

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 86/2

6950 HOUSE JUDICIARY

199

ALASKA STATE LEGISLATURE

Representative Georgianna Lincoln

HESS Committee, Co-Chair  
Resources Committee, Vice-Chair

Budget Subcommittees  
Health and Social Services  
Revenue



P.O. Box V  
Juneau, Alaska 99811

Phone: (907) 465-3732  
FAX: (907) 465-2652

- Alatna
- Allakaket
- Aniak
- Anvik
- Arctic Village
- Beaver
- Bettles
- Birch Creek
- Chalkyitsik
- Chuathbaluk
- Crooked Creek
- Evansville
- Fort Yukon
- Galena
- Grayling
- Holy Cross
- Hughes
- Huslia
- Kalskag
- Kaltag
- Koyukuk
- Lake Minchumina
- Lime Village
- Lower Kalskag
- Manley Hot Springs
- Marshall
- McGrath
- Minto
- Mountain Village
- Nikolai
- Nulato
- Pilot Station
- Pitkas Point
- Rampart
- Red Devil
- Ruby
- Russian Mission
- Shageluk
- Sleetmute
- St. Mary's
- Stevens Village
- Stony River
- Takotna
- Tanana
- Telida
- Tuluksak
- Tyonek
- Venetie
- Wiseman

M E M O R A N D U M

TO: Representative Dave Donley, Chair  
House Judiciary Committee

FROM: Representative Georgianna Lincoln  
House District 24

DATE: February 3, 1992

RE: HB 301

\*\*\*\*\*

I polled my staff in regards to HB 301, with the result being an overwhelming support for a later start date for the very reasons you stated in your memo dated January 16, 1992. Since I am "driven" by my wonderful staff, my vote too is a later start date.

Thank you for allowing all to have a say in this important suggested change.



Official Business

# Representative Loren Lemman

## Alaska State Legislature

State Office  
Suite 425  
Anchorage, Alaska  
99501-7814

During Session

P.O. Box V  
Juneau, Alaska 99801  
465-2095

### M E M O R A N D U M

TO: Representative Dave Donley

FROM: Representative Loren Lemman *Loren Lemman*

SUBJECT: Starting Day for Legislative Session

DATE: April 16, 1991

=====

Thank you for your inquiry regarding my opinions about the appropriate starting day for the legislative session.

I agree that a later starting date reduces some of the conflicts with the Christmas and New Year's post-holiday" syndrome. However, establishing the starting date as the fourth Monday of January causes even greater conflicts with seasonal employment if the legislative session lasts the full 121 days.

I suggest that the fourth Monday in January is an appropriate starting date only if the legislative session length can be reduced to 90 days. HJR 6, which I introduced earlier this session, proposes this reduction. If the session length is not reduced, I prefer to leave the starting dates as they are now, with a possible revision that the starting day be the third Monday in January (following non-gubernatorial years) if the first day in January is a Sunday or Monday.

# HOUSE COMMITTEE REPORT

(7)

Date Referred: February 7, 1992

FURTHER REFERRALS:

Rules

Date of Committee Action: 2.21.92

The JUDICIARY Committee considered:

HB 301

HOUSE BILL NO. 301

REGULAR LEGISLATIVE SESSIONS

"An Act relating to regular sessions of the legislature."

**RECOMMENDATIONS:**

be replaced with \_\_\_\_\_

CBHB 301 (JUD)

[ ] the same title  
 a new title

[ ] have attached amendments(s)

do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

[ ] fiscal impact \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

[ ] zero fiscal note \_\_\_\_\_

[ ] zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Daniel Donley</i>		<i>Terry Mastio</i>		<input checked="" type="checkbox"/>	
<i>St. Paul</i>	<input checked="" type="checkbox"/>	<i>Mark Stanley</i>		<input checked="" type="checkbox"/>	
<i>J. H. Ellis</i>	<input checked="" type="checkbox"/>				
<i>Kevin Pad Parnell</i>					

*Daniel Donley*  
 \_\_\_\_\_  
 CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 26, 1991

FURTHER REFERRALS:

Judiciary  
Rules

Date of Committee Action: 2/5/92

The STATE AFFAIRS Committee considered:

HB 301

HOUSE BILL NO. 301

REGULAR LEGISLATIVE SESSIONS

"An Act relating to regular sessions of the legislature."

RECOMMENDATIONS:

be replaced with CSHB 301 (STA)

- the same title  
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note LAA

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eugene A. Kukkonen</i>	<input checked="" type="checkbox"/>	<i>Tom Meyer</i>		<input checked="" type="checkbox"/>	
<i>J. Buchanan</i>	<input type="checkbox"/>	<i>James Baker</i>		<input checked="" type="checkbox"/>	
<i>Mark Huelsbeck</i>	<input checked="" type="checkbox"/>	<i>Phil Miller</i>	<input checked="" type="checkbox"/>		

*Eugene A. Kukkonen*  
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO: HB 301

Revision Date: \_\_\_\_\_  
Title: "An Act relating to regular sessions  
of the legislature."  
Sponsor: House Judiciary  
Requestor: House State Affairs

Department Affected: Legislative Affairs Agency  
BRU: All  
Component: \_\_\_\_\_

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE						
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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact.

Prepared By: Pamela A. Stoops, Director  
Division: Administrative Services

*Pamela A. Stoops*

Phone: 465-3850  
Date: 1/23/92

Approved By: Warren W. Endicott, Executive Director  
Agency: Legislative Affairs Agency

*Warren W. Endicott*

Date: 1/23/92

Distribution (by preparer): Leg. Finance, Legislative Sponsor, Requestor, OMB, Gov. , & Impacted Agency(ies).

HB

302

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN  
SEAT A

ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR  
NORTHWOOD • ROMIG • ROOSEVELT PARK • SPENARD • THOMPSON • TURNAGAIN • WINDEMERE • WOODLAND PARK

3111 "C" STREET, SUITE 450  
ANCHORAGE, ALASKA 99503  
(907) 561-7629 (FAX) 562-4376



CHAIRMAN  
JUDICIARY COMMITTEE

VICE CHAIRMAN  
REGULATION REVIEW COMMITTEE

MEMBER  
RULES COMMITTEE  
LABOR AND COMMERCE COMMITTEE

## SECTIONAL ANALYSIS

### CSHB 302(JUD) - MALPRACTICE INSURANCE FOR PROFESSIONALS

CSHB 302 (JUD) requires a person who is in an occupation or profession regulated by the state under Title 8 to have malpractice insurance if:

- (1) judgment has been entered against the person for civil damages;
- (2) the damages resulted from an act or omission arising out of the person's occupation or profession; and
- (3) the judgment has not been satisfied or the parties to the judgment have not entered into a settlement agreement.

The Division of Occupational Licensing shall suspend the license of a person who fails within 45 days to provide:

- (1) a copy of the judgment and proof of required insurance; or
- (2) a copy of the satisfaction or settlement of the judgment.

The license is suspended until proof of insurance, satisfaction of the judgment, or settlement is provided.

The division shall adopt regulations establishing minimum insurance requirements for each regulated occupation.

A court entering a malpractice judgment against a person in a regulated occupation must forward a copy of the judgment to the division.

An insurer who provides malpractice insurance coverage to a licensed professional shall provide notice to the division if the policy is cancelled or not renewed.

The insurance requirement does not apply to a person who:

- (1) is required to have insurance or to provide a bond as a condition of licensing;
- (2) is no longer employed in the occupation or profession; or
- (3) is licensed in a profession or occupation that is unrelated to the profession or occupation out of which the judgment arose.





## Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510  
Office: 540 L Street, Suite 104 • Anchorage  
(907) 258-4040

### HB 302 - MALPRACTICE INSURANCE FOR PROFESSIONALS

The idea behind HB 302 -- requiring professional malpractice insurance under certain circumstances -- is laudable. However we have a couple of concerns with the present form of the bill and would encourage the committee to consider some of these shortcomings.

HB 302 requires professionals to obtain malpractice insurance **only** if a judgment has been entered against them and that judgment has not been satisfied. That means an offending professional must commit negligence, get caught at it, have a case prosecuted to judgment and then not satisfy the judgment before HB 302 even applies. This exception raises a couple of problems.

First, this is a "one-free" bite kind of a bill. You not only have to be a professional who has injured someone, but you have to be taken to judgment and have failed to satisfy that judgment. The economics of taking a professional to judgment who is uninsured are abysmal. If the professional is judgment proof to begin with, claimants will not seek a judgment, as it is a waste of time and money. Once judgment is entered against a professional, there is no obligation under HB 302 to discharge the judgment. In other words, a professional can satisfy the law by simply securing requisite malpractice insurance for **future acts**, even though outstanding judgments exist against that individual. Although this exception was apparently designed to focus on the professional with a track record of negligence, it does not appear to apply to the professional who may have settled a series of negligence claims short of trial to avoid a negligence judgment.

Second, those of us who put ourselves forward as professionals; take peoples' problems into our hands; solicit public trust by our very presence and status within the community, have an obligation to insure against errors we may make in discharging our professional duties. A professional who holds himself or herself out to the public as competent in an area should back that representation with malpractice insurance, regardless of whether he or she has been the subject of a negligence judgment.

Despite these concerns, we urge passage of some legislation requiring mandatory liability insurance for professionals. The limits proposed in the present form of HB 302 are certainly better than nothing, but inadequate nonetheless.

# LEBOEUF, LAMB, LEIBY & MACRAE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

EASTERN U.S.:

NEW YORK, NY  
WASHINGTON, DC  
ALBANY, NY  
BOSTON, MA  
HARRISBURG, PA  
HARTFORD, CT  
NEWARK, NJ

520 MADISON AVENUE

NEW YORK, NY 10022

(212) 715-8000

FACSIMILE: (212) 715-8500

TELEX: 423416 (OR) 1561363

EUROPEAN COMMUNITY: BRUSSELS, BELGIUM AND LONDON, ENGLAND

DIRECT DIAL

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WESTERN U.S.:

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SAN FRANCISCO, CA

SOUTHERN U.S.:

JACKSONVILLE, FL  
RALEIGH, NC

May 22, 1991

BY FACSIMILE AND REGULAR MAIL

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

Re: Alaska House Bill 302

Dear Representative Donley:

Our firm is privileged to serve as United States General Counsel to Underwriter's at Lloyd's, London and to also represent a number of other alien insurers principally licensed in the London market. Our clients are eligible to write surplus lines insurance on Alaska risks and have long been active participants in your state's surplus lines marketplace.

In its original form, the captioned bill would have limited the procurement of malpractice coverage to the licensed market. We were surprised and somewhat alarmed by this proposal, particularly since malpractice coverage is frequently the very type of hard to place risk which most requires access to the non-admitted market through the surplus lines law. Thus, this bill, as proposed, could have created an artificial capacity shortage for malpractice coverage as well as severing well established mutually beneficial relationships between Alaska residents requiring malpractice coverage and surplus lines insurers.

Representative Dave Donley

May 22, 1991

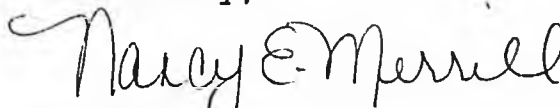
Page 2

Fortunately, this bill was subsequently amended in the House Labor & Commerce Committee and currently reads that the concerned coverage may be procured from "an insurer eligible to do business in Alaska." We have been advised by a Committee Aid to the Labor and Commerce Committee that the intent of the amendment is to clarify that malpractice coverage may be procured from the surplus lines market as provided for in the Alaska surplus lines law.

While we are grateful for this recognition that malpractice coverage may still be procured from surplus lines insurers in an appropriate case, we remain concerned that the true intent of this bill, even as amended, may not be sufficiently clear from the language of the bill to avoid undesirable misunderstanding. In the interest of clarity, we respectfully request that you consider removing the words "insurer eligible" from line seven of the bill and insert instead the following: "an insurer authorized to do business in this state or an eligible surplus lines insurer." We believe this amendment would effectively prevent any possible future misunderstandings.

Thank you for your consideration of this matter. If you have any questions or desire additional information, please do not hesitate to contact us.

Sincerely,



Nancy E. Merrill  
Admission Pending

NEM/tc

## 1992 LEGISLATIVE SESSION

Revision Date: 02/12/92 Department Affected: Commerce & Economic Development  
 Title: Relating to malpractice insurance for certain BRU: Occupational Licensing  
persons who are in a regulated occupation or profession Component: Administration  
 Sponsor: House Labor & Commerce  
 Requestor: House Judiciary COMPONENT SERIAL NO. 

0	3	5	6
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## Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	41.2	41.2	41.2	41.2	41.2	41.2
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	5.8	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	58.0	52.2	52.2	52.2	52.2	52.2

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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## FUNDING: (Thousands of Dollars)

GENERAL FUND	58.0	52.2	52.2	52.2	52.2	52.2
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	58.0	52.2	52.2	52.2	52.2	52.2

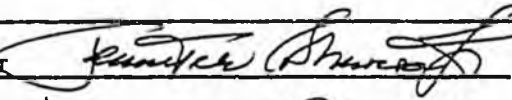
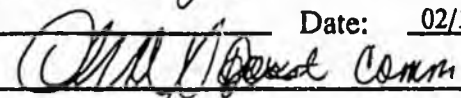
## POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

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

The bill establishes a malpractice insurance requirement for licensees, if judgement has been entered against the licensee for civil damages resulting from an act or omission arising out of the person's occupation or profession.

Prepared By: Jennifer Strickler  Phone: 465-2144  
 Division: Occupational Licensing Date: 02/12/92  
 Approved by Commissioner: Glenn A. Olds   
 Agency: Commerce & Economic Development Date: 2-12-92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, &amp; Impacted Agency(ies).

CONTINUATION OF FISCAL NOTE ANALYSIS - CSHB 302 (L&C)

CSHB 302(L&C) requires the division to adopt regulations establishing the minimum malpractice insurance requirements for each regulated occupation or comply with the requirement that a copy of the judgment and proof of the malpractice insurance, or a copy of the satisfaction or settlement of the judgement be submitted to the division within 45 days after the judgment is entered.

The division currently licenses 33 occupations and professions in over a hundred separate licensing categories. Since the bill requires the division to establish minimum malpractice requirements for each regulated occupation or profession, the division anticipates that a great amount of staff time and effort will be needed to coordinate with the division of risk management, the insurance companies, and each occupation or profession in establishing minimum malpractice insurance requirements for each licensing category, by regulations. This fiscal note therefore addresses the funding needed to carry out the provisions of the bill.

Personal Services \$ 41.2

- 1 - Regulations Specialist I, Range 13A, GGU  
12 months

This position will be responsible to coordinate the efforts in establishing the minimum malpractice insurance requirements for each of the 33 occupations and professions, for each licensing category.

Travel 5.0

This funding will provide transportation for the Regulations Specialist to coordinate with insurance companies, licensees, and to hold the necessary public hearings on the proposed regulations throughout the State.

Contractual Services 5.0

This funding will cover printing and advertising of the regulations project, communications expenses, and hearing expenses for suspension of a license in accordance with Section 08.02.040(b).

Supplies 1.0

This funding will provide daily operating supplies for the Regulations Specialist position.

Equipment (one-time costs) 5.8

This funding will provide one-time equipment costs for the Regulations Specialist position.

TOTAL: \$ 58.0

# HOUSE COMMITTEE REPORT

(7) Date Referred: May 14, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 2.12.92

The JUDICIARY Committee considered: HB 302

HOUSE BILL NO. 302 REQUIRE PROFESSIONAL LIABILITY INSURANCE

"An Act relating to malpractice insurance for certain persons who are in a regulated occupation or profession."

RECOMMENDATIONS: be replaced with CS HB 302 (JUD)  the same title  a new title

- have attached amendments(s)
- do pass
- do not pass
- no recommendations
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

fiscal impact Commerce + Econ Development  fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_  zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Dave Donley</i>	X	<i>Mike Miller</i>		✓	
<i>J. Ellis</i>	X	<i>X. J. Rosenberg</i>		✓	
<i>Kevin Paul V. Parnell</i>	✓				
<i>Mark Huskey</i>	X				
<i>Terry Martin</i>	X				

*Dave Donley*  
CHAIRMAN'S SIGNATURE

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN  
SEAT A

3111 "C" STREET, SUITE 450  
ANCHORAGE, ALASKA 99503  
(907) 561-7629 (FAX) 562-4376

ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR  
NORTHWOOD • ROMIG • ROOSEVELT PARK • SPENARD • THOMPSON • TURNAGAIN • WINDEMERE • WOODLAND PARK



CHAIRMAN  
JUDICIARY COMMITTEE

VICE CHAIRMAN  
REGULATION REVIEW COMMITTEE

MEMBER  
RULES COMMITTEE  
LABOR AND COMMERCE COMMITTEE

## SECTIONAL ANALYSIS

### CSHB 302(JUD) - MALPRACTICE INSURANCE FOR PROFESSIONALS

CSHB 302 (JUD) requires a person who is in an occupation or profession regulated by the state under Title 8 to have malpractice insurance if:

- (1) judgment has been entered against the person for civil damages;
- (2) the damages resulted from an act or omission arising out of the person's occupation or profession; and
- (3) the judgment has not been satisfied or the parties to the judgment have not entered into a settlement agreement.

The Division of Occupational Licensing shall suspend the license of a person who fails within 45 days to provide:

- (1) a copy of the judgment and proof of required insurance; or
- (2) a copy of the satisfaction or settlement of the judgment.

The license is suspended until proof of insurance, satisfaction of the judgment, or settlement is provided.

The division shall adopt regulations establishing minimum insurance requirements for each regulated occupation.

A court entering a malpractice judgment against a person in a regulated occupation must forward a copy of the judgment to the division.

An insurer who provides malpractice insurance coverage to a licensed professional shall provide notice to the division if the policy is cancelled or not renewed.

The insurance requirement does not apply to a person who:

- (1) is required to have insurance or to provide a bond as a condition of licensing;
- (2) is no longer employed in the occupation or profession; or
- (3) is licensed in a profession or occupation that is unrelated to the profession or occupation out of which the judgment arose.

JUNEAU OFFICE

(During Legislative Session January through May)

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661



FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 302

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Dev.  
 Title: An Act relating to malpractice insurance for certain persons... BRU: Occupational Licensing  
 Component: Administration  
 Sponsor: House Judiciary  
 Requestor: House Labor & Commerce COMPONENT SERIAL NO. 

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	41.2	41.2	41.2	41.2	41.2	41.2
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	5.8					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	58.0	52.2	52.2	52.2	52.2	52.2

CAPITAL						
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	58.0	52.2	52.2	52.2	52.2	52.2
FEDERAL FUNDS						
OTHER						
TOTAL	58.0	52.2	52.2	52.2	52.2	52.2

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

The bill establishes a malpractice insurance requirement for licensees, if judgment has been entered against the licensee for civil damages resulting from an act or omission arising out of the person's occupation or profession. (Continued on attached.)

Prepared By: Jennifer Strickler, Admin. Officer Phone: 465-2144  
 Division: Occupational Licensing Date: May 6, 1991  
 Approved by Commissioner: Glenn A. Olds  
 Agency: Commerce and Economic Development Date: 5-7-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION OF FISCAL NOTE ANALYSIS - HB 302

HB 302 requires the division to adopt regulations establishing the minimum malpractice insurance requirements for each regulated occupation or profession; and to suspend a license for one year if a licensee fails to comply with the requirement that a copy of the judgment and proof of the malpractice insurance, or a copy of the satisfaction or settlement of the judgement be submitted to the division within 45 days after the judgment is entered.

The division currently licenses 31 occupations and professions in over a hundred separate licensing categories. Since the bill requires the division to establish minimum malpractice requirements for each regulated occupation or profession, the division anticipates that a great amount of staff time and effort will be needed to coordinate with the division of risk management, the insurance companies, and each occupation or profession in establishing minimum malpractice insurance requirements for each licensing category, by regulations. This fiscal note therefore addresses the funding needed to carry out the provisions of the bill.

Personal Services \$ 41.2

1 - Regulations Specialist I, Range 13A, GGU  
12 months

This position will be responsible to coordinate the efforts in establishing the minimum malpractice insurance requirements for each of the 31 occupations and professions, for each licensing category.

Travel 5.0

This funding will provide transportation for the Regulations Specialist to coordinate with insurance companies, licensees, and to hold the necessary public hearings on the proposed regulations throughout the State.

Contractual Services 5.0

This funding will cover printing and advertising of the regulations project, communications expenses, and hearing expenses for suspension of a license in accordance with Section 08.02.040(b).

Supplies 1.0

This funding will provide daily operating supplies for the Regulations Specialist position.

Equipment (one-time costs) 5.8

This funding will provide one-time equipment costs for the Regulations Specialist position.

TOTAL: \$ 58.0

FISCAL NOTE

No. 1

Bill Version: CSHB 302(L&C)

(H) Publish Date: 5/14/91

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Dev.

Title: An Act relating to malpractice insurance for certain persons.... BRU: Occupational Licensing

Sponsor: House Judiciary Component: Administration

Requestor: House Labor & Commerce COMPONENT SERIAL NO. 

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	41.2	41.2	41.2	41.2	41.2	41.2
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	5.8					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	58.0	52.2	52.2	52.2	52.2	52.2

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	58.0	52.2	52.2	52.2	52.2	52.2
FEDERAL FUNDS						
OTHER						
TOTAL	58.0	52.2	52.2	52.2	52.2	52.2

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

The bill establishes a malpractice insurance requirement for licensees, if judgment has been entered against the licensee for civil damages resulting from an act or omission arising out of the person's occupation or profession. (Continued on attached.)

Prepared By: Jennifer Strickler, Admin. Officer Phone: 465-2144

Division: Occupational Licensing Date: May 6, 1991

Approved by Commissioner: Glenn A. Olds

Agency: Commerce and Economic Development Date: 5-9-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HB 302 requires the division to adopt regulations establishing the minimum malpractice insurance requirements for each regulated occupation or profession; and to suspend a license for one year if a licensee fails to comply with the requirement that a copy of the judgment and proof of the malpractice insurance, or a copy of the satisfaction or settlement of the judgement be submitted to the division within 45 days after the judgment is entered.

The division currently licenses 31 occupations and professions in over a hundred separate licensing categories. Since the bill requires the division to establish minimum malpractice requirements for each regulated occupation or profession, the division anticipates that a great amount of staff time and effort will be needed to coordinate with the division of risk management, the insurance companies, and each occupation or profession in establishing minimum malpractice insurance requirements for each licensing category, by regulations. This fiscal note therefore addresses the funding needed to carry out the provisions of the bill.

Personal Services \$ 41.2

- 1 - Regulations Specialist I, Range 13A, GGU  
12 months

This position will be responsible to coordinate the efforts in establishing the minimum malpractice insurance requirements for each of the 31 occupations and professions, for each licensing category.

Travel 5.0

This funding will provide transportation for the Regulations Specialist to coordinate with insurance companies, licensees, and to hold the necessary public hearings on the proposed regulations throughout the State.

Contractual Services 5.0

This funding will cover printing and advertising of the regulations project, communications expenses, and hearing expenses for suspension of a license in accordance with Section 08.02.040(b).

Supplies 1.0

This funding will provide daily operating supplies for the Regulations Specialist position.

Equipment (one-time costs) 5.8

This funding will provide one-time equipment costs for the Regulations Specialist position.

TOTAL: \$ 58.0

HB

303

B

HOUSE COMMITTEE REPORT

2-7-92

Finance

(7) Date Referred: April 26, 1991

FURTHER REFERRALS:

Date of Committee Action: 2-5-92

The JUDICIARY Committee considered:

HB 303

HOUSE BILL NO. 303

CRIMINAL APPEALS

"An Act relating to the state's right to appeal in criminal cases; relating to sentence appeals from sentences imposed by the district court; amending Rule 202 of the Alaska Rules of Appellate Procedure; and providing for an effective date."

RECOMMENDATIONS: be replaced with CS HB 303 (JUD) [X] the same title [ ] a new title

[ ] have attached amendments(s)

[X] do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

(2) [X] zero fiscal note Admin.; Dept. of Law

[ ] zero fiscal note(s) \_\_\_\_\_

Table with columns: SIGNING DO PASS, DP, OTHER RECOMMENDATIONS, DNP, NR, AM. Includes handwritten signatures and marks.

Chairman's Signature: Dave Dowley

CHAIRMAN'S SIGNATURE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 303

Revision Date: \_\_\_\_\_  
Title: "An Act relating to the State's right to appeal in criminal cases . . ."  
Sponsor: House Judiciary  
Requestor: House Judiciary

Department Affected: Administration  
BRU: Public Defender Agency  
Component: Public Defender Agency

COMPONENT SERIAL NO. 

1	6	3	1
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 FUND SOURCE:	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 FUND SOURCE:	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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

The fiscal impact of this bill depends entirely on the numbers of cases where review was previously denied, which now must be heard by the appellate courts. It is doubtful that there are any such cases. The appellate courts rarely have denied discretionary review to the State.

Prepared by: John Salemi, Public Defender  
Division: Public Defender Agency

Phone: 279-7541  
Date: February 3, 1992

Approved by Commissioner: Nancy Bear Usera  
Agency: Administration

Date: 2/4/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 303

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "An Act relating to the state's right to appeal in criminal cases..." BRU: Prosecution  
 Sponsor: House Judiciary Committee Component: All  
 Requestor: House Judiciary Committee COMPONENT SERIAL NO. 

--	--	--	--

EXPENDITURES/REVENUES: (Thousands of Dollars)

85 through 91

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: January 21, 1992  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law Date: January 21, 1992

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 303

This bill amends AS 22.07, AS 22.10, AS 22.15, and repeals Rule 202(c), Alaska Rules of Appellate Procedure, to provide that the state's right to appeal in criminal cases is limited by the prohibition against double jeopardy contained in the United States Constitution and the Alaska Constitution. Existing law limits this right except to test the sufficiency of the indictment or information or to appeal a sentence on the ground it is too lenient. The effect of granting broadened appeals rights to the state will be to permit it to test evidentiary rulings that are adverse to the state's case at the outset. Currently, the state's only opportunity to test evidentiary rulings is when a defendant appeals a ruling adverse to the defense and the state gets to respond.

Although there will be some incremental cost when the state elects to affirmatively bring an evidentiary appeal, it will certainly be more efficient than the current system where we must wait for a defense appeal before evidence issues are finally resolved.

# Alaska State Legislature



House of Representatives  
House Judiciary Committee  
Chairman Dave Donley

P. O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990  
(907) 465-4712

## ALLOWING STATE TO APPEAL IN CRIMINAL CASES

HB 303 enlarges the state's right to appeal in criminal cases by giving state prosecutors the same right to appeal as have federal prosecutors. Unlike Alaska law where the right of the prosecution to appeal is limited by statute (AS 22.07.020 and AS 22.10.020), the right of federal prosecutors to appeal erroneous decisions is limited only by constitutional double jeopardy provisions. A copy of the federal statute is attached.

Like all human institutions, our criminal justice system is not perfect and judges sometimes make mistakes. If a mistake is made in favor of the state, the defendant can appeal. A conviction that was wrongfully obtained will be reversed on appeal. That is as it should be; basic justice requires no less. But, if a judge makes a mistake in favor of a defendant, the state may not be able to obtain appellate review of the erroneous decisions. Constitutional prohibitions against double jeopardy do not require that these erroneous decisions stand uncorrected. The proposed amendment changes the statutes to allow the state to appeal in circumstances where an error has been made.

Under current state statutes, if a trial judge dismisses a case erroneously, the state must file a "petition for review", not an "appeal", with the court of appeals. The difference is two-fold.

First, the right to "appeal" means the right to have the court hear a case and consider it on the merits; the court cannot refuse to hear the case. But a "petition for review" is addressed to the court's discretionary power to review decisions of the trial court; the petitioner must convince the court that there is some good reason to take the case, aside from the fact that the judge may have made a mistake. The court can deny the petition because the legal issue raised is unusual, or because the issue is not likely to recur, or because the court is too busy, or for any other discretionary reason, without ever reaching the merits of the trial judge's decision. That is, the trial judge could be clearly wrong to have dismissed charges in a criminal case, but the court of appeals is not required to do anything to correct that wrong, even if it completely agrees with the state's legal argument.

Second, a petition for review must be drafted on very short notice. In the normal appeal process, a person has 30 days from the date of the trial judge's decision to file a simple pleading stating the person intends to appeal. The record on appeal is then prepared. After the record is completed, the person has an additional 30 days to file a brief. This means that, as a

practical matter, the person has several months to research and draft a brief before it must be filed with the court.

The petition for review process is quite different. The state has only 10 days from the trial judge's order to draft a petition that includes a sufficiently convincing argument on the merits of the case to convince the court of appeals that they should take the case and reverse the trial judge's decision. This 10-day period was designed with interlocutory -- mid-trial -- appeals in mind. However, with mid-trial appeals the parties and the judicial system cannot afford the luxury of leisurely briefing because everyone needs to know quickly whether the court of appeals is going to interrupt the trial to decide the legal issue involved. This frantic pace does not make a lot of sense when the state appeals a final order in a case; by definition, a final order adverse to the state ends the case. There is no reason to rush the briefing schedule after a final order has been entered.

The provisions of this section shall be liberally construed to effectuate its purposes.

(As amended Jan. 2, 1971, Pub.L. 91-644, Title III, § 14(a), 84 Stat. 1890.)

1971 Amendment. First par. Pub.L. 91-644, § 14(a)(1), enacted provision for appeal to a court of appeals from decision, judgment, or order of district court dismissing an indictment or information as to any one or more counts, except that no appeal shall lie where double jeopardy prohibits further prosecution.

Second par. Pub.L. 91-644, § 14(a)(1), enacted provision for appeal to a court of appeals from decision or order of district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

Such first and second pars. superseded former first eight pars. Pars. one through four had provided for appeal from district courts to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision arresting judgment of conviction for insufficiency of indictment or information, where such decision or judgment was based upon invalidity or construction of the statute upon which the indictment or information was founded and for an appeal from decision or judgment sustaining a motion in bar, where defendant had not been put in jeopardy. Pars. five through eight provided for appeal from district courts to a court of appeals where there were no provisions for direct appeal to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision arresting a judgment of conviction, and from an order, granting a motion for return of seized property or a motion to suppress evidence, made before trial of a person charged with violation of a Federal law, if the United States attorney certified to the judge who granted the motion that the appeal was not taken for purpose of delay and that the evidence was a substantial proof of the charge pending against the defendant.

Third par. Pub.L. 91-644, § 14(a)(2), authorized within third par., formerly ninth, an appeal within thirty days after order has been rendered.

Fourth par. Pub.L. 91-644, § 14(a), in revising the provisions, had the effect of designating former tenth par. as fourth par.

Fifth par. Pub.L. 91-644, § 14(a)(3), substituted as a fifth par. provision for liberal construction of this section for prior eleventh par. provision respecting remand of case by Supreme Court to court of appeals that should have been taken to such court and treatment of the court's jurisdiction to hear and determine the case as if the appeal were so taken in the first instance and for prior twelfth par. provision respecting certification of case to Supreme Court that should have been taken directly to such Court and treatment of the Court's jurisdiction to hear and determine the case as if the appeal were taken directly to such Court.

Savings Provisions. Section 14(b) of Pub.L. 91-644 provided that: "The amendments made by this section [to this section] shall not apply with respect to any criminal case begun in any district court before the effective date of this section [Jan. 2, 1971]."

Legislative History. For legislative history and purpose of Pub.L. 91-644, see 1970 U.S. Code Cong. and Adm. News, p. 5804.

#### Federal Practice and Procedure

##### Appellate review

Arrest of judgment, see Wright: Criminal 2d § 574.

Criminal contempt proceedings, see Wright: Criminal 2d § 715.

Decision setting aside or dismissing indictment or information, see Wright: Criminal 2d § 191.

Dismissal for unnecessary delay, see Wright: Criminal 2d § 814.

Motion for judgment of acquittal, see Wright: Criminal 2d § 469.

Search and seizure, see Wright: Criminal 2d § 678.

Government's right to appeal, see Wright: Criminal 2d § 874.

Mandatory release of defendant on his own recognizance upon dismissal of indictment, arrest of judgment and appeal by government, see Wright: Criminal 2d § 767.

Review of federal courts, see Wright, Miller & Cooper: Jurisdiction § 4034 et seq.

Writ applications, see Wright, Miller, Cooper & Grossman: Jurisdiction §§ 3932, 3934.

#### Notes of Decisions

##### Decision or judgment

Acquittal 34a

Double jeopardy 89

Exclusion of evidence 31b

Exclusion of witnesses 31a

Instructions 55

Mandamus 33a

Motion to correct sentence 54a

New trial, order granting 47c

Order reducing sentence 54

Parole terms 53

Quashing of subpoenas 90

States and territories, appeals by ?

Suppression of evidence

Generally 51

Time of ruling 51a

Writ of error 52

#### 1. Constitutionality

Where there was a general finding of guilt rendered by court in a bench trial, and thereafter district court granted defendant's motion to suppress, double jeopardy did not bar an appeal by the government. *U.S. v. Rose*, 1974, 97 S.Ct. 26, 429 U.S. 5, 50 L.Ed.2d 5.

Where district court, following a bench trial, found defendant guilty of charge of possessing marijuana with intent to distribute and thereafter

## Note 4

ing out of violation of injunction issued pursuant to section 160 of Title 29 in a case involving an unfair labor practice. In re Union Nacional de Trabajadores, C.A. Puerto Rico 1974, 502 F.2d 113.

## 5. — Right to jury trial

District court, which stated that it would not impose a sentence in excess of six months, properly denied the jury trial motion of defendants. Professional Air Traffic Controllers Organization officers who were charged with criminal contempt for failing to honor temporary restraining orders. U.S. v. Martinez, C.A.La.1992, 686 F.2d 334.

This section giving an accused a right to a speedy and public trial by an impartial jury in all cases of contempt arising under laws of United States governing issuance of injunction or restraining orders in any case involving or growing out of a labor dispute do not apply to contempt proceedings to enforce injunctions issued under section 141 et seq. of Title 29. Pabst Brewing Co. v. Brewery Workers Local Union No. 77, AFL-CIO, C.A.Ill.1977, 555 F.2d 146.

Failure to at least accord defendants statutory right to "demand" trial by jury in criminal contempt proceeding violated due process. Richmond Black Police Officers Ass'n v. City of Richmond, Va., C.A.Va.1977, 548 F.2d 123.

Writ of mandamus requiring jury trial in criminal contempt proceedings instituted by National Labor Relations Board was recalled, following United States Supreme Court decision that jury trials were not required in such cases, since withdrawal of mandate would not substantially prejudice rights of the union defendants and although defendants had spent considerable time and effort preparing for their challenge to jury selection procedure there was no vested interest in bringing such challenge in instant case and such work, which had been done by public interest legal group, presumably would be available in other cases. In re Union Nacional de Trabajadores, C.A.1, 1975, 527 F.2d 602.

Business agent for union local did not have constitutional or statutory right to jury trial on charge of contempt for violation of a "Boys Market" temporary restraining order which enjoined the local and its officers, agents, members, and all persons in active concert and participation with them from in any manner engaging in a strike, work stoppage or picketing against employer. U.S. v. Partin, C.A.La.1975, 524 F.2d 997, certiorari denied 96 S.Ct. 1493, 425 U.S. 904, 47 L.Ed.2d 753.

Under this section providing that an accused is entitled to a jury trial in all cases of contempt arising under laws of the United States governing issuance of injunctions in any case involving or growing out of a labor dispute, union and officers cited for contempt arising out of their alleged violation of court order enjoining union from striking without complying with notice and waiting requirements of section 160 of Title 29, were entitled to jury trial. In re Union Nacional de Trabajadores, C.A. Puerto Rico 1974, 502 F.2d 113.

Section 160 of Title 29 stating that in granting or enforcing injunctive relief requested by National Labor Relations Board in connection with alleged unfair labor practice the jurisdiction of court sitting in equity shall not be limited by Norris-La-Guardia Act, section 101 et seq. of Title 29, does not insulate criminal contempt proceedings following issuance of Board-requested injunction from requirement of jury trial under this section giving an accused right to jury in all cases of contempt arising under laws of United States governing issuance of injunctions in a case involving a labor dispute. Id.

Air traffic controller's charged with contempt in violating preliminary injunction requiring them to refrain from concerted effort directed to work slow down or stoppage and to notify their supervisor of their medical and physical condition with supporting medical data were not entitled to jury trial. U.S. v. Robinson, C.A. Alaska 1971, 449 F.2d 925.

## CHAPTER 235—APPEAL

## § 3721. Appeal by United States

In a criminal case an appeal by the United States shall lie to a court of appeals from a decision, judgment, or order of a district court dismissing an indictment or information as to any one or more counts, except that no appeal shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution.

An appeal by the United States shall lie to a court of appeals from a decision or order of a district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

The appeal in all such cases shall be taken within thirty days after the decision, judgment or order has been rendered and shall be diligently prosecuted.

Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be released in accordance with chapter 207 of this title.

HB

305

# HONDA *of Anchorage*

1118 E. 5TH AVENUE  
ANCHORAGE, ALASKA 99501  
279-9478

April 15, 1992

MR. DAVID J. WALSH  
DIRECTOR OF INSURANCE  
DEPT. OF COMMERCE AND ECONOMIC DEVELOPMENT  
P.O. BOX D  
JUNEAU, ALASKA 99811-0800

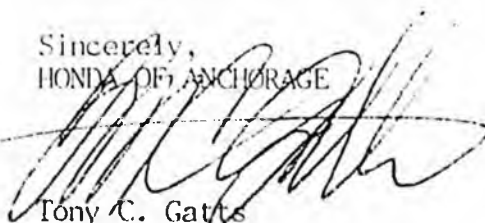
Dear Mr. Walsh,

Enclosed you will find letters from some of my customers and employees (over 100) protesting the insurance legislation introduced by Dave Donley last year.

On the surface this legislation would seem to be well meaning, in depth however the repercussions will result in a negative financial impact that will not only limit the availability of motorcycle users to acquire coverage it will take another revenue and employment source from an already embattled Alaskan economy. The loss of jobs and businesses due to the legislation will be devastating. In my small business alone I provide jobs for 25 Alaskans we are the largest motorcycle dealership in Alaska, more than 60% of our sales are financed. As you know financial organizations require insurance as a prerequisite to a loan. With the withdrawal of the insurance lines carried by the insurance brokers I will not be able to sell to a majority of my customers, many of whom are using a motorcycle as a means of basic transportation as well as an alternate source of transportation. While I may be able to withstand a 50%-60% drop in business most dealers would be forced to close their doors putting a great many people out of work, in an economy already starved for jobs.

Therefore I feel that this legislation should be modified to allow the re-entry of the insurance carriers that have withdrawn from this market.

Sincerely,  
HONDA OF ANCHORAGE



Tony C. Gatts  
President/Honda of Anchorage  
Chairman/Alaska Coalition of Motorcyclists

TCG/gmo

Mr. David J. Walsh  
Director of Insurance  
Dept. of Commerce and Economic Development  
P.O. Box D  
Juneau, Alaska 99811-0880

Dear Mr. Walsh

From a motorcyclist's point of view I wish to express my concern about insurance laws that have made it difficult, expensive, and time consuming to get motorcycle insurance. In some cases it is impossible!

As I understand it, legislation introduced by Dave Donley last year has increased the limits to the extent that many insurance companies will no longer write motorcycle insurance - or worse yet have left the State completely. Those who do offer motorcycle insurance only do so if another policy is in effect-(i.e.) house or car policy. This leaves many of us unable to get insurance at all - no car, rental home, etc.

I ask that you investigate this situation and take whatever action is necessary to rectify it. Our riding season is here, and it is short. So, needless to say, time is of the essence.

Thank you for your consideration.

Sincerely yours,

*Kim Moslak*

KIM Moslak

1000 W. 70<sup>th</sup>

Anch AK 99578-2110

CC: Representat.ve Dave Donley  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Mr. David J. Walsh  
Director of Insurance  
Dept. of Commerce and Economic Development  
P.O. Box D  
Juneau, Alaska 99811-0800

Dear Mr. Walsh

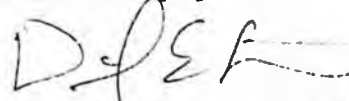
From a motorcyclist's point of view I wish to express my concern about insurance laws that have made it difficult, expensive, and time consuming to get motorcycle insurance. In some cases it is impossible!

As I understand it, legislation introduced by Dave Donley last year has increased the limits to the extent that many insurance companies will no longer write motorcycle insurance - or worse yet have left the State completely. Those who do offer motorcycle insurance only do so if another policy is in effect-(i.e.) house or car policy. This leaves many of us unable to get insurance at all - no car, rental home, etc.

I ask that you investigate this situation and take whatever action is necessary to rectify it. Our riding season is here, and it is short. So, needless to say, time is of the essence.

Thank you for your consideration.

Sincerely yours,



David E Stephenson

3212 Amber Bay

Anchorage Ak 99515

CC: Representative Dave Donley  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Mr. David J. Walsh  
Director of Insurance  
Dept. of Commerce and Economic Development  
P.O. Box D  
Juneau, Alaska 99811-0800

Dear Mr. Walsh

From a motorcyclist's point of view I wish to express my concern about insurance laws that have made it difficult, expensive, and time consuming to get motorcycle insurance. In some cases it is impossible!

As I understand it, legislation introduced by Dave Donley last year has increased the limits to the extent that many insurance companies will no longer write motorcycle insurance - or worse yet have left the State completely. Those who do offer motorcycle insurance only do so if another policy is in effect-(i.e.) house or car policy. This leaves many of us unable to get insurance at all - no car, rental home, etc.

I ask that you investigate this situation and take whatever action is necessary to rectify it. Our riding season is here, and it is short. So, needless to say, time is of the essence.

Thank you for your consideration.

Sincerely yours,

*April Imhof*

April Imhof

11348-A Lower Sunny Cir.

Eagle River, AK.

99577

CC: Representative Dave Donley  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Mr. David J. Walsh  
Director of Insurance  
Dept. of Commerce and Economic Development  
P.O. Box D  
Juneau, Alaska 99811-0800

Dear Mr. Walsh

From a motorcyclist's point of view I wish to express my concern about insurance laws that have made it difficult, expensive, and time consuming to get motorcycle insurance. In some cases it is impossible!

As I understand it, legislation introduced by Dave Donley last year has increased the limits to the extent that many insurance companies will no longer write motorcycle insurance - or worse yet have left the State completely. Those who do offer motorcycle insurance only do so if another policy is in effect-(i.e.) house or car policy. This leaves many of us unable to get insurance at all - no car, rental home, etc.

I ask that you investigate this situation and take whatever action is necessary to rectify it. Our riding season is here, and it is short. So, needless to say, time is of the essence.

Thank you for your consideration.

Sincerely yours,



SANDY HALL  
4701 DENALI ST  
ANC 03-7324

CC: Representative Dave Donley  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Mr. David J. Walsh  
Director of Insurance  
Dept. of Commerce and Economic Development  
P.O. Box D  
Juneau, Alaska 99811-0800

Dear Mr. Walsh

From a motorcyclist's point of view I wish to express my concern about insurance laws that have made it difficult, expensive, and time consuming to get motorcycle insurance. In some cases it is impossible!

As I understand it, legislation introduced by Dave Donley last year has increased the limits to the extent that many insurance companies will no longer write motorcycle insurance - or worse yet have left the State completely. Those who do offer motorcycle insurance only do so if another policy is in effect-(i.e.) house or car policy. This leaves many of us unable to get insurance at all - no car, rental home, etc.

I ask that you investigate this situation and take whatever action is necessary to rectify it. Our riding season is here, and it is short. So, needless to say, time is of the essence.

Thank you for your consideration.

Sincerely yours,

*Clifford Hartings*  
1318 Turpin St.  
Anchorage AK  
99504

CC: Representative Dave Donley  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN  
SEAT A

3111 "C" STREET, SUITE 450  
ANCHORAGE, ALASKA 99503  
(907) 561-7629 (FAX) 562-4376



CHAIRMAN  
JUDICIARY COMMITTEE  
VICE CHAIRMAN  
REGULATION REVIEW COMMITTEE  
MEMBER  
RULES COMMITTEE  
LABOR AND COMMERCE COMMITTEE

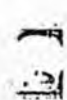
## HB 305 Repeal Sunset Provisions of Auto Insurance Law

This bill would repeal the sunset provisions of the mandatory insurance law. These provisions were put into the original bill because there were some concerns about the effect of mandatory insurance on rates. The compromise reached at that time was to put a sunset provision in the bill so that the legislature could revisit the issue.

Mandatory automobile insurance has been a success. Automobile insurance rates have gone down. It regularly scores 80% plus favorable rating in public opinion surveys. If anything, the public has asked for the law to be strengthened.

The time has come to cease viewing mandatory auto insurance as an experiment and make it the permanent law of the state.

DD/bb



BILL NO: HB 305

DATE: 5/6/91

TITLE: "An Act repealing provisions. . .mandatory motor vehicle insurance law"

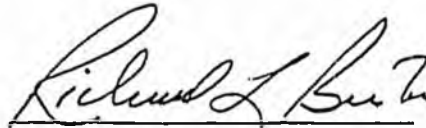
CONTACT: Juanita Hensley  
Driver Services (DMV)  
465-4335

DEPARTMENT OF PUBLIC SAFETY

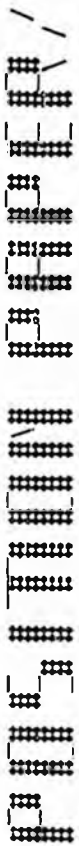
HB 305 repeals the "sunset clauses" of the current Mandatory Insurance Law, which is scheduled to be repealed effective January 1, 1994. Repeal of the sunset clauses would allow the present law to remain in effect indefinitely, until amended or repealed by the legislature.

The current Mandatory Insurance Law has had a positive effect on the number of uninsured motorists. Statistics show that for the six months of 1989 that the law was in effect, 11.2% of drivers involved in accidents were uninsured. In 1990, 11.9% of drivers involved in accidents were uninsured. For the period of January through April of 1991, only 9.2% of drivers involved in accidents were uninsured.

The Department of Public Safety supports this bill.



Richard L. Burton  
Commissioner



HOUSE COMMITTEE REPORT

Date Referred: April 26, 1991

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 5/15/91

The TRANSPORTATION Committee considered:

HB 305

HOUSE BILL NO. 305

REPEAL SUNSET PROVISIONS OF AUTO INS. LAW

An Act repealing provisions of law that would repeal the mandatory motor vehicle insurance law."

RECOMMENDATIONS:

to be replaced with \_\_\_\_\_ [ ] the same title  
[ ] a new title

[ ] have attached amendments(s)

[  ] do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

[ ] fiscal impact \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

[  ] zero fiscal note DPS

[ ] zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Jimmy Mack</i>	<i>α</i>	<i>Bill Hudson</i>		<input checked="" type="checkbox"/>	
<i>Gene Rubina</i>	<i>α</i>				
<i>Hait Phillips</i>	<i>x</i>				
<i>Richard Sobey</i>	<i>*</i>				

*Richard Sobey*  
CHAIRMAN'S SIGNATURE

**I USE COMMITTEE REPO!**

(7) Date Referred: May 9, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 3/11/92

The JUDICIARY Committee considered: HB 305

HOUSE BILL NO. 305 REPEAL SUNSET PROVISIONS OF AUTO INS. LAW

"An Act repealing provisions of law that would repeal the mandatory motor vehicle insurance law."

- RECOMMENDATIONS:  the same title  
 be replaced with \_\_\_\_\_  a new title
- have attached amendments(s)
  - do pass
  - do not pass
  - no recommendations
  - individual recommendations
  - additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

- fiscal impact \_\_\_\_\_
- fiscal note(s) \_\_\_\_\_
- zero fiscal note Public Safety/DMV 1/13/92
- zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Dave Douley</u>	X				
<u>Mark Haskley</u>	X				
<u>Mike Miller</u>	X				
<u>Kevin Pat Parnell</u>	✓				
<u>Th Ellis</u>	X				
<u>Perry Martin</u>	X				

Dave Douley  
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 305

Revision Date: \_\_\_\_\_ Department Affected: Public Safety  
 Title: An Act repealing provisions BRU: Motor Vehicles  
mandatory motor vehicle insurance law Component: Driver Services  
 Sponsor: House Judiciary  
 Requestor: House Judiciary COMPONENT SERIAL NO. 

5	0	0
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	-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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)  
  
 No fiscal impact upon the Division of Motor Vehicles is anticipated.

Prepared By: Juanita Hensley Phone: 465-4335  
 Division: Motor Vehicles Date: 1/9/92  
 Approved by Commissioner: Richard L. Burton  
 Agency: Department of Public Safety Date: 1/13/92

STATE OF ALASKA  
 1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: "An Act repealing provisions . . .  
 mandatory motor vehicle insurance law"  
 Sponsor: House Judiciary  
 Requestor: House Transportation

Department Affected: Public Safety  
 BRU: Motor Vehicles  
 Component: Driver Services

COMPONENT SERIAL NO. 

	5	0	0
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
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

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact upon the Division of Motor Vehicles is anticipated.

Prepared by: Juanita Hensley Phone: 465-4335  
 Division: Division of Motor Vehicles Date: 5/6/91  
 Approved by Commissioner: Richard L. Burton Richard L. Burton  
 Agency: Department of Public Safety Date: 5/6/91

# HOUSE COMMITTEE REPORT

(7)  
Date Referred:

FURTHER REFERRALS:

Date of Committee Action: 5/4/92

The JUDICIARY Committee considered:

HB 305

HOUSE BILL NO. 305

REPEAL SUNSET PROVISIONS OF AUTO INS. LAW

"An Act repealing provisions of law that would repeal the mandatory motor vehicle insurance law."

**RECOMMENDATIONS:**

be replaced with CS HB 305 (JUD)  the same title  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) Commerce 3-25-92 DPS 3/13/92

zero fiscal note \_\_\_\_\_

zero fiscal note(s) Law 3-25-92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Dave Donley</i>	✓				
<i>John Eells</i>	X				
<i>Tom Hunter</i>	✓	<i>Kevin Pat Parnell</i>		✓	
<i>Terry Martin</i>	✓				
<i>Mike Miller</i>	✓				

*Dave Donley*  
CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 4

Bill Version: HB 305

(H) Publish Date: 3-25-92

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_

Department Affected: Department of Law

Title: "...repealing...law that would repeal the mandatory motor vehicle insurance law."

BRU: Prosecution

Sponsor: House Judiciary Committee

Component: All

Requestor: House Judiciary Committee

COMPONENT SERIAL 

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Expenditures/Revenues: (Thousands of Dollars)

85 through 91

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

This bill repeals provisions of law that would have repealed the mandatory motor vehicle insurance law, and it will not have fiscal impact on the Department of Law.

Prepared by: Richard I. Peques / Director  
Division: Administrative Services

Phone: 465-3672  
Date: March 10, 1992

Approved by Commissioner: Charles E. Cole, Attorney General  
Agency: Department of Law

Date: March 10, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

**COMMITTEE COPY**

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

No. 3

Bill Version: HB 305

(H) Publish Date: 3-25-92

Revision Date: 4/26/91 Department Affected: Commerce & Economic Dev.  
 Title: Repeal Sunset Provisions of BRU: Insurance  
Auto Insurance Law Component: Operations  
 Sponsor: House Judiciary Committee  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

0	3	5	4
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
 No fiscal impact.

Prepared By: Joan Brown, Administrative Officer Phone: 465-2597  
 Division: Insurance Date: 3/19/92  
 Approved by Commissioner: Glenn A. Olds *Glenn A. Olds* Date: 3-19-92  
 Agency: Commerce and Economic Development Date: 3/19/92

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: Public Safety  
 Title: An Act repealing provisions... mandatory motor vehicle insurance law BRU: Motor Vehicles  
 Component: Driver Services  
 Sponsor: House Judiciary  
 Requestor: House Judiciary COMPONENT SERIAL NO. 

5	0	0
---	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact upon the Division of Motor Vehicles is anticipated.

Prepared By: Juanita Hensley Phone: 465-4335

Division: Motor Vehicles Date: 1/9/92

Approved by Commissioner: Richard L. Burton

Agency: Department of Public Safety Date: 1/13/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

HB

308

WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

April 29, 1991

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

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the notice required for adoption of emergency regulations. This legislation is necessary as a result of a recent court decision, Shepherd v. State, 4FA-90-1514 Civil (March 19, 1991), which held that the process the state has utilized for the adoption of emergency regulations for several years is invalid. The purpose of this legislation is to validate longstanding practice, thereby permitting the state to continue using present practice.

Under AS 44.62.180, an emergency regulation adopted by an agency is submitted to the lieutenant governor, and takes effect upon filing by the lieutenant governor. AS 44.62.250 currently requires notice of the adoption of an emergency regulation to be published within 10 days after "adoption" of the regulation. If notice is not published within that time, the regulation is automatically repealed. The Department of Law has always taken the position that the term "adoption" in this section really refers to the regulation's "effective date," since there would be no point in publishing notice of an emergency regulation that was not in effect and might never take effect. Furthermore, the practical realities of the situation are that it is often impossible to finalize and file an emergency regulation, and ensure that notice of that action is published, within 10 days of a board's action on it.

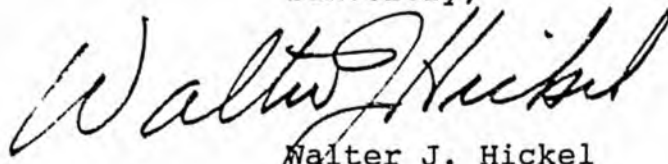
Nevertheless, the superior court held that irrespective of longstanding state practice, the time limits in AS 44.62.250

The Honorable Ben Grussendorf - 2 -

begin running immediately upon a board's taking a vote approving the adoption of an emergency regulation. This decision will cause serious problems for several boards, such as the Boards of Fish and Game, that frequently adopt emergency regulations.

This bill will validate existing practice and longstanding interpretations of the Department of Law with respect to the notice requirement for emergency regulations. I urge your support of this measure.

Sincerely,

A handwritten signature in cursive script, reading "Walter J. Hickel". The signature is written in dark ink and is positioned above the printed name and title.

Walter J. Hickel  
Governor

## Notice of Adoption of Emergency Regulations

As required by AS 44.62.250, notice is given that under the authority of AS 15.15.010, the Division of Elections adopted the following regulation as an emergency regulation:

6 AAC 27.165:

Establishing the authority of the director to require a voter to verify the physical location of his or her residency by means of attestation in order to qualify to vote in: 1) a municipal incorporation election or 2) a local option election conducted by the division.

This regulation took effect May 1, 1991, immediately upon the filing with the Lieutenant Governor, as provided by AS 44.62.180(3).

This action is not expected to require an increased appropriation.

Copies of the regulation may be obtained by writing to the Director of Elections, P.O. Box AF, Juneau, Alaska 99811-0105.

Notice is also given that the Division of Elections intends to make these regulations permanent under AS 44.62.260, and any person interested in presenting written statements or arguments relevant to the action proposed, may do so. Written statements may be sent to the Director of Elections at the address indicated above, so that they are received not later than June 1, 1991.

DATE: 5/2/91  
Juneau, Alaska  
AO #91-2060

Charlot Thickstun  
Director

**THE FOLLOWING PAGES  
WERE TREATED AS A UNIT  
IN THE ORIGINAL FILE**



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

MEMORANDUM

TO: All Commissioners  
FROM: Walter J. Hickel  
Governor  
DATE: April 1, 1991  
SUBJECT: Procedure after adopting regulations

A handwritten signature in cursive script, reading "Walter J. Hickel".

\*\*\*\*\*  
Currently, after your agencies adopt regulations, the regulations are sent to the Department of Law for a legal review. I would now like adopted regulations to be submitted to the Lieutenant Governor, who will submit the regulation project to the Department of Law for the legal review.

A control file will be set up in the Lieutenant Governor's office and during the time that the Department of Law is preparing their opinion, the Lieutenant Governor will be reviewing the regulations to make sure they meet the following requirements that our administration wishes to implement:

1. Are the regulations procedural. Policy belongs in statutes not regulations.
2. Are they positive not negative. A "can-do" attitude.
3. Are they readable. Regulations should be clear, concise and drafted in lay language so people can understand them.
4. Was the public input taken into account in the final adopted version of the regulations.
5. Was the legislative intent followed through to the regulatory process.
6. Are they necessary. Can government operate just as well without them.
7. Are they consistent with statutes and other regulations.

This change in procedure will allow us to carry out our agenda to be a responsive Administration and to implement our regulatory review program.

Please consider this procedural change effective immediately.

# MEMORANDUM

State of Alaska

Department of Law

TO: All Civil Attorneys  
Juneau, Anchorage, Fairbanks;  
and Chief Prosecutor's Office

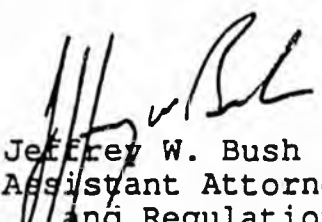
DATE: April 11, 1991

FILE NO:

TEL. NO.: 465-3600

SUBJECT: New procedure for  
adoption of regulations

FROM:

  
Jeffrey W. Bush  
Assistant Attorney General  
and Regulations Attorney

RECEIVED

APR 12 1991

Effective immediately, there is a new procedure for the adoption, amendment or repeal of administrative regulations, to provide for the review and approval of all regulations projects by the Lieutenant Governor's Office prior to their taking effect. Sara Fisher, an assistant to Mr. Coghill, will be in charge of reviewing all regulations for the Lieutenant Governor. Governor Hickel has directed Mr. Coghill to review all proposed regulations to ensure that they meet the following requirements:

1. Are the regulations procedural. Policy belongs in statutes not regulations.
- \* 2. Are they positive not negative. A "can-do" attitude.
3. Are they readable. Regulations should be clear, concise and drafted in lay language so people can understand them.
4. Was the public input taken into account in the final adopted version of the regulations.
5. Was the legislative intent followed through to the regulatory process.
- \* 6. Are they necessary. Can government operate just as well without them.
7. Are they consistent with statutes and other regulations.

Memorandum from Governor Hickel to all commissioners, dated April 1, 1991.

To implement the Governor's directive, the following procedure will be used:

1. At the time a regulations project is first opened in our office, a copy of the file opening memorandum will be sent to the Lieutenant Governor's Office, and they will maintain a separate file on each project.

2. Final regulations packages, including public notices and adoption orders, should be sent by the adopting agency directly to the Lieutenant Governor's Office. That office will then make a copy of each package before forwarding the original documents on to us. If you receive a final package directly from an agency, please immediately send it to me; I will then deliver it to the Lieutenant Governor's Office, they will copy it and send it back, and I will then get it back to you.

3. When the final package comes to the Lieutenant Governor's Office, they will begin their review, in conjunction with our legal review. Sara Fisher will contact the assigned attorney and work closely with the attorney in their review. If at any time the Lieutenant Governor's Office determines that a particular regulation or set of regulations should not be adopted, Sara will immediately contact the assigned attorney so that he or she can stop working on the file. Please feel free to contact Sara at any time with questions or comments.

4. Before any regulations project is forwarded to me for final technical review and filing with the Lieutenant Governor, the assigned attorney must get approval for the project from the Lieutenant Governor's Office. The cover memo to me forwarding the file must clearly state that the project has been approved for adoption by Sara Fisher. Absent this statement, the file will be immediately returned to the assigned attorney.

Please contact me if you have any questions.

JWB:cl

cc: Lt. Gov. John B. (Jack) Coghill

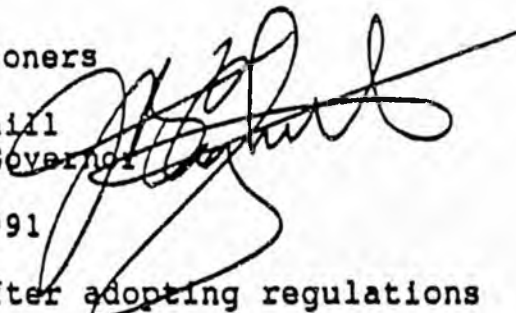


JOHN B. COGHILL  
LIEUTENANT GOVERNOR

STATE OF ALASKA  
P. O. BOX AA  
JUNEAU 99811-0111  
(907) 485-3820

MEMORANDUM

TO: All Commissioners

FROM: John B. Coghill  
Lieutenant Governor 

DATE: April 11, 1991

SUBJECT: Procedure after adopting regulations

\*\*\*\*\*

Since the Governor has given his directive to have all agencies submit adopted regulations to my office, I would like to inform you how this will happen.

When adopted regulations are received by my office, we will set up a control file. A copy the regulation project will be kept in my office and the original project will be sent to the Department of Law for legal review. After we receive the project we will notify you of the date it was transmitted to Law. The Department of Law will carry out their normal legal review, while my office will conduct the review as outlined in Governor Hickel's directive (see attached).

The Department of Law has advised me that adopted regulations were sent to them either by mail or courier. I would like to request a department courier deliver all regulation projects to my office. The courier should hand the project directly to Sara Fisher, my special assistant in charge of the regulatory review. If Sara is not available the project should be left with Dennis Burns, the Administrative Code Coordinator. This will ensure the regulation project was properly received by my office.

Your cooperation to start implementing these changes by Monday April 15, 1991 is appreciated. Please contact Sara Fisher if you have any questions.

# Coghill receives new regulatory powers

THE ASSOCIATED PRESS

**ANCHORAGE** - Gov. Walter J. Hickel has given Lt. Gov. Jack Coghill sweeping new powers to block proposed state regulations or order them rewritten.

Lawmakers said the action probably is unconstitutional and will allow special interests to influence Coghill to block laws written by the Legislature.

But Hickel wrote: "This change will allow us to carry out our agenda to be a responsive administration and to implement our regulatory review program."

Hickel made the move unannounced in an April 1 memo sent to his cabinet officers, according to his press secretary, Eric Rehmann.

The memo laid out rules requiring regulations to be positive and to exhibit a "can-do attitude."

It elevates Coghill over commis-

sioners, who previously oversaw regulation-writing.

A regulatory review team will be formed in Coghill's office, Rehmann said.

"I guess Coghill's a regulatory czar now," said Rep. Cliff Davidson, D-Kodiak. "I think the special interests gain and the public process loses."

Coghill will be able to reject or revamp state regulations dealing with oil and gas taxes and royalties, environmental safeguards, and fish and game management, said Davidson, co-chair of the House Resources Committee.

"Only the commissioner of an agency has statutory authority to implement regulations, not the lieutenant governor," said Rep. Fran Ulmer, a Juneau Democrat and attorney. "There isn't a lieutenant gover-

**Please turn to Coghill Page 8**

## Coghill...

**Continued from Page 1**

nor in the Lower 48 who has this kind of power."

But Hickel maintains he holds executive authority to designate the final arbiter of state regulations, Rehmann said.

"Jack's a statewide elected official and the governor sees this as adding greater democracy to the process," Rehmann said.

Coghill made expansion of the lieutenant governor's power a key plank in his 1990 election campaign.

Some regulations have been mired in the review process for up to three years by commissioners who delegate rule-writing to underlings, Coghill said. Industry and interest groups frequently complain about regulations that unfairly implement new laws, he said.

"It's kind of crazy that you have middle management bureaucracy dictating regulations," Coghill said. "That's why it's important the lieutenant governor be the conscience of the regulatory process."

Coghill said he already has rejected rules written by the Department of Transportation and Public Facilities that would have further restricted travel of long double-trailer

trucks on the Kenai Peninsula. Transportation Commissioner Frank Turpin said the rule would have limited travel of the 110-foot-long trucks to between 7 p.m. and 7 a.m. on weekdays on the Sterling and Seward Highways.

Although the trailer trucks occasionally slow traffic, they did not prompt widespread criticism from Kenai Peninsula legislators and residents, confirming Coghill's action, Turpin said.

"He was right," Turpin said. "We just didn't get a lot of support for the tighter regulations."

Administration sources said Coghill gained his newfound authority after a showdown with Hickel's chief of staff, Max Hodel, in a meeting with Hickel.

Hodel reportedly defended commissioners' rule-writing authority. He could not be reached for comment. Coghill declined to comment but made it clear he now holds the power.

"That's the signature of the governor," Coghill said pointing to the April 1 Hickel memo. "I'll let you be the judge of that."

A regulation is a rule or order springing from one of 15 executive agencies in state government. Regulations are adopted under authority

of statutes, or laws, passed by the Legislature.

Commissioners typically write or oversee the rule-writing process. The rules are then sent to the Department of Law for technical review and then to the lieutenant governor for signature, typically a formality.

The Administrative Procedures Act, which lays out the rules for regulation writing, makes no express provision for the lieutenant governor to assume the authority, said Tam Cook, an attorney for the Legislature.

However, it appears the governor may shift responsibility within the executive branch from the Department of Law to the governor by executive order, which is subject to legislative approval, she said.

Attorney General Charles Cole did not return several phone calls for comment on Hickel's action. Legislators said there has been no executive order from Hickel shifting rule-making responsibility.

In 1989, an attorney general's opinion described the lieutenant governor's regulatory role as largely ceremonial and confined to rule-signing. Then-Lt. Gov. Stephen McAlpine blocked regulations restricting a lottery organization by refusing to sign the rules.

# Czar

Continued from page A1

game management, said Davidson, co-chair of the House Resources Committee.

"Only the commissioner of an agency has statutory authority to implement regulations, not the lieutenant governor," said Rep. Fran Ulmer, a Juneau Democrat and attorney. "There isn't a lieutenant governor in the Lower 48 who has this kind of power."

But Hickel maintains he holds executive authority to designate the final arbiter of state regulations, Rehmann said.

"The governor has full authority to delegate to Jack the oversight on this," Rehmann said. "Jack's a statewide elected official and the governor sees this as adding greater democracy to the process."

Coghill made expansion of the lieutenant governor's power a key plank in his 1980 election campaign.

Some regulations have been mired in the review process for up to three years by commissioners who delegate rule-writing to their underlings, Coghill said. Industry and interest groups frequently complain about regulations that unfairly implement newly passed laws, he said.

"It's kind of crazy that you have middle management bureaucracy dictating regulations," Coghill said. "That's why it's important the lieutenant governor be the conscience of the regulatory process."

Coghill said he already has re-

**'I guess Coghill's a regulatory czar now. I think the special interests gain and the public process loses.'**

— Rep. Cliff Davidson,  
D-Kodiak

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# Coghill wins regulatory 'czar' power

## Hickel decision fires up lawmakers

By DAVE PATRICK

TIMES CAPITAL BUREAU

JUNEAU — Gov. Walter J. Hickel has given Lt. Gov. Jack Coghill sweeping new powers to block proposed state regulations or order them rewritten, Eric Rehmann, Hickel's press secretary, confirmed Friday.

Hickel's action elevates Coghill over commissioners who previously oversaw regulation-writing and occurred unannounced in an April 1 memo signed by the governor and sent to his Cabinet officers.

"This change will allow us to carry out our agenda to be a responsive administration and to implement our regulatory review program," Hickel wrote. The memo laid out rules requiring regulations to be positive and to exhibit a "can-do attitude."

A regulatory review team will be formed in Coghill's office,

■ Gov. Hickel opposes funding of abortions

Rehmann said.

Lawmakers said it likely unconstitutional to allow special interests to influence Coghill to blunt laws written by the Legislature.

"I guess Coghill's a regulatory czar now," said Rep. Cliff Davidson,

D-Kodiak. "I think the special interests and the public process."

Coghill will now be expected to reject or revamp an array of regulations that deal with gas taxes and royal inheritance mental safeguards, a

See C-1

ch 120 SLA 1971; am § 1 ch 200 SLA 1972; am § 2 ch 207 SLA 1975; am § 94 ch 218 SLA 1976; am E.O. No. 39, §§ 7, 13 (1977); am E.O. No. 55, § 37 (1984); am E.O. No. 58, § 19 (1984))

Revisor's notes. — Formerly AS 44.15.010. Renumbered in 1980.

#### NOTES TO DECISIONS

The University of Alaska cannot be allocated among the principal departments now identified under this section. *University of Alaska v. National Aircraft Leasing, Ltd.*, 536 P.2d 121 (Alaska 1975).

The University of Alaska is an instrumentality of the sovereign which enjoys in some limited respects a status which is co-equal rather than subordinate to that of the executive or the legislative arms of government. Therefore, it is not necessarily subject to such allocation under this

section. *University of Alaska v. National Aircraft Leasing, Ltd.*, 536 P.2d 121 (Alaska 1975).

Former Alaska State-Operated School System not a separate principal department of government. — See *Alaska State-Operated School Sys. v. Mueller*, 536 P.2d 99 (Alaska 1975).

Applied in *Granato v. Occhipinti*, 602 P.2d 442 (Alaska 1979).

Cited in *Aspen Exploration Corp. v. Sheffield*, 739 P.2d 150 (Alaska 1987).

Collateral references. — 38 Am. Jur. 2d, Governor, §§ 1 to 15; 63 Am. Jur. 2d, Public Officers and Employees, § 1 et seq;

72 Am. Jur. 2d, States, Territories and Dependencies, §§ 62 to 65.  
81A C.J.S., States, §§ 79 to 103.

**Sec. 44.17.010. Delegation of functions.** The principal executive officer of each state department may assign the functions vested in the department to subordinate officers and employees. (§ 3 ch 64 SLA 1959)

Collateral references. — 1 Am. Jur. 2d, Administrative Law, § 1 et seq.  
3 Am. Jur. 2d, Agency, § 68 et seq.

3 C.J.S., Agency, §§ 257 to 267; 73 C.J.S., Public Administrative Law, § 1 et seq.

**Sec. 44.17.020. Divisions.** The principal executive officer of each department may, with the approval of the governor, establish divisions or other administrative or organization units within the department in the interests of economy and efficiency and in accord with sound administrative principles and practices. (§ 3 ch 64 SLA 1959)

**Sec. 44.17.030. Regulations.** The principal executive officer of each department may adopt regulations, consistent with law or regulations established by the governor, for

- (1) the administration of the department;
- (2) the conduct of employees;
- (3) the distribution and performance of business; and
- (4) the custody, use, and preservation of the records, documents, and property pertaining to department business. (§ 5 ch 64 SLA 1959)

**Issuance of permits for killing of caribou based on verbal instructions to agents held improper.** — The issuance of permits for killing of caribou in certain specified areas of the state based on verbal instructions to the permit agents as to the need of individual applicants does not conform to requirements of this chapter. *State v. Tanana Valley Sportsmen's Ass'n*, 583 P.2d 854 (Alaska 1978).

Nothing in this chapter authorizes the Board of Game to impose requirements not contained in written regulations by means of oral instructions to agents. Such verbal additions to regulations involving requirements of substance are unauthorized and unenforceable. *State v. Tanana*

*Valley Sportsmen's Ass'n*, 583 P.2d 854 (Alaska 1978).

Cited in *Hammond v. Hickel*, 588 P.2d 256 (Alaska 1978); *In re Simpson*, 645 P.2d 1223 (Alaska 1982); *Chevron U.S.A., Inc. v. LeResche*, 663 P.2d 923 (Alaska 1983); *Pan Am. Petroleum Corp. v. Shell Oil Co.*, 455 P.2d 12 (Alaska 1969); *Coghill v. Boucher*, 511 P.2d 1297 (Alaska 1973); *In re Sullivan*, 551 P.2d 531 (Alaska 1976); *Dresser Indus., Inc. v. Alaska Dept of Labor*, 633 P.2d 998 (Alaska 1981); *Wien Air Alaska, Inc. v. Department of Revenue*, 647 P.2d 1087 (Alaska 1982); *Wickersham v. State Com. Fisheries Entry Comm'n*, 680 P.2d 1135 (Alaska 1984).

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**Collateral references.** — 1 and 2 Am. Jur. 2d. Administrative Law, § 1 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 1 et seq.

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### Article 1. Application and Effect.

**Section**

- 10. Application to State Organization Act of 1959
- 20. Authority to adopt, administer, or enforce regulations

**Section**

- 30. Consistency between regulation and statute

**Sec. 44.62.010. Application to State Organization Act of 1959.** Rule-making power conferred by ch 64 SLA 1959 is subject to this chapter. (§ 2(4) art I (ch 1) ch 143 SLA 1959)

**Revisor's notes.** — It is not possible to eliminate the reference to ch 64 SLA 1959 in the above section. The rule-making powers referred to are scattered throughout this revision.

#### NOTES TO DECISIONS

Cited in *Dayhoff v. Temsco Helicopters, Inc.*, 772 P.2d 1085 (Alaska 1989).

**Sec. 44.62.020. Authority to adopt, administer, or enforce regulations.** Except for the authority conferred upon the lieutenant governor in AS 44.62.130 — 44.62.170, AS 44.62.010 — 44.62.320 do not confer authority upon or augment the authority of a state agency to adopt, administer, or enforce a regulation. To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law. (§ 4 art I (ch 1) ch 143 SLA 1959)

## NOTES TO DECISIONS

**Authorization for regulations.** — In determining whether a regulation is authorized by statute the Court of Appeals of Alaska looks to four things: First, the scope of authority conferred by the authorizing statute; second, the extent to which the regulation is in accordance with "standards prescribed by other provisions of law"; third, the extent to which the regulation is consistent with the authorizing statute; and fourth, the extent to which the regulation is reasonably necessary to carry out the purpose of the authorizing statute. *Beran v. State*, 705 P.2d 1280 (Alaska Ct. App. 1985).

**Meaning of "in accordance with standards prescribed by other provisions of law."** — The words of this section, "in accordance with standards prescribed by other provisions of law," mean nothing more than if standards are prescribed by provisions of law other than those contained in this chapter, then they must be recognized and adhered to. This language does not mean that regulations cannot be validly adopted by an administrative agency "unless" standards have been prescribed. *Boehl v. Sabre Jet Room, Inc.*, 349 P.2d 585 (Alaska 1960).

**In the absence of express statutory authorization** a regulation imposing strict liability but providing for punishment by possible imprisonment is not "in accordance with standards prescribed by other provisions of law." *Beran v. State*, 705 P.2d 1280 (Alaska Ct. App. 1985).

**Record should give explanation for regulation.** — This chapter does not specifically require a decisional statement when an agency promulgates a regula-

tion; however, when an agency promulgates a regulation, the record should at least explain the reasons for the agency's action. *Johns v. Commercial Fisheries Entry Comm'n.* 758 P.2d 1256 (Alaska 1988).

**Judicial review of administrative regulation.** — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the supreme court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971).

**Standard of review.** — This section and AS 44.62.030 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971).

**Applied in** *State v. Anderson*, 749 P.2d 1342 (Alaska 1988).

**Quoted in** *State v. Alyeska Pipeline Serv. Co.*, 723 P.2d 76 (Alaska 1986).

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**Collateral references.** — 1 Am. Jur. 2d, Administrative Law, §§ 92 to 97.

73 C.J.S., Public Administrative Law and Procedure, § 87 et seq.

**Sec. 44.62.030. Consistency between regulation and statute.** If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute. (§ 5 art I (ch 1) ch 143 SLA 1959)

authorized by statute the Court of Appeals of Alaska looks to four things: First, the scope of authority conferred by the authorizing statute; second, the extent to which the regulation is in accordance with "standards prescribed by other provisions of law"; third, the extent to which the regulation is consistent with the authorizing statute; and fourth, the extent to which the regulation is reasonably necessary to carry out the purpose of the authorizing statute. *Beran v. State*, 705 P.2d 1280 (Alaska Ct. App. 1985).

**Statute prevails over conflicting regulation.** — The statute delegating its law-making power to government agencies to make law through regulations defines the agency's authority to promulgate regulations and thus if there is a conflict between the statute and a regulation, the statute prevails. *Chevron U.S.A., Inc. v. Hammond* (A77-195 Civil), F. Supp. (D. Alaska 1978).

**Attorney general could not save provisions of former AS 30.25 from unconstitutionality under Alas. Const., art. IX, § 7, by directing promulgation of regulations inconsistent with statute.** — See *Chevron U.S.A., Inc. v. Hammond* (A77-195 Civil), F. Supp. (D. Alaska 1978).

**Regulation accorded presumption of validity.** — An administrative regulation must be accorded a presumption of validity, and the challenger of the regulation must demonstrate its invalidity. *Union Oil Co. v. State*, 574 P.2d 1266 (Alaska 1978).

**Judicial review of administrative**

with the procedure of the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971).

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**Regulation invalid under this section.** — See *State v. Alyeska Pipeline Serv. Co.*, 723 P.2d 76 (Alaska 1986).

**Applied in** *State v. Anderson*, 749 P.2d 1342 (Alaska 1988); *State v. Korean Air Lines Co.*, Sup. Ct. Op. No. 3447 (File No. S-2438), P.2d (1989).

**Quoted in** *Chevron U.S.A., Inc. v. LeResche*, 663 P.2d 923 (Alaska 1983); *Kuhn v. State*, 692 P.2d 261 (Alaska 1983); *State v. Eluska*, 698 P.2d 174 (Alaska Ct. App. 1985).

## Article 2. Submission, Filing and Publication of Regulations.

### Section

- 40. Submitting regulations
- 50. Style and forms
- 60. Preparation and filing
- 70. Fees
- 80. Endorsement and filing

### Section

- 100. Presumptions from filing
- 110. Presumptions from publication
- 120. Voluntary submitting and publication
- 125. Regulations attorney

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

April 19, 1991

**SUBJECT:** Gubernatorial delegation of regulatory review power to the lieutenant governor (Work Order No. 7-LS1225)

**TO:** Senator Arliss Sturgulewski

**FROM:** Theresa L. Bannister *TLB*  
Legislative Counsel

You have asked whether the governor can delegate to the lieutenant governor the power to review regulations<sup>1/</sup> as he has done in his April 1, 1991 memo.<sup>2/</sup>

SHORT ANSWER. In my opinion the governor cannot delegate the power to review regulations to the lieutenant governor as he has done in his April 1, 1991 memo, unless he uses an executive order.

DISCUSSION. This delegation inserts additional steps into the regulation adoption process. At the present time, proposed regulations that have gone through the basic procedures for adoption are sent to the Department of Law ("department") for final legal approval before being submitted to the lieutenant governor for filing under AS 44.62.040, AS 44.62.060. The filing of the lieutenant governor is basically a technical act.<sup>3/</sup>

However, under the delegation the agencies must submit the regulations they have adopted to the lieutenant governor for his review before sending them to the department for its final review. The lieutenant governor then transmits the regulations to the department. Under the delegation, the approval of the lieutenant governor must be obtained before the department issues its final legal approval.

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<sup>1/</sup>In this memo a reference to "regulations" includes orders of repeal.

<sup>2/</sup> The scope of the delegation can be more completely understood by reviewing the April 11, 1991, Department of Law memo on this subject.

<sup>3/</sup>The statutes do not give the lieutenant governor any review power over the regulations that are submitted to him.

Under art. III, sec. 23, of the state constitution the governor is authorized to make changes in the organization of the executive branch or in the assignment of functions among its units that he considers necessary for efficient administration.<sup>4/</sup> However, if the change requires the force of law, he must use an executive order.

At first glance, the extra steps could be characterized as merely an internal reassignment of executive branch regulation review functions inherent in the regulatory process, a reassignment that does not require more than the memo that was used.

However, the delegation actually conflicts with the statutes governing the adoption of regulations, and the delegation appears to significantly alter the present statutory plan for adopting regulations by adding these particular steps.

The delegation conflicts with AS 44.62.250, which establishes the procedures for adopting emergency regulations. Under that section, the adopting agency is directed to immediately submit a copy of an emergency regulation to the lieutenant governor for filing. Under the delegation, adopted regulations are required to be submitted to the lieutenant governor for his review, not for filing by him.

The delegation also contradicts the responsibilities given to the Department of Law under AS 44.62.125. The lieutenant governor essentially controls when the regulations are transmitted to the department. He also controls whether or not the department can perform its final review of the regulations. Because the lieutenant governor controls when and if the department reviews regulations, it contradicts the affirmative requirement in AS 44.62.125 that the department review regulations.

The scope of the lieutenant governor's review both enlarges and conflicts with the statutory plan. Under the delegation, the lieutenant governor is to review the regulations for such items as being positive, not negative, and for a "can-do" attitude. These criteria are not usually required for the adoption of regulations. If the lieutenant governor bases his disapproval on these items, the disapproval may be

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<sup>4/</sup> This section reads as follows:

Section 23. Reorganization. The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

Senator Arliss Sturgulewski

April 19, 1991

Page 3

considered to conflict with the present statutory plan because it imposes new requirements on regulations beyond those already required.

During the review, the lieutenant governor also must consider whether "public input" has been taken into account in the final adopted version of the regulations. The present statutory plan addresses public review by establishing certain notice and hearing requirements (e.g. AS 44.62.190 and 44.62.210). Once these are satisfied under the present statutory plan, the regulation should be considered to have satisfied any "public input" requirements. Disapproval based on this point may conflict with the statutory plan because it requires more than is required by the statutory plan governing the adoption of regulations.

The timing and potential of the review appear to be significant. Under the present statutory process, by the time the regulation is ready for the final Department of Law approval, the regulation has gone through all of the requirements for the regulation under the statutory system, except for the final department review and submission to the lieutenant governor for technical filing. At that point the regulations have essentially been "adopted" by the agency, but have not become "effective". The addition of the lieutenant governor's general review with the potential for disapproving the regulation at that point appears to alter the established statutory plan for adopting regulations.

Because of these conflicts and alterations force of law is required to make these changes and the governor must use an executive order. Since the adoption of regulations is basically a legislative function delegated to the executive branch, a court is more likely (than when examining traditional executive functions) to hold that the governor cannot make these changes without an executive order. The delegation from the legislature would be more narrowly construed, and the court could more easily find that the changes require the force of law.

In conclusion, although the outcome of a court review cannot be predicted in this situation, it is my opinion that the governor cannot delegate the power to review regulations to the lieutenant governor as he has done in his April 1, 1991 memo, unless he uses an executive order.

If I may be of further assistance, please advise.

TLB:pl  
91-279.plm

# DIVISION OF LEGAL SERVICES

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Mail Stop 3101

### MEMORANDUM

April 22, 1991

**SUBJECT:** Executive orders

**TO:** Representative Max Gruenberg, Jr.

**FROM:** Tamara Brandt Cook *TBC*  
Director

You have informed me that you have a copy of the memorandum written by Terry Bannister on April 19 addressing the issue of whether the Governor may transfer to the Lieutenant Governor the broad regulation review function that the Lieutenant Governor has indicated he intends to exercise. In that memorandum, Terry Bannister concluded that such a transfer would require changes in statute and, therefore, could probably be accomplished only through a executive order. You have questioned whether, even by utilizing an executive order, the transfer could be accomplished. Article III, Sec. 23 of the state constitution provides:

The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

I have found only one case discussing this section of the constitution and it is not particularly on point. (Suber v. Alaska State Bond Committee, 414 P.2d 546 (Alaska 1966) holding the section not implicated where the Commissioner of Commerce created an executive agency to carry out the provisions of legislation when the legislation gave him specific authority to hire staff) However, the section is discussed in the Alaska Constitutional Convention Proceedings (pages 2226-2229) and it appears clear that the delegates viewed this section as providing the Governor the power, as an administrative matter, to reorganize the functions of the executive branch, but not particularly, to enlarge, diminish, or otherwise alter those functions.

NORDALE: I just perhaps could amplify the Committee's thinking a bit on this. We were thinking primarily of laws setting up boards and sort-of sloppy administration, as we have at the present time. Now then, when the governor sees there are too many departments set up functioning by themselves or functioning under boards and there isn't any coordination, he has the right to suggest a reorganization and a different assignment of functions. . . .

LONDBORG: Mr. President, just another word along that line, and I think Mrs. Nordale brought it out quite clear, now the other way would be if the governor wanted some reorganization he would have to go to the legislature and have a bill introduced by somebody or on his own request and that bill would be acted upon to make this necessary change. For instance, deleting a certain board or ceasing its functions and putting it under the single department head or something of that nature, whatever major change he would want he would have to depend upon the legislature to pass that bill and get it into operation. Doing it this way, he sets forth an executive order but it does not become effective until it slips through the next session of the legislature without being voted out by the legislature. I suppose you could call it reverse legislation. The governor makes a new law and if the legislature does not want it done away with, well, then they can let it go through, but I think it runs in line with the strong executive we have where he can set forth his changes and the legislature by being silent on it, in that way they approve of the order. (Constitutional Convention Proceedings, Part III, Page 2229)

So, it appears quite clear that the Governor could move responsibilities regarding the review of regulations from the Department of Law to the Lieutenant Governor through an executive order that would be subject to legislative disapproval. However, what has been proposed in the current situation, involving extensive review of existing regulations as well as a two-tiered review of new regulations involving both the Lieutenant Governor's office the Department of Law, appears to go beyond what may be accomplished through an executive order. Legislation may well be required to accomplish all that is proposed.

TBC:mi  
91-074.mai

**THE PRECEDING PAGES  
WERE TREATED AS A UNIT  
IN THE ORIGINAL FILE**



FISCAL NOTE

No. 1

Version: HB 308

(H) Publish Date: 4/29/91

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Revision Date: 4/17/91 Department Affected: Fish and Game

Title: Timely notice for emergency regulations BRU: All divisions

Component: All divisions

Sponsor: \_\_\_\_\_

Requestor: Governor

COMPONENT SERIAL NO.

4	7	7
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

Estimate of current year impact: No current year impact

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: McKie Campbell Phone: 465-4100

Division: Commissioner's Office Date: 4/17/91

Approved by Commissioner: Row Somerville (by ME)

Agency: Fish and Game Date: 4/17/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

No. 2

Bill Version: HB 308

(H) Publish Date: 4/29/91

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "An Act relating to notice of BRU: Legal Services  
adoption of emergency regulations..." Component: Operations  
 Sponsor: By request of the Governor  
 Requestor: Governor's Office COMPONENT SERIAL NO. 

		9	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: April 18, 1991  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law Date: April 18, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. \_\_\_\_\_

This bill amends AS 42.62.250 by changing the notice requirements for the adoption of emergency regulation to require that notice of adoption shall be made within five days after filing by the lieutenant governor, instead of within five days after adoption of emergency regulations. This change validates longstanding practice, and it is needed to conform to a recent court decision in Shepard v. State. Approval of the bill will not have a fiscal impact on the Department of Law.

(c) The lieutenant governor shall provide to the Legislative Affairs Agency the text of each issue of the journal in a computer-readable magnetic medium compatible with the legislative data processing system. The Legislative Affairs Agency shall retain the text of each issue of the journal in a computer-readable magnetic medium.

(d) The lieutenant governor shall sell individual copies of and subscriptions to the journal at a price reasonably calculated to offset the cost of publication and distribution. The commissioner of administration shall separately account for money collected under this subsection that the lieutenant governor deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the office of the lieutenant governor to carry out the purposes of this section.

(e) A person may not maintain an action based on publication or lack of publication in the journal.

(f) In this section

(1) "journal" means the Alaska Administrative Journal; and

(2) "publish" means to make available to the public

(A) through the legislative data processing system; and

(B) in printed form. (§ 2 ch 59 SLA 1985; am § 5 ch 87 SLA 1986; am § 48 ch 106 SLA 1986; am § 80 ch 138 SLA 1986; am § 76 ch 14 SLA 1987)

Revisor's notes. — To correct manifest errors in (a)(4) of this section, a reference to AS 46.11.030 was deleted in 1985 because that section was repealed in 1983, and in 1986 a reference to AS 37.05.316 was substituted for a reference to AS 37.05.315(d).

Cross references. — For legislative findings, see § 1, ch. 59, SLA 1985 in the Temporary and Special Acts.

Effect of amendments. — The first 1986 amendment added paragraph (10) of subsection (a).

The second 1986 amendment substituted "AS 36.30.130" for "AS 37.05.230" in paragraph (3) of subsection (a) and deleted "AS 19.10.190; AS 19.40.020; AS 35.15.030; AS 36.98.030; AS 37.05.230" following "18.55.320;" in paragraph (4) of subsection (a).

The third 1986 amendment inserted "individual copies of and" in the first sentence and added the last two sentences in subsection (d).

The 1987 amendment inserted "AS 36.30.210" in subsection (a)(4).

Article 4. Procedure for Adopting Regulations.

Section	Section
180. Effective date	250. Emergency regulations
190. Notice of proposed action	260. Limitation on effective period of emergency regulations
195. Fiscal notes on regulations	270. State policy
200. Contents of notice	280. Purpose of AS 44.62.180 — 44.62.290
210. Public proceedings	290. Limits of the application of AS 44.62.180 — 44.62.290
220. Right to petition	
230. Procedure on petition	
240. Limitation on retroactive action	

Opinions of attorney Department of Labor designated toxic substances pursuant to AS 18.60.105(a) with the promulgation of

Sec. 44.62.180 filed by the lieutenant after the date

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**Opinions of attorney general.** — The Department of Labor can publish its list of designated toxic and hazardous substances pursuant to AS 18.60.030(12) and AS 18.60.105(a) without going through the promulgation proceeding in the Ad-

ministrative Procedure Act. The list is merely a compilation of chemicals and substances from sources already identified by the legislature. July 18, 1984 Op. Att'y Gen.

**Sec. 44.62.180. Effective date.** A regulation or an order of repeal filed by the lieutenant governor becomes effective on the 30th day after the date of filing unless

(1) otherwise specifically provided by the statute under which the regulation or order of repeal is adopted, in which event it becomes effective on the day prescribed by the statute;

(2) it is a regulation prescribing the organization or procedure of an agency, in which event it becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal;

(3) it is an emergency regulation or order of repeal adopted under AS 44.62.250, in which case the finding and the statement of the facts constituting the emergency shall be submitted to the lieutenant governor, together with the emergency regulation or order of repeal, which, in that event only, becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal;

(4) a later date is prescribed by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal. (AS 3 art IV (ch 1) ch 143 SLA 1959; am § 7 ch 40 SLA 1969)

NOTES TO DECISIONS

Cited in *Mukluk Freight Lines v. Nabors Alaska Drilling, Inc.*, 516 P.2d 408 (Alaska 1973); *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166 (Alaska 1986).

**Sec. 44.62.190. Notice of proposed action.** (a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

(1) published in the newspaper of general circulation, or trade or industry publication, that the state agency prescribes and in the Alaska Administrative Journal;

(2) mailed to every person who has filed a request for notice of proposed action with the state agency;

(3) if the agency is within a department, mailed or delivered to the commissioner of the department;

(4) when appropriate in the judgment of the agency.

(A) mailed to a person or group of persons whom the agency believes is interested in the proposed action, and

(B) published in the additional form and manner the state agency prescribes;

(5) furnished the Department of Law together with a copy of the proposed regulation, amendment, or order of repeal for the department's use in preparing the opinion required after adoption and before filing by AS 44.62.060;

(6) furnished to all incumbent State of Alaska legislators and the Legislative Affairs Agency;

(7) furnished to the standing committee of each house of the legislature having legislative jurisdiction over the subject matter treated by the regulation under the Uniform Rules of the Alaska State Legislature, together with a copy of the proposed regulation, amendment, or order of repeal for the committee's use in conducting the review authorized by AS 24.05.182;

(8) furnished to the staff of the Administrative Regulation Review Committee.

(b) If the form or manner of notice is prescribed by statute, in addition to the requirements of filing and mailing notice under this chapter, the notice shall be published, posted, mailed, filed or otherwise publicized as prescribed by the statute.

(c) The failure to mail notice to a person as provided in this section does not invalidate an action taken by an agency under AS 44.62.180 — 44.62.290. (§ 5 art IV (ch 1) ch 143 SLA 1959; am § 2 ch 149 SLA 1962; am § 1 ch 3 SLA 1968; am § 16 ch 143 SLA 1968; am § 4 ch 64 SLA 1978; am § 5 ch 1 SLA 1982; am § 3 ch 59 SLA 1985)

**Effect of amendments.** — The 1985 amendment in paragraph (1) of subsection (a) substituted "that" for "which" and added "and in the Alaska Administrative Journal."

**Opinions of attorney general.** — There are few cases and little text discussion of the requirements of notice and the sufficiency of notice in proceedings for adoption of rules and regulations. 1959 Op. Att'y Gen., No. 26.

Where a lengthy regulation on one subject is to be proposed the best policy would be to briefly summarize the content and purpose of the regulation. 1959 Op. Att'y Gen., No. 26.

If only a very short regulation is proposed then ordinarily it would be most practicable to set forth the regulation in full. 1959 Op. Att'y Gen., No. 26.

Where a great many regulations are to be promulgated which are of a varied na-

ture, such as fish and game regulations, or oil leasing regulations, then the most practical thing to do would be to give a general listing of the subjects to be covered, a reference to any other existing body of regulations which are being adopted, amended or superseded which might be informative to the particular public or industry concerned (such as a reference to existing regulations of a state agency or department or to existing federal regulations) and a brief listing of any significant changes which are proposed if an existing body of regulations is to be effected. In such case it would be well to indicate that copies of the proposed regulations can be obtained from the agency in order to indicate the agency has done everything reasonably possible to give the public affected by its regulations an opportunity to familiarize itself with the regulations and to prepare itself to submit

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And when a summary of a large number of proposed regulations is to be used it would be safe for the departments and agencies of the state government to follow the Ohio and federal practice and to give notice of the areas in which regulations

may or may not be promulgated by listing the subject matter to which the proposed rules would relate. 1959 Op. Att'y Gen., No. 26.

Public notice referring only to regulation numbers and subject headings. — See 1959 Op. Att'y Gen., No. 26.

For illustrations of the notice required by this section, see 1959 Op. Att'y Gen., No. 26, Exhibits A, B, C and D.

### NOTES TO DECISIONS

The rule-making function of an administrative agency frequently resembles the legislative process of passing a statute. Each entity determines the need for a particular enactment in light of chosen policies; each has procedures for the expression of views upon the merits of the proposal; and each, after consideration of the relevant policies and arguments, decides whether to adopt the proposed enactment. When administrative rule making is based upon clear authority from the legislature to formulate policy in the adoption of regulations, the rule-making activity takes on a quasi-legislative aspect. Under proper standards, such delegations of legislative power to administer agencies are constitutional. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971).

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state (now the lieutenant governor), and publication. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971).

Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. *Northern Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (Alaska 1977).

Agency cannot adopt future amendments to code, etc., by reference. — Ac-

ording to the Legislative Affairs Agency [now Department of Law] drafting manual, an administrative agency may not adopt by reference a code or set of standards from another state, the federal government or a private organization and provide that future amendments as they become effective are being adopted also. *Northern Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (Alaska 1977).

One reason for the prohibition against delegation of the future law-making power of the state to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize, the amendments, as it does when they are adopted by the legislature or promulgated under the Alaska Administrative Procedure Act. *Northern Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (Alaska 1977).

Clause of regulation incorporating future amendments held severable. — Clause of an administrative regulation incorporating 1955 Uniform Building Code which also incorporated all future amendments of the code was separable from the rest of the administrative regulation, leaving the 1955 Uniform Building Code provisions applicable in a negligence action based on the death of a guest in a motel fire. *Northern Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (Alaska 1977).

Applied in *Kingery v. Chapple*, 504 P.2d 831 (Alaska 1972).

Stated in *State v. First Nat'l Bank*, 660 P.2d 406 (Alaska 1982).

Cited in *Boehl v. Sabre Jet Room, Inc.*, 349 P.2d 585 (Alaska 1960).

**Sec. 44.62.195. Fiscal notes on regulations.** If the adoption, amendment, or repeal of a regulation would require increased appropriations by the state, the department or agency affected shall prepare an estimate of the appropriation increase for the fiscal year following adoption, amendment, or repeal of the regulation and for at least two succeeding fiscal years. (§ 1 ch 16 SLA 1980)

**Sec. 44.62.200. Contents of notice.** (a) The notice of proposed adoption, amendment, or repeal of a regulation must include:

- (1) a statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation;
- (2) reference to the authority under which the regulation is proposed and a reference to the particular code section or other provisions of law that are being implemented, interpreted, or made specific;
- (3) an informative summary of the proposed subject of agency action;
- (4) other matters prescribed by a statute applicable to the specific agency or to the specific regulation or class of regulations;
- (5) a summary of the fiscal information required to be prepared under AS 44.62.195.

(b) A regulation that is adopted, amended or repealed may vary in content from the summary specified in (a)(3) of this section if the subject matter of the regulation remains the same and the original notice was written so as to assure that members of the public are reasonably notified of the proposed subject of agency action in order for them to determine whether their interests could be affected by agency action on that subject.

(c) An agency that issues a notice under this section shall assure that the notice is prepared in a form adequate for publication in the Alaska Administrative Journal. (§ 6 art IV (ch 1) ch 143 SLA 1959; am § 1 ch 185 SLA 1970; am § 2 ch 16 SLA 1980; am § 4 ch 59 SLA 1985)

**Effect of amendments.** — The 1985 amendment added subsection (c).  
**Legislative history reports.** — For report on ch. 185, SLA 1970 (CSHB 786), see 1970 House Journal, pp. 916 — 918.

**NOTES TO DECISIONS**

**Liberal construction of informative summary requirement.** — The legislature intended that the "informative summary" requirement in paragraph (a)(3) be liberally construed. *State v. First Nat'l Bank*, 660 P.2d 406 (Alaska 1982).

**Notice of proposed regulations held sufficient.** — Notice of Department of Commerce's proposed regulations to implement the Uniform Land Sales Practices Act, AS 34.55, did not violate the

informative summary requirement of paragraph (a)(3) so as to overcome the statutory presumption of validity since the contents of the notice gave members of the public sufficient information to decide whether their interests could be affected by the agency action and thus whether to make their views known to the agency. *State v. First Nat'l Bank*, 660 P.2d 406 (Alaska 1982).

Applied in *Kingery v. Chapple*, 504

P.2d 831 (Alaska 1977)  
*Inc. v. LeResche*, 66 P.2d 831 (Alaska 1983).  
 Quoted in *Kenai Peninsula's Coop. Ass'n v. State* (Alaska 1981).

**Sec. 44.62.210**  
 time and place of hearing. Any interested person shall be given the opportunity to be heard in writing, with or without oral testimony, if the agency may accept testimony authorized by this section. (b) At a hearing, the representative may request a continuance or postponement of the hearing. (§ 7 art I)

**Effect of amendment in subsection (b).** "may accept material in the form of communication in chapter and" in the *Opinions of attorneys general* between hearing and AS 44.62.451 between "adjudicative facts." See 1960 Op.

**Regulations adopted by commissioner of Natural Resources.** subject to the rule-making provisions of the Administrative Code Act (AS 44.62) and must be a regulation. The required procedures set for the adoption of regulations are not sufficient. A public hearing is required. An interested person may request a public hearing. If adopted, with the secretary of the lieutenant governor. *Kelly v. Zamarelli*, 478 P.2d 1971.

**Agency cannot adopt regulations to code, etc., according to the Legislative Manual.** Agency may not adopt or set of standards from federal government or

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P.2d 831 (Alaska 1972); Chevron U.S.A., Inc. v. LeResche, 663 P.2d 923 (Alaska 1983).

Quoted in Kenai Peninsula Fisherman's Coop. Ass'n v. State, 628 P.2d 897 (Alaska 1981).

Stated in State v. Tanana Valley Sportsmen's Ass'n, 583 P.2d 854 (Alaska 1978).

Cited in Bohl v. Sabre Jet Room, Inc., 349 P.2d 585 (Alaska 1960).

**Sec. 44.62.210. Public proceedings.** (a) On the date and at the time and place designated in the notice the agency shall give each interested person or the person's authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing, with or without opportunity to present them orally. The state agency may accept material presented by any form of communication authorized by this chapter and shall consider all relevant matter presented to it before adopting, amending or repealing a regulation.

(b) At a hearing under this section the agency or its authorized representative may administer oaths or affirmations, and may continue or postpone the hearing to the time and place which it determines. (§ 7 art IV (ch 1) ch 143 SLA 1959; am § 1 ch 54 SLA 1985)

**Effect of amendments.** — The 1985 amendment in subsection (a) inserted "may accept material presented by any form of communication authorized by this chapter and" in the last sentence.

**Opinions of attorney general.** — Difference between hearings under this section and AS 44.62.450 and distinction between "adjudicative facts" and "legislative facts." See 1960 Op. Att'y Gen., No. 7.

This article sets forth the procedure which must be followed when an agency exercises its quasi-legislative power but not to quasi-judicial proceedings. 1960 Op. Att'y Gen., No. 7.

Article 8 of this chapter was intended to be applicable to quasi-judicial proceedings. 1960 Op. Att'y Gen., No. 7.

NOTES TO DECISIONS

**Regulations adopted by the Commissioner of Natural Resources** are subject to the rule-making provisions of the Administrative Procedure Act (AS 14.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state (now the lieutenant governor), and publication. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971).

**Agency cannot adopt future amendments to code, etc., by reference.** — According to the Legislative Affairs Agency drafting manual, an administrative agency may not adopt by reference a code or set of standards from another state, the federal government or a private organiza-

tion and provide that future amendments as they become effective are being adopted also. *Northern Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (Alaska 1977).

One reason for the prohibition against delegation of the future law-making power of the state to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize, the amendments, as it does when they are adopted by the legislature or promulgated under the Alaska Administrative Procedure Act. *Northern Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (Alaska 1977).

**Clause of regulation incorporating future amendments held separable.** — Clause of an administrative regulation incorporating 1955 Uniform Building Code

which also incorporated all future amendments of the code; was separable from the rest of the administrative regulation, leaving the 1955 Uniform Building Code provisions applicable in a negligence action based on the death of a guest in a motel fire. *Northern Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (Alaska 1977).

Stated in *State v. Tanana Valley Sportsmen's Ass'n*, 583 P.2d 854 (Alaska 1978).

Cited in *Boehl v. Sabre Jet Room, Inc.*, 349 P.2d 585 (Alaska 1960); *Johns v. Commercial Fisheries Entry Comm'n.*, 75 P.2d 1256 (Alaska 1988).

Collateral references. — 2 Am. Jur. 2d, Administrative Law, §§ 281, 282. 73 C.J.S. Public Administrative Law and Procedure, §§ 106, 107.

**Sec. 44.62.220. Right to petition.** Unless the right to petition for adoption of a regulation is restricted by statute to a designated group or the procedure for the petition is prescribed by statute, an interested person may petition an agency for the adoption or repeal of a regulation as provided in AS 44.62.180 — 44.62.290. The petition must state clearly and concisely

- (1) the substance or nature of the regulation, amendment, or repeal requested;
- (2) the reasons for the request;
- (3) reference to the authority of the agency to take the action requested. (§ 8 art IV (ch 1) ch 143 SLA 1959)

NOTES TO DECISIONS

Quoted in *Johns v. Commercial Fisheries Entry Comm'n.* 699 P.2d 334 (Alaska 1985).

**Sec. 44.62.230. Procedure on petition.** Upon receipt of a petition requesting the adoption, amendment or repeal of a regulation under AS 44.62.180 — 44.62.290, a state agency shall, within 30 days, deny the petition in writing or schedule the matter for public hearing under AS 44.62.190 — 44.62.210. However, if the petition is for an emergency regulation, and the agency finds that an emergency exists, the requirements of AS 44.62.190 — 44.62.210 do not apply, and the agency may submit the regulation to the lieutenant governor immediately after making the finding of emergency and putting the regulation into proper form. (§ 9 art IV (ch 1) ch 143 SLA 1959; am § 1 ch 45 SLA 1969)

NOTES TO DECISIONS

**Judicial review.** — Even though a legislative enactment providing for agency action may not provide for judicial review, the courts may proceed to review such action where it is alleged that such action constitutes a denial of due process. *Johns v. Commercial Fisheries Entry Comm'n.* 699 P.2d 334 (Alaska 1985).  
**Writing requirement met.** — A letter from the chairman of an agency explain-

ing to a petitioner the agency's denial of the applicant compliance with

**Sec. 44.62.240.** adopted by an agency regulation has no effect only inconsistent regulation inconsistent with course of conduct in IV (ch 1) ch 143

Applied in *Wien Air Department of Revenue* (Alaska 1982).

Collateral references. 2d, Administrative Law seq.

**Sec. 44.62.250.** repeal may be adopted by a state agency; material facts that constitute the public peace, of AS 44.62.060 a adoption of emergency regulation a copy of it to the the Alaska Adm the agency shall 44.62.190(a). Fail day automatically; SLA 1959; am § 1 ch 6 SLA 1984)

Quoted in *State Sportsmen's Ass'n*, 5 1978).

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ing to a petitioner the reasons for the agency's denial of the petition was sufficient compliance with the "writing" re-

quirement of this section. Johns v. Commercial Fisheries Entry Comm'n, 699 P.2d 334 (Alaska 1985).

**Sec. 44.62.240. Limitation on retroactive action.** If a regulation adopted by an agency under this chapter is primarily legislative, the regulation has prospective effect only. A regulation adopted under this chapter that is primarily an "interpretative regulation" has retroactive effect only if the agency adopting it has adopted no earlier inconsistent regulation and has followed no earlier course of conduct inconsistent with the regulation. Silence or failure to follow any course of conduct is considered earlier inconsistent conduct. (§ 10 art IV (ch 1) ch 143 SLA 1959)

NOTES TO DECISIONS

Applied in Wien Air Alaska, Inc. v. Department of Revenue, 647 P.2d 1087 (Alaska 1982).

Collateral references. — 1 Am. Jur. 2d, Administrative Law, §§ 42 to 45, 69 et seq.

**Sec. 44.62.250. Emergency regulations.** A regulation or order of repeal may be adopted as an emergency regulation or order of repeal if a state agency makes a written finding, including a statement of the facts that constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The requirements of AS 44.62.060 and 44.62.190 — 44.62.210 do not apply to the initial adoption of emergency regulations; however, upon adoption of an emergency regulation the adopting agency shall immediately submit a copy of it to the lieutenant governor for filing and for publication in the Alaska Administrative Register, and within five days after adoption the agency shall give notice of the adoption in accordance with AS 44.62.190(a). Failure to give the required notice by the end of the 10th day automatically repeals the regulation. (§ 2(2) art IV (ch 1) ch 143 SLA 1959; am § 2 ch 45 SLA 1969; am § 1 ch 46 SLA 1972; am § 123 ch 6 SLA 1984)

NOTES TO DECISIONS

Quoted in State v. Tanana Valley Sportsmen's Ass'n, 583 P.2d 854 (Alaska 1978).

**Sec. 44.62.260. Limitation on effective period of emergency regulations.** (a) A regulation adopted as an emergency regulation does not remain in effect more than 120 days unless the adopting agency complies with AS 44.62.060 and 44.62.190 — 44.62.210 either before submitting the regulation to the lieutenant governor or during the 120-day period.

(b) Before the expiration of the 120-day period, the agency shall transmit to the lieutenant governor for filing a certification that AS 44.62.060 and 44.62.190 — 44.62.210 were complied with before submitting the regulation to the lieutenant governor, or that the agency complied with those sections within the 120-day period. Failure to so certify repeals the emergency regulation; it may not be renewed or refiled as an emergency regulation. (§ 4 art IV (ch 1) ch 143 SLA 1959; am § 3 ch 45 SLA 1969)

NOTES TO DECISIONS

Stated in *State v. Tanana Valley Sportsmen's Ass'n*, 583 P.2d 854 (Alaska 1978).

**Sec. 44.62.270. State policy.** It is the state policy that emergencies are held to a minimum and are rarely found to exist. (§ 2(2) art IV (ch 1) ch 143 SLA 1959)

NOTES TO DECISIONS

Quoted in *State v. Tanana Valley Sportsmen's Ass'n*, 583 P.2d 854 (Alaska 1978).

**Sec. 44.62.280. Purpose of AS 44.62.180 — 44.62.290.** It is the purpose of AS 44.62.180 — 44.62.290 to establish basic minimum procedural requirements for the adoption, amendment or repeal of administrative regulations. Except as provided in AS 44.62.250, AS 44.62.180 — 44.62.290 apply to the exercise of quasi-legislative power conferred by a statute, but nothing in AS 44.62.180 — 44.62.290 repeals or diminishes additional requirements imposed by the statute. AS 44.62.180 — 44.62.290 are not superseded or modified by subsequent legislation except to the extent that the legislation does so expressly. (§ 1 art IV (ch 1) ch 143 SLA 1959)

**Sec. 44.62.290. Limits of the application of AS 44.62.180 — 44.62.290.** (a) AS 44.62.180 — 44.62.290 do not apply to a regulation not required to be submitted to the lieutenant governor under AS 44.62.010 — 44.62.320.

(b) Only this section and AS 44.62.180 apply to a regulation that prescribes the organization or procedure of an agency. (§ 2(1) art IV

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(ch 1) ch 143 SLA 1959; am § 17 ch 143 SLA 1968; am § 8 ch 40 SLA 1969; am § 4 ch 45 SLA 1969)

Collateral references. -- 1 Am. Jur. 2d, Administrative Law, §§ 42 to 45, 69 et seq.

Article 5. Judicial Review.

Section

44.62.300. Judicial review of validity

Sec. 44.62.300. **Judicial review of validity.** An interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court. In addition to any other ground the court may declare the regulation invalid

(1) for a substantial failure to comply with AS 44.62.010 — 44.62.320, or

(2) in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency under AS 44.62.250. (§ 1 art V (ch 1) ch 143 SLA 1959)

NOTES TO DECISIONS

Judicial review from non-adjudicatory legislative action is provided in the Administrative Procedure Act under this section, which section specifically provides for declaratory relief, but not for a statute of limitations on actions. Moore v. State, 553 P.2d 8 (Alaska 1976).

Former App. R. 45 did not apply to a plaintiff's request for declaratory relief resulting in a judgment declaring that AS 44.040(a)(8) was unconstitutional because it delegates authority to the Alaska Game Licensing and Control Board without adequate standards, and declaring that the regulations adopted pursuant to this section were unconstitutional because they permit arbitrary action by the board. This section provides for judicial review from non-adjudicatory legislative action is provided in the Administrative Procedure Act under this section. Owsichek v. State, 627 P.2d 1343 (Alaska 1981).

In the past the supreme court has departed from a restrictive interpretation of the standing requirement. Coghill v. Boucher, 511 P.2d 1297 (Alaska 1973).

Standing may be allowed one without direct interest in outcome. — The court's review in certain cases may make

it desirable to allow standing to one whose primary interest is not in the direct outcome of the administrative action, but in its competitive effect on his economic interest. Coghill v. Boucher, 511 P.2d 1297 (Alaska 1973).

"Interested person." — Professional salmon hand troller is "interested" in the number of trolling permits issued, even if he will obtain a permit, since his ability to fish commercially is directly affected by the number of trollers using the fishery. Rutter v. State, 668 P.2d 1343 (Alaska 1983).

Registered voters held "interested persons" to challenge election regulations. — Residents and registered voters held to possess standing as "interested persons" under the Administrative Procedure Act (AS 44.62) to challenge the regulations promulgated by the lieutenant governor under AS 15.15.330, dealing with early counting of election votes. Coghill v. Boucher, 511 P.2d 1297 (Alaska 1973).

Denial of standing to registered voters would have the effect of unduly limiting the possibility of a popular check upon executive control of the election process. Coghill v. Boucher, 511 P.2d 1297 (Alaska 1973).