

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
6435 SENATE LABOR & COMMERCE **8672**

839

quired jurisdiction § 255. The United l in June appellant tember, the State of g appellant of viola- through 71-721, for ct. and commencing of Arkansas without kansas law for such ng Board. The case ant was found guilty ent was affirmed by rk. 285, 281 S. W. 2d eal. 351 U. S. 948. *amicus curiae* contend s statute to this con- Government's power le construction and ulating procurement. ned Services Procure- 1 U. S. C. § 152, that e made . . . to that ming to the invitation s to the Government. . . ." The report vices of the House of the factors to be con- particular bidder is a l business judgment. e bidder's experience, reputation, financial R. Rep. No. 109, 80th o. 571, 80th Cong., 1st eurement Regulations.

promulgated under the Act, set forth a list of guiding considerations, defining a responsible contractor as one who

"(a) Is a manufacturer, construction contractor, or regular dealer . . .

"(b) Has adequate financial resources, or ability to secure such resources;

"(c) Has the necessary experience, organization, and technical qualifications, and has or can acquire the necessary facilities (including probable subcontractor arrangements) to perform the proposed contract;

"(d) Is able to comply with the required delivery or performance schedule (taking into consideration all existing business commitments);

"(e) Has a satisfactory record of performance, integrity, judgment, and skills; and

"(f) Is otherwise qualified and eligible to receive an award under applicable laws and regulations." 32 CFR § 1.307; see also 32 CFR § 2.406-3.

Under the Arkansas licensing law similar factors are set forth to guide the Contractors Licensing Board:

"The Board, in determining the qualifications of any applicant for original license . . . shall, among other things, consider the following: (a) experience, (b) ability, (c) character, (d) the manner of performance of previous contracts, (e) financial condition, (f) equipment, (g) any other fact tending to show ability and willingness to conserve the public health and safety, and (h) default in complying with the provisions of this act . . . or any other law of the State. . . ." Ark. Stat., 1947, § 71-709.

Mere enumeration of the similar grounds for licensing under the state statute and for finding "responsibility" under the federal statute and regulations is sufficient to

indicate conflict between this license requirement which Arkansas places on a federal contractor and the action which Congress and the Department of Defense have taken to insure the reliability of persons and companies contracting with the Federal Government. Subjecting a federal contractor to the Arkansas contractor license requirements would give the State's licensing board a virtual power of review over the federal determination of "responsibility" and would thus frustrate the expressed federal policy of selecting the lowest responsible bidder. In view of the federal statute and regulations, the rationale of *Johnson v. Maryland*, 254 U. S. 51, 57, is applicable:

"It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them and pay a fee for permission to go on. Such a requirement does not merely touch the Government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders and requires qualifications in addition to those that the Government has pronounced sufficient. It is the duty of the Department to employ persons competent for their work and that duty it must be presumed has been performed. . . ."

The judgment of the Supreme Court of Arkansas is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

HB

82

SENATE COMMITTEE REPORT

FURTHER

2/13/89

DATE TURNED INTO OFFICE

3/13/89

Mr. President:

L&C

Committee considered

HB 82

delivery of supplies purchased under the State Procurement Code; efd
and recommended

- replace with _____ CS _____) same title
- or adopt _____ CS _____) new title
- attached amendment(s) and technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) zero fiscal impact appropriation no FN
 new updated previous
 same as previous fiscal note(s) published 1/25/89

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten Signature]

[Handwritten Signature]

[Handwritten Signature]

 Chairman signature and recommendation

Committee Backup attached

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



February 20, 1989

M E M O R A N D U M

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

From: Representative Dave Donley, Chair D
House Labor and Commerce Committee

Re: Request for hearing - HB 82

I am writing to request that you schedule a hearing on HB 82, relating to designated delivery points for supplies purchased under the state procurement code, for a hearing before the Senate Labor and Commerce Committee at your earliest convenience.

Please contact Colette Jensen or Ginger Baim at 4954 if you have any questions or need additional information.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892

April 5, 1988

MEMORANDUM

To: Representative Mike Navarre, Chair
House Rules Committee

From: Representative Dave Donley, Chair *DB*
House Labor and Commerce Committee

Re: Request to schedule HB 197

HB 197, a measure introduced by the House Labor and Commerce Committee, is currently before the House Rules Committee. I am writing to request that you schedule HB 197 for a vote before the full House at your earliest convenience.

HB 197 requires that state bid documents designate a delivery point for supplies within the state unless the Department of Administration determines that it is in the best interest of the state to designate a delivery point outside of Alaska.

HB 197 has a zero fiscal note and is strongly supported by local businesses, particularly the Alaska Manufacturers Association. This is a simple bill that doesn't cost anyone anything and it may help Alaska businesses to more fairly compete for state funded procurement contracts.

Please call me or Ginger Baim at 4954 if you have any questions or need additional information.

HB 197 File

HB 197 - PASSED
HOUSE UNANIMOUSLY
& DIED IN SEN.
FINANCE ON ADJOURN-
MENT 1988.

POSITION PAPER

Bill HB 197

The bill provides that all supplies purchased by the State will be delivered to a location within the state, unless the department making the purchase determines that a point of delivery outside the state would be in the best interest of the State. Invitations to Bid (ITB) and other means of procurement must state that the bid price includes delivery at the location named in the ITB.

The impact on the Department of Administration (DOA) will be minimal since nearly all ITBs and negotiated purchases already contain this requirement.

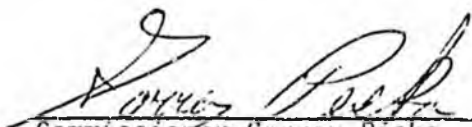
The DOA is neutral on this bill.



Robert J. Vink, Director
Division of General Services & Supply

3/27/87

Date



Commissioner Garrey Peska
Department of Administration

3/27/87

Date

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 197
Publish Date: March 27, 1987

REQUEST _____

Revision Date: _____
Title: An act relating to the delivery of supplies purchased under the State procurement code
Sponsor: Labor & Commerce Committee
Requestor: _____

Agency Affected: Dept. of Administration
BRU: General Services & Supply

Components: Purchasing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

The impact on the Department of Administration will be minimal since nearly all Invitations to Bid already contain this requirement.

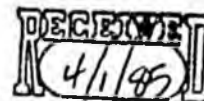
Prepared By: Robert J. Link *[Signature]* Phone: 465-2253
Division: General Services & Supply Date: March 26, 1987

Approved by Commissioner: Garrey Peska *[Signature]* Date: 3/27/87
Agency: Department of Administration

Distribution (by preparer):

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

Alaska State Legislature



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4453/4530

2201 ROOSEVELT DRIVE
ANCHORAGE, ALASKA 99503
(907) 248-4234



MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
HOUSE STATE AFFAIRS COMMITTEE

Representative Roger Jenkins

DISTRICT 11

April 1, 1985

MEMORANDUM

TO : Representative Ben Grussendorf
FROM : Representative Roger Jenkins *Roger L. Jenkins*
SUBJECT: State Contracting Procedures - FOB points

Attached is a letter that I received from Cartee & Sons some time back that speaks to the inequities in our contracting procedures.

Thought this might be of interest to you because of your interest in companies getting a fair shake when it comes to state contracts. If you recall Representative Taylor's comments on the floor about the contract let by the Alaska Railroad for wood ties, the attached letter is another instance of an FOB point established that excluded an Alaskan company from competing for a contract.

Attachment

sla

HB 50

Cartee & Sons

2601 ARCTIC BLVD. - ANCHORAGE, AK 99503 - (907) 279-1466

December 7, 1984

Representative Roger Jenkins

Box 100484

Anchorage, AK 99510

Dear Representative Jenkins,

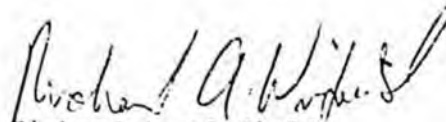
We are enclosing a copy of the letter written to the State of Alaska, Department of Transportation on December 7, 1984, in hope that you will be made aware of the inequities that exist in the State Purchasing system, and hopefully take legislative action to insure that these types of inequities are not allowed to continue.

Thank you for your time and consideration of this matter.

Respectfully,



Don S. Cartee
President



Richard A. Winfield
Sales Representative

Cartee & Sons

2601 ARCTIC BLVD. - ANCHORAGE, AK 99503 - (907) 279 1466

December 7, 1984

State of Alaska
Dept. of Transportation
Pouch Z, Mail Stop 2500
Juneau, AK 99811
ATTN: John Parsons

Mr. Parsons:

We are writing this letter in reference to invitation to bid #25506 "Purchase of t-shirts, baseball caps, and baseball jackets for the Marine Highway System".

We feel that the above mentioned invitation to bid is both questionable and objectionable, for the following reasons.

The invitation to bid creates an unfair advantage to non-Alaskan vendors by virtue of the delivery destination. In order to print the garments with Alaskan labor and then deliver the garments back to Seattle, an Alaskan vendor must pay freight on the shipment to Alaska and then back to Washington, whereas a Washington vendor pays no freight on the garments at all. The approximate freight costs on this shipment are \$400.00 each way, thereby giving a Washington vendor an \$800.00 advantage over an Alaskan vendor, with the higher labor costs and overhead that an Alaskan company must endure, this is almost an insurmountable advantage.

Because of the reasons stated above, we request that the Department of Transportation amend the aforementioned bid to read as follows:

"Items are for delivery to: Department of Transportation Warehouse, 5000 Aircraft Drive, Anchorage, Alaska".

If the amendment is issued, then both the Washington vendor and the Alaskan vendor would be facing identical shipping costs, which would make the bid competitive rather than one-sided.

We are a 25 year old Alaskan company that competes effectively with Washington vendors on a regular basis, we use strictly Alaskan labor and all work is done in Alaska.

We realize that it is in the best interest of the State of Alaska to effect purchase and delivery of goods in the least expensive and most timely manner possible, but we do not feel that this should be done in such a way that it effectively eliminates an Alaskan vendor being awarded a contract.

We would appreciate a written reply to this letter, and we thank you for your time and consideration of this matter.

Respectfully,


Don S. Cartee
President


Richard A. Winfield
Sales Representative

cc-Governor Bill Sheffield
cc-Senator Mitch Abood
cc-Representative Roger Jenkins
cc-Representative Don Young
cc-Senator Ted Stevens



INVITATION
TO BID

RETURN THIS BID TO:

State of Alaska
Department of Transportation & Public Facilities
Pouch Z - Headquarters Supply Section (MS 2500)
Juneau, Alaska 99811

INVITATION NO.
25506

THIS IS NOT AN ORDER

DATE ISSUED December 4, 1984

=====

SEALED BIDS WILL BE RECEIVED IN SINGLE COPY AT THE ABOVE ADDRESS UNTIL 2:00 P.M.
ON December 28, 1984 AT WHICH TIME THEY WILL BE PUBLICLY OPENED.

ITEMS ARE FOR DELIVERY TO: Pier 48, Seattle, Washington 98104

DATE DELIVERY DESIRED AT FINAL DESTINATION: NLT March 29, 1985

F.O.B.: Final Destination

IF YOUR COMPANY WOULD LIKE TO SUBMIT A "NO BID", PLEASE CHECK THIS BOX, SIGN THE BID, AND RETURN THIS COVER SHEET TO THE ADDRESS ABOVE. IF YOUR COMPANY DOES WANT TO SUBMIT A BID, MAKE SURE THE BID IS SIGNED AND ALL PAGES OF THE BID DOCUMENT ARE RETURNED BY THE DATE AND TIME MENTIONED ABOVE.

PURCHASE OF T-SHIRTS WITH LOGO, BASEBALL STYLE CAPS WITH LOGO,
BASEBALL STYLE WARM-UP WINDBREAKER JACKETS WITH LOGO

TRANSPORTATION COSTS AND ARRANGEMENTS: All transportation and delivery costs to the F.O.B. point are for the account of the Contractor. The Contractor shall assume full responsibility for arrangement of transportation. The State will not be liable for any charges for transportation, drayage, cartage, packing, boxing, crating, storage, or insurance, in excess of the price quoted by the Contractor.

SHIPPING: Title will not pass until goods have been accepted by the State.

RETURNS: All goods or materials purchased herein are subject to approval by the State. Any rejected items, goods, or material resulting because of non-conformity of the terms or specifications of this contract, whether held by the State or returned, will be at the Contractor's risk and expense.

AWARD: Award will be made by lot or by line item, whichever is in the best interest of the State.

DELIVERY DATE: All items in this invitation must be delivered to Pier 48, Seattle, Washington on or before March 29, 1985.

SILENCE OF SPECIFICATION: The apparent silence of this specification and supplemental specifications as to any detail, or the apparent omission from it, of a detailed description concerning any point, shall be regarded as meaning that only best commercial practice is to prevail, and that only materials and workmanship of first quality are to be used.

John Parsons
John Parsons

Title: Supply Officer

Telephone No. 465-4010

Page 1 of 7 pages + i & ii

Name of Company Submitting Bid

Authorized Signature

Printed Name

Date

Indicate if you qualify for 5 % Alaska Bidder's Preference: Yes No

AK Business License No.

Telephone

HB

86

SENATE COMMITTEE REPORT

FURTHER

3/21/89

DATE TURNED INTO OFFICE

4/11/89

Mr. President:

L&C

Committee considered

HB 86

employers to permit employees and former employees to have access to their personnel files

and recommended

- replace with _____ CS _____) same title
- or adopt _____ CS _____) new title
- attached amendment(s) and technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) zero fiscal impact appropriation no. FN

new updated previous

same as previous fiscal note(s) published

2/11/89

zero - Dept of Labor

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Chairman signature and recommendation

Committee Backup attached

Bill No. House Bill 86

Date January 30, 1989

Title "An Act requiring employers to permit employees and former employees to have access to their personnel files."

Contact: Tom Stuart
264-2452
Eileen Plate
465-2700

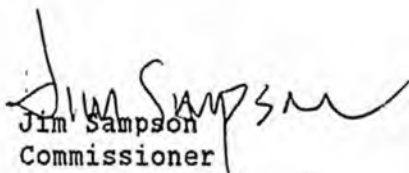
House Bill 86 requires employers to provide an employee or former employee access to his or her respective personnel records and to permit the employee to make copies of the records. The employer may charge the employee for the costs of duplicating the records.

Employees should have access to employer kept personnel records as provided in this bill. The accuracy of such records may have a direct bearing on a worker's employability should a prospective employer contact the worker's current or former employer as a reference. Under the provisions of this bill, a worker would have an opportunity to at least be aware of any discrepancies in the employer's personnel records.

The Department supports the provisions of this bill which provide workers a right to access and copy employer kept personnel records.

House Bill 86 would not have a fiscal impact on the Department of Labor.

APPROVED


Jim Sampson
Commissioner

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION : HB 86
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act requiring employers to
permit ...access to ...personnel files." BRU: Labor Standards & Safety
 Sponsor: House Labor & Commerce Components: Wage & Hour
 Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director Phone: 465-2725
 Division: Labor Standards & Safety Date: 1/26/89
 Approved by Commissioner: Jim Sampson Date: 1/26/89
 Agency: Department of Labor

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

A M E N D M E N T

OFFERED IN THE SENATE

BY FAIKS

TO: HB 86

Page 1, line 16, after "hours.":

Insert "However, an employer may prohibit an employee or former employee from copying proprietary information."

Page 1, line 25, after "state":

Insert ";

(3) "proprietary information" means information concerning other employees of the employer, and contract negotiations, sales, and purchases made by the employer"

A M E N D M E N T

OFFERED IN THE SENATE

BY FAIKS

TO: HB 86

Page 1, line 16, after "hours.":

Insert "However, an employer may refuse to permit a former employee to inspect and copy personnel information if the employee makes the request more than two years after the employee terminated employment with the employer."

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITAL
SITKA ALASKA 99801
1987 165 1000

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 13, 1989

SUBJECT: Scope of HB 86
(Access to personnel files)

TO: Representative Dave Donley

FROM: Teresa B. Cramer *IBC*
Legislative Counsel

You have asked whether HB 86 requires an employer to keep personnel files on employees. In my opinion, the answer is no. Under subsection (a), if an employer maintains personnel files, the employer must allow access to the information. There is nothing that affirmatively requires that the information be maintained in the first place.

If I may be of further assistance, please advise.

TC:kb
wkk1/119

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: LILLIE LAWSON

TITLE:

ADDRESS: 149 PALACE CIRCLE APT. 2

CITY: FAIRBANKS

ZIP: 99701

PHONE: 452-2209

BILL NO: HB 06

SUBJECT: EMPLOYEE ACCESS TO OWN PERSONNEL FILE

MESSAGE: I THINK ALL EMPLOYEES SHOULD HAVE THE RIGHT TO ACCESS THEIR PERSONNEL FILES AND ASK THAT YOUR COMMITTEE PASS THIS BILL.

POMID: 07134340

DATE: 03/23/89

TIME: 13:43:40

LIONAME: FAIRBANKS LIO

COPIES: SENATORSRODEY
FAIKS
KERTTULA
COGHILL

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: PAM CURE

TITLE:

ADDRESS: 5045 N. DOUGLAS

CITY: JUNEAU

ZIP: 99801

PHONE: 586-4454

BILL NO: SB 148

SUBJECT: EXEMPTIONS FROM IMMUNIZATIONS

MESSAGE: I SUPPORT THE BILL. PARENTS SHOULD HAVE THE CHOICE TO NOT IMMUNIZE THEIR CHILDREN BY PERSONAL CHOICE RATHER THAN RELIGIOUS.

POMID: 00152950

DATE: 03/23/89

TIME: 15:29:50

LIONAME: JUNEAU LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BARNES	BOUCHER	ADAMS
BOYER	BROWN	BINKLEY
CATO	COLLINS	COGHILL
COTTEN	DAVIDSON	DUNCAN
DAVIS, C.	DAVIS, M.	FAHRENKAMP
DONLEY	ELLIS	FAIKS
FOSTER	FURNACE	FISCHER
GOLL	GRUENBERG	FRANK
GRUSSENDORF	HANLEY	HALFORD
HOFFMAN	HUDSON	JONES
JACKO	KOPONEN	KELLY
LARSON	LEMAN	KERTTULA
MACLEAN	MARTIN	PEARCE
MENARD	MILLER	POURCHOT
NAVARRE	PETTYJOHN	RODEY
PHILLIPS	RIEGER	STURGULEWSKI
SHARP	SHULTZ	SYZHANSKI
SPOHNHOLZ	SWACKHAMMER	UEHLING
TAYLOR	ULMER	ZHAROFF
WALLIS	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: TERRY HORN

TITLE:

ADDRESS: 015 MCGRATH, SPACE 5V

CITY: FAIRBANKS

PHONE: 457-7728

ZIP: 99712

BILL NO:

SUBJECT: ELF

MESSAGE: REPEAL THE ELF AND IF YOU DON'T WANT TO VOTE FOR THE ALASKA PEOPLE
THEN I WANT A REPLY ON WHY YOU ARE VOTING FOR THE OIL COMPANIES.

EOM/MJO

POMID: 07111157

DATE: 03/23/89

TIME: 11:11:57

LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BARNES	BOUCHER	ADAMS
BOYER	BROWN	BINKLEY
CATO	COLLINS	COGHILL
COTTEN	DAVIDSON	DUNCAN
DAVIS, C.	DAVIS, M.	FAHRENKAMP
DONLEY	ELLIS	FAIKS
FOSTER	FURNACE	FISCHER
GOLL	GRUENBERG	FRANK
GRUSSENDORF	HANLEY	HALFORD
HOFFMAN	HUDSON	JONES
JACKO	KOPONEN	KELLY
LARSON	LEIHAN	KERTTULA
MACLEAN	MARTIN	PEARCE
MENARD	MILLER	POURCHOT
NAVARRE	PETTYJOHN	RODEY
PHILLIPS	RIEGER	STURGULEWSKI
SHARP	SHULTZ	SZYHANSKI
SFOHNHOLZ	SWACKHAMMER	UEHLING
TAYLOR	ULMER	ZHAROFF
WALLIS	ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: JOHN ALLEN

TITLE:

ADDRESS: PO BOX 74552

CITY: FAIRBANKS

PHONE: 479-2067

ZIP: 99707

BILL NO: HB 86

SUBJECT: EMPLOYEE ACCESS TO OWN PERSONNEL FILE

MESSAGE: I THINK ALL EMPLOYEES SHOULD HAVE THE RIGHT TO HAVE ACCESS TO THEIR
PERSONNEL FILES AND ASK THAT THE LABOR AND COMMERCE COMMITTEE SUPPORT HB 86.

POMID: 07115022

DATE: 03/23/89

TIME: 11:50:22

LIONAME: FAIRBANKS LIO

COPIES: SENATORS

RODEY
FAIKS
KERTTULA
COGHILL

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: COREY ALLEN

TITLE:

ADDRESS: P. O. BOX 10200

CITY: FAIRBANKS

ZIP: 99710

PHONE: 480-2202

BILL NO: HB 86

SUBJECT: EMPLOYEE ACCESS TO OWN PERSONNEL FILE

MESSAGE: I BELIEVE ALL EMPLOYEES OF OUR STATE SHOULD HAVE THE RIGHT TO THE ACCESS TO THEIR PERSONNEL FILES. PLEASE SUPPORT HB 86.

EOM-FZ

POMID: 07155108

DATE: 03/24/89

TIME: 15:51:00

LIONAME: FAIRBANKS LIO

COPIES: SENATORS

RODEY
FAIKS
KERTTULA
COGHILL

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: MICHAEL CRAFT

TITLE:

ADDRESS: 1739 CHENA RIDGE

CITY: FAIRBANKS

ZIP: 99709

PHONE: 479-5130

BILL NO: HB 110

SUBJECT:

MESSAGE: AS AN ALASKAN AND AN INVESTOR THE TAXES HERE IN FAIRBANKS HAVE PROMPTED ME TO LOOK ELSEWHERE FOR INVESTMENTS BECAUSE OF THE PROPERTY TAXES. THE LOCAL GOVERNMENT IS LOOKING FOR MORE PROPERTY TAXES BECAUSE STATE REVENUE SHARING HAS DROPPED. HOW CAN YOU JUSTIFY GIVING TAX BREAKS TO OBVIOUSLY VERY LUCRATIVE OIL DEVELOPMENT WHEN I AS A BUILDER CANNOT EVEN AFFORD TO PAY PROPERTY TAXES ON NEW CONSTRUCTION.

POMID: 07095820

DATE: 03/24/89

TIME: 09:58:20

LIONAME: FAIRBANKS LIO

COPIES: SENATORS

ADAMS
BINKLEY
COGHILL
DUNCAN
FAHRENKAMP
FAIKS
FISCHER
FRANK
HALFORD
JONES
KELLY
KERTTULA
PEARCE
POURCHOT
RODEY
STURGULEWSKI
SZYMAWSKI
UEHLING
ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: JOE PULLIAM
TITLE:
ADDRESS: 691 FARMER'S LOOP ROAD
CITY: FAIRBANKS ZIP: 99712
PHONE: 457-7422
BILL NO: HB 86
SUBJECT: EMPLOYEE ACCESS TO OWN PERSONNEL FILE
MESSAGE: I THINK ALL EMPLOYEES SHOULD HAVE THE RIGHT TO HAVE ACCESS TO
THEIR PERSONNEL FILES. I ASK THAT THE LABOR AND COMMERCE COMMITTEE SUPPORT
THIS BILL. JO

POMID: 07091424
DATE: 03/24/89
TIME: 09:14:24
LIONAME: FAIRBANKS LIO

COPIES: SENATORS

RODEY
FAIKS
KERTTULA
COGHILL

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: ANN ROTHE, REG. REPRESENTATION
TITLE: NATIONAL WILDLIFE FEDERATION
ADDRESS: 750 W. 2ND
CITY: ANCHORAGE ZIP: 99501
PHONE: 258-4800
BILL NO: SB 184
SUBJECT: REDOUBT BAY CRITICAL HABITAT AREA
MESSAGE: THIS IS TO EXPRESS THE SUPPORT OF THE NATIONAL WILDLIFE FEDERATION,
THE NATION'S LARGEST CONSERVATION ORGANIZATION WITH NEARLY 10,000 MEMBERS IN
ALASKA, FOR SB 184 ESTABLISHING THE REDOUBT BAY CRITICAL HABITAT AREA. WE
BELIEVE THIS BILL WILL ENSURE ENHANCEMENT AND PROTECTION OF IMPORTANT FISH AND
WILDLIFE HABITATS AND POPULATION.

POMID: 03102117
DATE: 03/24/89
TIME: 10:21:17
LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES SENATORS

WALLIS	FAHRENKAMP
NAVARRE	BINKLEY
SWACKHAMMER	FISCHER
	KERTTULA
	FRANK
	HALFORD
	STURGULEWSKI
	ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: ALEENE M. BROWN

TITLE:

ADDRESS: 9499 BRAYTON

CITY: ANCHORAGE

PHONE: 522-8533

BILL NO: HB 86

SUBJECT: EMPLOYEE ACCESS TO OWN PERSONNEL FILE

MESSAGE: I AM IN FAVOR OF HB 86 DEALING WITH EMPLOYEES ACCESS TO THEIR PERSONNEL FILE AND WOULD APPRECIATE YOUR SUPPORT OF THAT BILL. I WILL BE IN JUNEAU, TUESDAY, MARCH 28, 1989 AND WILL MAKE AN EFFORT TO CONTACT YOU AT THAT TIME TO DISCUSS IT. THANK YOU.

POMID: 03124817

DATE: 03/24/89

TIME: 12:48:17

LIONAME: ANCHORAGE LIO

COPIES: SENATORS

RODEY
FAIKS
KERTTULA
COGHILL

ZIP: 99507

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: TIM TILSWORTH

TITLE:

ADDRESS: 1900 RAVEN DRIVE

CITY: FAIRBANKS

PHONE: 479-0631

BILL NO:

SUBJECT: ELF

MESSAGE: I SUPPORT THE GOVERNOR'S PROPOSAL TO AMEND ELF. I ALSO REQUEST THE LEGISLATURE TO INFORM THE OIL INDUSTRY THAT THEY DO NOT OWN THE OIL OF THIS STATE. ALASKA RESIDENTS DO! IF WE ARE UNABLE TO OBTAIN A REASONABLE RETURN ON OUR OIL RESOURCES - THEN LEAVE THE OIL IN THE GROUND. EOM/CLS

POMID: 07122516

DATE: 03/24/89

TIME: 12:25:16

LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BARNES	BOUCHER	ADAMS
BOYER	BROWN	BINKLEY
CATO	COLLINS	COGHILL
COTTEN	DAVIDSON	DUNCAN
DAVIS, C.	DAVIS, M.	FAHRENKAMP
DONLEY	ELLIS	FAIKS
FOSTER	FURNACE	FISCHER
GOLL	GRUENBERG	FRANK
GRUSSENDORF	HANLEY	HALFORD
HOFFMAN	HUDSON	JONES
JACKO	KOPONEN	KELLY
LARSON	LEMAN	KERTTULA
MACLEAN	MARTIN	PEARCE
MENARD	MILLER	POURCHOT
NAVARRE	PETTYJOHN	RODEY
PHILLIPS	RIEGER	STURGULEWSKI
SHARP	SHULTZ	SZYMAWSKI
SPOHNHOLZ	SHACKHAMMER	UEHLING
TAYLOR	ULMER	ZHAROFF
WALLIS	ZAHACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: BEVERLY TITUS
TITLE:
ADDRESS: 1908.5 CARR AVENUE
CITY: FAIRBANKS ZIP: 99707
PHONE: 456-7385
BILL NO: HB 86

SUBJECT: EMPLOYEE ACCESS TO OWN PERSONNEL FILE
MESSAGE: I THINK ALL EMPLOYEES SHOULD HAVE THE RIGHT TO HAVE ACCESS TO THEIR PERSONNEL FILES AND ASK THAT THE LABOR AND COMMERCE COMMITTEE SUPPORT HB 86.
EOM/MJO

POHID: 07114224
DATE: 03/24/89
TIME: 11:42:24
LIONAME: FAIRBANKS LIO

COPIES: SENATORS

RODEY
FAIKS
KERTTULA
COGHILL

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: ROD MCCOY
TITLE:
ADDRESS: 7749 OLD HARBOR RD.
CITY: ANCHORAGE ZIP: 99504
PHONE: 337-6130
BILL NO:

SUBJECT: MARIJUANA
MESSAGE: MR. POURCHOT'S TESTIMONY ON SOCIETY'S ATTITUDES AND PROHIBITIONS ON DRUGS WAS WISE AND DEMONSTRATED INTELLIGENCE AND COURAGE FOR OUR SENATORS. I TOO AM ANUSED AND FRUSTRATED BY OUR SOCIETY'S SEEMING REFUSAL TO RECOGNIZE THE TOXIC NATURE OF OUR TRADITIONAL DRUGS. HIS POSITIVE AND THOUGHTFUL PRESENCE IN OUR SENATE REAFFIRMS MY BELIEF IN DEMOCRACY.

POHID: 03115913
DATE: 03/24/89
TIME: 11:59:13
LIONAME: ANCHORAGE LIO

COPIES: SENATORS

ADAMS
BINKLEY
COGHILL
DUNCAN
FAHRENKAMP
FAIKS
FISCHER
FRANK
HALFORD
JONES
KELLY
KERTTULA
PEARCE
POURCHOT
RODEY
STURGULEWSKI
SZYMAWSKI
UEHLING
ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: DENNIE DOUGHTY

TITLE:

ADDRESS: 12236 KEYSTONE

CITY: EAGLE RIVER

PHONE: 694-4881

BILL NO: HD 86

ZIP: 99577

SUBJECT: EMPLOYEE ACCESS TO OWN PERSONNEL FILE

MESSAGE: HD 86 IS NOW IN YOUR COMMITTEE. ALL HELP YOU CAN GIVE IN QUICKLY SCHEDULING AND SUPPORTING THIS BILL WILL BE GREATLY APPRECIATED BY THE WORKING PEOPLE OF ALASKA. I WILL BE IN JUNEAU ON MARCH 28 AND 29 AND WOULD LIKE TO DISCUSS THIS BILL WITH YOU.

POMID: 03104024

DATE: 03/23/89

TIME: 10:40:24

LIONAME: ANCHORAGE LIO

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: DENNIS DOUGHTY

TITLE:

ADDRESS: 12236 KEYSTONE

CITY: EAGLE RIVER

PHONE: 276-2029

BILL NO: HD 86

ZIP: 99577

SUBJECT: EMPLOYEE ACCESS TO OWN PERSONNEL FILE

MESSAGE: HD 86 IS NOW IN YOUR COMMITTEE. IT DESERVES YOUR EXPEDITED SUPPORT. IF AN EMPLOYER KEEPS AN HONEST PERSONNEL FILE HE SHOULDN'T HAVE ANY REASON NOT TO ALLOW EMPLOYEES ACCESS TO THAT INFORMATION. THIS ACCESS SHOULD BE GUARANTEED BY LAW. THANKS IN ADVANCE FOR YOUR SUPPORT.

POMID: 03112045

DATE: 03/23/89

TIME: 11:20:45

LIONAME: ANCHORAGE LIO

COPIES: SENATORS

RODEY

FAIKS

KERTTULA

COGHILL



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

May 31, 1988

MEMORANDUM

TO: Representative Dave Donley

FROM: Sandi Depue *Sandi*
Administrative Officer

RE: Other States' Legislation Allowing Private Sector Employees Access
to Personnel Files
Research Request 88.259

You asked this agency to determine whether other states allow private sector employees access to their own personnel files. In our effort to gather this information, we contacted the National Conference of State Legislatures (NCSL) and the Council of State Governments (CSG). Our findings are summarized in this memorandum and in the attached document.

Thirteen states, plus the District of Columbia, have statutes which allow private sector employees access to their personnel files. The pertinent states are California, Connecticut, Delaware, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin. In some cases, the statutes also address photocopying of documents within a file and an employee's right to correct or add documents to his or her file.

Brenda Trolin, of NCSL, sent copies of pages from the Employment Coordinator which deal with worker privacy laws (attached). The first page of the information indicates: "...The absence of an entry for any particular state means that worker privacy issues are not expressly regulated in that state by legislation...." Besides covering drug and AIDS testing, and various other privacy issues, the document details those states that have legislation regarding employee access to personnel files and gives a short summation of the legislation. I have highlighted the relevant sections of each state's summary. State statute citations are noted; we did not, however, photocopy the actual statutes. If you would like copies of them, or those of a particular state, please let us know.

I hope you find this information useful. If you need further information, please contact this agency.


Attachment

¶ EP-21,851. Worker privacy.

Whether, and to what extent, employees have rights protecting them from employer intrusion into their privacy are questions governed primarily, and almost exclusively, by state law.

Other than the federal Privacy Act, which relates to *governmental* intrusion into individuals' freedom (¶ EP-35,651 et seq.), and some court decisions holding Title VII inapplicable to employers' use of lie detectors and other truth tests (¶ EP-21,852), the federal government has thus far left the question of worker privacy in the private sector to regulation by the state legislatures.

Many states have enacted privacy statutes that deal with some aspect of the issue. Some states regulate the process by which an employer gathers information about employees and prospective employees, as well as how an employer can use or disclose to third parties the information gathered. With respect to the gathering of information, a particularly prevalent form of legislation deals with the use of polygraph or other honesty tests. Another area of common legislative concern involves the means by which an employee can gain access to his personnel file and correct or remove information from that file.


 **Note to Personnel:** Statutory worker privacy requirements should be implemented in company personnel policies dealing with matters such as employee selection (¶ PM-10,001 et seq.), job evaluations (¶ PM-12,081 et seq.), performance appraisals (¶ PM-14,051 et seq.), employee assistance programs (¶ PM-14,801 et seq.), and counseling programs (¶ PM-14,831 et seq.).

The following divisions (¶ EP-21,855 et seq.) identify and describe the provisions of state privacy statutes,¹ which have been enacted in 33 states, as well as the District of Columbia. The absence of an entry for any particular state

means that worker privacy issues are not expressly regulated in that state by legislation.

¶ EP-21,852. Effect of Title VII on use of lie detector tests.

Under Title VII, employers' use of polygraph tests to assure employee honesty has been approved, at least where the tests are not shown to have been applied unequally to,² or to have a disproportionate impact on,³ minority persons.

 **Caution:** Even though using a lie detector may not violate Title VII, this doesn't necessarily mean employers may do so with impunity. A number of states have enacted statutes prohibiting the practice. For example, the California statute prohibits private employers from requiring applicants or employees to take a polygraph as a condition of employment or continued employment (¶ EP-21,861).

Under State Laws

Arizona

¶ EP-21,855. Under what conditions can consumer report information about employees be gathered.

A consumer reporting agency may furnish a consumer report to any person the agency believes will use the information for employment purposes.⁴

¶ EP-21,856. How an employer can use consumer report information in a personnel file.

An employer that makes an adverse employment decision with regard to an individual must, upon written request, disclose the name and address of any consumer reporting agency

1. The reader is cautioned that this treatment discusses state statutes and does not attempt to reflect the law in any jurisdiction as it has been modified by administrative regulations or judicial decisions. The reader should, therefore, consult a state's regulatory compilations and judicial reporters for elaboration.

2. Ramirez v Omaha (1982, CA8) 678 F2d 751, 30 BNA

FEP Cas 477, 29 CCH EPD ¶ 32698; EEOC Decision No. 76-12 (Aug 15, 1975) CCH EEOC Decisions ¶ 6607.


3. EEOC Decision No. 76-65 (Nov 21, 1975) CCH EEOC Dec ¶ 6649.

4. Ariz RS § 44-1692 subd 1(b).

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EMPLOYMENT COORDINATOR

81,851

THIS INFORMATION IS PROVIDED BY THE
 National
 Conference
 of State
 Legislatures
 1050 17th Street
 Suite 2100
 Denver, Colorado 80265
 303-823-7800

that has furnished a consumer report considered in making the determination.⁵

California

¶ EP-21,860. Under what conditions can consumer report information about employees be gathered.

An investigative consumer reporting agency may furnish an investigative consumer report to any person the agency believes will use the information for employment purposes.⁶ If an investigative consumer report is sought for employment purposes, the person procuring or causing the report to be made must, no later than three days after the date on which the report was first requested, notify the consumer in writing that an investigative consumer report will be made. However, this rule does not apply when the report is sought for purposes of promotion or reassignment,⁷ or to determine whether an employee is to be retained or is engaged in any criminal activity likely to result in a loss to the employer.⁸

¶ EP-21,861. How an employer can use polygraph, voice stress analysis, or similar tests.

No employer, other than the federal or state government, or an agency or local subdivision, may require any applicant or employee to submit to a polygraph, lie detector, or similar test as a condition of employment or continued employment.⁹ Furthermore, no employer can request that any person take or administer such a test without first advising the person, in writing, at the time the test is to be administered, that the employer does not have the right to demand or require that the test be taken.¹⁰ In addition, no system that examines or records the voice prints or other voice stress patterns of any person can be used to determine the truth or falsity of statements made, without express written consent given in advance.¹¹

¶ EP-21,862. How an employer can use information in a personnel file.

No employee may be discriminated against in terms or conditions of employment due to a refusal to sign an authorization to disclose medical information, though an employer is not prohibited from taking necessary action in the absence of medical information due to an employee's refusal to sign an authorization.¹²

It is also unlawful for a public service corporation to discipline or discharge any employee based on a report by a special agent, detective, or spotter that involves a question of integrity, honesty, or breach of an employer rule, unless the employer gives notice and accords a hearing upon the accused employee's request. At this hearing, the employer must state specific charges, and the accused employee has the right to furnish testimony in his own defense.¹³

¶ EP-21,863. How an employee can gain access to a personnel file.

If an applicant signs any instrument relating to the obtaining of employment, he must be given a copy upon request.¹⁴ However, this rule does not apply to employment applications filed with railroad common carriers that are subject to the Railway Labor Act.¹⁵

Upon request, at reasonable times and at reasonable intervals as determined by the Labor Commissioner, an employee is also entitled to inspect employer personnel files used to determine qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.¹⁶ A copy of each employee's personnel file must be kept at the place the employee reports to work, or must be made available there within a reasonable time after the request is made.¹⁷ However, the right of inspection does not apply to records relating to the investigation of a possible criminal offense or to letters of reference.¹⁸

An employer that possesses an authorization to disclose medical information regarding an

5. Ariz RS § 44-1693 subd A(3).
6. Cal Deering's Civ C § 1786.12(d)(1).
7. Cal Deering's Civ C § 1786.16(a)(2).
8. Cal Deering's Civ C § 1786.16(b).
9. Cal Deering's Lab C § 432.2(a).
10. Cal Deering's Lab C § 432.2(b).
11. Cal Deering's Pen C § 637.3(a).

12. Cal Deering's Civ C § 56.20(b).
13. Cal Deering's Pub Util C § 8251.
14. Cal Deering's Lab C § 432.
15. Cal Deering's Lab C § 434.
16. Cal Deering's Lab C § 1198.5.
17. Cal Deering's Lab C § 1198.5.
18. Cal Deering's Lab C § 1198.5.

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employee must furnish a true copy of the authorization to the employee upon demand.¹⁰

¶ EP-21,864. How the state can gain access to signed applications.

If an applicant is required to sign an application for employment, a copy of the application form must be filed in the office of the Division of Labor Standards Enforcement.²⁰ However, this rule does not apply to employment applications filed with railroad common carriers subject to the Railway Labor Act.²¹

¶ EP-21,865. How an employer can disclose medical records to outsiders.

Each employer that receives medical information must establish appropriate procedures to ensure its confidentiality and protection from unauthorized use and disclosure.²² Although disclosure of employee medical information usually requires signed authorization, there are a number of exceptions, such as when disclosure is compelled by judicial or administrative process.²³ The exceptions do not apply, however, if an employer agrees in writing with one or more of its employees or maintains a written policy that provides that particular types of medical information must not be disclosed.²⁴

A disclosure of medical information pursuant to a required authorization must communicate any limitations in the authorization regarding the use of the information.¹ Cancellation or modification of an authorization is effective only after the employer actually receives written notice.²

Connecticut

¶ EP-21,870. Under what conditions can information about employees be gathered.

It is unlawful for an employer to operate any electronic surveillance device or system to record or monitor employee activities in areas designed for health or personal comfort or for safeguarding their possessions, such as rest-

rooms, locker rooms, or lounges.³ It is also unlawful to intentionally overhear or record a conversation or discussion pertaining to employment contract negotiations without the consent of all parties.⁴

¶ EP-21,871. How an employer can use polygraph tests.

No employer, including the state and any of its political subdivisions, but excluding any police department, except for civilian employees within the department,⁵ may request or require that any employee or prospective employee submit to a polygraph examination as a condition of obtaining or continuing employment.⁶ Furthermore, no employee may be dismissed or disciplined for failing or declining to submit to a polygraph examination.⁷

¶ EP-21,872. How an employee can correct or remove information from a personnel file.⁸

If an employee disagrees with any of the information contained in his personnel file (¶ EP-21,874.1) or medical records (¶ EP-21,874.2), and the employee and employer cannot agree on removal or correction of the information, the employee may submit a written statement explaining his position. This statement must be maintained as part of the file or records and must accompany any transmittal or disclosure made to a third party.⁹

¶ EP-21,873. How an employee can gain access to a personnel file or medical records.⁷

An employee is entitled to inspect his personnel file within a reasonable time after the employer receives a written request.⁸ Similarly, if an employee so requests, an employer must permit a physician chosen by the employee or with the employee's consent to inspect the employee's medical records within a reasonable time after receipt of the request.¹⁰ In addition, each employer must, within a reasonable time after receipt of a written request from an

19. Cal Deering's Civ C § 56.22.
20. Cal Deering's Lab C § 431.
21. Cal Deering's Lab C § 434.
22. Cal Deering's Civ C § 56.20(a).
23. Cal Deering's Civ C § 56.20(c).
24. Cal Deering's Civ C § 56.20(d).
1. Cal Deering's Civ C § 56.23.
2. Cal Deering's Civ C § 56.24.

3. Conn GS § 31-48b(b).
4. Conn GS § 31-48b(d).
5. Conn GS § 31-51g(d).
6. Conn GS § 31-51g(b)(1).
7. Conn GS § 31-51g(b)(1).
8. Conn GS § 31-128c.
9. Conn GS § 31-128b.
10. Conn GS § 31-128c.

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employee, provide the employee with a copy of all or part of the employee's personnel file or provide the employee's physician with a copy of the employee's medical records. However, a fee reasonably related to the cost of supplying requested document may be charged.¹¹

An employer is not required to permit inspection more than twice a calendar year.¹²

¶ EP-21,874. How an employer can disclose personnel or medical records to outsiders.

With certain exceptions, no individually identifiable information contained in the personnel file or medical records of any employee may be disclosed by an employer to any person or entity not employed by or affiliated with the employer, unless the employee authorizes the disclosure in writing. The exceptions to this rule permit disclosure:

(1) to a third party that maintains or prepares employment records or performs other employment-related services for the employer;

(2) under a lawfully issued administrative summons or judicial order, including a search warrant or subpoena, or in response to a government audit or the investigation or defense of personnel-related complaints against the employer;

(3) under a law enforcement agency's request for an employee's home address and dates of attendance at work;

(4) in response to an apparent medical emergency or to apprise the employee's physician of a medical condition of which the employee may not be aware;

(5) to comply with federal, state, or local laws or regulations;

(6) where the information is disseminated under the terms of a collective bargaining agreement; or

(7) where the information merely verifies the employee's dates of employment and gives his title or position and wage or salary.

If the authorization involves medical records, the employer must remind the employee of his right or his physician's right of inspection and correction, his right to withhold authorization,

and what effect withholding authorization will have on him.^{12,1}

¶ EP-21,874.1. What is a "personnel file."

A "personnel file" means papers, documents, and reports pertaining to a particular employee that are used or have been used by an employer to determine the employee's eligibility for employment, promotion, additional compensation, transfer, termination, discipline, or other adverse personnel action. It includes evaluations or reports on the employee's character, credit, and work habits, but not medical records (¶ EP-21,874.2), stock option or management bonus plan records, reference letters, materials the employer uses to plan for future operations, separately maintained security files (¶ EP-21,874.3), test information that would invalidate the test if disclosed, or documents prepared for use in civil, criminal, or grievance proceedings.^{12,2}

¶ EP-21,874.2. What are "medical records."

"Medical records" are all papers, documents, and reports prepared by a physician, psychiatrist, or psychologist that are in an employer's possession and are work-related or upon which the employer relies to make any employment-related decision.^{12,3} An employer may keep an employee's medical records separately and not as part of any personnel file.^{12,4}

¶ EP-21,874.3. What are "security files."

"Security files" are information relating to investigations of losses, misconduct, or suspected crimes, as well as investigative information maintained under government requirements. However, an employer must maintain this information separately and not use it to determine an employee's eligibility for employment to keep it from being considered part of an employee's personnel file (¶ EP-21,874.1).¹³

¶ EP-21,875. How an employer can use drug tests.

With one possible exception, an employer must use certain procedures in conducting any urinalysis drug test on employees or applicants to ensure the test's reliability (¶ EP-21,876) and

11. Conn GS § 31-128g.

12. Conn GS § 31-128h.

12.1. Conn GS § 31-128f.

12.2. Conn GS § 31-128a(3).

12.3. Conn GS § 31-128a(4).

12.4. Conn GS § 31-128c.

13. Conn GS § 31-128a(5).

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safeguard the confidentiality of testing information (¶ EP-21,877). The restrictions apply to any tests on employees that are used to determine eligibility for promotion, additional compensation, transfer, termination, or a disciplinary or other adverse personnel action.^{13.1}

An employer may require an employee to submit to a urinalysis drug test, only if one of the following conditions applies. First, an employer may require a test if it has a reasonable suspicion that the employee is under the influence of drugs or alcohol so that it adversely affects or could adversely affect his job performance.^{13.2}

Second, it may require a test on a random basis if:

- (1) the test is authorized by federal law;
- (2) the employee serves in an occupation that has been designated by regulations of the state's labor commissioner as a high risk or safety-sensitive occupation; or
- (3) the test is conducted as part of an employee assistance program sponsored or authorized by the employer in which the employee voluntarily participates.^{13.3}

Third, it may conduct medical screenings, with the express written consent of the employees, to monitor exposure to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities if the tests are limited to the specific substances identified in the employee consent form.^{13.4}

Fourth, it may conduct a test under the supervision of the division of special revenue, within the department of revenue service, relative to jai alai players, jai alai court judges, jockeys, harness drivers, or stewards participating in activities upon which pari mutuel wagering is authorized by the state's statutes.^{13.5}

Observation: The possible exception to the statute's various requirements involves the latter tests on participants in activities that are the subject of legalized gambling. While the law's provision concerning these tests does not use the term "exception" or "ex-

emption," its statement that nothing in the act restricts or prevents a urinalysis drug test program conducted under the supervision of the state agency regulating those activities appears to imply an exception.

An employer may not require an applicant to submit to a urinalysis drug test as a condition of employment, unless it notifies him in writing at the time of application of its intent to do so, and gives the applicant a copy of any positive result.^{13.6}

Liability for violations is discussed at ¶ EP-39,611 et seq.

Observation: The law appears to regulate only the urinalysis method of drug testing. Other forms of testing, such as those that use blood, breath, or hair samples, are not expressly covered, although one might argue that the law implies a ban on any methods less reliable than those which it regulates.

¶ EP-21,876. How to administer drug tests.

Whenever an employer seeks to use a urinalysis drug test as the basis for making employment decisions, it must use a reliable methodology in an initial test, confirm any positive result from an initial test by a second and independent test that uses a reliable methodology, and again confirm with a separate third test utilizing a gas chromatography and mass spectrometry methodology or a methodology determined by the state's commissioner of health services to be at least as reliable.^{13.7}

Also, it is unlawful for an employer, or its representative, agent, or designee to observe an employee or prospective employee directly in the process of producing the urine specimen to be used in its drug testing program.^{13.8}

¶ EP-21,877. How an employer can disclose information obtained in drug tests.

With regard to any urinalysis drug test (¶ EP-21,875) on an applicant for employment, the employer can only disclose the results to an employee to whom the disclosure is necessary.^{13.9} Results of tests on employees are subject to the same privacy protections afforded

13.1. PA 87-551, § 2.

13.2. PA 87-551, § 6.

13.3. PA 87-551, § 7.

13.4. PA 87-551, § 8.

13.5. PA 87-551, § 10.

13.6. PA 87-551, § 3.

13.7. PA 87-551, § 2.

13.8. PA 87-551, § 4.

13.9. PA 87-551, § 3.

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other employee medical records (¶ EP-21,872-21,874).

The results of tests conducted by or on behalf of an employer are also inadmissible in any criminal proceeding.^{13.10}

¶ EP-21,878. Effect of the drug testing law on an employer's authority.

The drug testing law permits an employer to prohibit the use of intoxicating substances during work hours, and to discipline an employee for being under the influence of such substances during work.^{13.11}

Collective bargaining agreements are subordinate to the provisions of the drug testing law as to the privacy rights of any employee.^{13.12}

Delaware

¶ EP-21,880. How an employer can use polygraph, voice stress analysis, or similar tests.

It is unlawful to require or request, directly or indirectly, that any employee or prospective employee take a polygraph, lie detector, or

similar test or examination, including a voice stress analysis, as a condition of employment or continuation of employment.¹⁴

¶ EP-21,881. How an employee can gain access to a personnel file or medical records.

Every employer must, at reasonable times upon the request of an employee, permit that employee to inspect his own personnel file used to determine his or her qualifications for employment, promotion, salary increases, termination, or disciplinary action.^{14.1} More particularly, a personnel file includes employment applications, salary information, notices of commendations, warning, or discipline, authorization for a deduction or withholding of pay, fringe benefit information, leave records, employment history with the employer, and medical records. It does not include records relating to investigations of a possible criminal offense, reference letters, documents prepared for use in civil, criminal, or grievance procedures, information available to the employer under the Fair Credit Reporting Act, or material used by the employer for business operations.^{14.2}

13.10. PA 87-551, § 5.

13.11. PA 87-551, § 9.

13.12. PA 87-551, § 12.

14. 19 Del C § 704.

14.1. 19 Del C § 721.

14.2. 19 Del C 720(3).

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81,854B

3/21/88 EMPLOYMENT COORDINATOR

The employer must make personnel records available during the regular business hours of the office where the records are maintained. However, the employer may ask the employee to inspect his records on the employee's free time. At the employer's discretion, the employee may be required to file a written request describing either the purpose for the inspection or the particular parts of the record to be inspected.^{14.3}

The employer must allow the employee sufficient inspection time, and the employee may take notes. Employers are not required to permit employees to remove their personnel records from the place where the records are maintained and, except for reasonable cause, the employer may limit inspections to one every calendar year.^{14.4}

¶ EP-21,882. How an employee can correct or remove information from personnel or medical records.

If an employee disagrees with any information contained in his personnel record, removal or correction of such information may be agreed on by the employee and his employer. If an agreement cannot be reached as to removal or correction, the employee may submit a written statement explaining his position, and the statement will become part of the employee's personnel record and must accompany any transmittal or disclosures of the record to third parties.^{14.5}

District of Columbia

¶ EP-21,885. How an employer can use polygraph tests.

No employer or prospective employer may administer, accept, or use the results of any lie detector test in connection with the employment of any individual. An employer or prospective employer also cannot have administered, inside the District of Columbia, any lie detector test to any employee, or to any potential employee whose employment, as contemplated at the time of administration of the test, would take place in whole or in part in the

District of Columbia.¹⁶ This rule does not apply to any criminal or internal disciplinary investigation conducted by the Metropolitan Police, the Fire Department, or the Department of Corrections.¹⁶

¶ EP-21,886. How an employee can correct or remove information from a personnel file.

Each employee has the right to present information immediately germane to any information contained in his official personnel record and to seek to have irrelevant, immaterial, or untimely information removed from the record.¹⁷

¶ EP-21,887. How an employee can gain access to a personnel file.

The official personnel record of a District of Columbia employee must be disclosed to the employee or any representative of his choice, though disclosure must be made in the presence of a representative of the agency having custody of the records, provided that certain information, such as criminal investigative reports, not be disclosed to any employee.¹⁸

¶ EP-21,888. How an employer can disclose personnel records to outsiders.

The mayor of the District of Columbia is authorized to issue rules and regulations governing the disclosure of official information contained in personnel records.¹⁹

Florida

¶ EP-21,888.5. How an employer can disclose medical records to outsiders.

No person may be compelled to identify or provide identifying characteristics which, if disclosed, would identify any individual who is the subject of serological tests. Any person who discloses the test results to another person, unless the disclosure is to the person receiving the test, is guilty of a first degree misdemeanor. This prohibition does not apply if:

(1) written consent is obtained from the test subject;

(2) the information is disclosed pursuant to the standard practice of medicine or public

14.3. 19 Del C § 721.

14.4. 19 Del C § 722.

14.5. 19 Del C § 723.

15. DC CA § 36-802(a).

16. DC CA § 36-802(b).

17. DC CA § 1-632.5(b).

18. DC CA § 1-632.5(a).

19. DC CA § 1-632.4.

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

health, including consultation between physicians to determine diagnosis and treatment and communication of test results to an authorized facility; or

(3) test results are disclosed during medical or epidemiologic research without the individuals' names or identifying characteristics.^{19,1}

Georgia

¶ EP-21,889. How an employer can use polygraph tests.

Georgia forbids the use of polygraph examinations except as measures of stressful physiological responses. The use of a polygraph primarily to frighten or intimidate an examinee is prohibited.²⁰ Furthermore, a polygraph examiner may not use a preemployment polygraph examination as an accusatory interrogation to elicit a confession from the examinee.²¹

Any employee or applicant for employment who agrees to submit to a polygraph examination must sign a notification indicating that he

is consenting voluntarily to take the examination.²²

A polygraph examination consists of a complete pretest interview,²³ a chart examination,²⁴ and a post-test interview, if necessary, in which the examiner tells the employee his opinion of the test results and allows him to respond to those opinions.²⁵

A polygraph examiner may not ask a question during an examination unless he has previously submitted that question in writing to the employee.¹ Furthermore, a polygraph examiner specifically may not inquire into the following areas during preemployment or periodic employment examinations: 1) religious beliefs; 2) beliefs or opinions regarding racial matters; 3) political beliefs or affiliations; 4) beliefs, affiliations or lawful activities regarding unions or labor organizations; or 5) sexual preferences.² An employee must be allowed to tape record his examination if it concerns any matters directly relating to employment.³

19.1. Fla § 381.606.

20. Ga C § 43-36-1.

21. Ga C § 43-36-15(a)(3)(B).

22. Ga C § 43-36-15(a).

23. Ga C § 46-36-13(a)(1).

24. Ga C § 43-36-13(a)(2).

25. Ga C § 43-36-13(a)(3).

1. Ga C § 43-36-13(e).

2. Ga C § 43-36-14.

3. Ga C § 43-36-15(a)(3)(F).

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

81,854D

3/21/88 EMPLOYMENT COORDINATOR

The information acquired from a polygraph examination may be disclosed only to: the employee or any other persons specifically designated in writing by him; the person, firm, corporation, partnership, business entity, or governmental agency that requested the examination; and any person named in a court order.⁴ Moreover, the examiner, upon written request by the employee must provide that employee with a copy of any opinion or conclusions concerning the polygraph examination.⁵

An employee who believes that an examination was improperly conducted may file a complaint with the State Board of Polygraph Examiners.⁶

An examinee's rights may not be waived, and the examiner may not request that an employee execute such a waiver.⁷ Georgia has created a state board of polygraph examiners and has guaranteed certain procedural rights for examinees. It has also instituted a qualification and licensing program for polygraph examiners. However, it has not specifically delineated the instances in which employers may use polygraph examinations.

Hawaii

¶ EP-21,890. Under what conditions can information about employees be gathered.

It is an unfair labor practice for an employer to employ any person to spy on employees or their representatives with respect to their exercise of any protected right.⁸

¶ EP-21,891. How an employer can use polygraph tests.

It is unlawful for any employer to require an employee to submit to a polygraph or lie detector test as a condition of employment or continued employment.⁹

Idaho

¶ EP-21,895. How an employer can use polygraph or similar tests.

No polygraph test or other lie detector test

may be required as a condition of employment or continued employment.¹⁰ However, this restriction does not apply to any law enforcement agency of the United States, the state of Idaho, or any political subdivision or governmental entity.¹¹

Illinois

¶ EP-21,900. How an employer can use polygraph, voice stress analysis, or similar tests.

Every examiner licensed to administer detection of deception examinations must use an instrument that meets state standards and must make the results of the test known to the person examined within five days of receipt of a written request.¹²

¶ EP-21,900.3. How an employer can use AIDS tests.

Under Illinois' AIDS Confidentiality Act, no person may perform an HIV test, a test for the presence of the AIDS virus, unless the test's subject or his legally authorized representative gives written, informed consent.^{12.1} A proper consent form must include an explanation of the test's (1) purpose, (2) potential uses, (3) limitations, (4) possible results and their meanings, and (5) procedures. The procedures must describe the voluntary nature of the test, the right to withdraw consent at any time, anonymity with respect to participation in the test and disclosure of test results, and confidential treatment of information identifying the subject and the test's results.^{12.2}

Because the right to anonymity effectively allows any employee or job applicant to deny identifiable test information to any employer,^{12.3} the Act severely restricts the usefulness of any workplace AIDS-testing program. However, the Act's restrictions do not apply to any

4. Ga C § 43-36-15(a)(4).

5. Ga C § 43-36-13(c)(4).

6. Ga C § 43-36-15(a)(1)(G).

7. Ga C § 43-36-15(b).

8. Haw RS § 377-6(10).

9. Haw RS § 378-21.

10. Ida C § 44-903.

11. Ida C § 44-904.

12. Ill RS c 111 § 2403.

12.1. L 1987, PA 85-679, § 4.

12.2. L 1987, PA 85-679, § 3(d).

12.3. L 1987, PA 85-679, § 6.

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

EMPLOYMENT COORDINATOR 3/21/88

81,855

insurer regulated under the Illinois Insurance Code.¹²⁴ Also, the rule as to informed consent does not apply if a person is specifically required by law to be tested.¹²⁵

¶ EP-21,900.4. How an employer can disclose information obtained from AIDS tests.

No person may disclose or be compelled to disclose the identity of anyone who is the subject of an HIV test (¶ EP-21,900.3), or disclose test results in any way that permits the test's subject to be identified. However, this rule does not apply to any disclosure made to the test subject, his legally authorized representative, any person designated in a legally effective release of the test results signed by the subject or his representative, an agent of a health facility or health care provider that has authority to obtain the test results to assure the safety of donated blood or other fluids or tissues, or a person allowed access to the record by a court order.¹²⁶

¶ EP-21,901. Under what conditions can information about nonemployment activities be gathered.

An employer cannot gather or keep a record of an employee's associations, political activities, publications, communications, or nonemployment activities, unless the employee submits the information in writing or authorizes the employer in writing to keep or gather the information. However, employers are permitted to keep a record of the following employee activities:

(1) activities that occur on the employer's premises or during the employee's working hours that interfere with the performance of the employee's duties or the duties of other employees;

(2) activities, regardless of when and where they occur, that constitute criminal conduct or may reasonably be expected to harm the employer's property, operations, or business or could by the employee's action cause the employer financial liability.¹³

12.4. L 1987, PA 85-679, § 15.1.

12.5. L 1987, PA 85-679, § 11.

12.6. L 1987, PA 85-679, § 9.

13. III RS c 48 § 2009.

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

81,856

3/21/88 EMPLOYMENT COORDINATOR

¶ EP-21,902. How an employee can gain access to a personnel file.

Employers, upon an employee's request, which may be in writing on a form supplied by the employer, must permit the employee to inspect any personnel records intended to be used in making employment decisions.¹ The employee's request to inspect personnel records must be complied with within seven working days. However, an employer may have an additional seven days to comply, if reasonable cause can be shown. An employee may, at reasonable intervals, request two inspection opportunities in a calendar year, unless otherwise provided in a collective bargaining agreement.

The inspection should take place at a location reasonably near the employee's workplace, and should occur during normal working hours, unless another time or place is more convenient for the employee. If an employee demonstrates that he is unable to review his personnel record at this location, the employer shall, upon the employee's written request, mail a copy of the requested record to the employee.²

The right of the employee to inspect his personnel record does not apply to:

- (1) letters of reference;
- (2) any portion of a test document, except a cumulative total test score;
- (3) material used by the employer for management planning for work;
- (4) personal information about third parties that would constitute a clearly unwarranted invasion of privacy;
- (5) an employer that does not maintain any personnel records;
- (6) records concerning a claim between the employer and employee that may be discovered in a judicial proceeding; or
- (7) investigatory or security records maintained by an employer to investigate criminal conduct or other harmful activity by an employee, unless and until the employer takes adverse personnel action based on information in such record.³

An employer may charge a fee for providing

a copy of the employee's personnel files; however, the fee shall be limited to the actual cost of duplicating the information.⁴

¶ EP-21,902.1. How an employee can correct or remove information from a personnel file.

If an employee disagrees with any information contained in the personnel file, the removal or correction of that information may be mutually agreed on by the employer and the employee. However, if no agreement can be reached, the employee may submit a written statement explaining his position. The employer must attach this statement to the disputed portion of the personnel record and include the statement whenever that disputed portion is released to a third party, as long as the disputed record is a part of the file. The inclusion of any written statement attached in the record, without further comment or action by the employer, will not imply or create any presumption of employer agreement with its contents. If either the employer or the employee knowingly places false information in the personnel record, the appropriate party will have a remedy through legal action to have that information expunged.⁵

¶ EP-21,903. How an employer can use information in personnel records.

Personnel information that was not included in the employee's personnel record, but should have been included, may not be used by an employer in a judicial or quasi-judicial proceeding. If, however, in the opinion of the judge in a judicial proceeding or the hearing officer in a quasi-judicial proceeding, the personnel record information was not intentionally excluded from the personnel record, it may be used by the employer in the proceeding if the employee agrees or has been given a reasonable time to review the information. Material that should have been included in the personnel record may be used at the request of the employee.⁶

¶ EP-21,904. How an employer can disclose personnel records to outsiders.

An employee who is involved in a current grievance against an employer may designate in

1. IL RS c 48 § 2002.

2. III RS c 48 § 2002.

3. III RS c 48 § 2010.

4. III RS c 48 § 2003.

5. III RS c 48 § 2006.

6. III RS c 48 § 2004.

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

writing a representative to inspect any personnel records that may have a bearing on the resolution of the grievance. The representative may be a member of the employee's union or collective bargaining unit. The employer must allow the designated representative to inspect the employee's personnel record in the same manner as he would the employee himself.⁷

Before releasing personnel records to a third party, an employer must review it and delete disciplinary reports, letters of reprimand, or other records of disciplinary action that are more than four years old. However, where the release is ordered to a party in a legal action or arbitration, such records must be disclosed.⁸

An employer or former employer cannot disclose a disciplinary report, letter of reprimand, or other disciplinary action to third parties, including a party who is not a part of the employer's organization or a party who is not part of a labor organization representing the employee, without providing written notice to the employee. The notice must be by first-class mail to the employee's last known address and should be mailed on or before the date the information is disclosed. However, the employer may disclose information without notice if:

- (1) the employee has specifically waived written notice as part of a written, signed employment application with another employer;
- (2) the disclosure is ordered to a party in a legal action or arbitration; or
- (3) information is requested by a government agency as a result of a claim or complaint by an employee, or as a result of a criminal investigation by such agency.⁹

Iowa

¶ EP-21,905. How an employer can use polygraph tests.

An employer cannot require an applicant for employment or a current employee to take a polygraph examination as a condition of employment.¹⁰

7. Ill RS c 48 § 2005.
8. Ill RS c 48 § 2008.
9. Ill RS c 48 § 2007.
10. Iowa CA § 730.4.
1. Kan SA 44-808(6).

Kansas

¶ EP-21,910. Under what conditions can information about employees be gathered.

It is unlawful for an employer to employ any person to spy on employees or their representatives with respect to their exercise of any right created or approved by the statute governing employer-employee relations.¹

Maine

¶ EP-21,915. Under what conditions can consumer report information about employees be gathered.

If a consumer reporting agency furnishes a consumer report to an employer for use in determining eligibility or suitability for employment, promotion, reassignment, or retention as an employee,² the employer must give statutory notice to the individual.³

¶ EP-21,916. How an employer can use polygraph tests.

Polygraph examinations may not be used or referred to for hiring or employment purposes, with the exception of employees of or applicants for employment with law enforcement agencies. An employee may, however, voluntarily request a polygraph examination provided that the result is not used against the employee, the employee is given a copy of the statute governing polygraph examinations at the time the examination is requested, and either the examination is recorded or a witness of the employee's choice is present during the examination, or both, as the employee requests.⁴

¶ EP-21,917. How an employer can use consumer report information in a personnel file.

Denial of a benefit by an employer based wholly or partly on information contained in a consumer report or investigative consumer report from a consumer reporting agency must be disclosed in writing to the individual against whom the adverse action has been taken.⁵

¶ EP-21,918. How an employee can gain access to a personnel file.

When permitted or required by statute, records containing state employee personal infor-

2. 10 Me RSA § 1313 subd 3.
3. 10 Me RSA § 1314.
4. 32 Me RSA § 7166.
5. 10 Me RSA § 1320 subd 1.

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

81,856B

12/15/85 EMPLOYMENT COORDINATOR

mation, such as performance evaluations, may be examined by the employee to whom they relate.⁶ Upon written request, an employee, or former employee, must be provided with an opportunity to review his personnel file.⁷ The review must take place during normal office hours, and the time spent by an employee in reviewing his file is not considered to be work time.⁸

A private or former employee is also entitled to review his personnel file, if any, upon written request to his employer.⁹ The review takes place where the personnel files are maintained, during normal office hours. However, the employer has discretion to allow the review at a time and place more convenient for the employee.¹⁰

Transcripts, recommendations, and other documents submitted in support of an application for teacher certification and maintained in the office of the Commissioner of Education and Cultural Services may be made available to individuals and their representatives who request to examine their own records.¹¹ Individuals requesting copies of their records must bear the costs of copying them.¹²

A consumer reporting agency may not prohibit an employer that obtains a consumer report or investigative consumer report from disclosing the content of the report, other than medical information and sources of information, to the individual to whom it relates.¹³

¶ EP-21,919. How an employer can disclose personnel records to outsiders.

An employer that obtains a consumer report or investigative consumer report from a consumer reporting agency is prohibited from disseminating the report to any person other than the individual who is the subject of the report, with the exception of information contained in its own files as a result of its direct experience with the individual.¹⁴

Papers relating to examinations or evaluations of applicants for public employment, and records containing employee personal information, such as performance evaluations, are confidential and not open to public inspection. However, if disciplinary action is taken, the final written decision relating to that action is no longer confidential after it is completed.¹⁵

Transcripts, recommendations, and other documents submitted in support of an application for teacher certification and maintained in the office of the Commissioner of Education and Cultural Services must be confidential and may be made available only to school boards, superintendents, and authorized Department of Education and Cultural Services personnel.¹⁶

Maryland

¶ EP-21,926. What an employer can ask an applicant.

An employer may not require an applicant to answer any written or oral questions pertaining to any physical, psychological, or psychiatric illness, disability, handicap, or treatment that does not bear a direct and timely relationship to the applicant's fitness or capacity to properly perform the activities or responsibilities of the desired position.¹⁷ However, a proper medical evaluation by a physician for the purpose of assessing an applicant's ability to perform a job is not prohibited.¹⁸

¶ EP-21,927. How an employer can use polygraph or similar tests.

An employer, other than the federal government or its agencies, may not demand or require any applicant for employment or any employee to submit to a polygraph, lie detector, or similar test or examination as a condition of employment or continued employment.¹⁹

All applications for employment must con-

6. 5 Me RSA § 554.

7. 5 Me RSA § 638 (state employees).

30 Me RSA § 64 subd 2 (county employees).

30 Me RSA § 2257 subd 2 (municipal employees).

8. 5 Me RSA § 638 (state employees).

30 Me RSA § 64 subd 2 (county employees).

30 Me RSA § 2257 subd 2 (municipal employees).

9. 26 Me RSA § 631.

10. 26 Me RSA § 631.

11. 20-A Me RSA § 13004 subd 2.C.

12. 20-A Me RSA § 13004 subd 3.

13. 20 Me SA § 1320 subd 3.

14. 20 Me RSA § 1320 subd 3.

15. 5 Me RSA § 554 (state government classified service).

30 Me RSA § 64 subd 1 (county employees).

30 Me RSA § 2257 subd 1 (municipal employees).

16. 20-A Me RSA § 13004 subd 2.

17. Md AC Art 100 § 95A(a).

18. Md AC Art 100 § 95A(b).

19. MD AC Art 100 § 95(b).

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

EMPLOYMENT COORDINATOR 6/15/87

81,856C

tain a statutory notice regarding polygraph examinations set out in bold face upper case type and separately acknowledged by the signature of the applicant.²⁰

Massachusetts

¶ EP-21,930. Under what conditions can consumer report information about employees be gathered.

An employer that procures or causes the preparation of an investigative consumer report on any individual must give statutory disclosure to the individual.²¹

A consumer reporting agency may furnish a consumer report to any person the agency believes will use the information for employment purposes.²²

¶ EP-21,931. How an employer can use polygraph tests.

It is unlawful for any employer to subject any employee or applicant, including any person applying for employment as a police officer, to a lie detector test, or to request, directly or indirectly, that a lie detector test be taken. Moreover, all applications for employment in Massachusetts must contain a clearly legible notice regarding the unlawful character of lie detector tests in the state. A lie detector test means any test utilizing a polygraph or any other device, mechanism, instrument or written examination, that is operated or the results of which are used or interpreted by an examiner for the purpose of detecting deception.²³

¶ EP-21,931.5. How an employer can use tests for AIDS.

It is unlawful for an employer to require HTLV-III antibody or antigen (AIDS) tests as a condition of employment.^{23.1}

¶ EP-21,932. How an employer can use consumer report information in a personnel file.

Disclosure is required if employment is denied or terminated wholly or partly because of information contained in a consumer credit report.²⁴

¶ EP-21,933. How an employee can gain access to consumer or medical reports.

Within a reasonable period of time after an individual receives disclosure that an employer has procured or caused the preparation of an investigative consumer report on the individual, a complete and accurate disclosure of the nature and scope of the investigation requested may be obtained.²⁵ The individual may also obtain from a consumer reporting agency clear and accurate disclosure of any consumer report on the individual that the agency has furnished for employment purposes within two years preceding the request.¹

If an employer requires a physical examination of an employee, the employee is entitled, upon request, to be furnished with a copy of the medical report following the examination.²

¶ EP-21,934. How an employee can correct or remove information from a personnel file.

If there is a disagreement between an employee and his employer over any information contained in the employee's personnel record, the employer and employee may mutually agree on a removal or correction of the information. If they cannot agree, the employee may submit a written statement explaining the employee's position, and that statement becomes a part of the employee's personnel record. The employer must include that statement whenever it transmits information in that personnel record to a third party as long as the original information remains part of the file. If an employer places in a personnel record any information that it knew or should have known to be false, the employee has a right through procedures authorized by a collective bargaining agreement, other personnel procedures, or judicial process to have that information deleted from the record.^{2.1}

¶ EP-21,934.3. How an employee can gain access to personnel records.

An employer must provide any employee who makes a written request to review his personnel record with an opportunity for such a review. The review must occur at the place of

20. MD AC Art 100 § 95(c).

21. Mass ALM c 93 § 53(a).

22. Mass ALM c 93 § 51(3)(b).

23. Mass ALM c 149 § 19B.

23.1. Mass ALM c 111 § 70(F).

24. Mass ALM c 93 § 62(a).

25. Mass ALM c 93 § 53(b).

1. Mass ALM c 93 § 56.

2. Mass ALM c 149 § 19A.

2.1. Mass ALM c 149 § 52C.

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

employment during normal business hours. Also, the employer must provide the employee with a copy of his personnel record if the employee submits a written request for it. In this context, a "personnel record" does not include information of a personal nature on someone other than the employee, if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.^{2,3}

Michigan

¶ EP-21,935. Under what conditions can information about an employee's nonemployment activities be gathered.

An employer must not gather or keep a record of an employee's associations, political activities, or other nonemployment activities, unless the information is submitted in writing by or authorized to be kept or gathered, in writing, by the employee to the employer, or the activities occur on the employer's premises or during the employee's working hours and interfere with the employee's duties or duties of other employees.³ If a record of such nonemployment activities is kept as permitted, it must be part of the personnel record.⁴

However, when an employer has reasonable cause to believe that an employee is engaged in criminal activity that may result in loss or damage to the employer's property or disruption of the employer's business operation, and the employer is engaged in an investigation, a separate file of information relating to the investigation may be kept. Upon completion of the investigation, or after two years, whichever comes first, the employee must be notified of the investigation. Upon completion of the investigation, if disciplinary action is not taken, the investigative file and all copies of the material in it must be destroyed.⁵

If an employer is a criminal justice agency involved in the investigation of an alleged criminal activity or the violation of an agency rule by an employee, a separate confidential file must be kept, and, upon completion of the

investigation, if disciplinary action is not taken, the employee must be notified.⁶ If the investigation reveals that the allegations are unfounded or unsubstantiated, or if disciplinary action is not taken, the separate file must contain a notation of the final disposition of the investigation.⁷

¶ EP-21,936. How an employer can use polygraph, voice stress analysis, or similar tests.

The opportunity to refuse to take polygraph, psychological stress evaluation, or similar tests in employment situations is a civil right.⁸ Furthermore, the use of polygraph examinations as a condition of employment, promotion, or change in status of employment, or as an express or implied condition of a benefit or privilege of employment, is prohibited.⁹

¶ EP-21,937. How an employee can correct or remove information from a personnel file.

If there is a disagreement with information contained in a personnel record, removal or correction may be mutually agreed upon by the employer and the employee. If an agreement is not reached, the employee may submit a written statement explaining his position.¹⁰

¶ EP-21,938. How an employer can use personnel record information.

It is unlawful to discipline or discharge a railroad employee based on the report of a special agent, detective, or spotter that involves a question of integrity, honesty, or breach of any employer rule, unless the employer gives notice to the employee and grants a hearing upon request. At the hearing, the employer must state specific charges, and the accused employee has the right to cross-examine the person making the report and to employ counsel.¹¹

If the investigation by a criminal justice agency of an alleged criminal activity or violation of an agency rule by an employee reveals that the allegations are unsubstantiated, or if disciplinary action is not taken, information in the separate confidential file relating to the investigation must not be used in any future

2.2. Mass ALM c 149 § 52C.

3. Mich LA § 423.508(1).

4. Mich LA § 423.508(2).

5. Mich LA § 423.509(1).

6. Mich LA § 423.509(2).

7. Mich LA § 423.509(2).

8. Mich LA § 37.2102(1).

9. Mich LA § 37.203.

10. Mich LA § 423.505.

11. Mich LA § 750.519.

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

consideration promotion, transfer, additional compensation, or disciplinary action.¹²

Personnel record information that was not included in the record, but that should have been included, may not be used by an employer in a judicial or quasi-judicial proceeding, unless, in the opinion of the judge or hearing officer, the information was not intentionally excluded. Furthermore, the employee must agree to such use or have been given a reasonable time to review the information.¹³ Material that should have been included must be used at the request of the employee.¹⁴

¶ EP-21,939. How an employee can gain access to personnel records.

An employee is entitled to review his personnel record, upon written request at reasonable intervals, at a location reasonably near his place of employment and during normal office hours.¹⁵ Review may be allowed at a time or location more convenient to the employee. Where review during normal office hours would require time off, some other reasonable time must be provided.¹⁶ If an employee demonstrates an inability to review the personnel record at the employing unit, the employer must mail a copy of the requested record to the employee, upon written request.¹⁷ After the review, the employee may obtain a copy of information, but an employer may charge a fee for providing the copy, limited to the actual cost of duplicating the information.¹⁸

¶ EP-21,940. How an employer can disclose personnel records to outsiders.

An employer or former employer must not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party, to a party who is not a part of the employer's organization, or to a party who is not a part of a labor organization representing the employee, without prior written notice to the employee by first-class mail to his last known address. However, this requirement does not apply if the employee has specifically

waived written notice as part of a written, signed employment application with another employer, the disclosure is ordered in a legal action or arbitration, or information is requested by a government agency as a result of a claim or complaint by the employee.¹⁹

An employer must review a personnel record before releasing information to a third party and must delete disciplinary reports, letters of reprimand, or other records of disciplinary action that are more than four years old, unless the release is ordered in a legal action or arbitration.²⁰

If an employee submits a written statement explaining disagreement with information contained in a personnel record, the statement must be included when the record is divulged to a third party, as long as the original information is part of the file.²¹

Minnesota

¶ EP-21,945. Under what conditions can medical information about employees be gathered.

An employer, employment agency, or labor organization can, with the consent of the employee, obtain additional medical information for the purposes of establishing an employee health record.²²

¶ EP-21,946. How an employer can use polygraph, voice stress analysis, or similar tests.

It is unlawful to directly or indirectly solicit or require a polygraph, voice stress analysis, or any test purporting to test the honesty of any employee or prospective employee. It is also unlawful to sell or interpret a test that has been unlawfully solicited or required. If an employee requests a polygraph test, the employer or agent administering the test must inform him that taking the test is voluntary.²³ Results of a polygraph test taken at an employee's request may be disclosed only to persons authorized by the employee.²⁴

The state Supreme Court has held that the

12. Mich LA § 423.509(2).

13. Mich LA § 423.502.

14. Mich LA § 423.502.

15. Mich LA § 423.503.

16. Mich LA § 423.503.

17. Mich LA § 423.504.

18. Mich LA § 423.504.

19. Mich LA § 423.506.

20. Mich LA § 423.507.

21. Mich LA § 423.505.

22. Minn SA § 363.02 subd 1(7)(ii).

23. Minn SA § 181.75 subd 1.

24. Minn SA § 181.76.

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

above statute does not violate the Constitution.²⁵

Montana

¶ EP-21,950. How an employer can use polygraph, voice stress analysis, or similar tests.

No person or business entity may require any person to take a polygraph test or any form of a mechanical lie detector test as a condition for employment or continuation of employment.¹

¶ EP-21,951. How an employer can use drug or alcohol tests.

No person or business entity may require any person to submit to a blood or urine test as a condition for employment, except employment in hazardous work environments or in jobs the primary responsibility of which is security, public safety, or fiduciary responsibility.^{1,1} Similarly, no person or business entity may require any employee to submit to a blood or urine test as a condition for continuation of employment, unless the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use.^{1,2}

Also, prior to the administration of a drug or alcohol test, the employer must adopt a written testing procedure and make it available to all persons subject to testing. This procedure must call for:

- (1) collection of each blood or urine specimen in a manner that minimizes invasion of personal privacy while ensuring the integrity of the collection process;
- (2) collection of a quantity of specimens sufficient to ensure the administration of several tests;
- (3) collection, storage, and transportation of the specimens in tamper-proof containers;
- (4) adoption of chain-of-custody documentation procedures identifying how each specimen was handled and tested;
- (5) verification of test results by two or more

different testing procedures before judging a test positive; and

(6) prohibition of the release of test results, except as authorized by the person tested or as required by a court.^{1,3}

An employer may not take any adverse action against a subject of a drug or alcohol test if that person presents a reasonable explanation or medical opinion indicating that the results of the test were not caused by alcohol consumption or illegal drug use.^{1,4}

¶ EP-21,952. How the subject of a drug or alcohol test can gain access to the test's results and an opportunity to supply other test results.

Any employer that conducts a drug or alcohol test on an employee or applicant must give a copy of the test results to the person tested and provide him the opportunity, at the expense of the person requiring the test, to obtain a confirmative test by an independent laboratory selected by the person tested. Also, the person tested must be given an opportunity to rebut or explain the results of either or both tests.^{1,5}

Nebraska

¶ EP-21,955. Under what conditions can medical information about employees be gathered.

When an employer requests an applicant for employment to submit to a medical examination, the employer must pay the cost of the examination.² However, this rule does not apply to the state or any subdivision of the state.³

¶ EP-21,956. How an employer can use polygraph, voice stress analysis, or similar tests.

No employer or prospective employer may require, as a condition of employment or continued employment, that a person submit to a truth and deception examination, unless the employment involves public law enforcement.⁴ This does not prohibit an employer from asking an employee or applicant to submit to a truth and deception examination if all of certain

25. *State v Century Camera, Inc.*, (1981, Minn) 309 NW2d 735.

1. Mont CA 39-2-304(1)(a).
1.1. Mont CA 39-2-304(1)(b).
1.2. Mont CA 39-2-304(1)(c).
1.3. Mont CA 39-2-304(2).

1.4. Mont CA 39-2-304(4).

1.5. Mont CA 39-2-304(3).
2. Neb RS § 48-221.
3. Neb RS § 48-223.
4. Neb RS § 81-1932.

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

EMPLOYMENT COORDINATOR 8/15/87

81,859

conditions, such as that questions be job-related, are met.⁵

Nevada

¶ EP-21,960. How an employer can use polygraph tests.

A person or governmental entity that possesses the results of a polygraph examination or information obtained during a polygraph examination required to permit the examinee to obtain or retain employment must not release the results or information without written consent, unless ordered by a court of competent jurisdiction or as otherwise provided by law.⁶

¶ EP-21,960.1. How an employee can gain access to a personnel file.

An employee is entitled upon request, to inspect records containing both information used by an employer to determine the employee's qualifications, and information regarding any disciplinary action taken against the employee. However, an employee is not entitled to review confidential reports by previous employers or investigative agencies or information concerning the investigation, arrest or conviction of the employee for a violation of law.^{6.1}

In addition, a discharged employee has the right to inspect his personnel records within 60 days after his termination. An employer must therefore furnish the employee, upon request,

with a copy of these personnel records. The employee may be required to pay a fee equal to the actual cost of providing access to any copies of those records.

However, an employer is not required to furnish any copies of records to an employee or former employee unless the employee was employed for more than 60 days.^{6.2}

¶ EP-21,960.2. How an employee can correct or remove information from a personnel file.

An employee who believes that any information contained in his personnel records is inaccurate or incomplete, must notify his employer in writing of his contention. If the employer finds that the employee's contention is correct, the employer must change the file accordingly.^{6.3}

¶ EP-21,961. How an employer can use information in a personnel file.

It is unlawful to discipline or discharge any employee based on a report by a special agent, detective, or spotter that involves a question of integrity, honesty, or a breach of employer rules, unless the employer gives notice and a hearing to the accused employee, upon request. At this hearing, the accused employee must have the opportunity to be confronted with the person making the report and to furnish testimony in his defense.⁷

5. Nev RS § 61-1932.

6. Nev RS § 648A.260.

6.1. Ch 387, L. 1985 § 2(1).

6.2. Ch. 387, L. 1985 § 2 (2), (3), (4).

6.3. Ch. 387, L. 1985 § 3.

7. Nev RS § 613.160 subd 1.

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

New Hampshire

¶ EP-21,965. Under what conditions can consumer report information about employees be gathered.

The New Hampshire Fair Credit Reporting Act provides that a consumer reporting agency may furnish a consumer report to any person the agency believes will use the information for employment purposes.⁸ An employer may not procure or cause to be prepared an investigative consumer report on any individual, unless clear and accurate disclosure of that fact is made to the individual.⁹

¶ EP-21,966. How an employer can use consumer report information in a personnel file.

Disclosure is required when employment is denied, wholly or partly based on information contained in a consumer report from a consumer reporting agency.¹⁰

¶ EP-21,967. How an employee can gain access to consumer report contents and recipients.

Within a reasonable period of time after disclosure by an employer that an investigative consumer report has been procured or prepared on any individual, the individual may obtain a complete and accurate disclosure of the nature and scope of the investigation requested.¹¹ The individual is also entitled to obtain clear and accurate disclosure from any consumer reporting agency regarding the recipients of any consumer report on the individual furnished for employment purposes within the two-year period preceding the request for disclosure.¹²

New Jersey

¶ EP-21,970. How an employer can use polygraph tests.

It is unlawful for an employer, other than one authorized to manufacture, distribute, or dispense narcotics or controlled dangerous substances, to require an employee to take or submit to a lie detector test as a condition of employment or continued employment.¹³

New Mexico

¶ EP-21,975. Under what conditions can credit information about employees be gathered.

In order to obtain information from a credit bureau, an employer must certify that inquiries are made only for the purposes of bona fide business transactions, such as the evaluation of the qualifications of present or prospective employees.¹⁴

New York

¶ EP-21,980. Under what conditions can information about employees be gathered.

It is an unfair labor practice for an employer to spy on or keep under surveillance any activities of employees or their representatives in the exercise of their protected rights.¹⁵ Furthermore, an employer may not request a consumer report, other than an investigative consumer report, in connection with an employment application, unless the applicant is first informed.¹⁶ If the notice to the applicant indicates that subsequent consumer reports may be requested or utilized, no additional notice is required at the time the subsequent report is requested.¹⁷ In addition, no investigative consumer report on any employee may be procured or caused to be prepared by an employer, other than the employee's present employer, unless notice is given and authorization is obtained from the employee.¹⁸ Refusal to execute the authorization is grounds for declining to grant employment.¹⁹

Under the New York Fair Credit Reporting Act, a consumer reporting agency may furnish a consumer report to any person the agency believes will use the information for employment purposes.²⁰

¶ EP-21,981. How an employer can use a psychological stress evaluator test.

No employer may require, request, or knowingly permit any employee or prospective em-

8. NH RSA 359-B:4 subd I(c)(2).

9. NH RSA 359-B:6 subd I.

10. NH RSA 359-B:15 subd I.

11. NH RSA 359-B:6 subd 2.

12. NH RSA 359-B:9 subd I(c)(1).

13. NJ SA 2C:40A-1.

14. NM SA § 56-3-4.

15. NY CLS Labor Law § 704 subd 1.

16. NY CLS Gen Bus Law § 380-b(b).

17. NY CLS Gen Bus L § 380-b(c).

18. NY CLS Gen Bus L § 380-c.

19. NY CLS Gen Bus L § 380-c(d).

20. NY CLS Gen Bus L § 380-b(a)(3)(II).

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

EMPLOYMENT COORDINATOR 9/15/88

81,860A

ployee to submit to a psychological stress evaluator examination, and no employer may administer or use the results of such a test for any reason whatsoever.²¹ Furthermore, it is unlawful for any individual to knowingly administer or participate in the administration of a psychological stress evaluator examination of an employee or prospective employee.²² In addition, a psychological stress evaluator examination may not be administered within the state to any individual seeking employment outside the state or for the purpose of continuing employment outside the state.²³

No employee may be discharged, disciplined, or discriminated against in any manner for filing a complaint or testifying in any proceeding or action involving violations of the statute regarding psychological stress evaluators.²⁴

¶ EP-21,982. How an employee can gain access to the names of recipients of a consumer report.

Any employee may obtain from any consumer reporting agency the names of recipients of any consumer report on the employee that it has furnished for employment purposes within the two-year period preceding the request, upon request and proper identification.²⁵

¶ EP-21,983. How an employer can disclose consumer reports to outsiders.

No employer may disseminate a consumer report or an investigative consumer report to any other person unless the other person has a legitimate business need for the information in connection with a business transaction involving the individual concerned in the report.¹

Ohio

¶ EP-21,985. Under what conditions can medical information about employees be gathered.

An employer may not require any prospective employee or applicant for employment to

pay the cost of a medical examination required by the employer as a condition of employment.²

¶ EP-21,986. How an employee can gain access to medical records maintained by an employer.

A copy of any medical report pertaining to an employee or former employee must be furnished to the employee upon request, provided that if a physician concludes that presentation of the employee's medical record directly to the employee will result in serious medical harm to the employee, the copy be given to a physician designated in writing by the employee.³ The employer may charge up to \$.25 for each page of a report furnished to an employee.⁴

Oregon

¶ EP-21,990. How an employer can use polygraph, voice stress analysis, or similar tests.

It is unlawful to require any person or employee to take a breathalyzer test, polygraph test, or any other form of lie detector test as a condition for employment or continuation of employment,⁵ or to directly or indirectly subject any employee or prospective employee to any breathalyzer test, polygraph examination, or psychological stress test.⁶ However, an employee may consent to administration of a breathalyzer test, and if the employer has reasonable grounds to believe that an employee is under the influence of intoxicating liquor, the employer may require the administration of a blood alcohol content test by a third party or a breathalyzer test as a condition for employment or continuation of employment. The employee, though, may not be required to pay the cost of any such test.⁷

A polygraph examination can be given to an individual who consents to it during the course of a criminal or civil judicial proceeding in which the person is a party or witness, or during the course of a criminal investigation conducted by a law enforcement agency, a district attorney, or the Attorney General.⁸

21. NY CLS Labor Law § 735 subd 1.

22. NY CLS Labor Law § 734 subd 1.

23. NY CLS Labor Law § 737.

24. NY CLS Labor Law § 736.

25. NY CLS Gen Bus L § 380-d.

1. NY CLS Gen Bus L § 380-i(c).

2. Ohio RC § 4113.21.

3. Ohio RC § 4113.23(A).

4. Ohio RC § 4113.23(b).

5. Ore RS 659.225(1).

6. Ore RS 659.227(1).

7. Ore RS 659.225(1), 659.227(5).

8. Ore RS 659.227(4).

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

¶ EP-21,991. How an employee can gain access to a personnel file.

At the request of an employee, his employer must provide a reasonable opportunity to inspect, at the place of employment or work assignment, those personnel records used to determine qualification for employment, promotion, additional compensation, or employment termination or other disciplinary action, and must furnish a certified copy of the records.⁹ A certified copy of personnel records of a terminated employee must be provided to the employee if a request is made within 60 days after termination.¹⁰ An employer may make only such charge as is reasonably calculated to recover the actual cost of providing the service.¹¹

¶ EP-21,992. How long an employer should retain the personnel file of a terminated employee.

An employer must keep a terminated employee's personnel records for no less than 60 days after termination.¹²

Pennsylvania

¶ EP-21,995. How an employer can use polygraph, voice stress analysis, or similar tests.

It is unlawful to require that an employee or other individual, other than those in the field of public law enforcement or who dispense or have access to narcotics or dangerous drugs, be required to take a polygraph test or any form of a mechanical or electrical lie detector test as a condition for employment or continuation of employment.¹³ Furthermore, it is unlawful to use a psychological stress evaluator, audio stress monitor, or similar device to judge the truth or falsity of oral statements without the consent of the person whose statements are being tested.¹⁴

¶ EP-21,996. How an employee can gain access to a personnel file.

An employee is entitled to inspect his personnel file upon request at reasonable times to

determine his own qualifications for employment, promotion, additional compensation, termination, or disciplinary action.¹⁵

Puerto Rico

¶ EP-21,998. How an employer can use information obtained on an employee's support obligations.

An employer may not reveal, publicize, or instigate the use of any information obtained from an employee for purposes of complying with the local law on income withholding for support.^{16,1}

Rhode Island

¶ EP-22,000. Under what conditions can information about employees be gathered.

It is an unfair labor practice for an employer to spy on any activities of employees or their representatives in the exercise of protected rights.¹⁶

Whenever any employer requires a physical examination prior to employment, the cost of the examination must be paid by the employer, whether or not the prospective employee is hired.¹⁷

An employer may not obtain a patient's confidential health care information without the written consent of the patient or his authorized representative.¹⁸

¶ EP-22,001. How an employer can use polygraph tests.

It is unlawful for an employer or its agent, orally or in writing, to request, require, or subject any employee to a lie detector test as a condition of employment or continued employment.¹⁹ However, this rule does not apply to lie detector tests administered by law enforcement agencies in the performance of their official duties.^{19.1}

¶ EP-22,002. How an employer can use medical information in a personnel file.

An individual whose employment application

9. Ore RS 652.750(2).

10. Ore RS 652.750(3).

11. Ore RS 652.750.(4).

12. Ore RS 652.750(3).

13. 18 Pa CS § 7321.

14. 18 Pa CS § 7507.

15. 43 P Pa SA §§ 1322-1323.

15.1. 1986, No. 106, § 4.

16. RI GS § 28-7-13(1).

17. RI GS § 28-62-1.

18. RI GS § 5-37.3-4(a).

19. RI GS § 28-6.1-1.

19.1. RI GS § 28-6.1-2.

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

is denied or whose employment is terminated based solely or partly on confidential health care information is entitled, upon written request, to have copies of the information transferred to a physician designated in the request, though the employer may require payment of its actual cost of retrieval, duplication, and forwarding of the information.²⁰

¶ EP-22,002.5. How an employee can gain access to a personnel file.

Beginning January 1, 1987, an employer must permit an employee to inspect certain personnel files under certain conditions. The employee must make a written request to inspect at least seven days in advance (excluding Saturdays, Sundays, and holidays). Also, he has a right to inspect only at a reasonable time other than his work hours and only twice in a calendar year. He may not remove or copy the files, but the employer must supply copies of requested documents at a reasonable fee. The employer or its designee has a right to be present during the inspection.

The right to inspect applies to the personnel files used to determine the requesting employee's qualifications for employment, promotion, additional compensation, termination, or disciplinary action but not to any: (1) records related to investigation of a possible criminal offense; (2) records prepared for use in any civil, criminal, or grievance proceedings; (3) letters of reference; (4) medical records; (5) recommendations; (6) managerial records kept or used only by the employer; (7) confidential reports from previous employers; or (8) managerial planning records.^{20.1}

¶ EP-22,003. How an employer can disclose medical records to outsiders.

An employer that receives and retains confidential health care information must establish certain security procedures, such as limiting access to the information.²¹

South Dakota

¶ EP-22,005. How a state employee can gain access to a personnel file.

Any records required or maintained by the

Bureau of Personnel, including performance appraisals, that pertain to an employee in the executive branch of state government must be available and open to inspection by the employee during normal business hours.²²

Tennessee

¶ EP-22,010. How an employee can gain access to a personnel file.

Any certificated or professional school employee is entitled to access to his personnel file at any reasonable time and to a copy of specified documents, on request and on payment of reasonable compensation.²³

Any state employee, regardless of position or classification, is entitled to have access to his personnel files at any reasonable time and must be furnished copies of any material contained in his file upon request and payment of the cost of reproduction.²⁴

¶ EP-22,011. How an employer can use polygraph tests.

An employer may not take any personnel action based solely on the results of a polygraph examination.^{24.1}

Utah

¶ EP-22,015. How an employer can use polygraph, voice stress analysis, or similar tests.

It is unlawful to conduct a deception detection examination by polygraph, voice stress equipment, or other similar device in a surreptitious manner, without the physical presence of the subject and without the subject being aware of the examination. Furthermore, it is unlawful to use a refusal to submit to such an examination as the basis for denying or terminating employment.²⁵

¶ EP-22,016. How a public employee can gain access to a personnel file.

Upon receipt of a written request from a public employee to examine his personnel file, the employer must produce the file for inspection.

20. RI GS § 5-37.3-5(a).

20.1. RI GS § 28-6.4-1.

21. RI GS § 5-37.3-4(c).

22. SD CL 3-6A-31.

23. Tenn CA § 49-2-301(f)(28).

24. Tenn CA § 8-50-108.

24.1. Tenn CA § 62-27-128.

25. Utah CA 34-37-2(5), 34-37-16.

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

tion and copying.²⁶ The cost of copying must be paid by the employee.²⁷ However, the right to examine and copy documents does not extend to those classified as "confidential" under the Utah Information Practices Act.²⁸

¶ EP-22,017. How an employer can use drug or alcohol tests.

An employer may test employees or prospective employees for the presence of drugs or alcohol as a condition of hiring or continued employment. However, the employer and management in general must themselves submit to testing on a periodic basis.¹

Observation: Although the statute's language suggests that drug and alcohol testing of an employer and its managerial staff is mandatory, it is likely that the statute's intent was to require that they be tested only if they impose a testing requirement on rank-and-file employees.

To ensure reliability in the testing procedure, the employer may designate the type of sample to be used for testing, may require samples from his employees and prospective employees, and may require them to present reliable identification to the person collecting the samples.² For current employees, the testing must be scheduled for some time during or immediately after the regular work period.³

All sample collection and testing must be:

- (1) performed under reasonable and sanitary conditions;
- (2) conducted with due regard for the privacy of the individual being tested;
- (3) reasonably calculated to prevent substitutions or interference with the samples;
- (4) documented by the labelling of samples to prevent erroneous identification of test results;
- (5) conducted with an opportunity for the employee or prospective employee to provide any information that he considers relevant to the test, including the identity of any prescription or nonprescription drugs he recently used or other relevant medical information;

(6) performed in a manner that reasonably precludes sample contamination or adulteration during collection, storage, and transportation; and

(7) conducted in conformity with scientifically accepted methods and procedures, including verification of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable method, before any test results may be used as a basis for any adverse action by the employer.⁴

An employer may carry out a testing or retesting program for the presence of drugs or alcohol only within the terms of a written policy that has been distributed to employees and is available for review by prospective employees.⁵

This policy may require testing for:

- . . . investigation of an individual employee's possible impairment;
- . . . investigation of workplace accidents or thefts;
- . . . maintenance of safety for employees or the general public;
- . . . maintenance of productivity, quality of products or services, or security of property or information.⁶ Specifically, the testing need not be limited to circumstances where there are indications of individual, job-related impairment.²⁴

If the employer receives a verified positive drug or alcohol test result indicating a violation of its written policy or if the employee or prospective employee refuses to provide a sample, the employer may:

- . . . require the employee to enroll in an employer-approved rehabilitation, treatment, or counseling program, that may include additional drug or alcohol testing, as a condition of continued employment;
- . . . suspend the employee with or without pay for a period of time;
- . . . terminate the employee;

26. Utah CA 67-18-3.

27. Utah CA 67-18-4.

28. Utah CA 67-18-5.

1. Utah CA 34-38-3.

2. Utah CA 34-38-4.

3. Utah CA 34-38-5(1).

3.1. Utah CA 34-38-6.

3.2. Utah CA 34-38-7(1).

3.3. Utah CA 34-38-7(2).

3.4. Utah CA 34-38-7(3).

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

However, there are exceptions to the proscriptons against requiring lie detector tests. For example, employees that may require an applicant for employment to submit to a polygraph examination under the law are:

(1) the department of public safety, municipal police departments and county sheriffs, with respect to sworn police officers and deputy sheriffs;

(2) any employer whose primary business is the wholesale or retail sale of precious metals, gems or jewelry;

(3) any employer whose business includes the manufacture or the wholesale or retail sale of regulated drugs provided, however, that the tests are limited to employees who come in contact with such regulated drugs; and

(4) any employer authorized or required under federal law or regulation to administer polygraph examinations.^{5,6}

An employer may not discriminate against an employee for his having filed a complaint or otherwise participated in a proceeding regarding the polygraph prohibition.^{5,7}

Virginia

¶ EP-22,025. Under what conditions can information about employees be gathered.

It is unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any medical records required by the employer as a condition of employment.⁸

Washington

¶ EP-22,030. How an employer can use polygraph or similar tests.

It is unlawful for any person, business, or the state of Washington, its political subdivisions or municipal corporations, to require any employee or prospective employee to take a lie detector or similar test as a condition of employment or continued employment. This rule

does not apply, however, to persons making an initial application for employment with any law enforcement agency, or an initial application for employment or the continued employment of persons who work in manufacturing, distributing, or dispensing controlled substances, or persons in sensitive positions directly involving national security.⁷

¶ EP-22,031. How an employee can gain access to a personnel file.

An employer must make all of an employee's personnel files available locally, at least once a year, within a reasonable time after receipt of an employee's request.^{7,1}

An employee is not entitled to review personal records relating to the investigation of a possible criminal offense, or records compiled in preparation for an impending lawsuit if they would not be available under the rules of pretrial discovery in state court.^{7,2}

¶ EP-22,032. How an employee can correct or remove information from a personnel file.¹

Once a year, an employee may request that the employer review all information in the employee's personnel file that is regularly maintained as a business record or that is subject to reference for information given to persons outside of the business.^{7,3} An employer, at his own discretion, may remove any irrelevant or erroneous information from the employee's personnel file. If an employee disagrees with his employer's determination, he may submit a statement of rebuttal or correction to be placed in his file.^{7,4} A former employee retains the right to rebut or correct information in his personnel file for two years.^{7,5}

West Virginia

¶ EP-22,035. How an employer can use polygraph or similar tests.

No employer, other than one authorized to manufacture, distribute, or dispense drugs (excluding ordinary drugs), law enforcement agencies, or state military forces, may require or

5.6. 21 Vr SA § 494b.

5.7. 21 Vr SA § 494d.

6. Va C § 40.1-28.

7. RC Wash 49.44.120.

7.1. Ch. 336, L. 1985 § 1, 2.

7.2. Ch. 336, L. 1985 § 3.

7.3. Ch. 336, L. 1985 § 2(2).

7.4. Ch. 336, L. 1985 § 2.

7.5. Ch. 336, L. 1985 § 2(3).

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

EMPLOYMENT COORDINATOR 5/18/87

81,864A

request, either directly or indirectly, that any employee or prospective employee submit to a polygraph, lie detector, or similar test. In addition, no employer may knowingly allow the results of any such test administered outside the state to be used to determine whether to employ a prospective employee or to continue the employment of an employee in the state. However, the results of any examination that is authorized may be used solely for the purpose of determining whether to employ or to continue to employ any person exempted.⁸

Wisconsin

¶ EP-22,040. Under what conditions can information about employees be gathered.

It is an unfair labor practice for an employer to employ any person to spy on employees or their representatives with respect to the exercise of any protected rights.⁹

¶ EP-22,041. How an employer can use polygraph, voice stress analysis, or similar tests.

No employer may directly or indirectly require or administer a polygraph, voice stress analysis, psychological stress evaluator, or any similar test purporting to test the honesty of any employee or prospective employee. Further, no person may sell to or interpret for an employer a test known to have been solicited or required by an employer. An employee that requests such a test must be informed that taking the test is voluntary.¹⁰ However, these rules do not apply to the use of an instrument that, at a minimum, is capable of recording visually, permanently, and simultaneously indications of a person's cardiovascular pattern and its changes and a person's respiratory pattern and its changes.¹¹ Finally, any agreement offering employment or any pay or job benefit in return for taking a test is void.¹²

If a permitted test is given, statutory procedures, such as informing the test subject of all his rights, must be followed.¹³ No disciplinary action may be taken or employment decision made that is based on the results of a permitted

test, unless the employer has relevant evidence or information, obtained independently from the permitted test, tending to support the test results, or based on the refusal of the employee to take the test.¹⁴

In the absence of a valid and voluntary written agreement, any person can refuse to disclose any oral or written communication during, or any result of, an examination using an honesty-testing device.¹⁵ Such a test may not be given, and the giving of the test may not be disclosed, without prior written informed consent.¹⁶

¶ EP-22,042. How an employee can correct or remove information from a personnel file.

If an employee disagrees with information contained in personnel records, a removal or correction of that information may be mutually agreed on by the employer and employee. However, if no agreement can be reached, the employee may submit a written statement explaining his position. This statement will be attached to the disputed portion of the employee's personnel record.¹⁷

¶ EP-22,043. How an employee can gain access to personnel records.

Upon the request of an employee, which the employer may require to be made in writing, every employer must permit the employee to inspect any personnel documents used in determining the employee's qualifications for employment, promotion, transfer, additional compensation, termination, or other disciplinary action. At least two requests must be granted in a calendar year in the manner required by statute, unless otherwise provided in a collective bargaining agreement.¹⁸ An employee involved in a current grievance may designate in writing a representative of a union, collective bargaining unit, or other representative to inspect the employee's personnel records that may have a bearing on the resolution of the grievance.¹⁹

The right to inspect personnel records in-

8. W Va C 21-5-5b.

9. Wisc SA 111.06(j).

10. Wisc SA 111.37(1)(a).

11. Wisc SA 111.37(1)(b).

12. Wisc SA 111.37(2).

13. Wisc SA 111.37(3).

14. Wisc SA 111.37(4).

15. Wisc SA 905.065

16. Wisc SA 942.06.

17. Wisc SA 103.13(4).

18. Wisc SA 101.13(2).

19. Wisc SA 103.13(3).

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

cludes medical records concerning the employee, though if the employer believes that disclosure of medical records would have a detrimental effect on the employee, the medical records may be released to the employee's physician or through a physician designated by the employee. In that case, the physician may release the medical records to the employee or his immediate family.²⁰

The right to inspect personnel records does not apply in certain instances, such as letters of reference or records relating to the investigation of possible criminal offenses,²¹ but does

include the right to copy or receive a copy of records, provided the employer may charge a reasonable fee not to exceed the actual cost of reproduction.²²

EP-22,045. How an employer can disclose personnel records to outsiders.

If an employee submits a written statement explaining his position in regard to any disputed portion of his personnel record, the statement must be attached to the disputed portion of the record and included whenever it is released to a third party for as long as it is a part of the file.²³

20. Wisc SA 103.13(5).

21. Wisc SA 103.13(6).

22. Wisc SA 103.13(7).

23. Wisc SA 103.13(4).

ALWAYS CHECK CURRENT MATTER IN BACK OF VOLUME

81,866

2/17/86 EMPLOYMENT COORDINATOR

HB

96

SENATE COMMITTEE REPORT

FURTHER

4/26/89

DATE TURNED INTO OFFICE 5/2/89

Mr. President:

LABOR & COMMERCE

Committee considered CSHB 96 (L&C)

extending the termiantion date of the Board of Veterinary Examiners; efd

and recommended

replace with S CS CS HB 96 (L+C)) same title
 or adopt _____ CS _____) new title
 attached amendment(s) and technical title change (HB only)
 _____ letter of intent adopted

do pass

do not pass

no recommendation

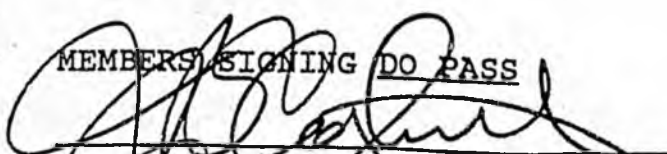
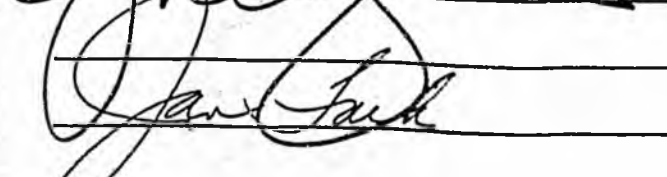
individual recommendations

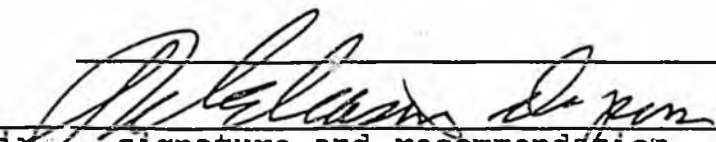
further referral to _____

FISCAL NOTE(S) zero fiscal impact appropriation no FN
 new zero 5/1/89 DC+ED updated previous
 same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS


 Chair signature and recommendation

Committee Backup attached

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act extending the termination
date of the Board of Veterinary Examiners;...
 Sponsor: House Labor & Commerce
 Requestor: _____

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Funding for the Board of Veterinary Examiners is included in the department's FY 90 operating budget request, and therefore, new funds are not required. The FY 90 projected budget for the Board of Veterinary Examiners is explained on the attached page.

Prepared by: Jennifer Strickler, Administrative Officer
 Division: Occupational Licensing

Phone: 465-2144
 Date: May 1, 1989

Approved by Commissioner: Larry Merculieff, Commissioner
 Agency: Commerce & Economic Development

Date: 5/1/89

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 96 (L&C)

The Division of Occupational Licensing, Department of Commerce & Economic Development, is funded primarily by program receipts generated from licensing fees. All licensing programs share in the responsibility of covering a percentage of the administrative costs based on the number of current licensees (198 veterinarians) divided by the total number of current division licensees (26,945). In FY 90, the Board of Veterinary Examiners will be responsible to cover 0.73% of the costs. The breakdown follows:

Personal Services:

- Administrative costs	\$ 7.1
- 20% Licensing Examiner	8.6
- 10% Investigative	<u>5.4</u>
Sub-Total:	\$ <u>21.1</u>

Travel:

- Administrative costs	\$.5
- Board Travel	<u>6.0</u>
Sub-Total:	\$ <u>6.5</u>

Contractual: \$ 5.3

Supplies: \$.2

Equipment: \$.2

TOTAL: \$ 33.3 FY 90 Costs

Average Annual Revenue: \$ 11.4

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: An Act extending the termination BRU: Occupational Licensing
date of the Board of Veterinary Examiners;...
 Sponsor: House Labor & Commerce Components: Licensing Boards
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

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

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Distribution (by preparer):

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

This fiscal note applies to
 SCS CSHB 96 (L+C)

Shula Peterson
 Senate L+C Committee
 page 1 of 2

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 96 (L&C)

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Contractual: \$ 5.3

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Equipment: \$.2

TOTAL: \$ 33.3 FY 90 Costs

Average Annual Revenue: \$ 11.4

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 19, 1989

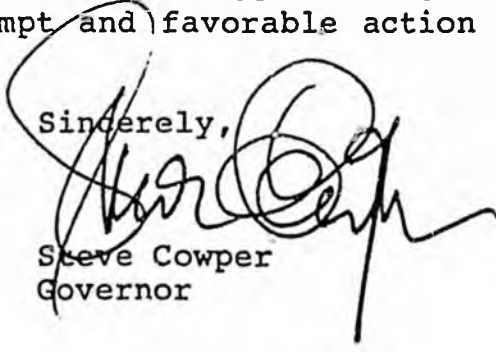
The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Cotten:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting three bills, to extend the Board of Pharmacy, the Board of Veterinary Examiners, and the State Physical Therapy and Occupational Therapy Board, respectively, for the standard four years. These boards are currently scheduled to "sunset" on June 30, 1989.

The boards provide valuable services and should be continued. I urge your prompt and favorable action on all three bills.

Sincerely,


Steve Cowper
Governor

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

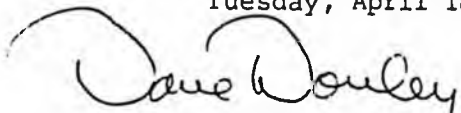
Letter of Intent on HB 96 - Board of Veterinary Examiners

It is the intent of the House Labor and Commerce Committee in adopting CS HB 96 (L&C) that the Board of Veterinary Examiners be subject to more frequent review until they improve their accountability to the public and comply with all applicable laws and policies governing operations of regulatory boards in the State.

Specifically, it is the intent of the House Labor and Commerce Committee that each member submit to the board all written and verbal correspondence received relative to the board and that this information be maintained so that it is readily available to the Division of Occupational Licensing and to the public and that the board disseminates accurate, unbiased and timely information and analysis relative to their intentions and any proposed statutory or regulatory changes by the board.

Finally, the board should demonstrate their commitment to animal health care by promoting qualified veterinarians and veterinary services throughout the state and by actively seeking and considering the concerns of the public and members of the profession in their decision making.

Adopted by the House Labor and Commerce Committee
Tuesday, April 18, 1989



Representative Dave Donley, Chair
House Labor and Commerce Committee

Please enter on record.

Box 34496
Juneau, Alaska
April 29, 1989

Senator Dick Eliason, Chairman
Senate Labor & Commerce Committee
Box V
Juneau, Alaska 99811

Re: CSHB 96(L&C) - Veterinary Board Extension

Dear Senator Eliason:

I strongly urge you and the members of the committee to support CSHB 96(L&C) and the Letter of Intent.

So you may know how this board has operated in recent years, I have enclosed a copy of my recent testimony before the House Labor & Commerce Committee. One current board member (since 1986) and two others have clearly shown intentions to continue pursuing past lawmaking. The two new members intentions are not known. With the aid of this committee, through passage of CSHB 96(L&C) and the Letter of Intent, it is my hope that this board will get a clear message regarding appropriate conduct and procedures as members of a State Board, and begin operating accordingly.

Thank you for your consideration.

Respectfully,



Martha Fischbach

Enclosure

TESTIMONY BEFORE THE HOUSE LABOR & COMMERCE COMMITTEE-HB 96
April 18, 1989

Mr. Chairman, members of the committee, thank you for allowing me to address you today.

My name is Martha Fischbach. I am here today, representing myself, to bring you up-to-date on the practices and intentions over the past several years to present times, of the State Veterinary Board. I own three dogs, and over the past 10 years have mushed, shown dogs, done obedience work, been an Iditarod volunteer, studied and worked on state and local animal laws, both urban and rural, worked in a pet shop and been involved with animals and their laws in numerous other ways, hence my interest in the actions I discovered being taken by the Veterinary Board with the introduction of SB 287 (reference green pages in colored packet).

Supposedly, according to the board, the bill was basically about lay vaccinators (people certified to give rabies shots to animals). That was the basic testimony at the first hearing and the replies when directly questioned about it by peers. I thought it was a little more involved than that and began researching the public record. Your packets show you a variety of examples of that record. I can assure you that the verbatim excerpts of their February 1987 meeting are a clear indication of their intentions as they have spent years in similar discussions, which I discovered in listening to the tapes of their meetings.

Basically, the laws they have introduced and currently intend to pursue, will make, in my opinion, most animal care in the state illegal unless performed by an Alaska licensed veterinarian and will severely limit and discourage the use of temporary veterinarians such as volunteer Iditarod vets and those who do consulting or specialty work or want to set up practice in Alaska.

For example, if I checked my dog for fleas or, as the board chairman explained, if I even suggested to you that you get your dog neutered, I would be practicing veterinary medicine without a license. If a volunteer temporary Iditarod vet going through Ruby was brought a rabbit with a cut foot, legally he could not treat it, unless it was already under the care of a licensed and practicing Alaska vet. As one board member put it, they don't want them practicing on all the dogs and cats in the neighborhood.

The board intends to put into law their already "arbitrary and capricious" practice (their words) of allowing only two temporary licenses or permits per lifetime which effectively keeps out experienced vets. So much for Iditarod, specialty clinics and additional animal health care for Alaska.

Other sections of SB 287 say that a veterinarian who has ever failed one of several exams listed, even though he passed it later and has been practicing successfully for 30 years, would be denied a license to practice in Alaska.

This board has knowingly mislead and misinformed the public, their peers and the legislature about their intentions and the ramifications of their proposed legislation. They know exactly what they are doing, clearly stating they prefer to make people liable and then take them on a case by case basis, using their discretion in determining what they will do with them. Not even Legislative Budget

& Audit was able to determine what the board was doing, there being no public record of communications made directly to the board.

The examples I have offered hopefully give you an idea of the magnitude and impact of the changes the board is seeking. By their own testimony, they do not want the legislature to know what they are really doing. The number "SB 287" may be dead, but they clearly indicate that they are continuing to pursue its content as well as regulations with equally comprehensive changes. If those changes are passed, it will affect animal owners, pet shops, groomers, teachers, humane societies, kennel clubs, handlers, 4-H groups, stables, the zoo, breeders, dog and cat sitters and many others.

Mr. Chairman, I am extremely concerned about the methods and intentions of this board and feel that their activities over the past several years and current intentions are very detrimental to animal care in this state, not to mention my piece of mind. It is my hope that this committee can assist the Veterinary Board, both old and new members, to remember its purpose, and encourage a forthright, positive method of operating. I would be happy to work with this committee, the board or the division on any matters of concern to the Veterinary Board.

Thank you for allowing me this opportunity to speak. Your time and attention are very much appreciated. I would be glad to answer any questions you may have.

248 Bentley Dr. E.
Fairbanks, Alaska 99701
April 28, 1989

The Honorable Dick Eliason
Chairman
Senate Labor & Commerce Committee
P.O. Box V
Juneau, Alaska 99811

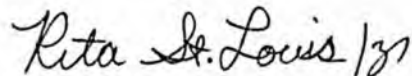
Dear Senator Eliason and Members of the Committee:

Please vote to pass CSHB 96(L&C) as well as the Letter of Intent
that is with it.

My experiences with the Veterinary Board over the past several years
have shown me this board clearly needs to be told to clean up their
act.

Please help them get the message by passing the above legislation.
Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Rita St. Louis" followed by a date "1/31".

Rita St. Louis

4-29-89

Senator Dick Eliason, Chairman
and members of the
Senate Labor and Commerce Committee
Box V
Juneau, AK 99811

Re: CSHB 96 (L&C) - Veterinary Board Extension

Dear Senator Eliason:

Please fully support passage of CSHB 96 (L&C)
and the accompanying Letter of content from
the House.

This board has, over the past several years, con-
ducted itself very irresponsibly and with
little or no consideration for the real welfare
of animals or the public good.

Their intentions and actions would be extremely
detrimental to the health and well being of
my animals and many others. Please help the
board get back on the right track by passing
the stated legislation and Letter of content.

Sincerely,

Laura L. Elze
Box 33404
Juneau, AK 99803

A PERFORMANCE REPORT
ON THE BOARD OF
VETERINARY EXAMINERS

July 1, 1984 - June 30, 1988

Audit Control Number

08-1343-89-R

Acting Commissioner, Department of
Commerce and Economic
Development

Larry Mercurieff

Deputy Commissioner, Department
of Commerce and Economic
Development

Vacant

Members of the
Board of Veterinary Examiners

Member
Member
Member
Member
Member

James B. Leach III, D.V.M.
Derrick J. Leedy, D.V.M.
Stephen A. Mersch, D.V.M.
Patrick J. Moriarty, D.V.M.
Bill Lewis

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

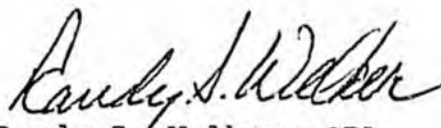
October 17, 1988

Members of the Legislative Budget
and Audit Committee:

According to the provisions of Titles 24 and 44 of the Alaska Statutes, the Division of Legislative Audit is required to conduct a "sunset" review of the Board of Veterinary Examiners.

At the request of the Chairman, during Fiscal Year 1988 budget deliberations, the Audit Division's budget was revised to reflect certain changes in the organization of the Committee's two Divisions. The revised budget of the Audit Division reflected efficiencies that might be obtained by utilizing the staff of the Legislative Finance Division on selected audit assignments during the interim.

As a result, the audit of the Board of Veterinary Examiners was conducted and this report has been prepared by the Legislative Finance Division. We feel this report discharges our responsibility under Titles 24 and 44. The report is submitted for your review.



Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
P.O. BOX WF
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

October 10, 1988

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Title 24 and 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

A PERFORMANCE REPORT
ON THE BOARD OF
VETERINARY EXAMINERS

July 1, 1984 to June 30, 1988

Audit Control Number

08-1343-89-R



Mike Greany, Director
Legislative Finance Division

TABLE OF CONTENTS

	<u>Page</u>
Purpose and Scope of the Report.	1
Organization and Function.	3
Report Conclusion.	5
Findings and Recommendations	7
Analysis of Public Need.	9
Appendix:	
A. Schedule of Revenues Compared with Expenditures, for Fiscal Year 1988	15
Agency Response:	
Department of Commerce and Economic Development	17

PURPOSE AND SCOPE OF THE REPORT

PURPOSE

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have examined the activities of the Board of Veterinary Examiners for the past four fiscal years to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Veterinary Examiners should be reestablished. The law now specifies that the Board will terminate June 30, 1989, and has one year from that date to conclude its affairs.

SCOPE

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Tests of files and documents of licensee.
3. Interviews with the license examiner.
4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Offices, Attorney General's Office, and the Ombudsman's Office.
5. Discussions with Board members.
6. Minutes of Board meetings and Division correspondence files.
7. Attorney General's opinions applicable to the professional board.

ORGANIZATION AND FUNCTION

The Board of Veterinary Examiners is a regulatory board consisting of four licensed veterinarians and one public member. The authority of the Board is outlined within Alaska Statutes 08.98.010-.250.

The Board determines the minimum quality of veterinary care in the State by:

1. Examining and issuing licenses to qualified applicants;
2. Establishing or amending rules and regulations necessary to enforce State statutes; and
3. Holding hearings to revoke or suspend the license of a person violating the veterinary statutes and regulations.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing. The division provides the Board with licensing and investigative support. The licensing section processes applications, maintains license files, answers inquiries, and provides other administrative help.

REPORT CONCLUSION

POLICY ISSUES

This review contains policy and/or procedural issues raised as a result of our evaluation of various Board practices. The final decisions affecting the practices are not within the scope of this report, but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations presented in this report so that the potential impact on changes can be evaluated.

REPORT CONCLUSION

In our opinion, the Board of Veterinary Examiners should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Assurance that licensed professionals act in a competent manner is provided by active investigation of complaints and revocation of suspension of licenses where appropriate.

The Findings and Recommendations Section (see page 7), describe areas where weaknesses or conflicts exist. Therefore, we have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Veterinary Examiners should consider registering veterinary technicians.

The Alaska statutes (AS 08.98.050) contain general provisions for veterinary technicians that allow the Board to: define the scope of practice, establish minimum education and training requirements; and establish examination and registration requirements. With statutory authority the Board has promulgated professional regulations (12 AAC 58) that specifically identify professional limits and minimum requirements imposed upon veterinary technicians. Nevertheless, registration requirements have not been imposed upon practicing veterinary technicians.

The professional practice and function of a veterinary technician is analogous to the relationship between a medical doctor and licensed nurse. A qualified veterinary technician would be familiar with medical practices, such as, the technical application and use of an x-ray machine and the injection of drugs into animals. However, the Board has not determined if those who are acting in the capacity of a veterinary technician have fulfilled education and training requirements. A means to determine if practitioners are qualified to practice would be to require certification or registration of qualified applicants.

The American Veterinary Medical Association (AVMA) has conducted a survey of other states to determine the extent of registration or licensing of veterinary technicians. According to information provided by AVMA; 39 states have laws or regulations governing the registration of veterinary technicians and 32 states administer the Veterinary Technician National Examination and/or a state examination prior to registration or certification.

Registering veterinary technicians would provide reasonable assurance that only qualified individuals are practicing this profession and thereby, fulfill the Board's primary purpose of protecting the public's welfare and the health of animals.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need defined in the "sunset" law. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission, or program has operated in the public interest.

A. The Board has served the public by examining and licensing qualified applicants, and proposing changes in regulations that are necessary to enforce State statutes and improve the quality of veterinary care. To conduct these functions the Board has held an average of two board meetings and two examination sessions a year for the past two calendar years.

B. Specifically, the Board has enhanced the practice of veterinary care by promulgating regulations concerning:

1. the retention, confidentiality, release of information and disposition of patient medical records,
2. fees, gender references and other miscellaneous "house keeping" changes.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The Board should consider registering veterinary technicians. (See Recommendation No. 1.)

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

The Board has proposed statutory changes of the Veterinary statutes (AS 08.98) to clarify areas of confusion. Specifically, the Board has proposed the statutes to be amended to:

1. remove any mention of an examination given by the American Veterinary Association. The association no longer administers an examination.

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area or activity or interest.

The Human Rights Commission and the Equal Employment Opportunity Office have received no complaints related to the Board's activities.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

CORRECTION

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

PURPOSE AND SCOPE OF THE REPORT

PURPOSE

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(Intentionally left blank)