea Mae Box 265 Port Lions 99550 Kodiak Native Association	Knagin	0/00/00	0/00/00	0/00/00	0/00/00
Arnold 722 Oceanview Terrace English Bay 99603 North Pacific Rim	Melsheimer	0/00/00	0/00/00	0/00/00	0/00/00
Russell Box 161 Dillingham 99576 Bristol Bay	Nelson	0/00/00	0/00/00	0/00/00	0/00/00
By RATNET Kawerak	Not Yet Appointed	0/00/00	0/00/00	0/00/00	0/00/00

REVISION DATE: 3/20/89

RATNET

MEMBER		APPT	REAAPT	REAPPT	TERM
Dimitri c/o APIA, 1689 "C" Street Anchorage 99501 Aleutian/Pribilof	Philemonof	0/00/00	0/00/00	0/00/00	0/00/00
Velma Box 70 Huslia 99746 Tanana Chiefs Conf.	Schafer	0/00/00	0/00/00	0/00/00	0/00/00
Kay Box 727 Whittier 99693 Public	Shepherd	81/10/30	0/00/00	0/00/00	0/00/00
Peter Box 703 Bethel 99559 AVCP	Twitchell	0/00/00	0/00/00	0/00/00	0/00/00
Nellie M P.O. Box 193 Yakutat 99689 Tlingit-Haida CC	Vale	0/00/00	0/00/00	0/00/00	0/00/00

BOARD: <u>RURAL ALASKA TELEVISION USERS NETWORK - RATNET</u>

BOARD NUMBER: 95

TITLE: Rural Alaska Television Users Network

DEPT: Department of Administration

AUTHORITY: AS 44.21.320 (1977); FCCS HB 50 "Letter of Intent"

STATUS: ACTIVE

REQUIREMENTS:

PROHIBITIONS:

TERM: No term specified

DESCRIPTION: 14 members - 2 selected at-large by Governor; plus 1 consumer selected by each regional nonprofit native association in Alaska; (FCCS HB 50 letter of intent).

SPECIAL FACTS:

FUNCTION: Policy committee for programming state satellite TV project.

COMPENSATION: Standard travel/per diem.

MEETINGS: 4 times per year, 1-2 days each; 8 days maximum.

*FOR FURTHER INFORMATION CONTACT: Deputy Director, Division of Telecommunication Services, Dept. of Administration, 5900 East Tudor Road, Anchorage, AK 99504 PHONE: 269-5744

S B

470

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 470
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to certification of real estate appraisers; . . .
Sponsor: Senator Duncan
Requestor: Senate Labor & Commerce

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	17.5	17.5	17.5	17.5	17.5	17.5
TRAVEL	15.4	12.5	8.9	8.9	8.9	8.9
CONTRACTUAL	25.0	15.0	15.0	15.0	15.0	15.0
SUPPLIES	1.3	1.3	1.3	1.3	1.3	1.3
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	59.2	46.3	42.7	42.7	42.7	42.7
CAPITAL	0	0	0	0	0	0
REVENUE	60.0	0	60.0	0	60.0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER GF/PR	59.2	46.3	42.7	42.7	42.7	42.7
TOTAL	59.2	46.3	42.7	42.7	42.7	42.7

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	1	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary) The bill establishes a three-member Board of Real Estate Appraisers to establish examination and continuing education requirements for certification of general real estate appraisers and residential real estate appraisers. The division has received information that approximately 200 individuals may apply and seek certification upon passage of this legislation. (CONTINUED)

Prepared by: Jennifer Strickler, Administrative Officer
Phone: 465-2144
Division: Occupational Licensing
Date: 2/20/90

Approved by Commissioner: Larry Merculieff
Date: 21 Feb 90
Agency: Department of Commerce & Economic Development

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

JS/dg16351D-1/22090b

This fiscal note represents the cost of certifying real estate appraisers with a three-member board and using an estimate of 200 individuals who may qualify for certification. Costs of the program are projected based on the number of individuals certified. Therefore, using 200 individuals as a base, the real estate appraiser certification program will be responsible to cover less than one percent (.076) of the division's operating costs, in addition to funds required to carry out specific mandates of the bill. A breakdown of these costs is as follows:

Personal Services:

One	Seasonal Occupational Licensing Examiner I Six months, GGU, Range 12A	$17.5
Travel:	cupat GGU	$15.4

In FY 91, this funding will provide for four face-to-face meetings: two in Anchorage, one in Juneau, and one in Fairbanks; assuming members are appointed from Anchorage, Juneau, and Fairbanks, and three division staff to attend each meeting. This funding will also provide travel to administer the examination in various locations throughout the state.

In FY 92, board meetings are reduced to three with travel provided to administer the examination in various locations.

FY 93 and forward, board meetings are reduced to two each year and travel funds to administer the examination in various locations throughout the state.

Contractual: $25.0

This fiscal note provides $10.0 for development of a professional certification examination in the first year. Currently, there are testing agencies with real estate appraiser examinations and, therefore, only those questions specific to Alaska will need to be developed. An additional $15.0 will fund printing, advertising, postage and communication costs.

Supplies: $ 1.3

Funding will provide standard office supplies.

TOTAL: $59.2

REVENUE:

The revenues are based on 200 individuals paying a certification fee of $150 per year. Because certifications are issued for a two-year period, revenues are doubled every other year. As indicated, certification fees of 200 certified individuals will not cover program costs and, therefore, the program will have to be covered by other licensing areas renewing in those years or supplemented with general funds.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 470
PUBLISH DATE: 2/12/90

REQUEST: **FISCAL NOTE**

Revision Date:
Title: An Act Relating to Certification of Real Estate Appraisers
Sponsor: Sen. Duncan
Requestor: Labor & Commerce

Agency Affected: DOT&PF
BRU: Engineering & Operations Standards and D & C Divs.
Components: ROW Sections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	42.6	12.2	12.2	12.2	12.2	12.2
TRAVEL	22.7	6.5	6.5	6.5	6.5	6.5
CONTRACTURAL	12.6	3.6	3.6	3.6	3.6	3.6
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	77.9	22.3	22.3	22.3	22.3	22.3

CAPITAL	0	0	0	0	0	0

REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	77.9	22.3	22.3	22.3	22.3	22.3
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: This bill would require that we certify appraisers involved in the acquisition of private property for public purposes. Currently there are 14 staff who would need certification. Approximately one-half of these currently meet the standards for certification. The other one-half would need to undergo the 150 hours of training required. The costs outlined above are for training 7 staff in the first year and 2 staff each year thereafter, based upon an average turnover rate among our appraisal staff.

Prepared by: Jeffery C. Ottesen
Division: Engineering and Operations Standards
Phone: 465-2951
Date: February 20, 1990

Approved by Commissioner: W. K. [signature]
Date: 7/21/90
Agency: Department of Transportation and Public Facilities

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

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

STATE OF ALASKA
1990 LEGISLATIVE SESSION
BILL VERSION: SB 470
PUBLISH DATE: 2/12/90

REQUEST:

FISCAL NOTE

Revision Date:
Title: An Act Relating to Certification of Real Estate Appraisers
Sponsor: Sen. Duncan
Requestor: Labor & Commerce

Agency Affected: DOT&PF
BRU: Engineering & Operations Standards and D & C Divs.
Components: ROW Sections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	42.6	12.2	12.2	12.2	12.2	12.2
TRAVEL	22.7	6.5	6.5	6.5	6.5	6.5
CONTRACTURAL	12.6	3.6	3.6	3.6	3.6	3.6
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	77.9	22.3	22.3	22.3	22.3	22.3
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	77.9	22.3	22.3	22.3	22.3	22.3
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: This bill would require that we certify appraisers involved in the acquisition of private property for public purposes. Currently there are 14 staff who would need certification. Approximately one-half of these currently meet the standards for certification. The other one-half would need to undergo the 150 hours of training required. The costs outlined above are for training 7 staff in the first year and 2 staff each year thereafter, based upon an average turnover rate among our appraisal staff.

Prepared by: Jeffery C. Ottesen
Division: Engineering and Operations Standards
Phone: 465-2951
Date: February 20, 1990

Approved by Commissioner: W.K. Barton
Date: 2/21/90
Agency: Department of Transportation and Public Facilities

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

Department of Transportation and public Facilities
Fiscal Note Analysis

There would be no fiscal impact in FY 1990.

Assumptions:	7 staff to be certified in 1991 2 staff to be certified each year thereafter due to attrition.	
Course Costs:	$600 for 50 hours of instruction x 3 courses	$1,800.
Travel:	$600 average x 3 courses	1,800.
Per Diem:	$80 day x 6 days x 3 courses	1,440.
Salary*:	$174 hours x $35/hr. average	6,090.
	Total per Staff	**$11,130**
For FY 1991: 7 staff * 11,130 =		77,910
For FY 1992 and beyond: 2 staff * $11,130		22,260

* ROW Appraisal staff are CIP funded and as such would need funds to cover their salary costs when not performing on a capital project. Discussions with FHWA suggest they would not participate in the costs of this training, and as such all related costs, as depicted above, would require general funds to compensate.

Department of Commerce & Economic Development / POSITION PAPER

Senate Bill 470: "An Act relating to certification of real estate appraisers; and providing for an effective date."

The need for regulating appraisers has been considered intermittently for a number of years. However, when the Federal Savings & Loan Bailout bill was signed into law last August, the time for action became immediate, because Title XI of that bill specifies that by July of 1991 the appraisal for any federally related transaction must be completed by a <u>state</u> <u>certified</u> <u>appraiser</u> in order to qualify for funding with federal money.

Title XI further provides that states may establish a state appraiser certifying and licensing agency to assure availability of appraisers for federally related transactions, and to assure effective supervision of those appraisers. Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) also established an Appraisal Subcommittee of the Federal Financial Institutions Examination Council. The Appraisal Subcommittee, among other things, has been charged with monitoring the appraiser certifying agencies created by the states, and has been instructed by Title XI not to recognize state appraiser agencies whose appraisal policies, practices, or procedures are found to be inconsistent with Title XI.

To assist states in the adoption of acceptable legislation, the Appraisal Subcommittee recently released guidelines regarding state certification and licensing of appraisers. These guidelines indicate that it will be necessary to regulate appraisers under a separate board in order to satisfy federal requirements that the appraisal regulatory function be independent of realty related activities.

SB 470 was introduced to address the issue of appraiser licensing in Alaska. The bill would create a three member appraiser board within the Division of Occupational Licensing and give responsibility to the Real Estate Appraiser Board for the regulation of the appraiser profession in Alaska.

The department supports the intent of this legislation, but has a number of concerns regarding specific provisions of the proposed legislation. First, we are opposed to Section 6 of the bill (page 7, line 4), which provides for "transitional certification." This grandfathering section is counter to the Appraisal Subcommittee's guidelines, which states that "[n]o individual or group of individuals shall be deemed exempt from meeting the criteria established for licensing or certification, or be otherwise 'grandfathered' into the system." We would ask that this section be removed from the bill, rather than risk Subcommittee disapproval of this state's plan for appraiser certification.

Secondly, we are concerned with proposed section AS 08.87.110(c) (page 3, line 8), the bill's certification by "comity" section. SB 470 provides for appraiser certification without examination to persons who have been certified in another jurisdiction under licensing standards substantially equivalent to those established in this bill. This is common language, which we generally support. However, given the very recent adoption of appraiser certification requirements in this country, Alaska's appraiser community is interested in seeing this section rewritten to reflect admission by "reciprocity." The department supports this request.

Rewriting this section to include reciprocity would mean that certification would be granted without licensure to a person applying from another jurisdiction, but only if 1) the appraiser certification standards were substantially similar to those in Alaska, and 2) the jurisdiction which the person was moving from also granted similar certification without examination privileges to Alaska-certified appraisers interested in moving to that jurisdiction. While the department is generally skeptical of the value and need for reciprocity provisions, because they can hinder movement across state lines, until the appraiser industry nationwide gets through this period of transition and each state's appraiser licensing plan is approved by the Appraisal Subcommittee, we believe it valid to add this level of protection for Alaska's appraisal community.

Finally, our third concern deals with the voluntary nature of the proposed certification plan outlined in SB 470. Proposed section AS 08.87.300 (see page 5, line 6), permits appraisals by uncertified appraisers. Given that some appraisal work may not be tied directly to federally related transactions, SB 470 provides that appraisers who may be involved in such transactions need not seek certification by the Board of Real Estate Appraisers.

We believe creating two different classes of real estate appraisers in this state will confuse the consumer. We are also concerned that it will leave the consumer unprotected from the unscrupulous. We foresee such a loophole allowing uncertified appraisers to receive payment for appraisal services and the consumer only later discovering that the appraisal is not acceptable to a bank or other entity because it was not performed by a certified appraiser.

If appraisers are to be regulated in a manner that compares with other professions currently licensed in Alaska, and if our primary objective in requiring such licensure is protection of the public from unscrupulous or incompetent practitioners, then we believe all persons seeking to provide appraisal services in Alaska should be subject to the same set of standards. SB 470 would impose those standards only on appraisers who wish to do work for those projects anticipating the use of federal monies. In our opinion, the vast majority of mortgage financing related to real estate sales and highway projects rely on at least some federal money. And funding for rural projects is frequently tied to BIA dollars. Since most appraisals will have to be done by an appraiser who is subject to the regulatory standards established by this proposed legislation, we believe this section should be deleted.

As stated before, there is an urgent need to enact appraiser certification legislation this year. All appraisals performed after July of 1991 must be done by state certified appraisers. Legislation must past this year if the state is to have the time necessary to begin testing and admitting qualified appraisers. We support the intent of SB 470, but request that consideration be given to the suggestions for amendment described above. With the changes suggested, the department would support passage of SB 470.

Larry Merculieff, Commissioner

Date: 21 Feb 90

LM/RPB/dgl6360D
22190a

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M   February 16, 1990

SUBJECT: Sectional analysis of SB 470
(Work Order No. 6-1912)

TO: Senator Jim Duncan

FROM: John B. Gaguine JBG
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill enacts a new chapter, AS 08.87, to the occupational licensing title. AS 08.87 would provide for the certification of real estate appraisers.

Article 1 establishes a Board of Certified Real Estate Appraisers. The board would consist of three members appointed by the governor - two appraisers and one public member. The board would, in addition to the powers it has under AS 08.01 (the centralized licensing statute), establish the examination specifications for certification as a general real estate appraiser and as a residential real estate appraiser (a person who is only certified as an appraiser for residential property of up to four, or in some cases twelve, units), and prescribe continuing education requirements for renewal of certification.

Article 2, AS 08.87.100 makes it a misdemeanor for a person to hold out as a certified appraiser if the person is not appropriately certified. AS 08.87.110 prescribes the requirements for certification, including the education and experience necessary; subsection (c) provides for Alaska certification of persons certified by other states if those states have requirements substantially equivalent to Alaska's.

In Article 3, AS 08.87.200 prohibits certain practices, such as acting negligently, violating AS 08.87, failing to comply with the Uniform Standards of Professional Appraisal Practice, accepting a contingent fee, making false statements in connection with an application for certification, and violating confidential records. AS 08.87.210 provides that an appraiser may lose certification if the person violates AS 08.87 or a board regulation, is convicted of a crime involving moral turpitude, or commits a fraudulent act as an appraiser.

Article 4 contains general provisions. AS 08.87.300 provides that a person not certified as a real estate appraiser may nevertheless appraise real estate as long as the person does not hold out to be a certified appraiser. AS 08.87.310 requires certified appraisers to retain records for at least three years. Finally, AS 08.87.900 defines several terms used in AS 08.87.

Section 2 makes the Board of Certified Real Estate Appraisers subject to AS 08.01, the centralized licensing chapter.

Section 3 creates a sunset date for the board of June 30, 1994.

Section 4 provides that the board is subject to the administrative adjudication provisions of the Administrative Procedure Act, AS 44.62.

Section 5 prescribes the qualifications of the initial appraiser appointees to the board.

Section 6 provides for "grandfathering" without examination appraisers who otherwise meet the requirements for certification.

Section 7 provides for an effective date of July 1, 1990.

JBG:pl
WKP2/059

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M   January 17, 1990

SUBJECT: Regulation of real estate appraisers (Work Order No. 6-1912)

TO: Senator Jim Duncan
Attn: Dale Staley

FROM: John B. Gaguine JBG
Legislative Counsel

Enclosed you will find a bill on the regulation of real estate appraisers. The bill is far shorter than the model bill you sent over, for a couple of major reasons. First, much of the material in the model bill seemed to me more appropriate for the board created by this bill to adopt as regulations. In this category were such items as the content of the appraiser examination, the procedures for renewing a license and the requirement to notify the board of changes of address. If you examine the other statutes in Title 8 (occupational licensing), none of them have the sort of detail found in the model bill, not even those regulating such populous professions as law and medicine.

Second, the board will be covered by AS 08.01 (centralized licensing), which confers rights and responsibilities on the board. For example, AS 08.01.050 mandates the Department of Commerce and Economic Development to handle numerous administrative duties on the board's behalf; AS 08.01.075 provides the basis for the board's disciplinary powers; and AS 08.-01.087 gives DCED power to investigate violations of AS 08.-87. Thus, many of the provisions of the model bill are already found in AS 08.01.

I have given the board three members, since there are, I believe, relatively few real estate appraisers working in Alaska. I can easily expand its membership, if you wish.

If I may be of further assistance, please advise.

JBG:pl
WKP1/008

Enclosure

Appraiser Qualifications Board of The Appraisal Foundation

1029 Vermont Ave. N.W. • Suite 900 • Washington, DC 20005 • (202) 347-7722 • FAX: (202) 347-7727

**APPRAISER QUALIFICATIONS CRITERIA
ADOPTED BY
APPRAISER QUALIFICATIONS BOARD
OF THE APPRAISAL FOUNDATION**

GENERAL CERTIFICATION CLASSIFICATION

The General Certification Classification would apply to appraisals of all types of real property.

Successful completion of written examination that tests various items, including ethics and conduct.

College degree, or successful completion of 150 classroom hours of courses in subjects related to real estate appraisal from a nationally recognized appraisal organization, college or university approved by the Appraiser Qualifications Board (AQB), and 15 classroom hours related to the Standards of Professional Practice and Provisions of the State Act.

Equivalent of two years experience within the previous five years. The experience must be supported by adequate written reports or file memoranda. A detailed listing of the reports or file memoranda shall be furnished for each year's experience claimed. It is possible that the experience will need to be submitted.

The term of certification shall be not less than two, nor more than four years.

<u>Continuing Education</u>

Prerequisite for renewal:

The equivalent of 10 classroom hours of instruction in courses or seminars (approved by the AQB) for each year during the period preceding the renewal. (For example, a two-year certification term would require 20 hours; the hours may be obtained anytime during the two-year term).

There are two alternatives to the classroom hours of instruction. The completion of educational programs or study determined by the AQB to be equivalent for continuing education purposes, <u>or</u> participation other than as a student in educational processes and programs including, but not limited to, teaching, program development, preparation of textbooks, etc.

Appraiser Qualifications Board of The Appraisal Foundation

1029 Vermont Ave. N.W. • Suite 900 • Washington, DC 20005 • (202) 347-7722 • FAX: (202) 347-7727

**APPRAISER QUALIFICATIONS CRITERIA
ADOPTED BY
APPRAISER QUALIFICATIONS BOARD
OF THE APPRAISAL FOUNDATION**

RESIDENTIAL CERTIFICATION CLASSIFICATION

The Residential Certification Classification would apply primarily for one to four units.

Successful completion of written exami[illegible]on that tests various items, including ethics and conduct.

College degree, or successful completion of 60 classroom hours of courses in subjects related to real estate appraisal from a nationally recognized appraisal organization, college or university approved by the Appraiser Qualifications Board (AQB); and 15 classroom hours related to the Standards of Professional Practice and Provisions of the State Act.

Equivalent of two years experience within [illegible]evious five years. The experience must be suppo[illegible] adequate written reports or file memorand[illegible] detailed listing of the reports or file memoranda shall be furnished for each year's experience claimed. It is possible that the experience will need to be submitted.

The term of certification shall be not less than two, nor more than four years.

Continuing Education

Prerequisite for renewal.

The equivalent of 10 classroom hours of instruction in courses or seminars (approved by the AQB) for each year during the period preceding the renewal. (For example, a two-year certification term would require 20 hours; the hours may be obtained anytime during the two-year term).

There are two alternatives to the classroom hours of instruction. The completion of educational programs or study determined by the AQB to be equivalent for continuing education purposes, or participation other than as a student in educational processes and programs including, but not limited to, teaching, program development, preparation of textbooks, etc.

National
Conference
of State
Legislatures

William T. Pound
Executive
Director

444 North Capitol Street, N.W.
Washington, D.C. 20001
(202) 624-5400

INFORMATION ALERT

JANUARY 22, 1990

APPRAISAL SUBCOMMITTEE RELEASES GUIDELINES FOR STATE LICENSING AND CERTIFICATION OF REAL ESTATE APPRAISERS

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council on January 18 released guidelines for state certification and licensing of real estate appraisers. The guidelines should be helpful to states attempting to meet a federal requirement that appraisers be licensed and certified for federally-related real estate transactions.

The federal requirement is contained in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (the thrift bailout bill or FIRREA). Congress acted based on findings that major causes of the $150 billion savings and loan collapse were (1) inflated appraisals and (2) conflicts of interest among appraisers, thrift operators, and real estate developers. FIRREA also established the Appraisal Subcommittee to monitor and assist state licensing and certification activity.

The guidelines issued by the Subcommittee on January 18 address some of the ambiguities about what form of state regulation would be acceptable for federally-related real estate transactions, in particular it addresses ambiguities about the independence and administrative location of state appraisal regulation agencies and about "grandfathering" of appraisers.

LOCATION AND INDEPENDENCE OF AGENCY

The Appraisal Subcommittee expressed its preference for a totally independent regulatory agency answerable to the governor, as the best means of insulating the agency from the influence of industries and individuals with a financial interest in appraisal licensure and certification. At the same time, the subcommittee recognized that there may be fiscal constraints or other legitimate reasons why a separate agency cannot be established. In such circumstances, according to the Subcommittee, "the appraisal certification and licensing function should be located within a state regulatory body which is structured to adequately eliminate the influences of an affected industry over the appraisal function."

In addition, to insure the independence of the agency, appointment of the agency head or board should not be made by a person or persons affiliated with an affected industry. Similarly, an agency head should not be actively engaged in an affected business for the term of his or her appointment and for a reasonable period of time after leaving office. And, any agency board or commission should not be dominated by any one industry or profession. The guidelines explicitly provide that appraisal licensing and certification activities should not be conducted by the same officials responsible for real estate regulation and that agency licensing, certification, and disciplinary decisions should be subject to review only by the courts.

(over)

"Information Alert" is a publication of the NCSL Office of State-Federal Relations that provides up-to-date information on issues under consideration by Congress or the Adminstration.

Grandfathering and Qualification Criteria

The guidelines reiterate the qualification criteria in FIRREA. In brief, certified appraisers must satisfy criteria established by the Appraisal Qualifications Board of the Appraisal Foundation and must pass a state examination consistent with Appraisal Foundation guidelines. Licensed appraisers must meet state testing, experience, and educational requirements.

"Grandfathering" is prohibited. The guidelines provide that: "No individual or group of individuals shall be deemed exempt from meeting the criteria established for licensing and certification, or be otherwise 'grandfathered' into the system."

States are prohibited from requiring that an applicant for appraisal certification or licensing hold another occupational license. States must ensure that a code of professional responsibility is incorporated into appraisal licensing and certification requirements.

Comments

Comments on the guidelines which will be published in the Federal Register should be sent to: Appraisal Subcommittee, FFIEC, 1776 G Street NW, Washington, D.C. 20006. The subcommittee may wish to issue additional policy guidelines.

- Staff Contact: Bill Waren.

APPRAISAL SUBCOMMITTEE

GUIDELINES REGARDING

STATE CERTIFICATION AND LICENSING OF APPRAISERS

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) establishes an Appraisal Subcommittee of the Federal Financial Institutions Examination Council. The responsibilities of the Appraisal Subcommittee include, among other things, monitoring the appraiser certifying and licensing agencies, which states may establish to carry out the purposes of Title XI. Section 1116 (d) of this Title instructs the Subcommittee not to recognize appraiser certifications and licenses from states whose appraisal policies, practices or procedures are found to be inconsistent with Title XI.

The legislative history accompanying Title XI indicates that states should adopt an organizational structure for implementing their appraiser licensing, certification and supervision functions that avoids potential conflicts of interest. Recognizing that each state has fiscal constraints or other factors that could influence the structure and location of the agency charged with licensing and certifying appraisers, the legislative history also indicates a desire to avoid imposing any particular organizational structure upon the states. However, while this suggests that a state could choose to locate the appraisal regulatory function in the same department as the regulation of real estate licensing, promotion, development or financing functions (hereinafter "realty related activities"), the organizational structure of the department must provide adequate safeguards to ensure that the appraisal regulatory function is independent of realty related activities.

In response to numerous requests from states and other interested parties, the Subcommittee is issuing these guidelines to assist the states, territories and the District of Columbia in the establishment of appropriate organizational structures for licensing and certifying appraisers. The guidelines are intended to facilitate the implementation of Title XI, promote the independence of the appraisal regulatory function, reduce conflicts of interest, and address the grandfathering and dual licensing of appraisers. Given the importance of these objectives, the Subcommittee will accept and consider public comments on the issues addressed by these guidelines.

GUIDELINES

LOCATION OF THE AGENCY

The Subcommittee believes it is preferable that the certification and licensing function be established as a totally independent regulatory agency answerable to the governor or a cabinet level officer who has no regulatory responsibility for realty related activities. (In these guidelines, the appraisal regulatory body will be referred to as the "agency", although it may also be a board, commission, or individual). Such a structure would provide maximum insulation for the agency from influences of any industry or organization whose members have a direct or indirect financial interest in the outcome of the agency's decisions (hereinafter "affected industry").

If, due to fiscal or other constraints, a separate agency is not feasible, the appraisal certification and licensing function should be located within a state regulatory body which is structured to adequately eliminate the influences of an affected industry over the appraisal function.

APPOINTMENT OF THE AGENCY HEAD

The appointment of the agency head or members of the appraisal board should be made by an individual or committee not associated or affiliated with an affected industry. (An individual would be affiliated or associated with an affected industry if the individual had a direct or indirect pecuniary interest in the industry).

To illustrate:

An autonomous agency head, appointed by the governor and subject to confirmation by the legislature would generally be considered to be properly appointed.

An individual or board chosen by or answerable to a committee or commission comprised of a majority of real estate appraisers, real estate brokers, financial institution executives or other members of an affected industry would not meet the criteria for being independently appointed.

INDEPENDENCE FROM AFFECTED INDUSTRIES

If the agency is directed by an individual, that person should not be actively engaged in the appraisal business or any other affected industry for the term of appointment or employment, and for a reasonable period thereafter.

If the agency is directed by a board or commission, the members of that board should represent the broad public interest, and the statute, regulation, or order creating that body should not permit a majority of the board to come from or be dominated by any one industry or profession. Moreover, after its initial establishment, the composition of the board should continue to remain free from domination by any one industry or profession.

INDEPENDENCE OF DECISION MAKING

Decisions as to whether to license and certify, to discipline or to de-license or de-certify appraisers should not be made by the same state officials whose responsibilities include realty related activities.

Decisions of the state appraiser regulatory agency regarding whether to license or certify, to discipline or to de-license or de-certify appraisers should be final administrative action subject only to appropriate judicial review.

QUALIFICATION CRITERIA

All appraisers subject to the licensing or certification provisions of Title XI must be qualified through appropriate testing and experience requirements established by state law.

Certified: Individuals designated as certified real estate appraisers shall have, at a minimum, 1) satisfied the criteria for certification issued by the Appraisal Qualifications Board of the Appraisal Foundation, and, 2) passed a state administered examination which is consistent with the Uniform State Certification Examination issued or endorsed by the Appraisal Qualifications Board of the Appraisal Foundation.

Licensed: States should establish meaningful qualification standards for licensed appraisers, including testing, experience and educational requirements that are adequate to demonstrate knowledge and competency.

Additional qualifications for licensing and certification may be required by any state or federal agency that considers such qualifications necessary to carry out responsibilities under Title XI.

EXEMPTIONS AND GRANDFATHERING

No individual or group of individuals shall be deemed exempt from meeting the criteria established for licensing or certification, or be otherwise "grandfathered" into the system. This is not meant to preclude states from recognizing existing licenses or certification designations of individuals who currently meet existing state licensing or certification requirements, provided those requirements are fully consistent with the provisions of Title XI.

MANDATORY DUAL LICENSING

Consistent with the spirit and intent of Title XI, state laws may not require any applicant for appraisal certification or licensing to hold other occupational licenses as a condition of obtaining a license or certification designation as a real estate appraiser.

OTHER

States should ensure that an appropriate code of professional responsibility is incorporated into their certification and licensing requirements.

To ensure that their licensing and certification procedures are not disapproved by the Subcommittee, states should adhere to the provisions set forth in Title XI and adopt policies, practices and procedures that are consistent with the purposes of the law. The Subcommittee will exercise the authority granted by Title XI to ensure the independence of the appraisal regulatory function within the state systems. The Subcommittee will meet its oversight responsibilities by reviewing each state's compliance with the intent of Title XI in its entirety.

Additional policy guidance may be provided by the Subcommittee, as necessary, to further assist in the effective implementation of Title XI.

EQUIVEST

REALTY ADVISORS, INC.

February 16, 1990

Senator Richard I. Dick Eliason
Labor & Commerce
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Re: Senate Bill 470

Dear Senator Eliason

It is my understanding that you will be holding a hearing on Senate Bill 470 on February 21, 1990. I will be attending that hearing by teleconference from Anchorage.

Enclosed herewith is a copy of a letter I sent to Senator Duncan's office outlining the opinion of the Real Estate Appraiser's Task Force on this particular Bill.

Our organization strongly supports House Bill 523 which was recently approved by unanamious vote at our last membership meeting. HB-523 has also been unanamiously approved by the Legislative Committee of the Alaska Association of Realtors.

Thanks for your assistance in this matter.

Sincerely,

REAL ESTATE APPRAISER'S TASK FORCE

Kenneth Jay Gain, MAI, SRS, CCIM, CRE
Chairman

REAL ESTATE COUNSELING AND EVALUATION. ASSET MANAGEMENT
ACQUISITION AND DISPOSITION OF INVESTMENT PROPERTIES

1844 WEST NORTHERN LIGHTS BLVD • ANCHORAGE, ALASKA 99517
(907) 279-8551

EQUIVEST

REALTY ADVISORS, INC.

February 15, 1990

Mr. Dale Staley
Administrative Assistant
Office of Senator Jim Duncan
P.O. Box V
Juneau, Alaska 99811

Re: Senate Bill No. 470

Dear Dale:

As we discussed on the telephone yesterday, I am very pleased that Senator Duncan understands the importance of enacting appropriate State Legislation to regulate appraisers during this session of the Legislature.

As I mentioned to you, the Real Estate Appraiser's Task Force has been working on this topic since last spring and we had been led to believe that the Governor's office would introduce our Bill. Unfortunately, we were not informed until the second week of the Legislature that he would not. We, therefore, contacted Senator Pat Rodey, due to his familiarity with real estate and banking issues, to have a Bill prepared which incorporated all of the recommendations of our Task Force. That Bill was prepared and is included in the enclosed Resource Manual as Exhibit "B". Since Senator Duncan introduced SB-470 before Senator Rodey had a chance to introduce our Bill, Senator Rodey has advised us that rather than introducing another Bill, we should concentrate on SB-470.

After careful review of SB-470, I see that it incorporates a number of our suggestions but is different in a number of areas. Our first recommendation would be for Senator Duncan to consider introducing our Bill (Exhibit "B" in the attached Resource Manual) or HB-523, which is virtually identical to our Bill, as a sponsor's substitute for a Senate Bill 470. If that is not acceptable to him, we hope that he will incorporate the following suggested amendments:

<u>Section 08.87.010</u>

In our study of the issue of board size, our Task Force considered a three member board, a five member board, and a seven member board. Due to the limited number of appraisers to be regulated (estimated to be between 200-300), we felt that the cost of a seven member board would be excessive. On the other hand, we felt that a three member board was too small due to the fact that a quorum would consist of only two people and as a result, one person who was both knowledgeable and persuasive could, in effect, end up establishing policy for all appraisers within the State of Alaska. For this reason, we believe that a five member board is the best. In our original report (Exhibit "F" of the attached Resource Manual), we proposed a board consisting of four appraisers and one public member. However, subsequent interpretation of the Federal requirements by the Federal Appraisal Sub-Committee (See Exhibit "E" of the Resource Manual) indicated that it would not be acceptable to have a board dominated by any one industry. We, therefore, proposed to Senator Rodey, in a letter dated January 26 (See Exhibit "H") that the board consist of one public member, two appraisers, a representative of the Mortgage Banking Industry, and the Executive Director of the Alaska Housing Finance Corporation or his designee.

Under this same section, in our proposed Bill, we provided that the Executive Secretary of the Alaska Real Estate Commission would serve as Executive Secretary of the board. We believe that this coordination is important.

Section 08.87.020(2)

While we strongly believe in the need for continuing education, we believe that rather than leaving it totally up to the board, there should be some guidelines adopted in the statute. As a result, in our Bill (Exhibit "B"), we proposed Section 08.87.120 on continuing education requirements.

Section 08.87.110(1)(A)

Although we are aware that the minimum guidelines proposed by the Appraisal Foundation also allow for a baccalaureate degree in lieu of the 150 classroom hours of appraisal education, we strongly disagree with that requirement as being inadequate. It might be marginally acceptable if a degree were required in real estate, but even then, most real estate degrees only require from 45 to 90 hours of classroom education in appraisal. Because appraising is a very specialized aspect of real estate, we believe that a person should have specific education in the field and that a degree in unrelated subjects is not an adequate substitute.

<u>Section 08.87.110(2)</u>

We believe that this level of experience is not sufficient and instead have provided for four years of experience within the previous seven, or three years experience as a "Registered Trainee".

<u>Section .08.87.110(b)</u>

Again, we believe that specific appraisal education should be required and that a degree in a non-related activity is not acceptable. We also recommend that the years of experience be increased to three years unless two of those were as a Registered Trainee.

<u>Section .08.87.110(c)</u>

We believe that sub-section (1) should be amended by adding the words <u>and that provides for certification of non-residents under conditions similar to those set out in this sub-section and without discriminatory cost.</u> We also believe that this section should be amended by adding a new section as follows:

> <u>Successfully completes an examination that may be prescribed by the board relating to appraisal matters unique to Alaska.</u>

<u>Section 08.87.900</u>

We believe that this section should be expanded by defining the terms "analysis assignment" "review assignment" and "valuation appraisal". These terms are defined in our draft bill (Exhibit "B") under .08.87.900 as items number 1, 11, and 12.

<u>Section 5</u>

We believe that it is very important that the initial appointments to the board, representing the appraisal industry, are knowledgeable in the appraisal profession and we, therefore, recommend adoption of the wording contained in Section 5 of our Bill (Exhibit "B") which provides that such initial appointments have either 10 years experience or be professionally designated by a recognized real estate appraisal organization that requires experience, education and testing to become a member.

Section 6

We strongly object to transitional certification which, in effect, allows grandfathering of all existing appraisers without the requirement of an examination. We strongly believe that the creditability of the certification bill will be enhanced by requiring that all appraisers must pass an examination. In addition, the interpretations of the Federal Appraisal Subcommittee (See Exhibit "E"), make it very clear that bills which allow grandfathering will not meet the Federal requirements. We recognize that there is always some concern about putting existing persons out of a business when a new licensing law is required. It is for this reason that we included in our Bill, section 08.87.320 providing for "Registered Trainees" so that anyone who might not otherwise meet the requirements could become affiliated with a Certified Appraiser and continue their employment in the appraisal industry until they can become certified in their own right.

In addition to the suggested amendments to sections within S.B. 470, we urge expansion of the Bill to add the following sections from our Bill:

Section .08.87.320 Registered Trainees

Section .08.87.330 Actions By Uncertified Real Estate Appraisers Prohibited

Section .98.87.120 Continuing Education Requirements for Renewal of Certificate.

Again, I would like to express our thanks for Senator Duncan's interest in this very important issue and hope that he will accept our comments in the spirit of recommendations for improved Legislation rather than as criticism of his work to date.

If I can provide you with any additional information not contained in this letter or the attached Resource Manual, please feel free to call me.

Sincerely,

REAL ESTATE APPRAISER'S TASK FORCE

Kenneth Jay Gain, MAI, SRS, CCIM, CRE
Chairman

cc: William A. Larick, RM
Acting President,
Alaska Chapter American Institute of Real Estate Appraisers

Kenneth E. Hinchey, SRA
President, Alaska Chapter Society of Real Estate Appraisers

James McCourt, President, Alaska Association of Realtors

Joe Hayes
Legislative Representative for the Alaska Association of Realtors

Realtor Board Legislative Committee
Anchorage, Mat-Su, Kenai, Katchemak, Fairbanks and Southeast

Lucille Stietz, Legislative Chairman, Alaska Mortgage Banker's Association

EQUIVEST

REALTY ADVISORS, INC.

February 19, 1990

Senator Richard I. Eilason
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Re: Regulation of Real Estate Appraisers
House Bill 523

Dear Senator Eilason:

The purpose of this letter is to advise you of the importance of enacting Legislation in this session of the Legislature which will regulate Alaska real estate appraisers. As a result of Federal activity in the adoption of Office of Management and Budget Circular A-129, and the adoption by Congress of Title XI of the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA), all appraisals involved in Federal activities must be performed by licensed or certified State appraisers by July 1, 1991. Since the Federal government regulates banks, virtually all forms of mortgage loans are affected by these Federal requirements as well as land acquisition programs for Federally funded projects involving highways, harbors, and airports.

In an effort to be responsive to the need for such Legislation, the Alaska Chapters of The American Institute of Real Estate Appraisers and The Society of Real Estate Appraisers appointed a joint Task Force to study the issue and prepare appropriate Legislation. After several months of review and numerous meetings, we did prepare a draft bill based upon similar Legislation from Wyoming as a guideline. It was our understanding that the Office of the Governor would introduce such a Bill, but during the second week of the Legislature, they advised us that they would not. We, therefore, began to work with Senator Rodey to have appropriate Legislation drafted. Although Senator Rodey has not introduced such Legislation, we were pleased that House Bill 523 introduced by Representatives Navarre and Swackhammer is an almost identical version of the Legislation approved by us. <u>Accordingly, we urge your support for the passage of House Bill 523.</u>

REAL ESTATE COUNSELING AND EVALUATION, ASSET MANAGEMENT.
ACQUISITION AND DISPOSITION OF INVESTMENT PROPERTIES

1844 WEST NORTHERN LIGHTS BLVD ▪ ANCHORAGE, ALASKA 99517
(907) 279-8551

Senator Richard I. Eilason
February 19, 1990
Page Two

As additional background on this issue, I am enclosing herewith a copy of an article on this issue which I wrote for the Alaska Real Estate Commission's Newsletter. If you require additional information, you can obtain a Resource Manual by calling me at 279-8551.

Thank you for your assistance in this important matter.

Sincerely,

REAL ESTATE APPRAISER'S TASK FORCE

Kenneth Jay Gain, MAI, SRS, CCIM, CRE
Chairman

EXHIBIT A

Draft of an article for the Real Estate Commission Newsletter, entitled "Appraiser Regulation"

APPRAISER REGULATION

Is the appraiser you are using licensed or certified?

The answer to that question is no. At the current time, there is no governmental regulation or licensing requirement for appraisers in the State of Alaska or the majority of the states in the Lower 48. The only regulation is on those appraisers who voluntarily belong to organizations such as the American Institute of Real Estate Appraisers which issues the professional designation of MAI and RM, or the Society of Real Estate Appraisers which issues the designation SRA, SRPA, and SREA. Although these organizations have higher standards than are likely to ever be imposed by governmental regulation and although their requirements for professional designation are substantially greater than any requirements ever proposed for governmental licensing or regulation, they only have jurisdiction over their membership. Nationwide the estimated membership in these two organizations is between 10 and 15% with only 3 to 5% of all the appraisers holding a professional designation! In Alaska those affiliated with one or both of these organizations is approximately 90% of all appraisers and 15 to 20% of all appraisers hold a professional designation. Because of the voluntary affiliation with the two appraisal groups, enactment of government regulation in Alaska will probably not have a noticeable effect on the quality of appraisal work.

Nevertheless, due to provisions contained within Title XI of the recently enacted Savings and Loan Bail-out Legislation, all appraisers involved in Federal activities will have to be State licensed or certified by July 1, 1991. Since all banks, savings and loans and credit unions are federally regulated, the appraisals for virtually all loans will have to be performed by licensed or certified appraisers. Likewise, government agencies which utilize the services of an appraiser in public works programs which have federal funding will also be effected. All such appraisers, including many government staff appraisers will have to become licensed or certified. The only major group of appraisers not impacted by this legislation are local tax assessors.

In response to this legislation and a directive enacted by the Federal Office of Management and Budget last year, the Alaska Chapters of the Society of Real Estate Appraisers and the American Institute of Real Estate Appraisers created a task force to review the various model bills for appraisal licensing and certification. After several months, the task force drafted a proposal based upon the Certification Law recently adopted in Wyoming.

The Bill, as proposed by the Alaska Appraiser's Task Force, provides for voluntary certification so that it will not be necessary to allow for "Grandfathering" of persons currently in business. Under their proposal, all appraisers, even those with 25 to 30 years experience, will be required to meet all of the qualifications for certification, including passing the examination, before they can become certified. Because the Bill provides for voluntary certification, the only persons who would be required by Alaska Law to be certified would be those who hold themselves out to be "Certified Appraisers" or who claim to have completed "Certified Appraisals". However, because of the requirements of the Federal Legislation which would require Certified Appraisers, if that is the only level of regulation available in a State, every appraiser in the private fee business would have to be certified or work as a trainee for a Certified Appraiser to be able to have enough business to make a living. Because tax assessors do not complete Certified Appraisals they would not have to become certified. Likewise, because opinions of value for listing or competitive market analysis are not Certified Appraisals, real estate brokers and salesmen would not be governed by the act unless they held themselves out to be Certified Appraisers.

The Bill proposed by the Alaska appraisers provides for two levels of certification and for a Registered Trainee. A Registered Trainee would be required to complete 30 classroom hours of appraisal education and would have to work under the supervision of a Certified Appraiser. Although a person could become a Certified Appraiser without ever working as a Registered Trainee, Registered Trainees could become certified with one year less actual appraisal experience.

The two levels of certification would be "Certified Residential Real Estate Appraiser" and "Certified General Real Estate Appraiser". The Certified Residential Real Estate Appraiser would be required to have three years appraisal experience (but only two years if a Registered Trainee), complete 75 classroom hours of appraisal education including 15 hours on Professional Standards and Ethics and pass a written examination. To be certified as a General Real Estate Appraiser, the appraiser would have to have four years appraisal experience (but only three years if a Registered Trainee) and have completed 160 classroom hours of appraisal education including 15 hours on Professional Standards and Ethics and pass a written examination. In additions to the requirements for initial certification, both classes of Certified Appraisers would have to complete 40 classroom hours of continuing education every two years for continuing certification.

As proposed by the Alaska appraisers, they would be regulated by a separate Certified Real Estate Appraiser Board appointed by the Governor. However, to maintain some cooperation with real estate brokers and salesmen, the Executive Secretary of the Real Estate Commission would also be designated as Executive Secretary of the Certified Real Estate Appraiser Board.

The foregoing represents the proposals by the Alaska Appraisers Task Force and undoubtedly, the final legislation will be somewhat different. The important issue is that the Legislature pass some form of licensing or certification so that the program can be implemented before July 1, 1991. Failure to enact such legislation could seriously limit the ability to get financing in Alaska or limit the ability to complete public works projects involving Federal funding!

While this proposed legislation will not directly affect real estate licensees not engaged in appraisal work, it will have a significant impact on a profession involved in most real estate transactions. Accordingly, it is legislation which licensees should be aware of and which could have a negative impact on licensee's income if the Legislature fails to enact a Bill meeting the Federal Standards.

S B

478

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 478
PUBLISH DATE: 2/12/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: Alcohol Server Education Course
Sponsor: Sen. Binkley
Requestor: Sen. Labor & Commerce Comm.

Agency Affected: Dept. of Revenue
BRU: Alcoholic Beverage Control Board
Components:

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-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This legislation does not impact the ABC Board's FY 90 budget.

Patrick L. Sharrock

Prepared by: Patrick L. Sharrock, Director
Division: Alcoholic Beverage Control Board
Phone: 277-8638
Date: 2/27/90

Approved by Commissioner: [signature]
Agency: Department of Revenue
Date: 2/28/90

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

Senator Johne Binkley

Senate Finance Committee
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985

Finance Committee
Co-Chairman

MEMORANDUM

February 22, 1990

TO: Senator Dick Eliason, Chairman
Senate Labor & Commerce Committee

FROM: Senator Johne Binkley Johne

RE: SB 478, relating to certain alcoholic beverage licenses and an alcohol server education course

---

The above-referenced bill was introduced on February 12 and referred to your committee. It would allow the ABC Board to approve alcohol server education courses offered in the state and make employee participation in such a course a condition of a licensee's license renewal or application if there is reasonable access to the training.

The Alaska Cabaret, Hotel, Restaurant and Retailers Association (CHARR) was the second organization to offer this kind of training in the United States. It is called "TAM," Techniques in Alcohol Management and I believe they started in 1984. In 1985, the Municipality of Anchorage adopted an ordinance requiring training as a condition of renewal or issuance of a liquor license. It helps to protect the licensee as well as the public from the misuse of alcohol. Many licensees are able to achieve a reduction in their liability insurance if their employees have had this training.

However, because the state has no authority over the training courses, successful programs such as CHARR's may be threatened by those which are less complete. This bill would help protect CHARR's investment as well as provide a standard which other training courses would have to meet.

I have enclosed for your committee's information a copy of CHARR's TAM manual as well as the MOA's training ordinance. I would appreciate your scheduling this bill for a hearing at the earliest possible time. Please let Janice Adair in my office know when that might be. Thank you.

Present

TAM

Techniques of Alcohol Management

in

Alaska

WORKBOOK

ARBA
Anchorage Restaurant &
Beverage Association

CHARR
Alaska Cabaret, Hotel,
Restaurant & Retailers Association

P.O. BOX 104839 • Anchorage, Alaska 99510 • 272-8133 or 272-8130

INTRODUCTION

Welcome to . . . . THE TECHNIQUES OF ALCOHOL MANAGEMENT

This program is brought to you through the cooperation of several organizations in Michigan, each of which is very concerned with the problems that alcohol causes on our highways and elsewhere. These organizations are:

Michigan Licensed Beverage Association.

Michigan Liquor Control Commission.

Michigan Association of Chiefs of Police.

Michigan Sheriff's Association.

Michigan State Police.

Michigan Office of Highway Safety Planning.

Michigan Office of Substance Abuse Services.

Each of these organizations appointed a member to sit on a steering committee to oversee the preparation and content of the program. The committee members were brought together to reflect the views of their organizations into the program. The unique combination of the Michigan Licensed Beverage Association and these public agencies was quite amazing and extremely productive.

THE IMPORTANT ROLE OF THE INNKEEPER

The role that taverns play in today's society hasn't changed since the early years of civilization. In the days when travel was very slow, miles were counted by the day rather than by the hour. The wayside inn was carefully spaced on roads so that after a long day of travel, the weary wayfarer would come upon a place to relax, eat and spend the night.

Since the vast majority of people didn't live in cities, the inn was the gathering spot of the surrounding area for people to meet and socialize. It was also common to use the inn for church meetings, political rallies, courtrooms and other social meetings. Because of the social importance of the inn, the tendency was to move closer to the inns. Many towns and cities grew up around what had once been isolated wayside inns.

Today's innkeeper may operate a tavern, a hotel, a club, a resort or some other specialized hospitality center. Times have changed, but the social needs filled by today's professional hospitality industry are the same as they always were. Travelers still go to hotels for overnight rest and friends still meet at taverns for socializing, relaxing and for entertainment. The principle purpose of today's tavern, hotel or restaurant keeper is the same today as it was thousands of years ago, to provide for some of the important social needs of people.

The serving of alcohol in taverns is a tradition as old as the industry itself, but it is only one of the functions to be filled. People can drink without going to a bar and those who think that they are in the business only to sell alcohol, and that they must sell as much of it as possible, completely misunderstand the innkeeper's role in society.

Through generations the reasons people go to bars hasn't changed. They go to be with friends, to relax, for entertainment, and to meet new people. Bars are a social meeting place, not a place for persons to become intoxicated.

OBJECTIVES

The primary objective of this program is to reduce alcohol-related driving accidents. The material presented in this book offers a variety of solutions and problem-solving techniques for use in licensed establishments. How to manage the dispensing of alcohol, how to manage customers and how to prevent fights in establishments are discussed in detail. The other basic objectives are:

1. To lay groundwork for an attitude of professionalism and ethical conduct among service personnel who deal with alcoholic beverages.

2. To improve employee knowledge and understanding of their key role in reducing alcohol-related auto accidents and to provide them with the tools required to reduce such accidents.

3. To apply the same techniques toward reducing injuries to patrons as a result of fights in licensed establishments.

4. To increase public awareness of the dangers of drinking and driving and to increase public acceptance of the measures required to solve the problem.

PROFESSIONALISM

Responsible dispensers of the drug alcohol will recognize that an attitude of professional and ethical conduct is required. Knowledge of how to mix drinks is not sufficient qualification for serving them to the public. One must know when, and in what doses, alcohol may be served. This knowledge must then be applied scrupulously, as a druggist would control the dispensing of other regulated substances.

Recent attitudes appear to downgrade the profession of alcohol service to one of pure "mixology" and sales techniques, or, in other words, to "pourers" and "pushers". It is sometimes overlooked that alcohol is, in fact, a regulated substance, and that society has entrusted the crucial role of proper dispensing of alcohol to certain licensed individuals and their employees. A standard of ethical conduct in fulfilling this role is an absolute necessity if abuse of alcohol is to be reduced.

IMPROVING INDUSTRY KNOWLEDGE

As in most areas of human endeavor today, a great deal more is known about alcohol and its effects than was known even five or ten years ago. A state-of-the-art approach is used in this program to give the server of alcohol all the tools presently available to help him or her be professional. The job of serving alcohol is comparable to that of a pharmacist. When dispensing a drug it's absolutely essential that the drug is understood and in turn given out in controlled doses. As a professional in the bar business, knowledge is the key to a better establishment.

REDUCING INJURIES

Injuries in bars due to fights is a very serious problem. Since 90 percent of the combatants are intoxicated the "Techniques of Alcohol Management" provide the necessary information to reduce these incidents. Injuries that occur in bars also include the uninvolved customer. There is a need to protect all patrons from injury.

AWARENESS AND ACCEPTANCE

Recent years have seen a massive publicity campaign designed to draw attention to the problem of drunk driving. The public is certainly aware of the problem, but by and large the public has not understood or accepted the measures required to solve the problem. The public should be made ready for controlled drinking and service in a bar. They should understand our concern for the well-being of all customers and our refusal to allow them to become intoxicated, resulting in the possibility of an accident while driving under the influence of alcohol. Certain steps must be taken to help the public help themselves.

Through this program, the tools and information to achieve these goals are available. Here, as in most cases, responsibility is the key. It has been said over and over that drinking and driving don't mix, but responsible serving practices can create a situation where one can drink and drive in a safe manner.

ALCOHOL

THE CLINICAL EFFECTS OF ALCOHOL

In order to practice good "Techniques of Alcohol Management," there must first be a working knowledge of the product itself. In this section the following will be discussed:

1. What is alcohol?
2. The reasons people use alcohol.
3. The way people use it.
4. The way it's absorbed.
5. The way it's distributed through the body, particularly to the mind.
6. The way it's metabolized and eliminated from the body after it's used.
7. The effects of alcohol on the mind and behavior.
8. Its interaction with drugs.
9. The toxicity of alcohol after chronic use.

WHAT IS ALCOHOL?

Alcohol is a very small organic molecule available in liquid form. It is a chemical substance, and it is a drug. "Alcohol," "ethanol" and "ethyl alcohol" are different names for the same substance. Alcohol is also a food. It contains carbohydrates, and has seven calories per gram. Some of the other substances contained in alcohol are called "congeners." Congeners give alcohol its color and taste, and may be responsible for the after-effect (hangover) the next morning.

Alcohol is produced by the age-old process of fermentation, a normal by-product of yeast. Alcoholic beverages are produced from berries, grapes, other fruits and grains, each of which produces a different beverage form. The amount of alcohol in a beverage depends on the amount of sugar converted by yeast and whether or not the beverage is distilled. Whiskey is a form of beer in which the alcohol has been concentrated through the distillation process. Beer contains from three to six percent alcohol, wine contains from nine to 14 percent, liqueurs or cordials have 20 to 40 percent, and liquor generally has from 40 to 50 percent. Notice the use of "percent of alcohol" rather