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National Board Inspection Code

***A Manual for Boiler and
Pressure Vessel Inspectors***

1987

*Approved by the National Board
Board of Trustees on February 19, 1987*

**NATIONAL BOARD OF BOILER
AND PRESSURE VESSEL INSPECTORS**

1055 Crupper Avenue, Columbus, Ohio 43229

614/688-8320

NB-23 Rev. 6



Preamble

The National Board of Boiler and Pressure Vessel Inspectors is an organization comprised of Chief Inspectors of states and cities of the United States, and provinces of Canada and is organized for the purpose of promoting greater safety to life and property by securing concerted action and maintaining uniformity in the construction, installation, inspection and repair of boilers and other pressure vessels and their appurtenances, thereby assuring acceptance and interchangeability among Jurisdictional Authorities responsible for the administration and enforcement of the various sections of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code.

Purpose and Scope of the National Board Inspection Code

The ASME Boiler and Pressure Vessel Code establishes rules of safety governing the design, fabrication and inspection during construction of boilers and pressure vessels.

It is the purpose of the NATIONAL BOARD INSPECTION CODE to maintain the integrity of such boilers and pressure vessels after they have been placed into service by providing rules and guidelines for inspection after installation, repair, alteration and rerating, thereby helping to ensure that these objects may continue to be safely used.

It is recognized that an American Petroleum Institute Inspection Code, API-510, exists covering the maintenance inspection, repair, alteration and rerating procedures for pressure vessels used by the petroleum and chemical process industries, which is applicable in these special circumstances. It is the intent that this Inspection Code cover installations other than those covered by API-510 unless the jurisdiction rules otherwise.

ASME Code
SECTION VII

SUBSECTION C7

REPAIRS, ALTERATIONS, AND MAINTENANCE

C7.100 REPAIRS AND ALTERATIONS

This Subsection provides guidance to the owner or user of power boilers for welded repairs and alterations to boiler pressure parts, in accordance with most jurisdictional authority requirements. Welded repairs and alterations should be in accordance with the rules of the National Board Inspection Code.¹ For the purpose of this Subsection, mechanical joints are not considered as a repair.

No welded repairs to a boiler pressure part should be initiated without the authorization of the Authorized Inspector who should satisfy himself that the welding procedures and welders are qualified and that the repair methods are acceptable. Subject to the administrative procedures of the jurisdiction, the Authorized Inspector may give prior approval for limited repairs provided he has ensured himself that the repair organization has acceptable procedures covering the repairs.

Each welded repair should be made by an appropriate Certificate Holder or other organization recognized by the jurisdictional authority.

Alterations to boiler pressure parts should be made by an organization that holds a valid ASME Certification of Authorization provided the alterations are within the scope of such authorization.

No alteration to boiler pressure parts should be initiated without the authorization of the Authorized Inspector, who should satisfy himself that the welding procedures and welders are qualified, that the alteration methods are acceptable, and that all applicable calculations are available.

Each owner or user of a boiler should verify with the jurisdictional authorities at the location of the power boiler that welded repair or alteration in accordance

with the National Board Inspection Code is acceptable to the jurisdictional authorities.

The welded repair or alteration should be documented on the appropriate form shown in the National Board Inspection Code.¹

Caution is recommended in the following regard: an unauthorized welded repair or alteration may make continued use of the boiler unsafe as well as illegal in many jurisdictions.

C7.200 MAINTENANCE

C7.210 General

Unscheduled outages of power equipment can result in production losses and an increase in power maintenance costs. This Subsection has been prepared to assist in the prevention of unscheduled outages by defining in general terms the potential trouble spots and conditions that should be checked during regularly scheduled maintenance outages. A thorough check of these critical parts will ensure that the equipment is put into sound operating condition before being returned to service and will help to eliminate the causes of unscheduled outages.

Due to the multiplicity of equipment types and plant layouts, the following is in sufficiently general terms to ensure that it is applicable to equipment types and not to Manufacturer's individual products. This makes it necessary to advise reference to individual Manufacturer's instruction books for data on clearances, part construction, controls, etc., when applying the information given in the guide to specific plant installations. Manufacturers should be contacted personally when required information is not given in instruction books.

C7.220 Information to Assist in Maintenance

The ability to recognize symptoms of impending equipment failure and to identify the faulty part is an

¹This document may be ordered from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229.

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build up of corrosive deposits between the disk and seat. If this condition is noted, the valve should be repaired by the valve manufacturer or replaced.

- c. It is recommended that under normal operating conditions² the safety or safety relief valve on a steam or hot water heating boiler should be tested manually once each month and pressure tested once each year.

I-303.21 PRESSURE GAGES

- a. The Inspector should determine that, where required, all the pressure gages have been removed, tested and their readings compared to the readings of a standard test gage or a dead weight tester.
- b. The location of a steam pressure gage should be noted by the Inspector to determine whether it is exposed to high temperature from an external source or to internal heat due to lack of protection by a proper siphon or trap. The Inspector should check that provisions are made for blowing out the pipe leading to the steam gage.

I-303.22 TUBE ROLLING

When tubes have been rerolled or replaced, the Inspector should observe whether the workmanship is proper. Where tubes are readily accessible, they may be over rolled. Conversely, when it is difficult to reach the tube ends they may have been under rolled.

I-303.23 HYDROSTATIC TEST

- a. If the Inspector requires additional information regarding a leak in a boiler or the extent of a possible defect, he may require that a hydrostatic test be performed.
- b. To determine tightness, the hydrostatic test pressure need be no greater than the set pressure of the safety valve having the lowest setting.

²Under certain operating conditions, these recommendations may not apply.

- c. The hydrostatic test pressure shall not exceed $1\frac{1}{2}$ times the maximum allowable working pressure (MAWP). For the test, the safety spring should not be compressed to prevent the valve from opening. The safety valve or valves should be removed or each disk shall be held down by means of a testing clamp. A plug device designed for this purpose may be used. The temperature of the water used to apply a hydrostatic test should not be less than 70°F (21°C), and the maximum temperature during inspection should not exceed 120°F (49°C). If a test is conducted at $1\frac{1}{2}$ times the MAWP and the owner specifies a temperature higher than 120°F (49°C) for this test, the pressure should be reduced to the MAWP and the temperature to 120°F (49°C) for the close examination.

I-303.24 RECORD REVIEW

A review of any boiler log, records of maintenance and feed water treatment should be made by the Inspector to determine what regular tests have been made on the boiler and controls. The owner or user should be consulted regarding any repairs which have been made since the last inspection. The Inspector should review the record of such repairs for compliance with applicable requirements. All repairs should be carried out in accordance with Chapter III of this Code.

I-303.25 CONCLUSIONS

Any defects or deficiencies in the condition, operating and maintenance practices of the boiler and auxiliary equipment should be discussed by the Inspector with the owner or user at this time and, if necessary, recommendations made for the correction of such defects or deficiencies.

I-502.8 MANHOLES AND OTHER OPENINGS

- a. Manholes, reinforcing plates, nozzles or other connections flanged or screwed into a pressure vessel should be thoroughly examined by the Inspector for cracks, deformation or other defects. Bolts and nuts should be checked for corrosion or defects.
- b. Wherever possible an inspection should be made from the inside of the pressure vessel to determine the condition of pipe connections at the vessel.
- c. On threaded connections the Inspector should ensure that an adequate number of threads are engaged.
- d. All openings leading to any external fittings or controls should be examined as thoroughly as possible by the Inspector to ensure they are free from obstructions.

I-502.9 SPECIAL CLOSURES

Any special closures including those on autoclaves, normally termed quick actuating (quick opening) closures which are used frequently in the operation of a pressure vessel, should be checked by the Inspector for adequacy and wear. A check should also be made for cracks at areas of high stress concentration.

I-502.10 PRESSURE TEST

- a. When there is doubt as to the extent of a defect or detrimental condition found in a pressure vessel, the Inspector may require a pressure test. A pressure test normally need not be made as part of a periodic inspection. However, a test shall be made when unusual, hard to evaluate forms of deterioration possibly affecting the safety of a vessel are disclosed by inspection and also after certain repairs.
- b. To determine tightness, the test pressure need be no greater than the set pressure of the pressure relief valve having the lowest setting.
- c. The pressure test should not exceed $1\frac{1}{2}$ times the maximum allowable working pressure adjusted for temperature. When the original test pressure includes consideration of corrosion allowance, the test pressure may be further adjusted based upon the remaining corrosion allowance.

II. INSPECTION OF BOILERS AND PRESSURE VESSELS

- d. During a pressure test, where the test pressure will exceed the set pressure of the pressure relief valve having the lowest setting, the pressure relief valve or valves should be removed or each valve disk be held down by means of a test clamp and not by applying additional load to the valve spring by turning the compression screw.
- e. The temperature of the water used to apply a hydrostatic test should not be less than 60°F (15.6°C) unless the owner provides information on the toughness characteristics of the vessel material to indicate the acceptability of a lower test temperature.

The temperature is not to be more than 120°F (49°C) unless the owner specifies the requirement for a higher test temperature. If the test is conducted at 1½ times the MAWP and the owner specifies a temperature higher than 120°F (49°C), the pressure should be reduced to the MAWP and the temperature to 120°F (49°C) for close examination.
- f. When contamination of the vessel contents by any other medium is prohibited or when a hydrostatic test is not possible, other testing media may be used providing the precautionary requirements of the applicable section of the ASME Code are followed. In such cases, there shall be agreement as to the testing procedure between the owner and the Inspector.

I-502.11 RECORD REVIEW

The Inspector should review any pressure vessel log, record of maintenance, corrosion rate record or any other examination results. The Inspector should consult with the owner or user regarding repairs made, if any, since the last internal inspection. The Inspector should review the records of such repairs for compliance with applicable requirements.

I-502.12 CONCLUSIONS

The Inspector should discuss with the owner or user, any defects or deficiencies in condition, maintenance practices or misuse of the pressure vessel and, if necessary, recommended corrective action. All repairs should be carried out in accordance with the requirements of Chapter III of this Code.

R-200 DEFINITION OF TERMS

R-201 REPAIR³

A repair is any work necessary to restore a boiler or pressure vessel⁴ to a safe and satisfactory operating condition, provided there is no deviation from the original design.

R-202 ALTERATION⁵

An alteration is any change in the item described on the original Manufacturers' Data Report which affects the pressure containing capability of the boiler or pressure vessel. Nonphysical changes such as an increase in the maximum allowable working pressure (internal or external) or design temperature of a boiler or pressure vessel shall be considered an alteration. A reduction in minimum temperature such that additional mechanical tests are required shall also be considered an alteration.

R-300 GENERAL REQUIREMENTS FOR REPAIRS AND ALTERATIONS

The requirements of the following paragraphs apply to all repairs and alterations to boilers and pressure vessels. In addition, the provisions of Chapter III, Supplement 4, page 74 apply to the repair of ASME Code Section VIII, Division 2, Pressure Vessels.

R-301 INSPECTION

R-301.1 AUTHORIZATION

R-301.1.1 Repairs: No repair to a boiler or pressure vessel shall be initiated without the authorization of the Inspector who shall satisfy himself that the welding procedures and welders are

³Examples of repairs are shown in Supplement 1(B), page 61.

⁴For additional requirements for the repair of ASME Code Section VIII, Division 2, Pressure Vessels, see Chapter III, Supplement 4, page 74.

⁵Examples of alterations are shown in Supplement 1(D), page 64.

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qualified and that the repair methods are acceptable. Subject to the administrative procedures of the jurisdiction, the Inspector may give prior approval for limited repairs provided he has assured himself that the repair organization has acceptable procedures covering the repairs. Examples of such repairs are described in Supplement 1(C), page 63. In every case, however, the Inspector shall be advised of each repair under such prior agreement.

R-301.1.2 Alterations: No alteration to a boiler or pressure vessel shall be initiated without the authorization of the Inspector who shall satisfy himself that the welding procedures and welders are qualified, that the alteration methods are acceptable, and that calculations have been made available. If he considers it necessary, he shall make an inspection of the object before granting such authorization.

R-301.2 ACCEPTANCE OF REPAIRS AND ALTERATIONS

R-301.2.1 General: It shall be the responsibility of the organization making the repair or alteration to provide for inspection, documentation and certification of the work and to ensure prior acceptance of the procedures for the work.

Inspection and certification of repairs and alterations shall be made by an Authorized Inspector employed by one of the following:

- a. a jurisdictional Authorized Inspection Agency;
- b. the Authorized Inspection Agency of the organization making the repair or alteration;
- c. the Authorized Inspection Agency which insures the boiler or pressure vessel;
- d. the owner-user inspection agency provided the work was not performed by his employer except as permitted in R-301.2.2 following.

R-301.2.2 Owner-User Acceptance Inspection of Repairs: An Inspector employed by an owner-user inspection agency⁶ may perform acceptance inspections of repairs to pressure vessels

⁶See Appendix D, page 217, for Owner-User Inspection Agencies.

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when such repairs have been performed by his employer provided the employer's organization and inspection procedures have specific approval of the jurisdiction or in the absence of a jurisdiction, by the National Board when requested by the owner-user. Such acceptance inspection procedures shall be subject to the concurrence of the Authorized Inspection Agency responsible for the inservice inspection of the pressure vessel.

R-301.3 DUTIES OF THE INSPECTOR

R-301.3.1 Repairs: Before acceptance of a repair, the Inspector shall satisfy himself that the welding was done in accordance with R-302 below, witness any pressure test he may require (see R-308, page 48), and assure that the other functions he deems necessary to assure compliance with the requirements of this Code, have been performed.

R-301.3.2 Alterations: Before signing for acceptance of an alteration, the Inspector shall make the required inspections, satisfy himself that, except as provided for in R-502.1(a)(2), the design change has been certified by an organization described in R-505.1, the welding was done in accordance with R-302, witness the pressure test applied (see R-308, page 48), and assure that the required nondestructive examinations have been performed satisfactorily and that the other functions he deems necessary to assure compliance with the requirements of this Code have been performed.

R-302 WELDING

R-302.1 WELDING PROCEDURE SPECIFICATIONS

The organization making repairs or alterations under these rules shall list the parameters applicable to welding that are to be performed in the welding procedure specification (WPS) document, such document having been qualified by the organization as required by the applicable section of the ASME Code. Such organization shall qualify its WPS by the welding of test coupons and the testing of specimens and recording the welding data and test results in its procedure qualification record (PQR) document. Welding procedure specifications shall be in accordance with the requirements of Section IX of the ASME Code.

R-302.2 WELDING PERFORMANCE QUALIFICATION

A welder or welding operator shall qualify for each welding process that he uses in the repair or alteration of a boiler or pressure vessel. Such qualification shall be in accordance with the requirements of Section IX of the ASME Code and a qualified welding procedure specification of the organization making the repair or alteration.

R-302.3 WELDING QUALIFICATION RECORDS

The organization making the repair or alteration shall maintain a record of the results obtained in welding procedure and welding performance qualifications. These records shall be certified by the organization and shall be available to the Inspector prior to the start of welding.

R-303 THERMAL HEAT TREATMENT

R-303.1 PREHEATING

Preheating may be employed during welding to assist in completion of the welded joint. The need for and the temperature of preheat are dependent on a number of factors, such as chemical analysis, degree of restraint of the parts being joined, material thickness and mechanical properties. The welding procedure specification for the material being welded shall specify the preheat temperature requirements.

For recommended preheating temperatures, see Supplement 2, Page 1.

R-303.2 POSTWELD HEAT TREATMENT

R-303.2.1 General: The detailed postweld heat treatment requirements and exemptions shall be in accordance with the applicable section of the ASME Code except as described below.

R-303.2.2 Alternative Methods: Under certain conditions, postweld heat treatment as outlined above may be inadvisable or impractical. In such instances, any other method of postweld heat treatment or special welding method acceptable to the Inspector may be used. Examples of special welding methods

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for P1 and P3 materials are described in Supplement 3, page 69. Where deemed necessary, competent technical advice should be obtained from the manufacturer of the object or from another qualified source.

R-304 NONDESTRUCTIVE EXAMINATION

The nondestructive examination (NDE) requirements, including technique, extent of coverage and acceptance criteria, shall be in accordance with the applicable sections of the ASME Code. Weld repairs and alterations should be subjected to the same nondestructive examination requirements as the original welds. Where this is not possible or practical, alternate NDE methods acceptable to the Inspector may be used.

After work that required radiographic examination has been completed, the repair or alteration organization shall retain the radiographs for a period specified in the applicable section of the ASME Code or alternatively, the radiographs may be turned over to the owner-user of the boiler or pressure vessel for retention.

R-305 MATERIALS

The materials used in making repairs or alterations shall conform to the requirements of the applicable section of the ASME Code. Carbon or alloy steel having a carbon content of more than 0.35% shall not be welded.

R-306 WELDED JOINTS

Butt joints shall have complete penetration and complete fusion for the full length of the weld. The surfaces of the weld may be left "as-welded", provided they are sufficiently free from coarse ripples, undercuts, grooves, overlaps, abrupt ridges and valleys to avoid stress concentration points and do not interfere with interpretation of NDE results, when used.

R-307 REPLACEMENT PRESSURE PARTS

R-307.1 GENERAL

Replacement parts may be classified as follows:

- a. Replacement parts which will be subject to internal or external pressure that consist of materials which may be

III REPAIRS AND ALTERATIONS TO BOILERS AND PRESSURE VESSELS BY WELDING

formed to the required shape by casting, spinning, forging, die forming and on which no fabrication welding is performed, shall be supplied as material. Such parts shall be marked with the material and part identification and the name or trademark of the parts manufacturer. Such markings shall be considered as the parts manufacturer's certification that the part complies with the applicable section of the ASME Code. Examples include seamless or welded tubes or pipe, forged nozzles, heads or tube sheets, or subassemblies attached together mechanically.

- b. Replacement parts which will be subject to internal or external pressure that are preassembled by attachment welds shall have the welding performed in accordance with the applicable section of the ASME Code and Section IX of the ASME Code. The supplier or manufacturer shall certify that the material and fabrication are in accordance with the applicable section of the ASME Code. This certification shall be supplied in the form of bills of material and drawings with the statement of certification. Examples include boiler furnace wall or floor panel assemblies, prefabricated openings in boiler furnace walls, such as burner openings, air ports, inspection openings or sootblower openings. Design changes of parts in this category shall be certified by an organization described in R-505.1, page 60.
- c. Replacement parts subject to internal or external pressure fabricated by welding and which require shop inspection by an Authorized Inspector shall be fabricated by a manufacturer having an ASME Certificate of Authorization and the appropriate Code symbol stamp. The item shall be inspected and stamped as required by the applicable section of the ASME Code. A completed Manufacturers' Partial Data Report shall be supplied by the manufacturer. When the part is added to the vessel, the partial data report is to be attached to Form R-1, Report of Welded Repair or Alteration (see Supplement 5, page 75).

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R-307.2 INSTALLATION OF REPLACEMENT PRESSURE PARTS

When replacement pressure parts are installed in conjunction with a repair, they shall be installed by organizations authorized in accordance with paragraph R-404, page 54. When replacement pressure parts are installed in conjunction with an alteration, they shall be installed by an organization authorized in accordance with paragraph R-505, page 60.

R-308 PRESSURE TEST

R-308.1 REPAIRS

The Inspector may require a pressure test after the completion of a repair to a boiler or pressure vessel. *See R 301.3.1*

R-308.2 ALTERATIONS

A pressure test as required for new construction shall be applied. Subject to the acceptance of the jurisdiction, an alternate test may be used.

R-308.3 REQUIREMENT

Pressure tests shall be carried out in accordance with I-303.23, page 22, or I-502.10, page 36, as applicable.

R-400 REPAIRS TO BOILERS AND PRESSURE VESSELS

This section provides specific rules for repairs to boilers and pressure vessels. It is intended that these requirements be used in conjunction with the general requirements of R-300, page 42.

R-401 REPAIR METHODS

R-401.1 DEFECT REPAIRS

R-401.1.1 General: A repair of a defect, such as a crack in a welded joint or base material, shall not be made until the defect has been removed. A suitable nondestructive examination method

Chapter III

Supplement 1

Examples of Repairs and Alterations

A. INTRODUCTION

The purpose of this supplement is to provide owners, users, repair organizations and Inspectors with assistance in evaluating whether contemplated work on boilers or pressure vessels should be categorized as repairs or alterations. The significance of this categorization affects the qualifications of the organization performing the work as well as the resultant documentation and symbol stamping of the boiler or pressure vessel.

B. EXAMPLES OF REPAIRS

Repairs are defined in R-201, page 42. Examples of repairs are:

1. weld repairs or replacement of pressure parts or attachments that have failed in a weld or in the base material;
2. the addition of welded attachments to pressure parts, such as:
 - a. studs for insulation or refractory lining
 - b. hex steel or expanded metal for refractory lining
 - c. ladder clips
 - d. brackets
 - e. tray support rings
 - f. corrosion resistant strip lining
 - g. corrosion resistant weld overlay
 - h. weld build-up of wasted areas;
3. replacement of heat exchanger tube sheets in accordance with the original design;
4. replacement of boiler and heat exchanger tubes where welding is involved;
5. in a boiler, a change in the arrangement of tubes in furnace walls, economizer or superheater sections;

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6. replacement of pressure retaining parts identical to those existing on the boiler or pressure vessel and described on the original Manufacturers' Data Report. For example:
 - a. replacement of furnace floor tubes and/or sidewall tubes in a boiler
 - b. replacement of a shell or head in accordance with the original design
 - c. rewelding a circumferential or longitudinal seam in a shell or head
 - d. replacement of nozzles of a size where reinforcement is not a consideration;
7. installation of new nozzles or openings of such a size that reinforcement is not a consideration [for example, the installation of a 3 in. (76 mm) pipe size nozzle to a shell or head of 3/8 in. (10 mm) or less in thickness or the addition of a 2 in. (50 mm) pipe size nozzle to a shell or head of any thickness];
8. the addition of a nozzle where reinforcement is a consideration may be considered to be a repair provided the nozzle is identical to one in the original design, located in a similar part of the vessel, and not closer than three times its diameter from another nozzle. The addition of such a nozzle shall be restricted by any service requirements;
9. the installation of a flush patch to a boiler or pressure vessel;
10. the replacement of a shell course in a cylindrical pressure vessel;
11. welding of gage holes;
12. welding of wasted or distorted flange faces;
13. replacement of slip-on flanges with weld neck flanges or vice-versa;
14. seal welding of butt straps and rivets;
15. subject to the administrative procedures of the jurisdiction and approval of the Inspector, the replacement of a riveted section or part by welding;

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16. the repair or replacement of a pressure part with a Code accepted material that has a nominal composition and strength that is equivalent to the original material, and is suitable for the intended service.

C. REPAIRS OF A ROUTINE NATURE

Subject to the administrative procedure of the jurisdiction and the approval of the Inspector, the types of repairs listed below may be given prior approval as described in R-301.1.1, page 42, or the requirement for the repair report stamping, as described in R-402.2, page 52, and R-403.4, page 54, respectively, may be waived. The repairs listed below are examples intended to provide the Inspector with general guidelines and are not intended to be all inclusive:

1. weld repair or replacement of tubes or pipes and attachments;
2. the addition of non-pressure attachments to pressure parts where postweld heat treatment is not required;
3. weld build-up of wasted areas;
4. corrosion resistant weld overlay;
5. replacement of boiler and heat exchanger tubes where welding is involved;
6. in a boiler, a change in the arrangement of tubes in furnace walls, economizer or superheater sections;
7. rewelding or replacing heat exchanger channel partition plates;
8. replacement of nozzles where reinforcement is not a consideration;
9. welding of gage holes;
10. replacement of slip-on flanges with weld neck flanges or vice-versa where NDE of the welded joint is not a requirement of the applicable ASME Code.

D. EXAMPLES OF ALTERATIONS

Alterations are defined in R-202, page 42. Examples are:

1. an increase in the maximum allowable working pressure (internal or external) or temperature of a boiler or pressure vessel regardless of whether or not a physical change was made to the boiler or pressure vessel;
2. a decrease in the minimum temperature such that additional mechanical tests are required;
3. the addition of new nozzles or openings in a boiler or pressure vessel except those classified as repairs;
4. a change in the dimensions or contour of a pressure vessel;
5. in a boiler, an increase in any heating surface;
6. the addition of a pressurized jacket to a pressure vessel;
7. replacement of a pressure retaining part in a pressure vessel or boiler with a material of different nominal strength or nominal composition from that used in the original design.

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Alaska State Legislature

SENATOR PAUL FISCHER, Chairman
SENATOR JIM DUNCAN, Vice Chairman
SENATOR AL ADAMS
SENATOR LLOYD JONES
SENATOR TIM KELLY



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Senate Committee on Health, Education and Social Services

TO: SENATOR DICK ELIASON, CHAIRMAN, SENATE LABOR AND
COMMERCE COMMITTEE.

FROM: SENATOR PAUL A. FISCHER *PF*

RE: SENATE BILL 496 - EXAMINATION OF FETAL TISSUE

DATE: 2/20/90

SENATE BILL 496 RELATES TO THE EXAMINATION AND TESTING OF FETAL TISSUE AFTER AN INDUCED TERMINATION OF A PREGNANCY. ESSENTIALLY, THIS BILL WOULD REQUIRE A PHYSICIAN TO EXAMINE FETAL TISSUE RESULTING FROM AN INDUCED TERMINATION OF A PREGNANCY, AND REPORT THE RESULTS OF THE TEST TO THE WOMAN IF THERE IS EVIDENCE THAT THE PHYSICAL HEALTH OF THE WOMAN MAY BE AFFECTED BY COMPLICATIONS RELATED TO THE TERMINATION OF THE PREGNANCY.

THIS IS A CONSTITUTIONALLY UPHELD PROVISION OF THE LAW, BASED UPON A MISSOURI STATUTE. I HAVE INCLUDED THE SUPREME COURT CASE PLANNED PARENTHOOD V. ASHCROFT, WHICH WAS THE LAND MARK CASE UPHOLDING THIS PROVISION OF THE LAW.

I HAVE ALSO ASKED LEGISLATIVE LEGAL SERVICES FOR AN OPINION ON THE CONSTITUTIONALITY OF THIS LAW AND WHETHER IT WOULD BE UPHELD IN OUR STATE. IT WAS THEIR OPINION THAT THIS WOULD BE UPHELD.

I WISH TO THANK YOU FOR REVIEWING THIS, AND HOPE THAT YOU WOULD CONSIDER THIS LEGISLATION FOR SCHEDULING AT YOUR EARLIEST POSSIBLE CONVENIENCE.

THANK YOU

STATE OF ALASKA
THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 16, 1990

SUBJECT: Constitutionality of SB 496
TO: Senator Paul Fischer
FROM: Terri Lauterbach *TML*
 Legislative Counsel

You have asked whether the law that would be enacted by SB 496 would be constitutional. In brief, SB 496 requires the physician who performs an abortion to examine the fetal tissue, provide for appropriate laboratory testing if required under guidelines of the State Medical Board, and report the results of the examination and testing to the woman if they indicate that her physical health may be affected by complications related to the abortion.

In my opinion, the law that would be enacted by SB 496 is within the bounds of permissible abortion regulation. However, the guidelines of the State Medical Board, determining when further testing is required and what kind of testing, will need to be within the scope of permissible regulation as well.

The U.S. Supreme Court case most related to the subject of this bill is Planned Parenthood Assoc. of Kansas City, MO v. Ashcroft, 462 U.S. 476 (1983). In that case, a 5-4 majority upheld a Missouri law that requires a physician who performs an abortion to submit a fetal tissue sample to a pathologist for testing after all abortions. The majority upheld the provision as being an insignificant burden on the abortior. decision, a burden outweighed by the health interest at stake.

The dissenters in Ashcroft were primarily concerned about the additional cost involved (\$20-\$40 in 1983 dollars) in requiring referral to a pathologist, which involved a second physician, and the blanket requirement of additional testing after preliminary examination even if no abnormalities were

noted by the preliminary examination. To the dissenters, the cost burdened the abortion decision too much, especially for poor women, and the blanket nature of the requirement undercut the state's claim that the requirement was health-related. They pointed out that medical experts did not agree on whether additional testing served any health purpose if preliminary examination failed to reveal any abnormalities.

The view of the dissenters is important because the Alaska Supreme Court, faced with an explicit privacy clause and a more restrictive equal protection test under our state constitution, is likely to uphold fewer abortion regulations in Alaska than the U.S. Supreme Court upholds under the federal constitution. Our court would likely have sided with the dissenters in Ashcroft.

However, SB 496 would apply even the objections of the dissenters in Asher does not require more than an examination by the attending physician unless required under regulations of the State Medical Board. Therefore, the cost should be less than that noted in Ashcroft, which required the involvement of a second physician and pathology testing in all cases. Lower costs means there is less effect on the abortion decision, particularly of a poor woman; hence less of an equal protection argument. And, with referral for further testing taking place only under State Medical Board guidelines, the relationship of the proposed statute to protection of the woman's health is more substantial than if additional testing were required in all cases; hence, a better "fit" between the state's health interest and the means chosen to achieve it.

The State Medical Board, of course, will need to be careful in its adoption of regulations to maintain the scheme envisioned by the bill. That is, if the board were to establish guidelines that called for pathology testing of all fetal tissue, the issues of cost and relationship to protection of health would be raised at that level, the level of the regulations. So, while SB 496 establishes procedures that may be constitutional, the regulations of the board could wind up being an unconstitutional implementation of SB 496. That issue will arise, if ever, only after the State Medical Board uses its authority under Section 1 of the bill to adopt regulations.

Senator Paul Fischer
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February 16, 1990

In the meantime, it is my opinion that SB 496 is clearly constitutional under the federal constitution and probably constitutional under our state constitution.

If you have other questions in this area, I would be happy to attempt to answer them. Please let me know if you need further assistance.

TL:pl
WKP2/061

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Statutes § 166 — construction — definition of hospital

1a, 1b. Where a state does not define the term "hospital" in its statutory provisions regulating abortions, the United States Supreme Court must assume that the term has its common meaning of a general, acute-care facility.

presence of a second physician during abortions performed after viability is constitutional since the state has a compelling interest in preserving life. [Per Powell, J., Burger, Ch. J., O'Connor, J., White, J., and Rehnquist, J. Dissenting: Blackmun, Brennan, Marshall, and Stevens, JJ.]

Abortion § 1; Constitutional Law § 526 — hospitalization requirement — validity

2. A state statute requiring all second trimester abortions to be performed in general acute-care facilities is unconstitutional since it unreasonably infringes upon a women's constitutional right to obtain an abortion. (O'Connor, White, and Rehnquist, JJ., dissented from this holding.)

Abortion § 1; Constitutional Law § 526 — pathology report — state statute

4a, 4b. A state statute requiring a pathology report for each abortion performed is constitutional since it does not significantly burden a pregnant women's abortion decision. [Per Powell, J., Burger, Ch. J., O'Connor, J., White, J., and Rehnquist, J. Dissenting: Blackmun, Brennan, Marshall, and Stevens, JJ.]

Abortion § 1; Constitutional Law § 526 — presence of second physician — state statute

3a, 3b. A state statute requiring the

Abortions § 1; Constitutional Law § 526 — minors — parental or judicial consent

5a, 5b. A state statute requiring mi-

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

- 1 Am Jur 2d, Abortion §§ 1.5, 37.5
- 1 Am Jur Pl & Pr Forms (Rev), Abortion, Forms 1 et seq.
- USCS, Constitution, 14th Amendment
- US L Ed Digest, Abortion § 1; Constitutional Law § 526
- L Ed Index to Annos, Abortion
- ALR Quick Index, Abortion
- Federal Quick Index, Abortion
- Auto-Cite®: Any case citation herein can be checked for form, parallel references, later history and annotation references through the Auto-Cite computer research system.

ANNOTATION REFERENCES

Supreme Court's views as to validity of laws restricting or prohibiting sale or distribution to minors of particular types of goods or services otherwise available to adults. 52 L Ed 2d 892.

Validity, under federal constitution, of abortion laws. 35 L Ed 2d 735.

Binding effect upon state courts of opinion of United States Supreme Court supported by less than a majority of all its members. 65 AI R3d 504.

nors who seek an abortion to secure parental or judicial consent will be held to be constitutional where (1) two justices of the Supreme Court are of the opinion that the construction of the statute does not permit a juvenile court to deny a petition unless it first finds that the minor is not mature enough to make her own decision and (2) three other

justices are of the view that the provision is valid because it imposes no undue burden on any right that a minor may have to undergo an abortion. [Per Powell, J., Burger, Ch. J., O'Connor, J., White, J., and Rehnquist, J. Dissenting: Blackmun, Brennan, Marshall, and Stevens, JJ.]

SYLLABUS BY REPORTER OF DECISIONS

Missouri statutes require abortions after 12 weeks of pregnancy to be performed in a hospital (§ 188.025); require a pathology report for each abortion performed (§ 188.047); require the presence of a second physician during abortions performed after viability (§ 188.030.3); and require minors to secure parental consent or consent from the Juvenile Court for an abortion (§ 188.028). In an action challenging the constitutionality of these provisions, the District Court invalidated all provisions except § 188.047. The Court of Appeals reversed as to §§ 188.028 and 188.047 but affirmed as to §§ 188.030.3 and 188.025.

Held: Section 188.025 is unconstitutional, but §§ 188.047, 188.030.3, and 188.028 are constitutional. 664 F2d 687, affirmed in part, reversed in part, vacated in part, and remanded.

Justice Powell delivered the opinion of the Court with respect to Parts I and II, concluding that the second-trimester hospitalization requirement of § 188.025 "unreasonably infringes upon a woman's constitutional right to obtain an abortion." *City of Akron v Akron Center of Reproductive Health, Inc.*, ante, at 439, 76 L Ed 2d 687, 103 S Ct 2481.

Justice Powell, joined by The Chief Justice, concluded in Parts III, IV, and V that:

1. The second-physician requirement of § 188.030.3 is constitutional as reasonably furthering the State's compelling interest in protecting the lives of viable fetuses.

2. The pathology-report requirement of § 188.047 is constitutional. On its face and in effect, such requirement is reasonably related to generally accepted

medical standards and furthers important health-related state concerns. In light of the substantial benefits that a pathologist's examination can have, the small additional cost of such an examination does not significantly burden a pregnant woman's abortion decision.

3. Section 188.028 is constitutional. A State's interest in protecting immature minors will sustain a requirement of a consent substitute, either parental or judicial. And as interpreted by the Court of Appeals to mean that the Juvenile Court cannot deny a minor's application for consent to an abortion "for good cause" unless the court first finds that the minor was not mature enough to make her own decision, § 188.028 provides a judicial alternative that is consistent with established legal standards. See *City of Akron v Akron Center for Reproductive Health, Inc.*, ante, at 439-440, 76 L Ed 2d 687, 103 S Ct 2481.

Justice O'Connor, joined by Justice White and Justice Rehnquist, concluded that:

1. The second-physician requirement of § 188.030.3 is constitutional because the State has a compelling interest, extant throughout pregnancy, in protecting and preserving fetal life.

2. The pathology-report requirement of § 188.047 is constitutional because it imposes no undue burden on the limited right to undergo an abortion, and its validity is not contingent on the trimester of pregnancy in which it is imposed.

3. Assuming, arguendo, that the State cannot impose a parental veto on a minor's decision to undergo an abortion, the parental consent provision of § 188.028.2 is constitutional because it

imposes no undue burden on any right that a minor may have to undergo an abortion.

Powell, J., announced the judgment of the Court in Part VI and delivered the opinion of the Court with respect to Parts I and II, in which Burger, C. J., and Brennan, Marshall, Blackmun, and Stevens, JJ., joined, and an opinion with

respect to Parts III, IV, and V, in which Burger, C. J., joined. Blackmun, J., filed an opinion concurring in part and dissenting in part, in which Brennan, Marshall and Stevens, JJ., joined. O'Connor, J., filed an opinion concurring in part in the judgment and dissenting in part, in which White and Rehnquist, JJ., joined.

APPEARANCES OF COUNSEL

Frank Susman argued the cause for the Planned Parenthood Association of Kansas City, Missouri, Inc., et al.

John Ashcroft argued the cause for the Attorney General of Missouri, et al.

Briefs of Counsel, p 912, *infra*.

SEPARATE OPINIONS

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Justice Powell announced the judgment of the Court in Part VI delivered the opinion of the court with respect to Parts I and II, and an opinion with respect to Parts III, IV, and V, in which The Chief Justice joins.

These cases, like *City of Akron v Akron Center for Reproductive Health, Inc.*, ante, p 416, 76 L Ed 2d 687, 103 S Ct 2481, and *Simopoulos v Virginia*, post, p 506, 76 L Ed 2d 755, 103 S Ct 2532, present questions as to the validity of state statutes or local ordinances regulating the performance of abortions.

I

Planned Parenthood of Kansas

1. Missouri Rev Stat § 188.025 (Supp 1982) provides: "Every abortion performed subsequent to the first twelve weeks of pregnancy shall be performed in a hospital."

2. Missouri Rev Stat § 188.047 (Supp 1982) provides:

"A representative sample of tissue removed at the time of abortion shall be submitted to a board eligible or certified pathologist, who shall file a copy of the tissue report with the state division of health, and who shall provide a copy of the report to the abortion facility or hospital in which the abortion was performed

City, Missouri, Inc., two physicians who perform abortions, and an abortion clinic (plaintiffs) filed a complaint in the District Court for the Western District of Missouri challenging, as unconstitutional, several sections of the Missouri statutes regulating the performance of abortions. The sections relevant here include Mo Rev Stat § 188.025 (Supp 1982), requiring that abortions after 12 weeks of pregnancy be performed in a hospital;¹ § 188.047, requiring a pathology report for each abortion performed;² § 188.030.3, requiring the presence of a second

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physician performing abortions performed after viability;³ and § 188.028, requiring minors

or induced and the pathologist's report shall be made a part of the patient's permanent record."

3. Missouri Rev Stat § 188.030.3 (Supp 1982) provides:

"An abortion of a viable unborn child shall be performed or induced only when there is in attendance a physician other than the physician performing or inducing the abortion who shall take control of and provide immediate medical care for a child born as a result of the abortion. During the performance of the abortion, the physician performing it, and

to secure parental or judicial consent.⁴

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After hearing testimony from a number of expert witnesses, the District Court invalidated all of these

sections except the pathology requirement. 483 F Supp 679, 699-701 (1980).⁵ The Court of Appeals for the Eighth Circuit

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reversed the District

subsequent to the abortion, the physician required by this section to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the viable unborn child; provided that it does not pose an increased risk to the life or health of the woman."

4. Missouri Rev Stat § 188.028 (Supp 1982) provides:

"1. No person shall knowingly perform an abortion upon a pregnant woman under the age of eighteen years unless:

"(1) The attending physician has secured the informed written consent of the minor and one parent or guardian; or

"(2) The minor is emancipated and the attending physician has received the informed written consent of the minor; or

"(3) The minor has been granted the right to self-consent to the abortion by court order pursuant to subsection 2 of this section, and the attending physician has received the informed written consent of the minor; or

"(4) The minor has been granted consent to the abortion by court order, and the court has given its informed written consent in accordance with subsection 2 of this section, and the minor is having the abortion willingly, in compliance with subsection 3 of this section.

"2. The right of a minor to self-consent to an abortion under subdivision (3) of subsection 1 of this section or court consent under subdivision (4) of subsection 1 of this section may be granted by a court pursuant to the following procedures:

"The minor or next friend shall make an application to the juvenile court which shall assist the minor or next friend in preparing the petition and notices required pursuant to this section. The minor or the next friend of the minor shall thereafter file a petition setting forth the initials of the minor; the age of the minor; the names and addresses of each parent, guardian, or, if the minor's parents are deceased and no guardian has been appointed, any other person standing in loco parentis of the minor; that the minor has been fully informed of the risks and consequences of the abortion; that the minor is of sound mind and has sufficient intellectual capacity to consent to the abortion; that, if the court does not grant the minor majority rights for the purpose of consent to the abortion, the court should find that the abortion is

in the best interest of the minor and give judicial consent to the abortion; that the court should appoint a guardian ad litem of the child; and if the minor does not have private counsel, that the court should appoint counsel. The petition shall be signed by the minor or the next friend;

"(3) A hearing on the merits of the petition to be held on the record, shall be held as soon as possible within five days of the filing of the petition. . . . At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect and understanding of the minor; the nature, possible consequences, and alternatives to the abortion; and any other evidence that the court may find useful in determining whether the minor should be granted majority rights for the purpose of consenting to the abortion or whether the abortion is in the best interests of the minor;

"(4) In the decree, the court shall for good cause:

"(a) Grant the petition for majority rights for the purpose of consenting to the abortion, or

"(b) Find the abortion to be in the best interests of the minor and give judicial consent to the abortion, setting forth the grounds for so finding; or

"(c) Deny the petition, setting forth the grounds on which the petition is denied;

"3. If a minor desires an abortion, then she shall be orally informed of and, if possible, sign the written consent required by section 188.039 in the same manner as an adult person. No abortion shall be performed on any minor against her will, except that an abortion may be performed against the will of a minor pursuant to a court order described in subdivision (4) of subsection 1 of this section that the abortion is necessary to preserve the life of the minor."

5. The District Court also awarded attorney's fees for all hours claimed by the plaintiffs' attorneys. The Court of Appeals affirmed this allocation of fees. See 655 F2d 848, 872 (CA8 1981). The petition for certiorari raises the issue whether an award of attorney's fees made pursuant to 42 USC § 1988 (1976 ed. Supp V) [42 USC § 1988], should be proportioned to reflect the extent to which plaintiffs prevailed.

Court's judgment with respect to § 188.028, thereby upholding the requirement that a minor secure parental or judicial consent to an abortion. It also held that the District Court erred in sustaining § 188.047, the pathology requirement. The District Court's judgment with respect to the second-physician requirement was affirmed, and the case was remanded for further proceedings and findings relating to the second-trimester hospitalization requirement. 655 F2d 848, 872-873 (1981). On remand, the District Court affirmed its holding that the second-trimester hospitalization requirement was unconstitutional. The Court of Appeals affirmed this judgment. 664 F2d 687, 691 (1981). We granted certiorari. 456 US 988, 73 L Ed 2d 1282, 102 S Ct 2267 (1982).

The Court today in *City of Akron*, ante, at 426-431, 76 L Ed 2d 687, 103 S Ct 2481, has stated fully the principles that govern judicial review of state statutes regulating abortions, and these need not be repeated here. With these principles in mind, we turn to the statutes at issue.

II

[1a, 2] In *City of Akron*, we invali-

6. [1b] Missouri does not define the term "hospital" in its statutory provisions regulating abortions. We therefore must assume, as did the courts below, see 483 F Supp 679, n 10 (1980); 664 F2d 687, 689-690, and nn 3, 5, and 6 (1981), that the term has its common meaning of a general, acute-care facility. Cf. Mo Rev Stat § 188.015(2) (Supp 1982) (defining "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed other than a hospital"). Section 197.020.2 (1978), part of Missouri's hospital licensing laws, reads:

"Hospital" means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than twenty-four hours in any week of three or more nonrelated individuals suffering from illness, disease, injury, deformity or

dated a city ordinance requiring physicians to perform all second-trimester abortions at general or special hospitals accredited by the Joint Commission on Accreditation of Hospitals (JCAH) or by the American Osteopathic Association. Ante, at 431-432, 76 L Ed 2d 687, 103 S Ct 2481. Missouri's hospitalization requirements are similar to those enacted by Akron, as all second-trimester abortions must be performed in general, acute-care facilities.⁶ For the reasons stated in *City of*

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Akron, we held that such a requirement "unreasonably infringes upon a woman's constitutional right to obtain an abortion." Ante, at 439, 76 L Ed 2d 687, 103 S Ct 2481. For the same reasons, we affirm the Court of Appeals' judgment that § 188.025 is unconstitutional.

III

We turn now to the State's second-physician requirement. In *Roe v Wade*, 410 US 113, 35 L Ed 2d 147, 93 S Ct 705 (1973), the Court recog-

other abnormal physical conditions; or a place devoted primarily to provide for not less than twenty-four hours in any week medical . . . care for three or more nonrelated individuals.

Cf. Mo Rev Stat § 197.200(1) (1978) (defining "ambulatory surgical center" to include facilities "with an organized medical staff of physicians" and "with continuous physician services and registered professional nursing services whenever a patient is in the facility"); 13 Mo Admin Code § 50-30.010(1)(A) (1977) (same). The regulations for the Department of Social Services establish standards for the construction, physical facilities, and administration of hospitals. §§ 50-20.010 to 50-20.030. These are not unlike those set by JCAH. See *City of Akron*, ante, at 432, and n 16, 76 L Ed 2d 687, 103 S Ct 2481.

nized that the State has a compelling interest in the life of a viable fetus: "[T]he State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother." *Id.*, at 164-165, 35 L. Ed. 2d 147, 93 S. Ct. 705. See *Colautti v. Franklin*, 439 U.S. 379, 386-387, 58 L. Ed. 2d 596, 99 S. Ct. 675 (1979); *Beal v. Doe*, 432 U.S. 438, 445-446, 53 L. Ed. 2d 464, 97 S. Ct. 2366 (1977). Several of the Missouri statutes undertake such regulation. Postviability abortions are proscribed except when necessary to preserve the life or the health of the woman. Mo. Rev. Stat. § 188.030.1 (Supp. 1982). The

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State

also forbids the use of abortion procedures fatal to the viable fetus unless alternative procedures pose a greater risk to the health of the woman. § 188.030.2.

The statutory provision at issue in this case requires the attendance of a second physician at the abortion of a viable fetus. § 188.030.3. This section requires that the second physician "take all reasonable steps in keeping with good medical practice . . . to preserve the life and health of the viable unborn child; provided that it does not pose an increased risk to the life or health of the woman." See n. 3, *supra*. It also provides that the second physician "shall take control of and provide immediate medical care for a child born as a result of the abortion."

The lower courts invalidated § 188.030.3.⁷ The plaintiffs, respon-

7. The courts below found, and Justice Blackmun's partial dissenting opinion agrees, post, at 499-500, 76 L. Ed. 2d, at 750-751, that there is no possible justification for a second-physician requirement whenever D&E is used because no viable fetus can survive a D&E procedure. 483 F. Supp. at 694; 655 F.2d, at 865. Accordingly, for them, § 188.030.3 is overbroad. This reasoning rests on two assumptions. First, a fetus cannot survive a D&E abortion, and second, D&E is the method of choice in the third trimester. There is general agreement as to the first proposition, but not as to the second. In fact, almost all of the authority cited by Justice Blackmun's critical dissent, as well as the Court of Appeals notes, is subject to the requirements of § 188.030.2. See *id.*, at 865, and n. 28. Nevertheless, the courts below, in conclusory language, found that D&E is the "method of choice even after viability is possible." *Id.*, at 865. No scholarly writing supporting this view is cited by those courts or by the dissent. Reliance apparently is placed solely on the testimony of Dr. Robert Crist, a physician from Kansas, to whom the District Court referred in a footnote. 483 F. Supp. at 694, n. 25. This testimony provides slim support for this holding. Dr. Crist's testimony, if nothing else, is remarkable in its candor. He is a member of the National Abortion Federation,

"an organization of abortion providers and people interested in the pro-choice movement." 3 Record 415-416. He supported the use of D&E on 28-week pregnancies well into the third trimester. In some circumstances, he considered it a better procedure than other methods. See *id.*, at 427-428. His disinterest in protecting fetal life is evidenced by his agreement "that the abortion patient has a right not only to be rid of the growth, called a fetus in her body, but also has a right to a dead fetus." *Id.*, at 431. He also agreed that he "[n]ever ha[s] any intention of trying to protect the fetus, if it can be saved," *ibid.*, and finally that "as a general principle" "there should not be a live fetus." *id.*, at 435. Moreover, contrary to every other view, he thought a fetus could survive a D&E abortion. *Id.*, at 433-434. None of the other physicians who testified at the trial, those called both by the plaintiffs and defendants, considered that any use of D&E after viability was indicated. See 2 Record 21 (limiting use of D&E to under 18 weeks); 3 Record 381, 410-413 (Dr. Robert Kretzschmar) (D&E up to 17 weeks; would never perform D&E after 26 weeks); 5 Record 787 (almost "inconceivable" to use D&E after viability); 7 Record 52 (D&E safest up to 14 weeks); *id.*, at 110 (doctor not performing D&E past 20 weeks); *id.*, at 111 (risks of doing outpatient D&E equivalent to childbirth at 24 weeks). See also 8 Record 33, 78-81 (depar-

dents here on this issue, urge affirmance on the

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grounds that the second-physician requirement distorts the traditional doctor-patient relationship, and is both impractical and costly. They note that Missouri does not require two

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physicians in attendance for any other medical or surgical procedure, including childbirth or delivery of a premature infant.

The first physician's primary concern will be the life and health of the woman. Many third-trimester abortions in Missouri will be emergency operations," as the State permits these late abortions only when they are necessary to preserve the life or the health of the woman. It is not unreasonable for the State to

assume that during the operation the first physician's attention and skills will be directed to preserving the woman's health, and not to protecting the actual life of those fetuses who survive the abortion procedure. Viable fetuses will be in immediate and grave danger because of their premature birth. A second physician, in situations where Missouri permits third-trimester abortions, may be of assistance to the woman's physician in preserving the health and life of the child.

[3a] By giving immediate medical attention to a fetus that is delivered alive, the second physician will assure that the State's interests are protected more fully than the first physician alone would be able to do. And given the compelling interest that the State has in preserving life, we cannot say that the Missouri

tion of Dr. Willard Cates) (16 weeks latest D&E performed). Apparently Dr. Crist performed abortions only in Kansas, 3 Record 334, 368, 428, a State having no statutes comparable to § 188.030.1 and § 188.030.2. It is not clear whether he was operating under or familiar with the limitations imposed by Missouri law. Nor did he explain the circumstances when there were "contraindications" against the use of any of the procedures that could preserve viability, or whether his conclusory opinion was limited to emergency situations. Indeed, there is no record evidence that D&E ever will be the method that poses the least risk to the woman in those rare situations where there are compelling medical reasons for performing an abortion after viability. If there were such instances, they hardly would justify invalidating § 188.030.3.

In addition to citing Dr. Crist in its footnote, the District Court cited—with no elaboration—Dr. Schmidt. His testimony, reflecting no agreement with Dr. Crist, is enlightening. Although he conceded that the attendance of a second physician for a D&E abortion on a viable fetus was not necessary, he considered the point mostly theoretical, because he "simply [did] not believe that the question of viability comes up when D&E is an elected method of abortion." 5 Record 836. When reminded of Dr. Crist's earlier testimony, he

conceded the remote possibility of third-trimester D&E abortions, but stated: "I personally cannot conceive that as a significant practical point. It may be important legally, but [not] from a medical standpoint . . ." Ibid. Given that Dr. Crist's discordant testimony is wholly unsupported, the State's compelling interest in protecting a viable fetus justifies the second-physician requirement even though there may be the rare case when a physician may think honestly that D&E is required for the mother's health. Legislation need not accommodate every conceivable contingency.

8. There is no clearly expressed exception on the face of the statute for the performance of an abortion of a viable fetus without the second physician in attendance. There may be emergency situations where, for example, the woman's health may be endangered by delay. Section § 188.030.3 is qualified, at least in part, by the phrase "provided that it does not pose an increased risk to the life or health of the woman." This clause reasonably could be construed to apply to such a situation. Cf. *H. L. v Matheson*, 450 US 398, 407, n 14, 67 L Ed 2d 388 101 S Ct 1164 (1981) (rejecting argument that Utah statute might apply to individuals with emergency health care needs).

requirement of a second physician in those unusual

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circumstances where Missouri permits a third-trimester abortion is unconstitutional. Preserving the life of a viable fetus that is aborted may not often be possible,⁹ but the State legitimately may choose to provide safeguards for the comparatively few instances of live birth that occur. We believe the second-physician requirement reasonably furthers the State's compelling interest in protecting the lives of viable fetuses, and we reverse the judgment of the Court of Appeals holding that § 188.030.3 is unconstitutional.

IV

In regulating hospital services within the State, Missouri requires that "[a]ll tissue surgically removed with the exception of such tissue as tonsils, adenoids, hernial sacs and prepuces, shall be examined by a pathologist, either on the premises or by arrangement outside of the hospital." 13 Mo Admin Code § 50-20.030(3)(A)7 (1977). With respect to abortions, whether performed in hospitals or in some other facility, § 188.047 requires that a pathologist to

"file a copy of the tissue report with the state division of health

See n 2, supra. The pathologist also is required to "provide a copy of the report to the abortion facility or hospital in which the abortion was performed or induced." Thus, Missouri appears to require that tissue following abortions, as well as from almost all other surgery performed in hospitals, must be submitted to a pathologist, not merely examined by the performing doctor. The narrow question before us is whether the State lawfully also may require the tissue removed following

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abortions performed in clinic as well as in hospitals to be submitted to a pathologist.

On its face and in effect, § 188.047 is reasonably related to generally accepted medical standards and "further[s] important health-related state concerns." City of Akron, ante, at 430, 76 L Ed 2d 687, 103 S Ct 2481. As the Court of Appeals recognized, pathology examinations are clearly "useful and even necessary in some cases," because "abnormalities in the tissue may warn of serious, possibly fatal disorders." 655 F2d, at 870.¹⁰ As a rule, it is ac-

9. See American College of Obstetricians and Gynecologists (ACOG) Technical Bulletin No. 56, 4 (Dec 1979) (as high as 7% live-birth rate for intrauterine instillation of uterotonic agents); Stroh & Hinman, Reported Live Births Following Induced Abortion: Two and One-Half Years' Experience in Upstate New York, 126 Am J Obstet Gynecol 83, 83-84 (1976) (26 live births following saline induced-abortions; 9 following hysterotomy; 1 following oxytocin-induced abortion) (1 survival out of 38 live births); 5 Record 728 (50-62% mortality rate for fetuses 26 and 27 weeks); id., at 729 (25-92% mortality rate for fetuses 28 and 29 weeks); id., at 837 (50% mortality rate at 34 weeks).

10. A pathological examination is designed

to assist in the detection of fatal ectopic pregnancies, hydatidiform moles or other precancerous growths, and a variety of other problems that can be discovered only through a pathological examination. The general medical utility of pathological examinations is clear. See, ACOG, Standards for Obstetric-Gynecologic Services 52 (5th ed 1982) (1982 ACOG Standards); National Abortion Federation (NAF) Standards 6 (1981) (compliance with standards obligatory for NAF member facilities to remain in good standing; Brief for American Public Health Association as Amicus Curiae, OT 1982, Nos. 81-185, 81-746, 81-1172, p 29, n 6 (supporting the NAF standards for nonhospital abortion facilities as constituting "minimum standards").

cepted medical practice to submit all tissue to the examination of a pathologist." This is particularly important following abortion, because questions remain as to the long-range

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complications and their effect on subsequent pregnancies. See App 72-73 (testimony of Dr. Willard Cates, Jr.); Levin, Schoenbaum, Monson, Stubblefield, & Ryan, Association of Induced Abortion with Subsequent Pregnancy Loss, 243 JAMA 2495, 2499 (1980). Recorded pathology reports, in concert with abortion complication reports, provide a statistical basis for studying those complications. Cf. Planned Parenthood of Central Missouri v Danforth, 428 US 52, 81, 49 L Ed 2d 788, 96 S Ct 2831 (1976).

Plaintiffs argue that the physician

performing the abortion is as qualified as a pathologist to make the examination. This argument disregards the fact that Missouri requires a pathologist—not the performing physician—to examine tissue after almost every type of surgery. Although this requirement is in a provision relating to surgical procedures in hospitals, many of the same procedures included within the Missouri statute customarily are performed also in outpatient clinics. No reason has been suggested why the prudence required in a hospital should not be equally appropriate in such a clinic. Indeed, there may be good reason to impose stricter standards in this respect on clinics performing abortions than on hospitals.¹² As the testimony in the District

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Court indi-

11. ACOG's standards at the time of the District Court's trial recommended that a "tissue or operative review committee" should examine "all tissue removed at obstetric-gynecologic operations." ACOG, Standards for Obstetric-Gynecologic Services 13 (4th ed 1974). The current ACOG Standards also state as a general rule that, for all surgical services performed on an ambulatory basis, "[t]issue removed should be submitted to a pathologist for examination." 1982 ACOG Standards, at 52. Justice Blackmun's dissent, however, relies on the recent modification of these Standards as they apply to abortions. ACOG now provides an "exception to the practice" of mandatory examination by a pathologist and makes such examination for abortion tissue permissive. *Ibid.* Not surprisingly, this change in policy was controversial within the College. See 5 Record 799-800. ACOG found that "[n]o consensus exists regarding routine microscopic examination of aspirated tissue in every case," though it recognized—on the basis of inquiries made in 29 institutions—that in a majority of them a microscopic examination is performed in all cases. ACOG, Report of Committee on Gynecologic Practice, Item #6.2.1 (June 27-28, 1980).

12. The professional views that the plaintiffs find to support their position do not disclose whether consideration was given to the fact that not all abortion clinics, particularly inadequately regulated clinics, conform

to ethical or generally accepted medical standards. See *Bellotti v Baird*, 443 US 622, 641, n 21, 61 L Ed 2d 797, 99 S Ct 3035 (1979) (*Bellotti II*) (minors may resort to "incompetent or unethical" abortion clinics); *Planned Parenthood of Central Missouri v Danforth*, 428 US 52, 91, n 2, 49 L Ed 2d 788, 96 S Ct 2831 (1976) (Stewart, J., concurring). The *Sun-Times of Chicago*, in a series of special reports, disclosed widespread questionable practices in abortion clinics in Chicago, including the failure to obtain proper pathology reports. See: *The Abortion Profiteers*, *Chicago Sun-Times* 25-26 (Special Reprint 1978). It is clear, therefore, that a State reasonably could conclude that a pathology requirement is necessary in abortion clinics as well as in general hospitals.

In suggesting that we make from a "comfortable perspective" the judgment that a State constitutionally can require the additional cost of a pathology examination, Justice Blackmun's dissent suggests that we disregard the interests of the "woman on welfare or the unemployed teenager." *Post.* at 498, 76 L Ed 2d, at 749. But these women may be those most likely to seek the least expensive clinic available. As the standards of medical practice in such clinics may not be the highest, a State may conclude reasonably that a pathologist's examination of tissue is particularly important for their protection.

cates, medical opinion differs widely on this question. See 4 Record 623; 5 Record 749-750, 798-800, 845-847; n 11, *supra*. There is substantial support for Missouri's requirement. In this case, for example, Dr. Bernard Nathanson, a widely experienced abortion practitioner, testified that he requires a pathologist examination after each of the 60,000 abortions performed under his direction at the New York Center for Reproductive and Sexual Health. He considers it "absolutely necessary to obtain a pathologist's report on each and every specimen of tissue removed from abortion or for that matter from any other surgical procedure which involves the removal of tissue from the human body." App 143-144. See also *id.*, at 146-147 (testimony of Dr. Keitges); 5 Record 798-799 (testimony of Dr. Schmidt).¹³

[4a] In weighing the balance between protection of a woman's health and the comparatively small additional cost of a pathologist's examination, we cannot say that the Constitution requires that a State subordinate its interest in health to minimize to this extent the cost of abortions. Even in the early weeks of pregnancy, "[c]ertain regulations that have no significant impact on the woman's exercise of her right [to

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13. Justice Blackmun's dissent appears to suggest that § 188.047 is constitutionally infirm because it does not require microscopic examination, *post*, at 496-497, 76 L. Ed. 2d, at 748-749, but that misses the point of the regulation. The need is for someone other than the performing clinic to make an independent medical judgment on the tissue. See n 12, *supra*; 5 Record 750 (Dr. Pierre Keitges, a pathologist). It is reasonable for the State to assume that an independent pathologist is more likely to perform a microscopic examination than the performing doctor. See H. Cove, *Surgical Pathology of the Endometrium* 28 (1981) ("To the pathologist, abortions of

decide to have an abortion] may be permissible where justified by important state health objectives." *City of Akron*, *ante*, at 430, 76 L. Ed. 2d 687, 103 S. Ct. 2481. See *Danforth*, 428 U.S., at 80-81, 49 L. Ed. 2d 788, 96 S. Ct. 2831. We think the cost of a tissue examination does not significantly burden a pregnant woman's abortion decision. The estimated cost of compliance for plaintiff Reproductive Health Services was \$19.40 per abortion performed, 483 F. Supp. at 700, n 48, and in light of the substantial benefits that a pathologist's examination can have, this small cost clearly is justified. In *Danforth*, this Court unanimously upheld Missouri's recordkeeping requirement as "useful to the State's interest in protecting the health of its female citizens, and [as] a resource that is relevant to decisions involving medical experience and judgment." 428 U.S., at 81, 49 L. Ed. 2d 788, 96 S. Ct. 2831.¹⁴ We view the requirement for a pathology report as comparable and as a relatively insignificant burden. Accordingly, we reverse the judgment of the Court of Appeals on this issue.

V

As we noted in *City of Akron*, the relevant legal standards with respect

any sort are evaluated grossly and microscopically for the primary purpose of establishing a diagnosis of intrauterine pregnancy" (emphasis added).

14. The *Danforth* Court also noted that "[t]he added requirements for confidentiality with the sole exception for public health officers, and for retention for seven years, a period not unreasonable in length, assist and persuade us in our determination of the constitutional limits." 428 U.S., at 81, 49 L. Ed. 2d 788, 96 S. Ct. 2831. Missouri extends the identical safeguards found reassuring in *Danforth* to the pathology reports at issue here. See Mo. Rev. Stat. §§ 188.055.2, 188.060 (Supp. 1982).

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to parental-consent requirements are not in dispute. See ante, at 439, 76 L Ed 2d 687, 103 S Ct 2481; *Bellotti v Baird*, 443 US 622, 640-642, 643-644, 61 L Ed 2d 797, 99 S Ct 3035 (1979) (*Bellotti II*) (plurality opinion); id., at 656-657, 61 L Ed 2d 797, 99 S Ct 3035 (White, J., dissenting).¹⁵ A State's interest in

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protecting immature minors will sustain a requirement of a consent substitute, either parental or judicial. It is clear, however, that "the State must provide

an alternative procedure whereby a pregnant minor may demonstrate that she is sufficiently mature to make the abortion decision herself or that, despite her immaturity, an abortion would be in her best interests."¹⁶ *City of Akron*, ante, at 439-440, 76 L Ed 2d 687, 103 S Ct 2481.¹⁷ The issue here is one purely of statutory construction: whether Missouri

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provides a judicial alternative that is consistent with these established legal standards.¹⁸

15. The dissenters apparently believe that the issue here is an open one, and adhere to the views they expressed in *Bellotti II*. Post, at 503-504, 76 L Ed 2d, at 753. But those views have never been adopted by a majority of this Court, while a majority have expressed quite differing views. See *H. L. v Matheson*, 450 US 398, 67 L Ed 2d 388, 101 S Ct 1164 (1981); *Bellotti II*, (plurality opinion); 443 US, at 656-657, 61 L Ed 2d 797, 99 S Ct 3035 (White, J., dissenting).

16. The plurality in *Bellotti II* also required that the alternative to parental consent must "assure" that the resolution of this issue "will be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained." Id., at 644, 61 L Ed 2d 797, 99 S Ct 3035. Confidentiality here is assured by the statutory requirement that allows the minor to use her initials on the petition. Mo Rev Stat § 188.028.2(1) (Supp 1982). As to expedition of appeals, § 188.028.2(6) provides in relevant part:

"The notice of intent to appeal shall be given within twenty-four hours from the date of issuance of the order. The record on appeal shall be completed and the appeal shall be perfected within five days from the filing of notice to appeal. Because time may be of the essence regarding the performance of the abortion, the supreme court of this state shall, by court rule, provide for expedited appellate review of cases appealed under this section."

We believe this section provides the framework for a constitutionally sufficient means of expediting judicial proceedings. Immediately after the effective date of this statutory enactment, the District Court enjoined enforcement. No unemancipated pregnant minor has been required to comply with this section. Thus, to this point in time, there has been no

need for the State Supreme Court to promulgate rules concerning appellate review. There is no reason to believe that Missouri will not expedite any appeal consistent with the mandate in our prior opinions.

17. Cf. *H. L. v Matheson*, supra, at 406-407, and n 14, 411, 67 L Ed 2d 388, 101 S Ct 1164 (upholding a parental notification requirement but not extending the holding to mature or emancipated minors or to immature minors showing such notification detrimental to their best interests). The lower courts found that § 188.028's notice requirement was unconstitutional. 655 F2d, at 873; 483 F Supp, at 701. The State has not sought review of that judgment here. Thus, in the posture in which it appears before this Court for review, § 188.028 contains no requirement for parental notification.

18. The Missouri statute also exempts "emancipated" women under the age of 18 both from the requirement of parental consent and from the alternative requirement of a judicial proceeding. Plaintiffs argue that the word "emancipated" in this context is void for vagueness, but we disagree. Cf. *H. L. v Matheson*, supra, at 407, 67 L Ed 2d 388, 101 S Ct 1164 (using word to describe a minor). Although the question whether a minor is emancipated turns upon the facts and circumstances of each individual case, the Missouri courts have adopted general rules to guide that determination, and the term is one of general usage and understanding in the Missouri common law. See *Black v Cole*, 626 SW2d 397, 398 (Mo App 1981) (quoting 67 CJS, Parent and Child § 86, p 811 (1950)); *In re Marriage of Heddy*, 535 SW2d 276, 279 (Mo App 1976) (same); *Wurth v Wurth*, 313 SW2d 161, 164 (Mo App 1958) (same), rev'd on other grounds, 322 SW2d 745 (Mo 1959).

The Missouri statute, § 188.028.2,¹⁹ in relevant part, provides:

"(4) In the decree, the court shall for good cause:

"(a) Grant the petition for majority rights for the purpose of consenting to the abortion; or

"(b) Find the abortion to be in the best interests of the minor and give judicial consent to the abortion, setting forth the grounds for so finding; or

"(c) Deny the petition, setting forth the grounds on which the petition is denied."

On its face, § 188.028.2(4) authorizes Juvenile Courts²⁰ to choose among any of the alternatives outlined in the section.

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The Court of Appeals concluded that a denial of the petition permitted in subsection (c) "would initially require the court to find that the minor was not emancipated and was not mature enough to make her own decision and that an abortion was not in her best interests." 655 F2d, at 858. Plaintiffs contend that this interpretation is unreasonable. We do not agree.

[5a] Where fairly possible, courts should construe a statute to avoid a danger of unconstitutionality. The Court of Appeals was aware, if the statute provides discretion to deny permission to a minor for any "good cause," that arguably it would violate the principles that this Court has set forth. *Ibid.* It recognized, however, that before exercising any option, the Juvenile Court must receive evidence on "the emotional development, maturity, intellect and understanding of the minor." Mo Rev Stat § 188.028.2(3) (Supp 1982). The court then reached the logical conclusion that "findings and the ultimate denial of the petition must be supported by a showing of 'good cause.'" 655 F2d, at 858. The Court of Appeals reasonably found that a court could not deny a petition "for good cause" unless it first found—after having received the required evidence—that the minor was not mature enough to make her own decision. See *Bellotti II*, 443 US, at 643–644, 647–648, 61 L Ed 2d 797, 99 S Ct 3035 (plurality opinion). We conclude that the Court of Appeals correctly interpreted the statute and that § 188.028, as interpreted, avoids any constitutional infirmities.²¹

19. See n 4, *supra*. This Court in *Danforth* held unconstitutional Missouri's parental-consent requirement for all unmarried minors under the age of 18. 428 US, at 75, 49 L Ed 2d 788, 96 S Ct 2831. In response to our decision, Missouri enacted the section challenged here. This new statute became effective shortly before our decision in *Bellotti II*.

20. We have indicated in prior opinions that a minor should have access to an "independent decisionmaker." *H. L. v Matheson*, *supra*, at 420, 67 L Ed 2d 388, 101 S Ct 1164 (Powell, J., concurring). Missouri has provided for a judicial decisionmaker. We therefore need not consider whether a qualified and independent nonjudicial decisionmaker would be appropriate. Cf. *Bellotti II*, 443 US, at 643, n 22, 61 L Ed 2d 797, 99 S Ct 3035.

21. Plaintiffs also argue that, in light of the

ambiguity of § 188.028.2(4) as evidenced by the differing interpretations placed upon it, the appropriate course of judicial restraint is abstention. This Court has found such an approach appropriate. See *Bellotti v Baird*, 428 US 132, 146–147, 49 L Ed 2d 844, 96 S Ct 2857 (1976) (*Bellotti I*). Plaintiffs did not, however, argue in the Court of Appeals that the court should abstain, and Missouri has no certification procedure whereby this Court can refer questions of state statutory construction to the State Supreme Court. See 655 F2d, at 861, n 20; 17 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 4248, p 525, n 29 (1978 and Supp 1982). Such a procedure "greatly simplified" our analysis in *Bellotti I*, *supra*, at 151, 49 L Ed 2d 844, 96 S Ct 2857. Moreover, where, as here, a statute is susceptible to a fair con-

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VI

Akron and the Court's prior decisions.

The judgment of the Court of Appeals, insofar as it invalidated Missouri's second-trimester hospitalization requirement and upheld the State's parental- and judicial-consent provision, is affirmed. The judgment invalidating the requirement of a pathology report for all abortions and the requirement that a second physician attend the abortion of any viable fetus is reversed. We vacate the judgment upholding an award of attorney's fees for all hours expended by plaintiffs' attorneys and remand for proceedings consistent with *Hensley v Eckerhart*, 461 US 424, 76 L Ed 2d 4C, 103 S Ct 1933 (1983).

It is so ordered.

Justice Blackmun, with whom Justice Brennan, Justice Marshall, and Justice Stevens join, concurring in part and dissenting in part.

The Court's decision today in *Akron v Akron Center for Reproductive Health, Inc.*, ante, p 416, 76 L Ed 2d 687, 103 S Ct 2481, invalidates the city of Akron's hospitalization requirement and a host of other provisions that infringe on a woman's decision to terminate her pregnancy through abortion. I agree that Missouri's hospitalization requirement is invalid under the Akron analysis, and I join Parts I and II of Justice Powell's opinion in the present cases. I do not agree, however, that the remaining Missouri statutes challenged in these cases satisfy the constitutional standards set forth in

I

Missouri law provides that whenever an abortion is performed, a tissue sample must be submitted to a "board eligible

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or certified pathologist" for a report. Mo Rev Stat § 188.047 (Supp 1982). This requirement applies to first-trimester abortions as well as to those performed later in pregnancy. Our past decisions establish that the performance of abortions during the first trimester must be left "'free of interference by the State.'" *Akron*, ante, at 430, 76 L Ed 2d 687, 103 S Ct 2481, quoting *Roe v Wade*, 410 US 113, 163, 35 L Ed 2d 147, 93 S Ct 705 (1973). As we have noted in *Akron*, this does not mean that every regulation touching upon first-trimester abortions is constitutionally impermissible. But to pass constitutional muster, regulations affecting first-trimester abortions must "have no significant impact on the woman's exercise of her right" and must be "justified by important state health objectives." *Akron*, ante, at 430, 76 L Ed 2d 687, 103 S Ct 2481; see ante, at 489-490, 76 L Ed 2d, at 744.

Missouri's requirement of a pathologist's report is not justified by important health objectives. Although pathology examinations may be "useful and even necessary in some cases," ante, at 487, 76 L Ed 2d, at 742, Missouri requires more than a pathology examination and a

struction that obviates the need to have the state courts render the saving construction,

there is no reason for federal courts to abstain.

pathology report; it demands that the examination be performed and the report prepared by a "board eligible or certified pathologist" rather than by the attending physician. Contrary to Justice Powell's assertion, *ibid.*, this requirement of a report by a pathologist is not in accord with "generally accepted medical standards." The routine and accepted medical practice is for the attending physician to perform a gross (visual) examination of any tissue removed during an abortion. Only if the physician detects abnormalities is there a need to send a tissue sample to a pathologist. The American College of Obstetricians and Gynecologists (ACOG) does not recommend an examination by a pathologist in every case:

"In the situation of elective termination of pregnancy, the attending physician should record a description of the gross products. Unless definite embryonic or fetal parts can be identified, the products of elective interruptions

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of pregnancy must be submitted to a pathologist for gross and microscopic examination.

". . . Aspirated tissue should be examined to ensure the presence of villi or fetal parts prior to the patient's release from the facility. If villi or fetal parts are not identified with certainty, the tissue spec-

imen must be sent for further pathologic examination
ACOG, Standards for Obstetric-Gynecologic Services 52, 54 (1982)

Nor does the National Abortion Federation believe that such an examination is necessary:

"All tissue must be examined grossly at the time of the abortion procedure by a physician or trained assistant and the results recorded in the chart. In the absence of visible fetal parts or placenta upon gross examination, obtained tissue may be examined under a low power microscope for the detection of villi. If this examination is inconclusive, the tissue should be sent to the nearest suitable pathology laboratory for microscopic examination." National Abortion Federation Standards 5 (1981) (emphasis deleted).

As the Court of Appeals pointed out, there was expert testimony at trial that a nonpathologist physician is as capable of performing an adequate gross examination as is a pathologist, and that the "abnormalities which are of concern" are

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readily detectable by a physician. 655 F2d 848, 871, n 37 (CA8 1981; see App 135.² While a pathologist may be better able to perform a microscopic examination, Missouri law does not require a microscopic examination unless "fetal parts or pla-

1. See also ACOG, Standards for Obstetric-Gynecologic Services 66 (1982):

"Tissue removed should be submitted to a pathologist for examination. . . . An exception to the practice may be in elective terminations of pregnancy in which definitive embryonic or fetal parts can be identified. In such instances, the physician should record a description of the gross products. Unless

definite embryonic or fetal parts can be identified, the products of elective interruptions of pregnancy must be submitted to a pathologist for gross and microscopic examination

2. The District Court made no findings on this point, noting only that some witnesses for the State had testified that "pathology should be done" for every abortion. 483 F Supp 679, 700, n 49 (WD Mo 1980).

centa are not identified." 13 Mo Admin Code § 50-151.030(1) (1981). Thus, the effect of the Missouri statute is to require a pathologist to perform the initial gross examination, which is normally the responsibility of the attending physician and which will often make the pathologist's services unnecessary.

On the record before us, I must conclude that the State has not "met its burden of demonstrating that [the pathologist requirement] further[s] important health-related State concerns." Akron, ante, at 430, 76 L Ed 2d 687, 103 S Ct 2481.³ There has been no showing that tissue examinations by a pathologist do more to protect health than examinations by a nonpathologist physician. Missouri does not require pathologists' reports for any other surgical procedures performed in clinics, or for minor surgery performed in hospitals. 13 Mo Admin Code § 50-20.030(3)(A)(7) (1977). Moreover, I cannot agree with Justice Powell that Missouri's pathologist requirement has "no significant impact" ante, at 489, 76 L Ed 2d, at 744, on a woman's exercise of her right to an abortion. It is undisputed that this requirement may increase the cost of a first-trimester abortion by as much as \$40. See 483 F Supp 679, n 48 (WD Mo 1980). Although this increase may seem insignificant from the Court's comfortable perspective, I cannot say that it is

equally insignificant to every woman seeking an abortion.

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For the woman on welfare or the unemployed teenager, this additional cost may well put the price of an abortion beyond reach.⁴ Cf. Harper v Virginia Board of Elections, 383 US 663, 668, 16 L Ed 2d 109, 86 S Ct 1079 (1966) (\$1.50 poll tax "excludes those unable to pay"); Burns v Ohio, 360 US 252, 255, 257, 3 L Ed 2d 1209, 79 S Ct 1164, 10 Ohio Ops 2d 404, 84 Ohio L Abs 570 (1959) (\$20 docket fee "foreclose[s] access" to appellate review for indigents).

In Planned Parenthood of Central Missouri v Danforth, 428 US 52, 81, 49 L Ed 2d 788, 96 S Ct 2831 (1976), the Court warned that the minor recordkeeping requirements upheld in that case "perhaps approach[ed] impermissible limits." Today in Akron, we have struck down restrictions on first-trimester abortions that "may in some cases add to the cost of providing abortions." Ante, at 447-448, 76 L Ed 2d 687, 103 S Ct 2481; see ante, at 449-51, 76 L Ed 2d 687, 103 S Ct 2481. Missouri's requirement of a pathologist's report unquestionably adds significantly to the cost of providing abortions, and Missouri has not shown that it serves any substantial health-related purpose. Under these circumstances, I would hold that constitutional limits have been exceeded.

3. Justice Powell appears to draw support from the facts that "questionable practices" occur at some abortion clinics, while at others "the standards of medical practice . . . may not be the highest." Ante, at 489, n 12, 76 L Ed 2d, at 743. There is no evidence, however, that such questionable practices occur in Missouri.

4. A \$40 pathologist's fee may increase the price of a first-trimester abortion by 20% or more. See 655 F2d 848, 869 n 35 (1981) (cost of first-trimester abortion at Reproductive

Health Services is \$170); F. Jaffe, B. Lindheim, & P. Lee, Abortion Politics: Private Morality and Public Policy 36 (1981) (cost of first-trimester clinic abortion ranges from approximately \$185 to \$235); Henshaw, Free-standing Abortion Clinics: Services, Structure, Fees, 14 Family Planning Perspectives 248, 255 (1982) (average cost of first-trimester clinic abortion is \$190); National Abortion Federation Membership Directory 18-19 (1982/1983) (NAF clinics in Missouri charge \$180 to \$225 for first-trimester abortion).

II

In Missouri, an abortion may be performed after viability only if necessary to preserve the life or health of the woman. Mo Rev Stat § 188.030.1 (Supp 1982). When a postviability abortion is performed, Missouri law provides that "there [must be] in attendance a [second] physician . . . who

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shall take control of and provide immediate medical care for a child born as a result of the abortion." Mo Rev Stat § 188.030.3 (Supp 1982). The Court recognized in *Roe v Wade*, 410 US, at 164-165, 35 L Ed 2d 147, 93 S Ct 705, that a State's interests in preserving maternal health and protecting the potentiality of human life may justify regulation and even prohibition of postviability abortions, except those necessary to preserve the life and health of the mother. But regulations governing postviability abortions, like those at any other stage of pregnancy, must be "tailored to the recognized state interests." *Id.*, at 165, 35 L Ed 2d 147, 93 S Ct 705; see *H. L. v Matheson*, 450 US 398, 413, 67 L Ed 2d 388, 101 S Ct 1164 (1981) ("statute plainly serves important state interests, [and] is narrowly drawn to protect only those interests"); *Roe*, 410 US, at 155, 35 L Ed 2d 147, 93 S Ct 705 ("legislative enactments must be narrowly drawn

to express only the legitimate state interests at stake").

A

The second-physician requirement is upheld in these cases on the basis that it "reasonably furthers the State's compelling interest in protecting the lives of viable fetuses." *Ante*, at 486. 76 L Ed 2d, at 742. While I agree that a second physician indeed may aid in preserving the life of a fetus born alive, this type of aid is possible only when the abortion method used is one that may result in a live birth. Although Missouri ordinarily requires a physician performing a postviability abortion to use the abortion method most likely to preserve fetal life, this restriction does not apply when this method "would present a greater risk to the life and health of the woman." Mo Rev Stat § 188.030.2 (Supp 1982).

The District Court found that the dilatation and evacuation (D&E) method of abortion entails no chance of fetal survival, and that it will nevertheless be the method of choice for some women who need postviability abortions. In some cases, in other words, maternal health considerations will preclude the use of procedures that might result in a live birth. 483

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F Supp, at 694. When

5. The District Court relied on the testimony of Doctors Robert Crist and Richard Schmidt. Doctor Crist testified that in some instances abortion methods other than D&E would be "absolutely contraindicated" by the woman's health condition. 3 Record 438-439, giving the example of a recent patient with hemolytic anemia that would have been aggravated by the use of prostaglandins or other labor-inducing abortion methods, *id.*, at 428. Doctor Schmidt testified that "[t]here very well may be" situations in which D&E would be used because other methods were contraindicated. 5 Record 836. Although Doctor

Schmidt previously had testified that a postviability D&E abortion was "almost inconceivable," this was in response to a question by the State's attorney regarding whether D&E would be used "[a]bsent the possibility that there is extreme contraindication for the use of prostaglandins or saline, or of hysterotomy." *Id.*, at 787. Any inconsistencies in Doctor Schmidt's testimony apparently were resolved by the District Court in the plaintiffs' favor.

The Court of Appeals upheld the District Court's factual finding that health reasons sometimes would require the use of D&E for

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a D&E abortion is performed, the second physician can do nothing to further the State's compelling interest in protecting potential life. His presence is superfluous. The second-physician requirement thus is overbroad and "imposes a burden on women in cases where the burden is not justified by any possibility of survival of the fetus." 655 F2d, at 865-866.

Justice Powell apparently believes that the State's interest in preserving potential life justifies the State in requiring a second physician at all postviability abortions because some methods other than D&E may result in live births. But this fact cannot justify requiring a second physician to attend an abortion at which the chance of a live birth is nonexistent. The choice of method presumably will be made in advance,⁶ and any need for a second physician disappears when

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the woman's health requires that the choice be D&E. Because the statute is not tailored to protect the State's

legitimate interests, I would hold it invalid.⁷

B

In addition, I would hold that the statute's failure to provide a clear exception for emergency situations renders it unconstitutional. As Justice Powell recognizes, ante, at 485, n 8, 76 L Ed 2d, at 741, an emergency may arise in which delay could be dangerous to the life or health of the woman. A second physician may not always be available in such a situation; yet the statute appears to require one. It states, in unqualified terms, that a postviability abortion "*shall* be performed . . . *only* when there is in attendance" a second physician who "*shall* take control of" any child born as a result of the abortion, and it imposes certain duties on "the physician *required*" by this section to be in attendance." Mo Rev Stat §188.030.3 (Supp 1982) (emphasis added). By requiring the attendance of a second physician even when the resulting delay may be harmful to the health of the pregnant woman, the statute

postviability abortions. 665 F2d, at 865. Absent the most exceptional circumstances, we do not review a District Court's factual findings in which the Court of Appeals has concurred. *Branti v Finkel*, 445 US 507, 512, n 6 63 L Ed 2d 574, 100 S Ct 1287 (1980).

6. In addition to requiring the physician to select the method most likely to preserve fetal life, so long as it presents no greater risk to the pregnant woman, Missouri requires that the physician "certify in writing the available method or techniques considered and the reasons for choosing the method or technique employed." Mo Rev Stat §188.030.2 (Supp 1982). This ensures that the choice of method will be a reasoned one.

7. The State argues that its second-physician requirement is justified even when D&E is used, because "[i]f the statute specifically excepted D&E procedures, abortionists would

be encouraged to use it more frequently to avoid the expense of a second physician, to ensure a dead fetus, to prevent the presence of a second professional to observe malpractice or the choice of a questionable procedure from a safety viewpoint, a fetus-destroying procedure, or to avoid their own awakening to concern for the newborn." Brief for Petitioners in No. 81-1623, p 44. The Court rejected this purported justification for a second physician in *Doe v Bolton*, 410 US 179, 199, 35 L Ed 2d 201, 93 S Ct 739 (1973): "If a physician is licensed by the State, he is recognized by the State as capable of exercising acceptable clinical judgment. If he fails in this, professional censure and deprivation of his license are available remedies. Required acquiescence by co-practitioners has no rational connection with a patient's needs and unduly infringes on the physician's right to practice."

impermissibly fails to make clear "that the woman's life and health

must always prevail over the fetus' life and health when they conflict." *Colautti v Franklin*, 439 US 379, 400, 58 L Ed 2d 596, 99 S Ct 675 (1979).

Justice Powell attempts to cure this defect by asserting that the final clause of the statute, requiring the two physicians to "take all reasonable steps . . . to preserve the life and health of the viable unborn child; provided that it does not pose an increased risk to the life or health of the woman," could be construed to permit emergency postviability abortions without a second physician. *Ante*, at 485, n 8, 76 L Ed 2d, at 741. This construction is contrary to the plain language of the statute; the clause upon which Justice Powell relies refers to the duties of both physicians during the performance of the abortion, but it in no way suggests that the second physician may be dispensed with.

Moreover, since Justice Powell's proposed construction is not binding on the courts of Missouri,⁸ a physician performing an emergency post-

viability abortion cannot rely on it with any degree of confidence. The statute thus remains impermissibly vague; it fails to inform the physician whether he may proceed with a postviability abortion in an emergency, or whether he must wait for a second physician even if the woman's life or health will be further imperiled by the delay. This vagueness may well have a severe chilling effect on the physician who perceives the patient's need for a postviability abortion. In *Colautti v Franklin*, we considered a statute that failed to specify whether it "require[d] the physician to make a 'trade-off' between the woman's health and additional percentage points of fetal survival." 439 US, at 400, 58 L Ed 2d 596, 99 S Ct 675. The Court held there that "where conflicting duties of this magnitude are involved, the State, at the least, must proceed with greater precision before it may subject a physician to possible

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criminal sanctions." *Id.*, at 400-401, 58 L Ed 2d 596, 99 S Ct 675.⁹ I would apply that reasoning here, and hold Missouri's second-physician requirement invalid on this ground as well.¹⁰

8. "Only the [Missouri] courts can supply the requisite construction, since of course 'we lack jurisdiction authoritatively to construe state legislation.'" *Gooding v Wilson*, 405 US 518, 520, 31 L Ed 2d 408, 92 S Ct 1103 (1972), quoting *United States v Thirty-seven Photographs*, 402 US 363, 369, 28 L Ed 2d 822, 91 S Ct 1400 (1971).

9. A physician who fails to comply with Missouri's second-physician requirement faces criminal penalties and the loss of his license. *Mo Rev Stat* §§ 188.065, 188.075 (1978 and Supp 1982).

10. Because I would hold the statute unconstitutional on these grounds, I do not reach the question whether Missouri's second-physician requirement impermissibly interferes with the doctor-patient relationship. I note, however, that Missouri does not require attendance of a second physician at any other medical procedure, including a premature

birth. There was testimony at trial that a newborn infant, whether the product of a normal birth or an abortion, ordinarily remains the responsibility of the woman's physician until he turns its care over to another. App 133; see ACOG, *Standards for Obstetric-Gynecologic Services* 31 (5th ed 1982): "The individual who delivers the baby is responsible for the immediate post-delivery care of the newborn until another person assumes this duty".

This allocation of responsibility makes sense. Consultation and teamwork are fundamental in medical practice, but in an operating room a patient's life or health may depend on split-second decision by the physician. If responsibility and control must be shared between two physicians with the lines of authority unclear, precious moments may be lost to the detriment of both woman and child.

III

Missouri law prohibits the performance of an abortion on an unemancipated minor absent parental consent or a court order. Mo Rev Stat § 188.028 (Supp 1982).

Until today, the Court has never upheld "a requirement of a consent substitute, either parental or judicial," ante, at 491, 76 L Ed 2d, at 745. In *Planned Parenthood of Central Missouri v Danforth*, 428 US, at 74, 49 L Ed 2d 788, 96 S Ct 2831, the Court invalidated a parental-consent requirement on the ground that "the State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent." In *Bellotti v Baird*, 443 US 622, 61 L Ed 2d 797, 99 S Ct 3035 (1979) (*Bellotti II*), eight Justices [462 US 504]

agreed that a Massachusetts statute permitting a judicial veto of a mature minor's decision to have an abortion was unconstitutional. See *id.*, at 649-350, 61 L Ed 2d 797, 99 S Ct 3035 (opinion of Powell, J.); *id.*, at 654-656, 61 L Ed 2d 797, 99 S Ct 3035 (opinion of Stevens, J.). Although four Justices stated in *Bellotti II* that an appropriately structured judicial-consent requirement would be constitutional, *id.*, at 647-648, 61 L Ed 2d 797, 99 S Ct 3035 (opinion of Powell, J.), this statement was not necessary to the result of the case and did not command a majority. Four other Justices concluded that any judicial-consent stat-

ute would suffer from the same flaw the Court identified in *Danforth*: it would give a third party an absolute veto over the decision of the physician and his patient. 443 US, at 655-656, 61 L Ed 2d 797, 99 S Ct 3035 (opinion of Stevens, J.).

I continue to adhere to the views expressed by Justice Stevens in *Bellotti II*:

"It is inherent in the right to make the abortion decision that the right may be exercised without public scrutiny and in defiance of the contrary opinion of the sovereign or other third parties. . . . As a practical matter, I would suppose that the need to commence judicial proceedings in order to obtain a legal abortion would impose a burden at least as great as, and probably greater than, that imposed on the minor child by the need to obtain the consent of the parent. Moreover, once this burden is met, the only standard provided for the judge's decision is the best interest of the minor. That standard provides little real guidance to the judge, and his decision must necessarily reflect personal and societal values and mores whose enforcement upon the minor—particularly when contrary to her own informed and reasonable decision—is fundamentally at odds with privacy interests underlying the constitutional protection afforded to her decision." *Ibid.* (footnote omitted).

Because Mo Rev Stat § 188.028 (Supp 1982) permits a parental or

judicial veto of a minor's decision to obtain an abortion, I would hold it unconstitutional.

[462 US 505]

Justice O'Connor, with whom Justice White and Justice Rehnquist join, concurring in part in the judgment and dissenting in part.

For reasons stated in my dissent in *Akron v Akron Center for Reproductive Health*, ante, p 416, 76 L Ed 2d 687, 103 S Ct 2481, I believe that the second-trimester hospitalization requirement imposed by § 188.025 does not impose an undue burden on the limited right to undergo an abortion. Assuming, arguendo, that the requirement was an undue burden, it would nevertheless "reasonably relat[e] to the preservation and protection of maternal health." *Roe v Wade*, 410 US 113, 163, 35 L Ed 2d 147, 93 S Ct 705 (1973). I therefore dissent from the Court's judgment that the requirement is unconstitutional.

[3b] I agree that the second-physician requirement contained in § 188.030.3 is constitutional because the State possesses a compelling interest in protecting and preserving fetal life, but I believe that this state

interest is extant throughout pregnancy. I therefore concur in the judgment of the Court.

[4b] I agree that the pathology-report requirement imposed by § 188.047 is constitutional because it imposes no undue burden on the limited right to undergo an abortion. Because I do not believe that the validity of this requirement is contingent in any way on the trimester of pregnancy in which it is imposed, I concur in the judgment of the Court.

[5b] Assuming, arguendo, that the State cannot impose a parental veto on the decision of a minor to undergo an abortion, I agree that the parental-consent provision contained in § 188.028 is constitutional. However, I believe that the provision is valid because it imposes no undue burden on any right that a minor may have to undergo an abortion. I concur in the judgment of the Court on this issue.

I also concur in the Court's decision to vacate and remand on the issue of attorney's fees in light of *Hensley v Eckerhart*, 461 US 424, 76 L Ed 2d 40, 103 S Ct 1933 (1983).

Mo. Stat. Ann.

188.047. Tissue sample authorized—pathologist to file report, copies furnished.—A representative sample of tissue removed at the time of abortion shall be submitted to a * board eligible or certified pathologist, who shall file a copy of the tissue report with the state department of health, and who shall provide a copy of the report to the abortion facility or hospital in which the abortion was performed or induced and the pathologist's report shall be made a part of the patient's permanent record.

(L. 1979 H.B. 523, 626 & 902)
Effective 6-29-79

* Word "a" does not appear in original rolls.

(1983) Statute requiring pathology reports following all abortions is constitutional because it is reasonably related to important health-related state concerns. *Planned Parenthood of Kansas City, Mo. v. Ashcroft*, 103 S.Ct. 2517.

188.055. Forms to be supplied to health facilities and physicians.—1. Every abortion facility, hospital, and physician shall be supplied with forms by the department of health for use in regards to the consents and reports required by sections 188.010 to 188.085. A purpose and function of such consents and reports shall be the preservation of maternal health and life by adding to the sum of medical knowledge through the compilation of relevant maternal health and life data and to monitor all abortions performed to assure that they are done only under and in accordance with the provisions of the law.

2. All information obtained by physician, hospital, or abortion facility from a patient for the purpose of preparing reports to the department of health under sections 188.010 to 188.085 or reports received by the department of health shall be confidential and shall be used only for statistical purposes. Such records, however, may be inspected and health data acquired by local, state, or national public health officers.
(L. 1974 H.B. 1211 § 10, A.L. 1979 H.B. 523, 626 & 902)
Effective 6-29-79

188.060. Records to be retained for seven years.—All medical records, reports, and other documents required to be kept under sections 188.010 to 188.085 shall be maintained in the permanent files of the abortion facility or hospital in which the abortion was performed for a period of seven years.

(L. 1974 H.B. 1211 § 11, A.L. 1979 H.B. 523, 626 & 902)
Effective 6-29-79

188.070. Breach of confidentiality prohibited.—Any physician or other person who fails to maintain the confidentiality of any records or reports required under sections 188.010 to 188.085 is guilty of a misdemeanor and, upon conviction, shall be punished as provided by law.
(L. 1974 H.B. 1211 § 13)
Effective 6-14-74

188.075. Violation of sections 188.010 to 188.085 a class A misdemeanor.—Any person who contrary to the provisions of sections 188.010 to 188.085 knowingly performs or aids in the performance of any abortion or knowingly fails to perform any action required by sections 188.010 to 188.085 shall be guilty of a class A misdemeanor and, upon conviction, shall be punished as provided by law.
(L. 1974 H.B. 1211 § 14, A.L. 1979 H.B. 523, 626 & 902)
Effective 6-29-79

S B

501

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/15/90

FURTHER: Judiciary
C & R A

Date of 5-Day Notice: 2/22/90
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/27/90

Labor and Commerce Committee considered SB 501

Act relating to the retail sale of pull-tabs, tickets, and cards for charitable gaming activities.

and recommended:

- replace with _____ CS SB 501 same title
- attached amendment(s) new title
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to Finance

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

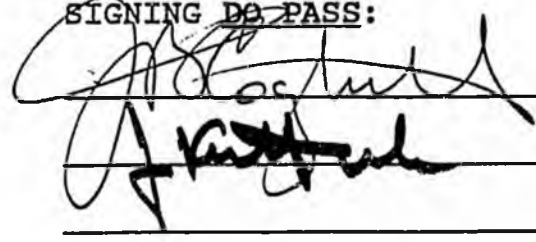
- fiscal note(s) _____
- CSS 8501 Dept of Commerce, 3/26/90
- SB 501 Dept of Commerce, 2/28/90

- zero fiscal note(s) _____
- _____
- _____

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:



OTHER RECOMMENDATIONS:


Chair: Signature and Recommendation

Senate Bill 501: "An Act relating to the retail sale of pull-tabs, tickets, and cards for charitable gaming activities."

The department was given responsibility for administration of the Alaska Gaming Reform Act in July of 1989. Since that time, the department has been actively engaged bringing stability and equality of enforcement to the charitable gaming industry.

One of the areas of concern to the department has been the so-called "third party vendor" issue. Presently, across the state, both permittees and operators have turned to vendors (e.g., retail outlets, bars, restaurants) to sell pull-tabs on their behalf. The department has found no specific statutory authorization for these vendor sales. As a result, the department gave notice late last year of its belief that legislation was needed if vendor sales were to be allowed.

Of major concern to the department has been the unregulated nature of vendor sales. The concerns discussed below have prompted our belief that if vendor participation in charitable gaming is to be authorized by the Legislature, then it must be strictly regulated.

1. Competition for prime vendor locations has increased the amount of compensation charged permittees by vendors to the detriment of the charities (some vendors are now asking and getting in excess of 50% of pull-tab proceeds). Limits must be placed on the amount of allowable vendor compensation in order to both eliminate "bidding" for locations by permit holders and ensure that an acceptable share of gaming proceeds is returned to those nonprofit organizations issued gaming permits. Most other states do limit the amount of compensation a vendor can charge.
2. There is no penalty or regulation presently in place that penalizes the unscrupulous vendor. We have become increasingly aware of cases where vendors have failed to pay permittees any share of the proceeds from the sale of pull-tabs. Under the present gaming law, there is no protection for the permittee in such cases. The permittee must sue the vendor to collect the gaming proceeds due the permittee.
3. Vendors have shouldered responsibility for ordering and purchasing pull-tabs from pull-tab distributors, bypassing the permittee. As a result, permittees have lost accountability for the pull-tab sales conducted under the auspices of their permits. We have investigated cases in which a permittee was unaware of pull-tab purchases made by its vendor. In addition, we recently had a case in which a vendor continued to order pull-tabs from a distributor after the permittee had removed its permit from the vendor's premises because the distributor was unaware of the permittee's action to end its relationship with that vendor.

Most importantly, please note that the department's proposed language limits vendor sales to the sale of pull-tabs.

To allow vendors to get into the business of selling more than pull-tabs will effectively guarantee the additional proliferation of gaming activities in bars, restaurants, retail stores, and "gaming parlors" in malls or other storefronts throughout Alaska.

At this point in time, permittees and operators have only expressed a desire to see pull-tab sales by vendors authorized. We see no need to greatly expand the role of vendor sales in this state by including vendor sales for any and all games beyond those vendor sales already recognized and authorized under AS 05.15 (i.e., for ice classics).

The department's proposals include:

1. vendor registration by the permittee or operator;
2. issuance of an endorsement to a permittee's or operator's license that authorizes a vendor to sell pull-tabs on behalf of the permittee or operator;
3. a cap of 30% of ideal net on the amount that a vendor can charge a permittee or operator to compensate the vendor for selling pull-tabs on their behalf;
4. the requirement that the vendor pay the agreed upon amount of profit to the permittee or operator at the time of delivery of a pull-tab series to the vendor for sale;
5. payment into the charitable gaming surety fund by the registered vendor;
6. the requirement that a vendor and permittee or operator enter into a written contract;
7. the provision that only a permittee or operator may supply pull-tabs to a vendor;
8. a provision prohibiting an employee of a vendor from purchasing a pull-tab from any series sold by the vendor;
9. a prohibition that the owner or manager of a vendor who is also a member of permittee organization or a municipal officer may not enter into a contract to sell pull-tabs on behalf of that organization or municipality for compensation;
10. provisions to clarify that a distributor may not deal directly with a vendor; and

Not surprisingly then, the department approaches a review of SB 501 with the consequences of unregulated vendor activity at the forefront of its thoughts. From that perspective, SB 501 clearly lacks the kind of specific regulatory language needed to provide justifiable controls over this very active area of charitable gaming and would curtail our ability to properly administer the program.

In addition, we question the bill because its language is so broad that the bill, however unintentionally, considerably expands the list of persons who could become involved in charitable gaming in this state.

If the title of a bill is any indication of its scope, then SB 501's title suggests it only addresses the "retail" sale of pull-tabs, tickets, and cards. However, no limitation to retail businesses is actually found in the proposed new section. Indeed, it simply says "a person," other than a permittee or an operator, may sell pull-tabs or other gaming tickets and cards. Under state law the word "person" is quite broad and encompasses any and all corporations, businesses, associations, partnerships, natural persons, etc., regardless of residency.

Thus, under the proposed language of SB 501, there would be no reason, for instance, for anyone to become licensed as an operator: they could simply function as a sales vendor. Also, organizations denied a charitable gaming permit because, for example, they did not meet the criteria for a permit could simply opt instead to sell gaming pull-tabs, tickets, or cards for those nonprofit organizations that did have a permit. Under this scenario, such organizations could charge the permittee a percentage of the proceeds for their sales efforts equal to or more than the permittee might receive (which is already happening), thus, thoroughly defeating the intent of the Gaming Reform Act.

This bill, as presently written, would effectively do away with any justification for calling the activities we presently authorize in the state as "charitable" gaming activities. While we do not believe this was the intent of the drafters of this legislation, the department cannot support the bill in its present form for these reasons.

The department understands, however, that there is broad permittee and operator support for recognition of a vendor class. Certainly, the testimony the department heard in mid-December regarding its position on vendor sales made it very clear that eliminating or severely restricting the vendor class would drastically reduce the gaming proceeds presently collected by organizations granted charitable gaming permits.

Given that a vendor bill has been introduced, and assuming that the broad support evidenced for this issue means that some legislative recognition of a vendor class is forthcoming, the department has attached to this position paper draft language that reflects the department's perspective on the issue of vendor sales.

Position Paper
Senate Bill 501
Page Four

We believe that a bill that contains the provisions outlined above will meet the department's concerns for the proper regulation of a vendor class while also maintaining primary responsibility for the state's charitable gaming activity with the licensed permittee and operator.

We urge your consideration of the attached language. A bill which included language substantially similar to that found in the attached draft and which covered the areas described above would at least address the department's concerns sufficiently for the department to go on record as unopposed to legislative recognition of vendor sales.



Larry Mercurieff, Commissioner

Date: 3/1/90

LM/RPB/dgl6388D
22790b

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to the retail sale of pull-tabs, tickets, and cards
 Sponsor: Senate Finance
 Requestor: Senate L&C

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary) The bill authorizes a person other than a permittee or operator to sell the pull-tabs, tickets, and cards necessary to conduct a charitable gaming activity under AS 05.15.100 provided the person is authorized by a written contract with the permittee or operator. The bill requires the department to be notified within five days of commencement of sales by a person other than a permittee or operator. (CONTINUED)

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: 2/23/90

Approved by Commissioner: Larry Merculieff Date: 3/1/90
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- 6387D-1/22790b

CONTINUATION OF FISCAL NOTE ANALYSIS - SB 501

Current resources for the gaming program are inadequate to fully regulate charitable gaming in the state. There are over 1,000 gaming permittees, operators, and distributors authorized to conduct gaming activities in an industry which generates millions of dollars each year.

If the gaming program is to regulate gaming activities by persons other than a permittee or operator (conceivably another 2,000 individuals) and beef up its enforcement over current gaming activities, additional staff resources are definitely needed. In the Division of Occupational Licensing's original FY 91 budget request and its budget amendments, the division has requested funding for a total of six positions, only four of which are new (the other two are taken from permanent part-time to permanent full-time). The positions include: two PFT Investigators, one PFT Licensing Examiner, one PFT Clerk Typist, one PFT Data Processing Clerk, and one PFT Attorney. The zero fiscal note attached to SB 501 assumes authorization of the division's budget request.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the retail sale of pull-tabs, tickets, and cards.
Sponsor: Senate Finance
Requestor: Senate L&C

Agency Affected: Commerce & Econ. 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	50.3	50.3	50.3	50.3	50.3	50.3
TRAVEL	8.0	8.0	8.0	8.0	8.0	8.0
CONTRACTUAL	3.0	3.0	3.0	3.0	3.0	3.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	9.9					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	72.2	62.3	62.3	62.3	62.3	62.3
CAPITAL	0	0	0	0	0	0
REVENUE	100.0	100.0	100.0	100.0	100.0	100.0

DRAFT

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER *	72.2	62.3	62.3	62.3	62.3	62.3
TOTAL	72.2	62.3	62.3	62.3	62.3	62.3

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

(SEE ATTACHED)

Prepared by: Jennifer Strickler, Admin. Officer Phone: 465-2144
Division: Occupational Licensing Date: 3/26/90

Approved by Commissioner: Larry Mercurieff, Commissioner Date: _____
Agency: Department of Commerce and Economic Development

Distribution (by preparer):

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

* Funding Source is General Fund/Program Receipts

DRAFT

1.	POSITION TITLE INVESTIGATOR III				RANGE/STEP 18A	BARG. UNIT GGU	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION:					
4.	TYPE OF EXPENDITURE			AMOUNT		The bill authorizes a person other than a permittee or operator to sell the pull-tabs necessary to conduct a charitable gaming activity under AS 05.15.100 provided the vendor is registered with the department and complies with the provisions of the bill.				
	1		2	3	Charitable gaming activity in Alaska is a rapidly growing industry and the enforcement of the Gaming Reform Act of 1988 is becoming more difficult in light of increased gaming activity. Presently, the number of gaming investigators (just two) is inadequate to support statewide enforcement of the gaming program and gaming enforcement is therefore not as timely and as efficient as necessary to fully protect the playing public or the permitted charitable organizations.					
	PERSONAL SERVICES				The recognition of vendors in SB 501, as well as our ability under SB 501 to take enforcement action in the face of vendor noncompliance, will increase the investigatory burden. (Until now, the division has taken complaints regarding vendor actions but has had no authority to take action to correct or otherwise enforce compliance.) We are therefore submitting a fiscal note requesting funding for an additional investigator.					
5.	Salary		37.3		The new vendor registration will affect a significant number of businesses and charitable organizations throughout the state. We have seen unlawful activity within the gaming industry. The investigator position requested by this fiscal note will greatly assist the division in beefing-up its current gaming enforcement and will promote compliance with gaming laws in the state					
6.	Benefits		13.0		The \$72.2 required includes \$8.0 in travel, to fund the cost of widespread travel to various communities, and a one-time equipment charge of \$9.9.					
7.	Supplemental Benefits				With a vendor registration fee of \$50, we estimate that regulation of vendor will bring in approximately \$100.0 in program receipts (\$50 x 2,000 vendors)					
8.	Fixed Benefits									
9.	TOTAL PERSONAL SERVICES	01	50.3							
10.	Travel	02	8.0							
11.	Contractual	03	3.0							
12.	Commodities	04	1.0							
13.	Equipment	05	9.9							
14.	Other									
15.	TOTAL COST		72.2							
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004								
19.		I-A Receipts 1005								
20.		Program Receipts 1028		72.2						
21.		Other								
FOR B&M USE ONLY KEY NUMBER										

REQUEST FOR
NEW POSITION
LGJOBS/SB501FN

AGENCY Commerce and Economic Development
BRU Occupational Licensing
INVESTIGATIONS
COMPONENT _____

FY 91

Page 3 of 3
Revised Date _____

DRAFT

CONTINUATION OF FISCAL NOTE ANALYSIS
CSSB 501 (L&C)

The bill authorizes a person other than a permittee or operator to sell the pull-tabs necessary to conduct a charitable gaming activity under AS 05.15.100 provided the vendor is registered with the department and complies with the provisions of the bill.

Charitable gaming activity in Alaska is a rapidly growing industry and the enforcement of the Gaming Reform Act of 1988 is becoming more difficult in light of increased gaming activity. Presently, the number of gaming investigators (just two) is inadequate to support statewide enforcement of the gaming program and gaming enforcement is therefore not as timely and as efficient as necessary to fully protect the playing public or the permitted charitable organizations.

The recognition of vendors in SB 501, as well as our ability under SB 501 to take enforcement action in the face of vendor noncompliance, will increase the investigatory burden. (Until now, the division has taken complaints regarding vendor actions but has had no authority to take action to correct or otherwise enforce compliance.) We are therefore submitting a fiscal note requesting funding for an additional investigator.

The new vendor registration will affect a significant number of businesses and charitable organizations throughout the state. We have seen unlawful activity within the gaming industry. The investigator position requested by this fiscal note will greatly assist the division in beefing-up its current gaming enforcement and will promote compliance with gaming laws in the state.

The \$72.2 required includes \$8.0 in travel, to fund the cost of widespread travel to various communities, and a one-time equipment charge of \$9.9.

With a vendor registration fee of \$50, we estimate that regulation of vendors will bring in approximately \$100.0 in program receipts (\$50 x 2,000 vendors).

Senator Rick Uehling

Downtown, Elmendorf, Northeast Anchorage



Co-Chairman, Senate Finance Committee
International Trade & Tourism Committee
State Affairs Committee

February 21, 1990

MEMORANDUM

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

From: Senator Rick Uehling, Co-Chairman
Senate Finance Committee

Subject: Request for Senate Bill 501 hearing

I would appreciate your scheduling a hearing on SB 501, an act relating to retail sale of pull tabs, tickets, and cards for charitable gaming activities.

The purpose of the bill is to provide a reference in statute for the existing practice of allowing retail stores (bars, restaurants, gas stations, convenience stores) to sell pull tabs on behalf of nonprofit corporations.

The Department of Commerce has cited the absence of statutory reference as a reason to regulatorily prohibit retail sales. SB 501 merely provides the statutory reference the department says it needs. The bill makes no change to existing practice. It codifies the status quo in the simplest way.

There are hundreds of nonprofit corporations who rely on retail sale of pull tabs as a primary means of fund raising. This type of fund raising enables a great amount of charitable work to be accomplished while relieving pressure on local and state government budgets.

I am anxious to have the merits of SB 501 explored further in public hearing.

Your assistance is appreciated.

Alaska State Legislature



Senate Judiciary Committee

March 14, 1990

MEMORANDUM

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

FROM: Senator Jan Faiks 

SUBJECT: Amendment to SB 501

I would appreciate your incorporating the following amendment into the Labor and Commerce Committee Substitute for SB 501:

- Amend the title by adding ", and permittee prize limitations."
- Add a new section to the bill which amends 05.15.180 (g) as follows:

A Municipality or qualified organization may award a maximum of \$1,000,000 in prizes each year in activities authorized under this chapter [; however, if a municipality or qualified organization contracts with an operator to conduct on its behalf activities authorized under this chapter, the municipality or qualified organization may award a maximum of \$500,000 in prizes each year].

Through this amendment, it will allow all permittees to award \$1,000,000 in prize money irrespective of whether they work with an operator or by themselves.

Provided by Sen Faiks

Proposed compromise on SB 501

This proposal intends to do four things:

1. It deletes references to vendor registration and vendor fees.

It replaces the registration and fee requirements with a new requirement that permittees or operators shall notify the Department by registered mail on or before the date a vendor begins selling pull-tabs on its behalf.

It also requires the permittee or operator to notify the Department within thirty days of cessation of sales on its behalf by a vendor.

2. It gives the Department authority to disallow pull-tab sales at a vendor site if, in the department's judgement, the vendor is an habitual source of missing pull-tabs or related funds.

3. It deletes all references to the Surety Fund legislation.

4. It gives specific authority to the Department to ensure that permittees, operators and vendors receive their contractually agreed upon share of revenue, and that changes in mandatory allocation of revenue may be made after hearings pursuant to the Administrative Procedures Act.

Original sponsor(s): Finance Committee

1 IN THE SENATE BY THE LABOR & COMMERCE COMMITTEE
2 CS FOR SENATE BILL NO. 501 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL
6 For an Act entitled: "An Act ^{relating to} ~~licensing and regulating~~ pull-tab vendors;
7 prohibiting certain conduct by charitable gaming
8 licensees and permittees and their agents; relating
9 to charitable gaming awards, contracts between opera-
10 tors and permittees, and to the enforcement of chari-
11 table gaming laws; and providing for an effective
12 date."

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

14 * Section 1. AS 05.15.060 is amended to read:

15 Sec. 05.15.060. REGULATIONS. The department shall adopt regula-
16 tions under the Administrative Procedure Act (AS 44.62) necessary to
17 carry out this chapter covering, but not limited to,

18 (1) the issuance, renewal, and revocation of permits, [AND]
19 licenses, and vendor registrations;

20 (2) a method of ascertaining net proceeds, the determina-
21 tion of items of expense that may be incurred or paid, and the limita-
22 tion of the amount of the items of expense to prevent the proceeds
23 from the activity permitted from being diverted to noncharitable,
24 noneducational, nonreligious, or profit-making organizations, individ-
25 uals, or groups;

26 (3) the immediate revocation of permits, [AND] licenses,
27 and vendor registrations authorized under this chapter if this chapter
28 or regulations adopted under it are violated;

29 (4) the requiring of detailed, sworn, financial reports of

omit
redundant
omit

1 operations from permittees and licensees including detailed statements
2 of receipts and payments;

omit
omit
3 (5) the investigation of permittees, licensees, registered
4 vendors, and their employees, including the fingerprinting of those
5 permittees, licensees, registered vendors, and employees whom the
6 commissioner considers it advisable to fingerprint;

omit
omit
7 (6) exclusion from participation as a permittee, licensee,
8 registered vendor, or employee of a permittee [OR] licensee, or regis-
9 tered vendor, of a person convicted of, in prison for, or on parole
10 for a felony within the preceding five years, or convicted of a crime
11 involving theft or dishonesty or of a violation of a municipal, state,
12 or federal gambling law;

13 (7) the method and manner of conducting authorized activ-
14 ities and awarding of prizes or awards, and the equipment that may be
15 used;

16 (8) the number of activities that may be held, operated, or
17 conducted under a permit during a specified period; however, the
18 department may not allow more than 14 bingo sessions a month and 35
19 bingo games a session to be conducted under a permit;

20 (9) a method of accounting for receipts and disbursements
21 by operators, including the keeping of records and requirements for
22 the deposit of all receipts in a bank;

omit
omit
23 (10) the disposition of funds in possession of a permittee,
24 [OR] a person, municipality, or qualified organization that possesses
25 an operator's license, or a registered vendor at the time a permit,
26 [OR] a license, or a vendor registration is surrendered, revoked, or
27 invalidated;

28 (11) restrictions on the participation by employees of the
29 Department of Fish and Game in salmon classics;

(12) ensuring that permittees, operators and vendors receive ~~an~~ ^{an} ~~equitable~~ ^{equitable} share of revenue derived from gaming activities authorized by this chapter. ~~Changes~~ ^{Mandatory} changes in allocation of revenue may be made only after public hearings pursuant to the Administrative Procedures Act.

1 (13) ~~(12)~~ other matters the commissioner considers necessary to
2 carry out this chapter or protect the best interest of the public.

3 * Sec. 2. AS 05.15.070 is amended to read:

4 Sec. 05.15.070. EXAMINATION OF BOOKS AND RECORDS. The commis-
5 sioner may examine or have examined the books and records of a per-
6 mittee, an operator, a registered vendor, or a person licensed to
7 manufacture or to distribute pull-tab games in the state. The commis-
8 sioner may issue subpoenas for the attendance of witnesses and the
9 production of books, records, and other documents.

omit

10 * Sec. 3. AS 05.15.115(b) is amended to read:

11 (b) The contract between an authorizing permittee and an opera-
12 tor must include the amount and form of compensation to be paid to the
13 operator, the term of the contract, the activities to be conducted by
14 the operator on behalf of the permittee, the location where the activ-
15 ities are to be conducted, the name and address of the member in
16 charge, and other provisions the department may require. The contract

17 must provide that an operator conducting pull-tab games on behalf of a
18 permittee shall return at least 40 percent of the ideal net to the
19 permittee.

omit

20 * Sec. 4. AS 05.15.124 is amended to read:

21 Sec. 05.15.124. MUNICIPAL REGULATION OF OPERATORS. A munici-
22 pality may by ordinance prohibit an operator or a vendor from conduct-
23 ing activities under this chapter within the municipality.

omit

24 * Sec. 5. AS 05.15.128(a) is amended to read:

25 (a) The department shall revoke the license of an operator who
26 does not

27 (1) report an adjusted gross income of at least 15 percent
28 of gross income for two consecutive quarters based on the total opera-
29 tion of the operator; [OR]

1 (2) pay to each authorizing permittee for two consecutive
2 quarters at least 15 percent of the adjusted gross income, as de-
3 termined under (1) of this subsection, received from activities (other
4 than pull-tab games) conducted on behalf of the authorizing permittee;
5 or

6 (3) pay to each authorizing permittee for two consecutive
7 quarters at least 40 percent of the ideal net received from pull-tab
8 games conducted on behalf of the authorizing permittee.

9 * Sec. 6. AS 05.15.170 is repealed and reenacted to read:

10 Sec. 05.15.170. SUSPENSION OR REVOCATION OF PERMIT, LICENSE, OR
11 VENDOR ^{SALES} ~~REGISTRATION~~ (a) The commission may suspend or revoke a
12 permit, license, or vendor ^{SALES} ~~registration~~ after giving notice to and an
13 opportunity to be heard by the permittee, licensee, or vendor, if the
14 permittee, licensee, or vendor

15 (1) violates or fails to comply with a requirement of this
16 chapter or of a regulation adopted under this chapter;

17 (2) breaches a contractual agreement with a permittee,
18 licensee, or ~~registered~~ vendor;

19 (3) is convicted of a felony, of a crime involving theft or
20 dishonesty, or of a violation of a municipal, state, or federal gam-
21 bling law; for the purposes of this paragraph, a permittee, licensee,
22 or ~~registered~~ vendor that is not a natural person is considered con-
23 victed if an owner or manager of the permittee, licensee, or vendor is
24 convicted; or

25 (4) knowingly submits false information to the department
26 or, in the case of a ~~registered~~ vendor, to a permittee or operator
27 when the vendor knows that the false information will be submitted to
28 the department as part of an application for registration.

29 (b) If the department revokes a permit, license, or vendor

replace 1
omit-replace 2
omit-replace 3

^{sales}
~~registration~~ under this section, it may prohibit the permittee, ^{OR} licensee, ~~or vendor~~ from reapplying for a permit, license, or ^{in the case of a} vendor, ~~registration~~ ^{from conducting vendor sales} for a period of up to five years.

* Sec. 7. AS 05.15.180(g) is amended to read:

(g) A permittee [MUNICIPALITY OR A QUALIFIED ORGANIZATION] may award a maximum of \$1,000,000 in prizes each year in activities authorized under this chapter; [HOWEVER, IF A MUNICIPALITY OR A QUALIFIED ORGANIZATION CONTRACTS WITH AN OPERATOR TO CONDUCT ON ITS BEHALF ACTIVITIES AUTHORIZED UNDER THIS CHAPTER, THE MUNICIPALITY OR QUALIFIED ORGANIZATION MAY AWARD A MAXIMUM OF \$500,000 IN PRIZES EACH YEAR]. In this subsection, "activities authorized under this chapter" means all activities subject to this chapter other than bingo.

* Sec. 8. AS 05.15.183 is amended by adding a new subsection to read:

(e) A distributor may not

(1) take an order for the purchase of a pull-tab series from a vendor;

(2) sell a pull-tab series to a vendor; or

~~(3) deliver a pull-tab series to a vendor location.~~

omit

* Sec. 9. AS 05.15.187 is amended by adding a new subsection to read:

(h) An owner, manager, or employee of a person holding a permit ^{OR AN OWNER, MANAGER OR EMPLOYEE OF A VENDOR THAT IS AUTHORIZED} or license under this chapter, or ~~registered~~ ^{as a} vendor, may not purchase a pull-tab from any pull-tab series manufactured, distributed, or sold by the permittee, licensee, or ~~registered~~ ^{to sell pull-tabs,} vendor.

ADD

omit

omit

* Sec. 10. AS 05.15 is amended by adding a new section to article 2 to read:

Sec. 05.15.188. PULL-TAB SALES BY VENDORS ON BEHALF OF PERMITTEES AND OPERATORS; ~~VENDOR REGISTRATION.~~ (a) A permittee or operator may contract with a vendor to sell pull-tabs on behalf of the

omit

replace

1 permittee or operator, if the permittee or operator first ^{notifies} registers
2 ~~the vendor with the department by applying for registration on a form~~ ^{by registered mail on or before the date a vendor begins}
3 ~~prescribed by the department and by submitting the registration fee of~~ ^{selling on behalf of the permittee.}

omit

4 \$50 for each location at which the vendor will sell pull-tabs. If a
5 vendor location is within the boundaries of a municipality, the per-
6 mittee or operator shall, concurrently with applying for registration
7 with the department, submit a copy of the application form to the
8 ~~governing body of the municipality.~~

replace

9 (b) The department ^{may disallow pull-tab sales if it determines that the vendor is} shall approve or disapprove an initial vendor ^{by a vendor}
10 ~~registration request within 10 working days of receipt of the regis-~~ ^{a repeating} ~~tration form from a permittee or operator.~~ ^{source of signi-}
11 ^{ficant losses of} ^{pull tabs or} ^{related funds}

replace

12 (c) ~~Upon approval of the vendor registration, the department~~
13 ~~shall issue an endorsement to the permittee's permit or the operator's~~
14 ~~license that authorizes the conduct of pull-tab sales at that vendor~~
15 ~~location.~~ ^{→ A permittee/operator must notify the dept. by registered mail}

add (c)

16 ~~(d) The endorsement issued under (c) of this section is an~~ ^{within 30 days when a vendor stops selling pull tabs on its behalf.}

omit

17 extension of the permittee's or operator's privilege under AS 05.15.
18 100 to conduct pull-tab sales in this state. A vendor may not sell a
19 pull-tab series until the permit or license containing the endorsement
20 for the new vendor location has been posted by the permittee or opera-
21 tor in the registered vendor establishment. The endorsed permit or
22 license must be clearly visible to the gaming public.

renumber

23 (e) A separate endorsement shall be issued for each vendor
24 ~~location.~~ ^(d) The permittee or operator shall inform the department when
25 a vendor with whom the permittee or operator is contracting changes
26 the physical location at which pull-tabs are sold, and shall return to
27 the department the endorsed permit or license of a vendor that is no
28 longer selling pull-tabs on behalf of the permittee or operator.

omit

29 ~~Failure to inform the department of a change in vendor location, or to~~

1 return the endorsed permit or license to the department after a vendor
2 change, may constitute grounds for the suspension or revocation of a
3 permittee's permit or an operator's license.

4 (f) At the time that a permittee or operator annually renews its
5 permit or license, it shall also ^{submit a current list of all} ~~renew the registration of all~~ loca-
6 tions where a vendor is selling pull-tabs on the permittee's or opera-
7 tor's behalf, ~~and shall pay a registration fee of \$50 for each vendor~~
8 ~~location.~~

9 (g) A permittee or operator that uses a vendor to sell pull-tabs
10 on its behalf shall enter into a written contract with that vendor,
11 ^{using a contract format and content acceptable to the Department.} ~~The department may inspect this contract.~~ If the contract contains
12 provisions that violate this chapter or the regulations adopted under
13 it, the department may declare the contract void, and may suspend or
14 revoke ~~the registration of the vendor and~~ the license of the operator
15 or the permit of the permittee. ^{The Department may develop sample contracts}
16 ^{to carry out the provisions of this section.}

17 (h) A person, other than a permittee's member-in-charge or an
18 operator, may not directly supply a pull-tab series to a registered
19 vendor for sale by that vendor on behalf of the permittee or operator.
20 A vendor may not acquire a series from a licensed distributor.

21 (i) If a permittee contracts with a vendor under (a) of this
22 section, the contract must provide that the permittee shall receive no
23 less than 70 percent of the ideal net.

24 (j) An amount equal to the ideal net less the compensation paid
25 to the vendor shall be paid by the vendor within 30 days of the date
26 that the member in charge or operator delivers a pull-tab series to
27 the vendor for sale. The amount required to be paid by the vendor
28 under this subsection must be paid by check and shall be deposited by
29 the permittee or operator directly into its gaming ^{BANK} ~~checking~~ account.

(k) A vendor may not enter into a contract with a permittee to

1 sell pull-tabs for compensation if

2 (1) the permittee is a qualified organization, and the
3 owner or manager of the vendor is a member of the governing body of
4 the organization, or is the organization's designated member in charge
5 under AS 05.15.112; or

6 (2) the permittee is a municipality, and the owner or
7 manager of the vendor is an elected official of the municipality or is
8 employed by the municipality in a managerial position.

9 * Sec. 11. AS 05.15.188(g) is repealed and reenacted to read:

10 (g) At the time that a permittee or operator annually renews its
11 permit or license, it shall also ^{PROVIDE A LIST} ~~(renew the registration)~~ of all loca-
12 tions where a vendor is selling pull-tabs on the permittee's or opera-
13 tor's behalf, ~~and shall pay a registration fee of \$50 for each vendor~~
14 location. The permittee or operator shall also forward, with each
15 vendor registration renewal, that vendor's annual payment of the
16 assessment to the charitable gaming surety fund.

17 * Sec. 12. AS 05.15.188 is amended by adding a new subsection to read:

18 (m) The vendor registration required by (a) of this section
19 shall be accompanied by payment of the vendor's assessment to the
20 charitable gaming surety fund under AS 05.15.230. The assessment
21 amount shall be set by the department by regulation and may not exceed
22 \$100. The payment shall be drawn on the checking account of the
23 vendor and may not be paid by the permittee or operator on the ven-
24 dor's behalf.

25 * Sec. 13. AS 05.15 is amended by adding a new section to read:

26 Sec. 05.15.195. ORDER PROHIBITING ACTION IN VIOLATION OF CHAP-
27 TER. (a) If the commissioner determines that a person has engaged in
28 an act or practice in violation of this chapter or a regulation adopt-
29 ed under this chapter, the commissioner may, after giving reason ble

replace
omit
Redundant

omit

1 notice to the person and an opportunity for the person to be heard,
2 issue an order prohibiting the violation by the person. The order
3 remains in effect until the person has submitted evidence acceptable
4 to the commissioner showing that the violation has been corrected.

5 (b) If the public interest requires, the commissioner may issue
6 an emergency order prohibiting an act or practice in violation of this
7 chapter or a regulation adopted under this chapter without notice to
8 or an opportunity to be heard by the person affected by the order.
9 The commissioner shall immediately serve the person with a copy of the
10 emergency order. An emergency order expires 60 days after the date it
11 is issued, if the person affected by the order requests a hearing
12 within 15 days of receipt of the order. If the person does not re-
13 quest a hearing within 15 days of receipt of the emergency order, the
14 order becomes permanent. Following a hearing, the commissioner may
15 rescind, modify, or make permanent the emergency order.

16 * Sec. 14. AS 05.15.200(b) is amended to read:

17 (b) A person who, with the intent to mislead a public servant in
18 the performance of the public servant's duty, submits a false state-
19 ment in an application for a permit, ^{OR} license ~~(or vendor registration)~~
20 under this chapter [,] is guilty of unsworn falsification.

21 * Sec. 15. AS 05.15.210 is amended by adding new paragraphs to read:

22 (35) "ideal net" means an amount equal to the total amount
23 of receipts that would be received if every individual pull-tab ticket
24 in a series were sold at face value, less the prizes to be awarded for
25 that series;

26 (36) "permittee" means a municipality or a qualified orga-
27 nization that holds a valid permit under AS 05.15.100;

28 (37) "vendor" means a business whose primary activity is not
29 regulated by this chapter but that is engaged in the sale of pull-tabs

1 on behalf of a permittee or operator, holds a business license under
2 AS 43.70, and is

3 (A) a retail establishment;

4 (B) an eating establishment; or

5 (C) an establishment licensed under AS 04.11.

omit
renumber
~~6 * Sec. 16. Sections 11 and 12 of this Act take effect on the effective
7 date of an Act establishing a charitable gaming surety fund that is enacted
8 by the Sixteenth Alaska State Legislature.~~

omit
9 * Sec. 17. Except for secs. 11 and 12, this Act takes effect immediate-
10 ly under AS 01.10.070(c).

Vendor Compensation
 Comparable Analysis
 30% Vendor Compensation
 Computed on IDEAL NET

For Note		55%	75%	85%
		Prize Pay-out	Prize Pay-out	Prize Pay-out
	\$1000, Gross Handle (1000 mas x 1000)	55%	75%	85%
(A)	Permittee/Vendor	\$550-	\$750-	\$850-
	Prize Pay-out	450-	250-	150-
	IDEAL NET	135-	75-	45-
	30% Commission to Vendor (30% x IDEAL NET)	\$405-	\$225-	\$112.5-
	Balance to Permittee	\$135-	\$117.5-	\$110.5-
(B)	Permittee/Operator/Vendor	\$550-	\$750-	\$850-
	Prize Pay-out	450-	250-	150-
	IDEAL NET	135-	75-	45-
	Operator's Gross Fee (85% of A.S.I.)	382.50	212.50	127.50
	30% Commission to Vendor (Pd from Operator's Fee)	135-	95-	45-
	Operator's Net Fee (less Vendor's Com)	247.50	137.50	82.50
	Balance To Permittee (15% of A.S.I.)	\$197.50	\$318.8	\$191.3
(A)	Permittee/Vendor computed by Permittee.	405	30%	of IDEAL NET paid to Vendor
(B)	Permittee/Vendor/Operator to Vendor by Operator under ASOS. 15. (2B)(1)(2)	405	30%	of IDEAL NET paid from Operator's allowable compensation
(C)	For Basis of Analysis been computed.	405	30%	of pull-tab, including tax has NOT

Vendor Compensation
Comparable Analysis
5% Vendor Compensation
Computed on Gross Sales

1	\$1500, GROSS HANDLE				
2	(1000 tabs X \$1.00 EA)				
3	Remittree / Vendor				
4	Prize Pay-out	55%	75%	85%	
5					
6	IDEAL NET				
7					
8	5% Commission to Vendor				
9	(5% X Gross)				
10	Balance to Remittree				
11					
12					
13					
14	Permittee / Vendor / Operator				
15					
16	Prize Pay-out				
17					
18	IDEAL NET				
19					
20					
21	Operators Gross Fee (85% of AGI)				
22					
23	5% Commission to Vendor				
24	(Pd from operators Fee)				
25	Operators Net Fee (less Under Comp)				
26					
27	Balance to Remittree				
28	(15% of AGI)				
29					
30					
31					
32					
33					
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39					
40					

State of Alaska
Department of Commerce and Economic Development
Division of Occupational Licensing
Games of Chance and Skill Section

1989 Charitable Gaming Annual Report

This report is compiled as required by
Alaska Statute 05.15.090

Larry Mercurieff
Commissioner

April 20, 1990

ALASKA

**DEPARTMENT OF COMMERCE
AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING**

1989 CHARITABLE GAMING ANNUAL REPORT

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THE YEAR IN REVIEW

The Alaska Gaming Reform Act of 1988 (HB 299, Chapter 99, SLA 1988) took effect on September 2, 1988. The state's games of chance and contests of skill program has undergone major changes since that date. Many of the issues that were addressed in the Reform Act are still being dealt with by the present administrators of the program.

During the period of September 2, 1988 to June 30, 1989, many provisions of the new law were not fully implemented or, more importantly, enforced. This may partially be explained by the fact that the Department of Revenue was transferring administration of the program to the Department of Commerce and Economic Development, Division of Occupational Licensing, on July 1, 1989. The transfer was accomplished under Executive Order No. 74.

Since transfer of the gaming program, the Division of Occupational Licensing -- responding to numerous industry complaints and a very large increase in gaming activity within the state -- has taken an active role in administration of the program. Regulations affecting the ability of the division to effectively enforce the law were drafted and public hearings were held statewide. These regulations are presently in the Attorney General's office undergoing final review prior to implementation.

Additional staff have been hired: a manager for the Gaming Program (authorized in the FY 90 budget) and a receptionist. The division opened a Fairbanks field office and transferred an investigator previously housed in Juneau to that office; the new (part-time) receptionist is also located in Fairbanks. The division now has offices in Anchorage, Juneau, and Fairbanks to serve both the gaming industry and the public.

Charitable gaming in Alaska has moved out of the bingo halls and into many retail and eating establishments and bars in almost every community in the state. The proliferation of pull-tab sales since the adoption of the Reform Act has had a marked impact on many of these communities. It is the intent of the division to fund a study to more accurately determine the social and economic characteristics of those actively involved as consumers of gaming activities and to assess community impacts.

From the outset of transfer of the program to this department, it was apparent that many persons not licensed as operators were nevertheless conducting gaming activities on behalf of organizations holding valid gaming permits (hereinafter "permittees"). The result of this illegal activity has been difficult to measure due to the lack of proper accountability and reporting by the unlicensed operators. We are aware, however, of at least one bingo hall operation run by an unlicensed individual which closed its doors late last fall having failed for over six months to remit any gaming proceeds to many of the organizations lending their permit to the unlicensed operation.

The division has utilized staff from its other licensing areas to aid the gaming staff in organizing and managing the program and its work load. The division has fully automated the program, including development of a data base which was used to produce the statistical data provided in this report. This is the first comprehensive capturing of the annual financial statements filed by permittees. Because the 1988 data was not complete when last year's report to the Legislature was filed, the division has included both final 1988 financial statement data as well as all the data from the 1989 financial statements received through April 15, 1990.

FY 90 gaming revenue from (a) gaming licensing fees, (b) the 3% pull-tab assessment, and (c) the 1% net proceeds fee presently totals \$1.26 million. We estimate total gaming revenue for FY 90 to reach \$1.5 million with less than one-third of those funds appropriated to administration of the program itself. The remaining \$1.0 million is available to the general fund.

MAJOR CHARITABLE GAMING ISSUES

Below is a listing of a number of the current major issues identified by the division pertaining to charitable gaming in Alaska. It is by no means an exhaustive list.

1. Statutory amendments and/or comprehensive regulations are needed to address the following issues:
 - A. Vendor (third party) sales of pull-tabs.
 - B. Advertising and conduct of gaming activities on the airwaves.

- C. Licensing of out-of-state manufacturers.
 - D. Reduction of the operator bonding requirement, or enactment of a surety fund to protect permittees.
2. Increased gaming staff is needed to provide training for permittees and to further insure compliance with gaming statutes and regulations.
 3. A comprehensive review of the criteria for establishing the eligibility of an organization to qualify for a gaming permit is needed to determine whether all presently licensed permittees are truly "qualified" organizations and whether the existing statutory language is too broad or needs clarification. We are also concerned that permits have been issued to organizations that do not meet existing criteria.
 4. There must be a thorough review of the use of gaming-derived proceeds by permittees and operators. Some questions to consider:
 - a. Are only authorized, bona fide, and reasonably necessary fees and expenses being deducted from proceeds by operators and vendors? Given the present 1989 gaming data, we are concerned, despite the obvious growth in gaming activity, that permittees are receiving a smaller percentage of the charitable gaming dollars spent in the state.
 - b. Are net proceeds going to permittees being properly used by the permittee to benefit persons within that permittee's local community and are the funds expended for legitimate uses? Given the growth of gaming fund-raising occurring statewide through vendor and operator sales, how do we determine proper "local" expenditures by permittees?

LICENSED OPERATORS

Under the Alaska Gaming Reform Act, AS 05.15.100 was amended by adding a new subsection authorizing the department to issue operator licenses to natural persons, qualified organizations, or municipalities to conduct charitable gaming activities on behalf of authorized permittees. Licenses are effective for a calendar year.

The state issued seven (7) operator licenses in 1988 and twelve (12) licenses in 1989. Operator-conducted gaming activity now accounts for almost 50% of the total gross for charitable gaming.

As of April 15, 1990, the department had received nineteen (19) applications and has issued fifteen (15) operator licenses for 1990. The increase is directly attributable to the division's enforcement of the Reform Act's operator licensing requirements.

Operator Statistics

These statistics reflect the gaming activity conducted by licensed operators on behalf of permittees:

	<u>1988*</u>	<u>1989*</u>
Gross Income	\$20,584,176	\$53,583,880
Prizes Awarded	[16,757,968]	[41,409,338]
AGI (Adjusted Gross Income**)	3,826,208	12,174,542
Operator Fees and Expenses	[3,156,570]	[10,617,760]
Total Net Proceeds to Permittees from Operators	<u>\$ 675,393</u>	<u>\$2,497,075</u>
Percentage of AGI Paid to Permittees	18%	21%
Net Proceeds as a Percentage of the Gross	3%	5%

*These figures are based on unaudited permittee reports; therefore, the gross receipts minus the prizes awarded and operator fees and expenses do not balance to the reported permittee net proceeds.

**The Adjusted Gross Income (AGI) is defined as gross income less prizes awarded and any state, federal or municipal taxes paid or owed on the income.

PULL-TAB DISTRIBUTORS

Under the Alaska Gaming Reform Act, AS 05.15 was amended by adding a new section, AS 05.15.184, authorizing the department to issue pull-tab distributor licenses to persons distributing pull-tabs to permittees. The section also requires pull-tabs to be distributed from a location in Alaska only. Licenses are effective for a calendar year.

The department issued 15 pull-tab distributor licenses in 1988 and 23 licenses in 1989. Licensed pull-tab distributors were located in the following cities:

	<u>1988</u>	<u>1989</u>	<u>1990</u> (as of 4/15/90)
Anchorage	7	12	12
Cordova	1	1	1
Fairbanks	4	5	4
Juneau	1	1	1
Ketchikan	1	1	1
Nome	0	1	1
Sitka	0	1	1
Wasilla	<u>1</u>	<u>1</u>	<u>1</u>
Total	<u>15</u>	<u>23</u>	<u>22</u>

PERMITTEES

The following is a breakdown of charitable gaming permits issued to qualified organizations and municipalities under AS 05.15.020 for the last ten years:

<u>Year</u>	<u>Number of Permits</u>
1979	564
1980	578
1981	622
1982	703
1983	779
1984	763
1985	788
1986	1,011
1987	1,040
1988	1,026
1989	1,042
1990 (as of 04/15/90)	425

COMPLIANCE

The division has opened a total of 32 investigations since January 1, 1990. These range from counterfeit pull-tabs to potential embezzlement. Seventeen (17) notices of violations have been issued since January 1, 1990. These range from minor infractions to operating without licenses and permits.

The division has implemented a policy of requiring all 1989 annual financial statements to be filed prior to the issuance of a 1990 permit. This has resulted in many permit applications and financial statements being returned for additional documentation prior to a 1990 permit being issued. In past years, permits were automatically renewed and the annual financial reports were often either not filed or in substantial noncompliance. Holding the permit pending compliance has increased effective reporting and has enforced compliance with gaming laws and regulations.

We have completed three field audits of pull-tab distributors and will have audited all distributors by year's end. All operators will also be audited.

STATISTICAL DATA OVERVIEW

The data shows substantial growth in gross charitable gaming receipts but a reduction in net proceeds available to permittees:

	<u>1986</u>	<u>1987</u>	<u>1988*</u>	<u>1989*</u>
Gross Receipts	\$63,936,774	\$62,163,749	\$87,524,470	\$115,160,891
Prizes Awarded	[48,182,821]	[51,613,746]	[69,095,076]	[86,319,035]
Expenses and Taxes	<u>[7,096,773]</u>	<u>[6,358,015]</u>	<u>[10,982,399]</u>	<u>[16,554,602]</u>
Net Proceeds	<u>\$ 8,657,180</u>	<u>\$ 4,191,988</u>	<u>\$10,256,316</u>	<u>\$ 9,141,529</u>

Accompanying this report are additional tables and graphs providing further data regarding the state's gaming activities. The division will issue a final report once all 1989 financial statements have been received and a number of significant audits have been completed.

Questions regarding the information contained in this report should be addressed to John Hansen, Gaming Program Manager, or Randall Burns, Division Director.

 *Annual statements are unaudited, resulting in statistics based on reports as filed; therefore, gross receipts less prizes and taxes do not balance to total reported net proceeds.

CHARITABLE GAMING STATISTICS

- A. 1960 - 1989 Gaming Receipts, Expenses and Net Proceeds
- B. 1960 - 1989 Gross Receipts and Net Proceeds (Graph)
- C. 1975 - 1989 Gross Receipts and Net Proceeds (Graph)
- D. 1988 Reported Permittee Activity
- E. 1989 Reported Permittee Activity
- F. 1989 Reported Operator Activity
- G. 1989 Gross Receipts by Gaming Activity (Graph)
- H. 1989 Gross Receipts Distribution

Department of Commerce and Economic Development
 Division of Occupational Licensing
 Games of Chance and Skill Section

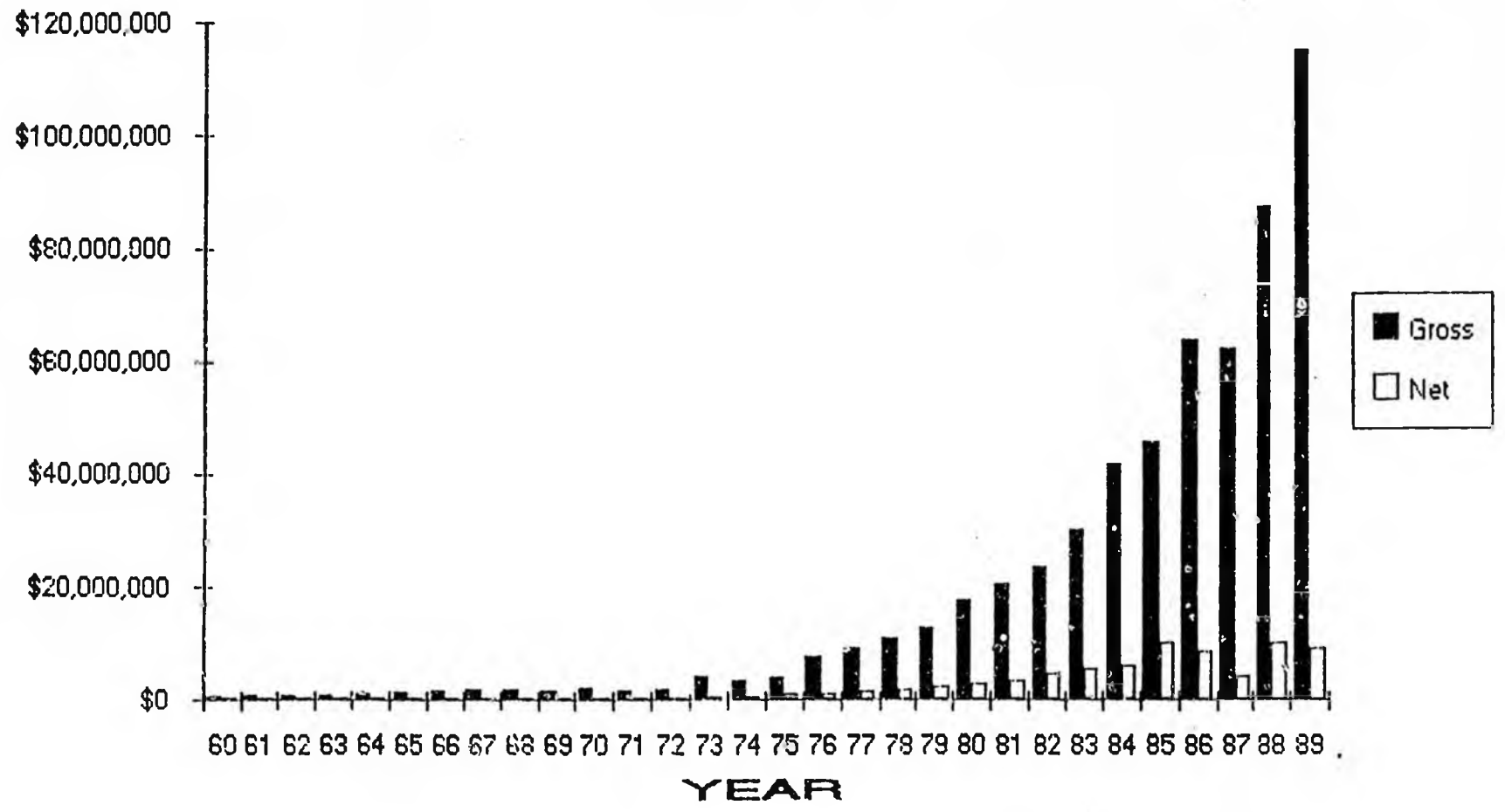
GAMING RECEIPTS, EXPENSES AND NET PROCEEDS
1960-1989

<u>YEAR</u>	<u>PERMITS ISSUED</u>	<u>GROSS RECEIPTS</u>	<u>PRIZES AND EXPENSES AND TAXES</u>	<u>NET PROCEEDS</u>
1960	162	\$ 649,793	\$ 553,440	\$ 96,363
1961	283	793,506	630,562	162,944
1962	284	734,619	599,550	135,069
1963	293	906,073	713,172	192,901
1964	333	1,035,506	861,949	173,637
1965	339	1,375,022	1,184,815	190,207
1966	386	1,516,289	1,253,442	262,847
1967	386	1,790,560	1,529,155	261,405
1968	406	1,970,723	1,654,935	315,788
1969	419	1,558,197	1,265,360	292,359
1970	394	2,101,408	1,716,170	385,238
1971	418	1,735,671	1,398,125	337,546
1972	457	1,928,404	1,621,008	307,396
1973	469	4,154,869	3,508,589	646,280
1974	505	3,318,427	2,838,173	480,254
1975	441	3,894,584	2,784,566	1,110,018
1976	443	7,477,337	6,400,297	1,077,040
1977	490	9,093,043	7,481,551	1,611,492
1978	550	11,046,034	9,214,874	1,831,160
1979	564	12,766,697	10,499,542	2,267,155
1980	578	17,641,692	14,828,135	2,813,557
1981	622	20,534,498	17,117,447	3,417,051
1982	703	23,644,716	18,844,032	4,800,684
1983	779	30,126,943	24,641,267	5,485,676
1984	763	41,666,994	35,744,570	5,922,424
1985	788	45,779,308	35,705,733	10,073,575

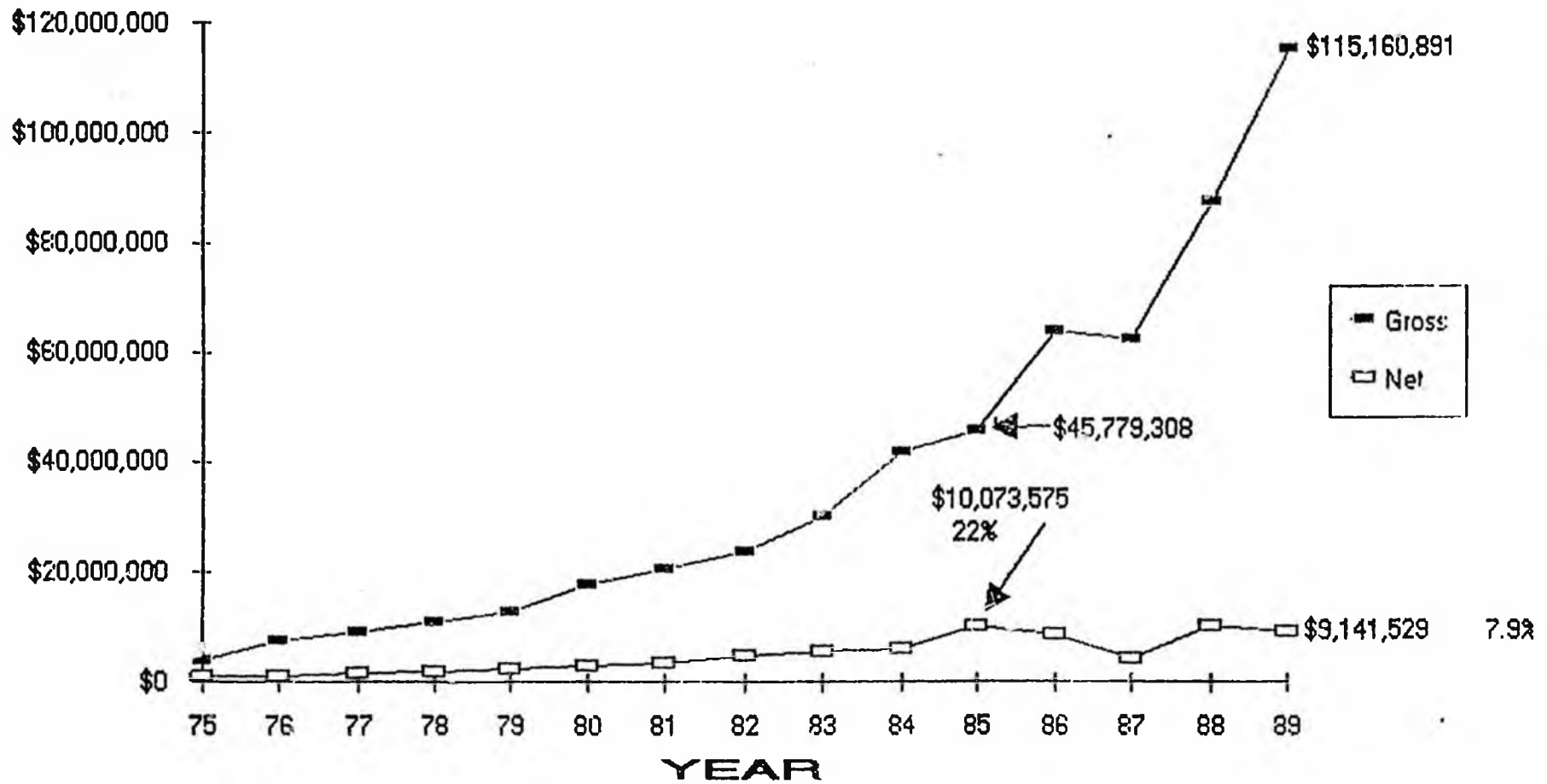
<u>YEAR</u>	<u>PERMITS ISSUED</u>	<u>GROSS RECEIPTS</u>	<u>PRIZES</u>	<u>EXPENSES AND TAXES</u>	<u>NET PROCEEDS</u>
1986	1,011	\$63,936,834	\$48,182,821	\$ 7,097,123	\$ 8,656,890
1987	1,040	62,163,749	51,613,746	6,358,015	4,191,988
1988*	1,026	87,524,470	69,095,076	10,957,143	10,256,316
1989*	1,042	115,160,891	86,319,035	16,564,602	9,141,529

*1988 and 1989 Annual Statements are unaudited, resulting in statistics based on reports as filed; therefore, the gross receipts minus prizes, expenses and taxes do not balance to reported permittee total net proceeds.

Annual Gross Receipts and Net Proceeds



Annual Gross Receipts and Net Proceeds



Department of Commerce and Economic Development
 Division of Occupational Licensing
 Games of Chance and Skill Section

PERMITTEE ACTIVITY
1988

Gross Receipts	\$87,524,470.81*	
Taxes	[25,256.00]	
Prizes Awarded	[69,095,076.45]	
Expenses	<u>[10,957,143.61]</u>	
Net Proceeds	<u>\$10,256,316.82</u>	
Percent Net Proceeds of Gross Receipts:		11.7%

Breakdown of Expenses:

Rent	\$1,497,446.88	Ticket Printing	\$ 72,645.88
Janitorial	273,710.64	Pull-Tab Purchase	1,463,966.43
Utilities	286,074.37	Bingo Supplies	200,748.42
Building Repair	176,354.00	Supplies	416,075.28
Building Depreciation	199,869.83	Other Printing	239,804.99
Building Insurance	159,432.89	Postage	34,333.39
Contract Services	1,145,639.45	Equipment Purchase	170,507.79
Accounting	81,980.00	Equipment Repairs	18,708.07
Wages	2,259,437.01	Non-Alcoholic	158,793.33
Payroll Taxes	193,346.52	Door Prizes	349,592.70
Prof. Services	0.00	Advertising	0.00
Permit Fees	23,881.87	From Operator (Expenses)	55,156.65
Pull-Tab Tax	128,622.49	Door Prizes	0.00
Other Expenses	1,270,288.87		

*All numbers are as reported by the permittees and may not balance.

Department of Commerce and Economic Development
 Division of Occupational Licensing
 Games of Chance and Skill Section

**PERMITTEE ACTIVITY
 1989**

Gross Receipts	\$115,160,891.14*	
Taxes	[9,576.79]	
Prizes Awarded	[86,319,035.34]	
Expenses	<u>[16,554,602.21]</u>	
Net Proceeds	<u>\$ 9,141,529.23</u>	
Percent Net Proceeds is of Gross Receipts:		7.9%

Breakdown of Expenses:

Rent	\$1,754,230.04	Ticket Printing	\$ 70,707.84
Janitorial	261,565.71	Pull-Tab Purchase	2,009,454.14
Utilities	229,612.23	Bing > Supplies	241,414.39
Building Repair	166,461.89	Supplies	453,025.60
Building Depreciation	84,530.79	Other Printing	293,143.44
Building Insurance	113,563.50	Postage	57,108.41
Contract Services	2,404,351.07	Equipment Purchase	216,855.68
Accounting	510,277.68	Equipment Repairs	11,985.01
Wages	3,149,686.13	Non-Alcoholic	141,274.72
Payroll Taxes	477,694.52	Door Prizes	283,155.72
Prof. Services	0.00	Advertising	0.00
Permit Fees	81,581.38	From Operator (Expenses)	1,551,900.46
Pull-Tab Tax	592,738.53	Door Prizes	0.00
Other Expenses	1,552,887.74		

*All numbers are as reported by the permittees and may not balance.