ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7011 HOUSE JUDICIARY

FACSIMILE

DATE: March 25, 1992
TO: Cliff Davidson
COMPANY:
FACS NO.: 907/465-2864
FROM: Al Haslebacher
COMPANY: Spokane District Farm Credit Council
TOTAL PGS.: 2

SPECIAL INSTRUCTIONS OR COMMENTS:

We wanted you to know the Farm Credit Bank of Spokane supports this legislation and encourage you to give me a call if you would like additional background information.

Thanks.

WE ARE TRANSMITTING FROM AN AUTOMATIC FACSIMILE.
TO TALK TO US: 509/838-9669
TO FACSIMILE TO US: 509/838-9445

THE SPOKANE DISTRICT FARM CREDIT COUNCIL
FARM CREDIT BANKS BUILDING • POST OFFICE BOX TAF-C5 • SPOKANE, WASHINGTON 99220 • (509) 838-9208

Testimony
on
Senate Bill 154
In the Legislature of the State of Alaska
Before the House Resources Committee
3/25/92
by
Al Haslebacher
President, SDFCC

The Spokane District Farm Credit Council is a trade association representing the legislative interests of cooperative lenders in the Twelfth Farm Credit District. Our members, the Farm Credit Bank of Spokane and the Northwest Farm Credit Services, an agricultural credit association, have over two billion dollars in loans outstanding in our five states of Alaska, Idaho, Montana, Oregon, and Washington. Farm Credit system loans in Alaska cover farms, rural homes, fishing boats, cooperative operations/facilities, and timber.

Lender liability relative to "clean-up" of acquired properties is a growing concern and will eventually tend to restrict mortgage credit unless some reasonableness is returned to CERCLA legislation. Alaska Senate Bill 154 is positive legislation that we support.

If any "tales of horror", relative to acquired properties and the resultant "losses" to the lender, would be helpful to your consideration of the bill, we can provide them. If you need any clarification or elaboration please feel free to call me at (509) 838-9208.

Al Haslebacher
President, SDFCC

RECEIVED MAR 2 3 1992

DENALI STATE BANK

119 N. Cushman Street • (907) 456-1400 • FAX (907) 456-2140 • P.O. Box 74568 • Fairbanks, Alaska 99707-4568

March 17, 1992

Representative Davidson
House of Representatives
State Capitol
Juneau, AK 99801-1182

RE: SB154 "An Act Relating to the Liability of Financial Institutions Arising Out of an Unpermitted Release of a Hazardous Substance or the Substantial Threat of an Unpermitted Release of a Hazardous Substance, and to Liens on the Property of Financial Institutions Resulting From an Oil or Hazardous Substance Spill or the Threat of an Oil or Hazardous Substance Spill"

Dear Representative Davidson:

This letter is being written both as President of Denali State Bank and in my current capacity as President of the Alaska Bankers Association.

I am asking you to support SB154 as it has passed the Alaska State Senate. The passage of this bill is vitally important to financial institutions in the State of Alaska and the borrowing customers that we serve. Much effort has been put into this bill by Senator Rodey and his staff, the Department of Environmental Conservation, and the Alaska Bankers Association. I am confident that it will fulfill the needs of all parties concerned.

Your support of this bill will be sincerely appreciated. Please do not hesitate to contact the undersigned if you have any questions.

Sincerely yours,

Gary Roth

Gary Roth
President and Chief Executive Officer

GR/bf

Key Bank of Alaska
A KeyCorp Bank

Post Office Box 100420
Anchorage, Alaska 99510-0420
(907) 562-6100

Dan Mogck
Vice President

Direct Line: (907) 564-0446
Fax: (907) 564-0200

March 12, 1992

Representative Cliff Davidson
Alaska State Legislator
State Capital - 108 Capital Building
Juneau, Alaska 99801-1182

Re: SB 154

Dear Representative Davidson:

I represent the Alaska Bankers Association in our efforts to clarify the security interest exemption in the state environmental strict liability law. As a member of the House Resources committee, you will likely be hearing of SB 154 soon. I would like to take this opportunity to briefly outline the problem, and to educate you as to what we feel is a partial solution. I have enclosed a copy of the bill for your reference.

The state strict liability law, AS 46.03.822 - 828, is patterned after the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, aka Superfund). In both state and federal law there was a security interest exemption for lenders and other security holders. Over all the years, because of ambiguities in the in the wording, court cases have eroded the exemption. Lenders have been held to be liable as owners by forcloseing on a property, even though the lender had nothing to do with causing the problem and was only acting to protect a security interest. Courts have gone so far as to suggest that a lender may be liable as an operator if, in the words of the court, " the lender had the capability to influence hazardous waste decisionmaking through financial relationships". Because lenders may be the only deep pocket left after a clean up, they are easy targets for enforcement agencies.

The lending industry is very alarmed at the situation. The law and case decisions greatly increase the risks of lending money. Lenders, in many cases, are unable to lend money into the communites we serve, because of the environmental risks. Not being able to lend is very unsettling to our industry, as this is the primary way we invest in our communities. However, under current law, the risks of lending into a situation with any

potential environmental liability, particularly in the case of someone requesting funds to perform a clean up and also in the case of small loans, far outweigh the rewards.

As a partial solution, we have proposed SB 154, legislation that would clarify the security interest exemption. The clarification would allow a lender to hold indicia of ownership, which may include full legal title through foreclosure or equivalent, as long as the lender is holding primarily to protect a security interest, and does not participate in the management of a vessel or facility. Participating in management is also clarified, so that a lender will not risk liability unless there is actual participation in the management or operational affairs.

A second section of the bill addresses the state's lien for clean up and the ability of the state to recover on its lien from a property owner not otherwise liable, to the extent of an increase in the value of the property resulting from the state's clean up.

The Alaska Department of Environmental Conservation and the Office of the Attorney General have considered the bill, and in fact the present draft of the bill is their version. We certainly appreciate their involvement and hope for their continued support of this legislation.

Please call me if you or your staff have any questions regarding the bill. I ask for your support of the bill, as it will be crucial if we are to pass the bill this session.

Thank you.

Sincerely,

Dan Mogck
Vice President

dm03-07

National Bank of Alaska

Corporate Headquarters P.O. Box 100600 Anchorage, Alaska 99510-0600 (907) 276-1132

January 27, 1992

Senator Patrick Rodey
Alaska State Senate
P.O. Box Z (MS3100)
Juneau, AK 99811

Dear Senator Rodey:

The State Banking Association is supporting Senate Bill #154 which we believe would encourage lending to small business. The reason for our support for this legislation is to facilitate small business commerce in the state of Alaska and to place the blame for environmental problems on the guilty parties. We must be able to make loans to small business without the constant threat of being required to cleanup environmental problems in which we were unaware nor did we contribute to the environmental problem. We believe in a due diligence by the state to protect us from environmental hazards.

We believe in the concept of a clean environment and that Alaska is in much better shape than much of the U.S. We do become extremely skittish when a state leasing official encourages us to make loans on its property and tells us that due to our financial resources, they would require us to cleanup any environmental problems regardless whether the problem was created by the state itself, an adjacent property owner, or a previous ground lessee.

Borrowing in the future will become more difficult if the state anticipates that we pay for everyone's environmental problems. We are encountering more and more cases whereby the marginal environmental risk causes us to decline to make the loan because of unknown future problems which we might encounter. We encourage you to vote for Senate Bill #154 which will go a long way to encourage lenders to lend on real estate and to small business.

Sincerely yours,

Dan Sieberts
Senior Vice President

sr

ALASKA CREDIT UNION LEAGUE

SUITE 650, 4000 CREDIT UNION DRIVE
ANCHORAGE, ALASKA 99503-6647
(907) 562-1255

Alaska Credit Union League
Statement in Support of CS for SB 154

There are 18 credit unions in Alaska (16 federally chartered, 2 state chartered) and all are members of the Alaska Credit Union League, a trade association dedicated to protecting and serving the interests of Alaska's credit unions and the members who own them.

Some 338,000 Alaskans are currently members of these 18 credit unions. Obviously, credit unions are considered by Alaskans to be among the safest financial institutions in the marketplace.

However, in today's economic climate, the financial services industry and its regulators are very concerned about real estate loan losses. From a lender's standpoint, the factor which creates the greatest potential for loss is not market risk or credit risk but the risk associated with environmental contamination. Under state law, a lender can be held strictly liable for the cost of clean up of contaminated properties- regardless of who contaminated the property. The current owner (which a lender becomes through the foreclosure process) is financially responsible for clean up and damages.

There is no way to guarantee that during the term of the loan the property value will not be impaired by contamination. If the individual owner is not financially capable of cleaning up a property, the state can file a lien superior to a pre-existing lenders lien. This situation has curtailed and eliminated sources of credit for real estate lending (this includes business loans secured by real estate, home equity loans and loans for the improvement and purchase of homes).

In fact, Alaska USA Federal Credit Union discontinued granting real estate loans in October of 1989 because of losses and potential losses incurred or threatened under the strict liability provisions of state law. Prior to that time, the credit union granted $50 million in real estate loans each year. It is the position of the Alaska Credit Union League that the availability of credit for real estate related purposes is an essential part of the Alaska economy.

ALASKA CREDIT UNION LEAGUE

SUITE 650, 4000 CREDIT UNION DRIVE
ANCHORAGE, ALASKA 99503-6647
(907) 562-1255

Currently, prudent lending requires not only the traditional appraisal, title insurance, etc. but also site assessment for the detection of environmental contamination. If through the site assessment contamination is discovered, then the law requires it to be reported. If the contaminated real estate is ever to have economic value, it must be cleaned up. It makes good environmental sense to encourage lending because the lender as a third party must do site assessments and has great incentive (loss of loan and collateral) to do thorough assessments to identify contaminated or potentially contaminated properties that might otherwise go undetected and unreported for years.

The changes to existing law proposed by CS of SB 154 encourage the more active involvement of financial institutions in real estate lending by limiting (not eliminating) liability of financial institutions that have acquired contaminated facilities or vessels through foreclosure or trust agreements. We believe it is in the best interest of the environment, the economy, and the people of the State of Alaska that SB 154 become law this session.

National Bank of Alaska

Corporate Headquarters P.O. Box 100600 Anchorage, Alaska 99510-0600 (907) 276-1132

January 28, 1992

Senator Patrick Rodey
Alaska State Senate
P. O. Box Z (MS3100)
Juneau, Alaska 99811

Dear Senator Rodey:

I want to ask you for your support of Senate Bill #154 which deals with issues of environmental liability to lenders. Passage of the Bill will facilitate small business commerce in the State of Alaska.

We all wish to live in a clean and healthy environment; however, we have become concerned over attempts to hold lender's liable for the cost of cleaning up a borrower's property.

Lenders already have adequate incentives to encourage their borrowers to engage in environmentally safe practices but lenders are not equipped to police the environmental activities of their borrowers. Imposition of unlimited liability on lenders can be expected to restrict credit to any borrowers where there is environmental risk. A reduction in the availability of credit threatens businesses and their ability to contribute to cleanup of the environment and thereby also frustrates environmental interests.

Banks are now examining property carefully before they foreclose and sometimes walk away from their collateral in order to avoid liability. I have been designated the banks' "Environmental Risk Officer". As such, I review loan requests to assess the level of risk to the bank.

Imposing liability for environmental cleanup costs on lenders is [redacted]likely to do little to prevent pollution, but may interfere with the availability of credit to even prudent businesses that use hazardous substances such as fish processors, all maritime businesses, trucking, car dealerships, dry cleaners, aviation and service stations to name just a few.

We recently declined credit to a gift shop in Valdez, not because they used hazardous substances, but because they were next door to a service station. In rural Alaska most communities rely exclusively on petroleum for heat and transportation and to operate all forms of equipment essential to their livelihoods. Existing State environmental laws were modeled after what others have done in the lower 48 and do not consider problems unique to Alaska.

Meanwhile, other states continue to pass legislation similar to Senate Bill #154. In 1991 alone Arizona, Illinois, Indiana, Maine, Maryland, Minnesota, Missouri, Hawaii, Nebraska, Oregon, Texas, West Virginia, Indiana, Montana and New Mexico all passed such legislation.

Again I ask you for your support of Senate Bill #154.

Sincerely,

NATIONAL BANK OF ALASKA

Gerard Diemer
Assistant Vice President
Commercial Credit Services

GD:ld

SB

183

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 183

Revision Date: _____ Department Affected: Revenue

Title: Authority to stock alcoholic beverages in guest rooms. BRU: Alcoholic Beverage Control Board

Component: _____

Sponsor: Senate Labor & Commerce Comm.

Requestor: Senate Labor & Commerce Comm. COMPONENT SERIAL NO. 0 1 0 0

Expenditures/Revenues: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Patrick L. Sharrock, Director Phone: 277-8638

Division: Alcoholic Beverage Control Board Date: March 12, 1991

Approved by Commissioner: _____

Agency: Department of Revenue Date: 3-18-91

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

Rev 10/90

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 183

Revision Date: _____ Department Affected: Commerce & Economic Develo

Title: "An act related to the authority of certain beverage dispensary licenses" BRU: Tourism

Component: Tourism development

Sponsor: Senate Labor Commerce Committee

Requestor: Senator Drue Pearce COMPONENT SERIAL NO. 1 0 1 7

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						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

This bill does not impact operations of the Division of Tourism.

Prepared By: Wendy Wolf Phone: 465-2012

Division: Division of Tourism Date: 3/20/91

Approved by Commissioner: Glenn A. Olds BST Comm

Agency: Department of Commerce & Economic Development Date: 3-21-91

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

Rev 10/90

[redacted] OUSE COMMITTEE REPO[redacted]

7)

Date Referred: May 7, 1991 FURTHER REFERRALS: Judiciary

Date of Committee Action: 5-9-91

The LABOR AND COMMERCE Committee considered: CSSB 183(L&C)

CS FOR SENATE BILL NO. 183 (L&C) ALCOHOL SALES IN HOTEL ROOMS

"An Act related to the authority of certain beverage dispensary licensees to stock alcoholic beverages in guest rooms and prohibiting certain room rentals for the purpose of providing alcoholic beverages to a person under 21 years of age."

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 _____ [X] zero fiscal note(s) ABC Bd. + DCED

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		Dave Donley		✓	
	✓				
	X				
	✓				
	✓				

CHAIRMAN'S SIGNATURE

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF REVENUE

ALCOHOLIC BEVERAGE CONTROL BOARD

560 W. 7TH AVE
ANCHORAGE, ALASKA 99501-6696

March 26, 1991

The Honorable Drue Pearce, Chair
Labor and Commerce Committee
Alaska State Senate
P. O. Box V
Juneau, Alaska 99811

RE: SB 183

Dear Senator Pearce:

Ken Erickson of your office asked that I provide you with the ABC Board's position concerning SB 183.

The board has discussed the subject of mini-bars in hotel rooms on several occasions during the last few years. The board concluded that it neither supports nor opposes mini bars. However, it has indicated that it should have a role in reviewing proposals from licensees who want to provide mini-bar service in their facilities. Senate Bill 187 does provide for board approval.

Thank you for the opportunity to comment. If I can provide any additional information, please do not hesitate to call.

Sincerely,

Patrick L. Sharrock
Director, ABC Board

PS/cl

91-42

Department of Commerce & Economic Development / POSITION PAPER

SB 183: "An Act related to the authority of certain beverage dispensary licensees to stock alcoholic beverages in guest rooms."

The department has no oppostion to this bill, as it does not affect any of the department's programs.

Glenn A. Olds, Commissioner

Date: 3-22-91

APR 5 1991

KEN

DENALI NATIONAL PARK HOTEL
McKINLEY CHALET RESORT
McKINLEY VILLAGE LODGE

ARA Denali National Park Company

April 3, 1991

Senator Pearce
Box V
Juneau, AK 99811

Senator Pearce,

I wish to express our companies support of Senate Bill 183. We find it to be a courtesy that traveller's are accustomed to receiving such services in their Hotel Rooms.

Sincerely,

Carson W. Fleharty
ARA Denali Park Hotels

(Oct-Apr) 825 W. 8th Ave., #220, Anchorage, Alaska 99501 (907) 279-2653 PH. (907) 258-3668 FAX
(May-Sept) P.O. Box 87, Denali Park, Alaska 99755 (907) 683-2215 PH. (907) 683-2398 FAX

APR 2 1991

Hotel Seward

"Independently owned & operated"

221 5th Ave., P.O Box 670 • Seward, Alaska 99664 • (907) 224-BEST (2378)

March 27th, 1991

SENATOR PEARCE
P. O. Box V
Juneau, Alaska 99811

Re: Senate Bill No. 183

Dear Senator Pearce;

We would like to take this opportunity to express our support of your Senate Bill No. 183.

We operate the Best Western Hotel Seward, as well as the New Seward Hotel in Seward, Alaska, and would like to see this bill passed in the Senate as well as the House of Representatives.

If we can help you further, please do not hesitate to let us know.

Thank you.

Sincerely,

Brad Snowden
Owner/Manager

BS/dr

APR 1 7 1991

ALASKA HOTEL
PROPERTIES, INC.

bill file - let's put in floor packet

April 15, 1991

Senator Drue Pearce
P. O. Box V
Juneau, AK 99811

Dear Senator Pearce:

Re: Senate Bill 183

Alaska Hotel Properties, Inc. owner or the Harper Lodge Princess at Denali National Park, the Kenai Princess Lodge, Cooper Landing and soon to be (1993) the Fairbanks Princess Hotel, support Senate Bill 183.

We feel that the hoteliers in Alaska will best serve the requirements of their guests and be on a par with the lodging industry in other states if this bill is enacted.

Yours Truly,

PRINCESS TOURS

Don Grandy

Don Grandy
Vice President
Alaska Hotel Properties, Inc.

DWG:tm
DWG:068:91

2815 Second Avenue, Suite 400
Seattle, Washington 98121-1299

(206) 728-4202

THE ANCHORAGE HILTON

March 25, 1991

Senator Drue Pearce
P.O. Box V
Juneau, AK 99811

Dear Senator:

On behalf of the Anchorage Hilton, please accept our most vigorous plaudits for a marvelous opportunity to bring more business to the State of Alaska. Needless to say, we are strongly in favor of Senate Bill number 183.

As stated in SB183, travellers of all sophistications now expect first class and complete hospitality accommodations. In-room food and beverage availability was once a novelty. It is now a must!

As you know the State of Alaska competes with many destinations, not only for the summer tourist, but company meetings and conventions as well. We can ill afford to allow our competition the slightest edge.

Thank you again for your work on this long over due piece of legislation.

Sincerely,

Jim Garvin
Director of Food and Beverage

JG/eh

HILTON
USA

Five Hundred West Third Avenue P.O. Box 100520 Anchorage, Alaska 99510 907/272-7411 Fax 907/265-7140
Reservations 1-800/HILTONS

ALASKA INTERNATIONAL AIRPORT · TOURISM MARKETING COUNCIL ·

Ralph Nogal
Anchorage Hilton Hotel
Bill Elander
Anchorage Convention & Visitors Bureau
Forest Paulson
Sheraton Anchorage Hotel
Bob Coe
Duty Free Shoppers
Gordon Godfred
Arctic Circle Enterprises
Wally Hickel, Jr.
Hotel Captain Cook
Masao Ishii
Japan Air Lines
Rolf Klug
Holland America Westours
Bill MacKay
Alaska Airlines
Jeff Ripley
Princess Tours
Shinobu Shimojima
Seibu Alaska, Inc.
Kay Sugimoto
A & P Tours

By FAX 463-5352

March 25, 1991

Senator Drue Pearce
P.O. Box V
Juneau, AK 99811

Dear Senator Pearce:

On behalf of the Alaska International Airport and Tourism Marketing Council, Inc., please be advised we strongly support Senate Bill No. 183 in order to offer more convenience to our international and domestic travelers.

In stocking alcoholic beverages and snacks, as well as cold drinks, in a room refrigerator, we will offer the same privileges our international and domestic guests have in locations other than Alaska. These units are separately keyed and only offered to persons 21 years of age or older.

Please also remember that these units only sell about 17% liquor and the balance is for snacks and non-alcoholic beverages.

Senator Pearce, passage of this bill will put us on a plane with other states and countries.

Sincerely,

Ralph C. Nogal
President

RCN/eh

P.O. Box 104979 ■ Anchorage, Alaska 99510 ■ (907) 272-74

ALASKA VISITORS ASSOCIATION

501 West Northern Lights, Suite 201 • Anchorage, Alaska 99503
Tel: (907) 276-6663 • Fax: (907) 258-4036

#89-1

A Resolution of the Board of Directors of the Alaska Visitors Association regarding:

The presence of mini-bars in hotel and motel rooms.

WHEREAS, the Hotel/Motel Association of Alaska and CHARR are seeking passage of a statute by the Alaska legislature amending Alaska State liquor laws to permit the placement of mini-bars in hotel and motel rooms,

THEREFORE BE IT NOW RESOLVED, that the Board of Directors of the Alaska Visitors Association supports this legislation and encourages the Alaska State Legislature to amend the necessary laws to permit the use of hotel room mini-bars.

ADOPTED BY THE AVA BOARD OF DIRECTORS ON FEBRUARY 7, 1989.

END

Alaska Cabaret, Hotel,
Restaurant & Retailers Association

P.O. Box [illegible] • Anchorage, Alaska 99510
[illegible] K Street • (907) 272-[illegible] • Fax: (907) 277-3640

March 8, 1991

Position Paper on Hotel Mini-Bars

The Alaska Cabaret, Hotel, Restaurant & Retailers Association endorses legislation that amends Alaska State Liquor Laws to permit the placement of mini-bars in hotel and motel rooms. As a major part of the hospitality and visitor industry of the state, the Association feels that the availability of this amenity to the traveling public is necessary to maintain our competitive edge as a visitor destination. Mini-bars are available in hotel rooms in many areas of the world and we believe that Alaska's lodging industry should be able to participate fully in the modern world of hospitality.

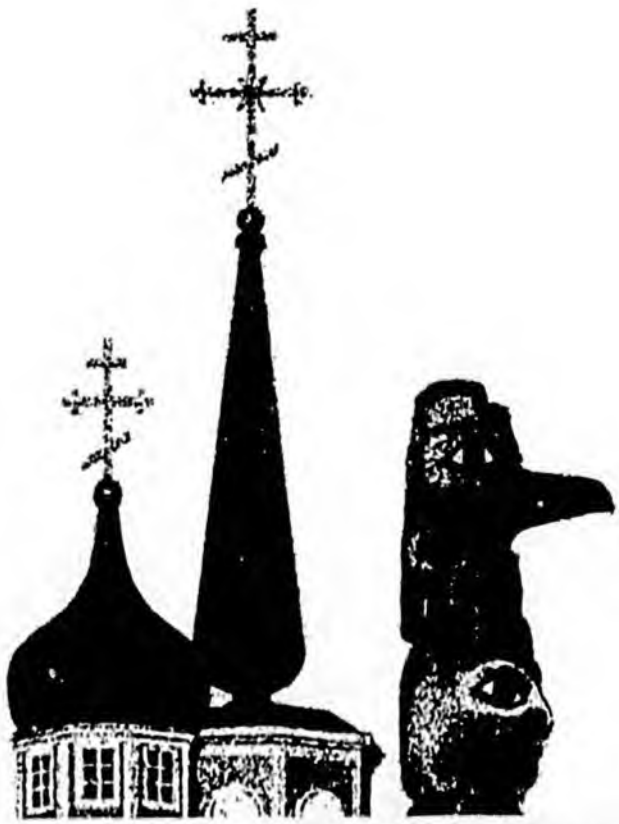
Sitka

Sitka Convention & Visitors Bureau
P.O. Box 1226
Sitka, Alaska 99835
(907) 747-5940

To: The House Labor and Commerce Committee
From: Anne Demarce, Acting Director, Sitka Convention and Visitors Bureau
Re: SB 183

May 9, 1991

The Sitka Convention and Visitors Bureau supports SB 183 which would allow mini-bars to be installed in hotel rooms. This is a service that is available in most other states, and one many visitors have come to expect. Allowing inter-room refreshments provides an additional service for the visitors staying in our Alaskan hotels.



Alaska State Legislature

Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 465-3991
Fax: (907) 465-3331

March 20, 1991

MEMORANDUM

TO: Senator Drue Pearce

FROM: Linda J. Snow
Legislative Analyst

RE: Regulation of Hotel Mini-Bars
Research Request 91.200

You asked this office how other states regulate hotel mini-bars. You specifically asked if other states require special licenses or permits for mini-bars, how they restrict access by minors and drunken persons, and how they control sale hours. You also asked if proposed mini-bar legislation would conflict with Alaska's "Happy Hour" law.

We spoke with representatives of alcoholic beverage control authorities in California, Illinois, Nevada, New York, Texas, and Wisconsin. Our discussions with these people are summarized below. Attached to this memorandum are relevant statutes from the various states.

California

According to David Wright, assistant chief of business practices for the California Department of Alcoholic Beverage Control, special controlled-access cabinet permits may be issued to California hotels which have an on-sale liquor license.[1] Mini-bar cabinets must be locked, and no access key may be issued to minors. Hotel employees allowed to stock the cabinets must be at least 21 years of age. Cabinets may not be stocked between 2:00 a.m. and 6:00 a.m., the hours during which the state prohibits sales of alcohol.

Illinois

Mr. Eric Wisette, chief of investigations for the Illinois Liquor Control Commission, reported that his state does not require separate mini-bar permits if hotels have a general liquor license. However, local municipalities have

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[1]On-sale refers to establishments which sell liquor for consumption on the premises (i.e., restaurants and bars). Off-sale refers to establishments which sell packaged liquor for consumption off the premises (i.e., grocery stores and liquor stores).

the option to require permits or licenses for mini-bars. Illinois lacks legislation regarding mini-bars. The authority to regulate them comes from a Liquor Control Commission policy statement. The state has no regulations regarding hours of sale, although local governments may regulate them. Regarding access by drunken persons, the liquor license holder is ultimately responsible and risks the loss of his or her license if abuses occur. Illinois recently passed legislation (attached) which makes any person who rents a hotel room for the purpose of consumption of alcohol by minors guilty of a class C misdemeanor.

Nevada

The State of Nevada does not regulate alcoholic beverages. According to Jody Cummings of the Nevada Game and Control Board, both city and county governments regulate alcoholic beverages in Nevada. We spoke with Art Besser, chief of licensing for the Clark County Department of Business Licenses about mini-bars in Las Vegas. He reported that hotels with 100 or more rooms and a bar liquor license may receive "individual access licenses" (for mini-bars). Each license costs $1,000 per three-month period. The cabinets are locked, and upon proof of age, a guest will be given a mini-bar key on a ring with the room key. The mini-bar key cannot be removed from the cabinet without locking it, so it is assured that the cabinet will be locked when the occupant is not in the room. Las Vegas allows sale of alcohol 24 hours a day, seven days a week. Employees of an establishment with a liquor license must take a course in liquor awareness training, which may help them identify abuses of mini-bars. According to Mr. Besser, Clark County has not had any serious problems with abuse of mini-bar privileges.

New York

New York law does not require special licenses or permits for hotel mini-bars beyond a general hotel liquor license. The law requires that mini-bar cabinets have a lock, and that keys will not be issued to minors or persons who are visibly intoxicated. According to Steven Kalinsky, attorney with the New York State Liquor Authority, nothing in the New York law addresses regulation of hours when the mini-bar may be used.

Texas

Ms. Jeannene Fox, director of licensing for the Texas Alcoholic Beverage Commission, reported that Texas legislation passed in 1989 requires a special permit to operate mini-bars in hotels with a current "mixed beverage" liquor license. Fees for these permits begin at $2,000 annually, and decrease incrementally to $750 annually for the third and all subsequent renewals. Local governments have the authority to charge up to the same amount for permits that the state charges. Prior to issuance of a permit, mini-bars must

be inspected. The cabinets must lock with a key separate from the room key, and the drinks in the cabinets must be miniature (between one and two fluid ounces) for hotels to pass inspection. Upon registration for a room with a mini-bar, every occupant of the room must present proof of age. Restocking of mini-bars cannot occur between 9:00 p.m. and 9:00 a.m. daily, or all day Sunday, and employees who restock must be at least 18 years of age.

According to Ms. Fox, Texas law views hotel rooms more like residences than licensed premises. Persons may become intoxicated, as long as they remain in their hotel room. Also, Texas law allows minors to consume alcohol in their home under the supervision of a parent or legal guardian. This pertains to hotel rooms as well. Ms. Fox also reported that prior to passage of the 1989 legislation, the commission researched control of mini-bars in other states, and found that no other states had trouble regulating access of alcohol from mini-bars by minors and drunken persons.

Wisconsin

We interviewed Roger Johnson, a representative of Alcohol and Tobacco Enforcement in the Wisconsin Department of Revenue. He reported that Wisconsin authorities initially had concerns about the control of alcoholic beverages sold in hotel mini-bars, but that no major problems have occurred.

Hotels with a general bar liquor license operate mini-bars without any special permits or licenses. Generally, only expensive resort hotels in Wisconsin have mini-bars. According to Mr. Johnson, this tends to preclude minors from obtaining access to them simply because few minors can afford to rent the rooms. The mini-bar cabinets must be locked and proof of age is required before a key will be issued. Some hotels have remote locking devises and can therefore control access to the liquor during certain hours. However, Wisconsin law states that although liquor may be furnished at the time the guest occupies the room, the sale of the liquor furnished is considered to occur at the time and place the guest pays for it. Most state laws address only hours of sale of liquor, not hours of consumption.

Bob Frohling, an analyst with the National Conference of State Legislatures who specializes in alcohol issues, stated that he has no knowledge of problems in controlling access to mini-bars by minors and drunken people. David Wright of the California Department of Alcoholic Beverage Control stated that new technology is emerging which will make control of mini-bar access easier. Hotels are now able to lock mini-bar cabinets remotely, stopping access during prohibited hours or when questions arise about the age or drunkenness of a room guest. Also, mini-bar cabinets may now be equipped with remote sensors which indicate exactly what liquor has been removed from a cabinet.

Conflict with Alaska's "Happy Hour" Law

We spoke with Mike Ford, an attorney with the Legislative Affairs Agency Legal Services Division, who is familiar with state liquor laws. He stated that the "happy hour" law prohibits delivery of a drink to a person with two or more drinks already in his possession. Technically, a guest serving himself a drink from an open-access mini-bar could not be considered delivery. Therefore, it appears there would be no conflict with Alaska's "happy hour" law.

I hope this information is sufficient to answer your questions. If you need further assistance, please call this office.

Attachments

Reprint of

Chapter 8.20

LIQUOR LICENSE REGULATIONS

CLARK COUNTY CODE
NEVADA
1990

BOOK PUBLISHING COMPANY
201 Westlake Avenue North
Seattle, Washington 98109

INDIVIDUAL ACCESS LICENSE. "Individual access license" means a license which allows a hotel to stock a locked cabinet or refrigerator in a hotel room or suite with alcoholic liquor, the key to which is given to the adult transient guest. The liquor cabinet key must be on the keyring to which the room key is attached and the liquor cabinet lock must be so designed that the key may not be removed therefrom without first locking the cabinet. The hotel must have at least one hundred rooms or suites, a full-service twenty-four-hour restaurant with a service bar and a tavern or main bar, room service of meals to all guestrooms, a recreation facility as defined in Section 8.04.010(X)(6) and a convention pavilion as part of the same operation and complex.

LEWD. "Lewd" means:

(a) The showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the covered male genitals in a discernibly turgid state with the intent to arouse or excite the sexual desire of the viewer;

(b) The touching of the genitals, buttocks or female breast of oneself or another person for purposes of sexual arousal, gratification or affront;

(c) An act of sexual intercourse, including actual or simulated, genital-genital, oral-genital, anal-genital or oral-anal, with or between persons of the same sex or opposite sex, or an act of masturbation, bestiality or sado-masochistic abuse.

LICENSEE. "Licensee" means any corporation or association or a natural person to whom a valid alcoholic liquor license and/or import-wholesale alcoholic liquor license has been issued and is used herein in the plural as well as the singular sense.

LIQUOR CATERER LICENSE. A liquor caterer license permits the operator of a portable bar at events for which the caterer has obtained a permit.

LIQUOR STORE. "Liquor store" is a specialty retail store which deals exclusively in alcoholic liquors and related items including magazines, newspapers and packaged snack foods. Minors are not allowed entry into liquor stores. A liquor license shall not be granted to a liquor store if it is located within a one-thousand-five-hundred-foot radius of the entry door of any other liquor store.

LOUNGE. "Lounge" means a room or designated and separate area adjacent to and operated in connection with a hotel, supper club, casino or tavern wherein the patrons of said businesses meet in an informal setting at tables, booths or easy chairs for conversation or entertainment, and into which room or area minors are not permitted entry.

MANAGER/GENERAL MANAGER. A "manager" is the individual responsible for liquor sales and code compliance whose responsibilities are limited to a shift. "General manager" means a key employee who is designated by the licensee as the individual responsible for all liquor sales, employee supervision and liquor code requirement compliance.

MAIN BAR. "Main bar" means a bar where alcoholic liquors are dispensed by the drink by retail sales to customers at such bar in an establishment licensed for gaming other than Class A slot machines, resort hotel, or to a hotel having at least one hundred fifty rooms, providing sleeping accommodations to transient guests for valid consideration, and a restaurant.

MINOR. "Minor" means, for the purposes of this chapter, a natural person under the age of twenty-one years.

MORAL TURPITUDE. "Moral turpitude" is defined as any crime, including conspiracy to commit the crime, which:

parking lot over which the licensee has ownership or contractual parking privileges. (Ord. L-92-89 §, 1989: Ord. L-89-89 § 1, 1989: Ord. L-81-88 § 4, 1988: Ord. L-55-85 § 1, 1985)

8.20.470 License fees. It is unlawful for any person, firm, association or corporation to engage in the retail business of selling, distributing, dispensing or giving away intoxicating, spirituous, vinous, malt (fermented) or other liquors, wines or beers in the county, outside the incorporated cities and towns therein, without first having procured a license and paid the applicable fees in advance to the county department of business license as follows:

(a) For retail liquor licenses:

(1) For each and every main bar operated by an establishment for on-premises consumption, including room service of package goods to hotel guests in rooms by a porter within the establishment, a fee of five hundred twenty-five dollars per quarter-annual period;

(2) For each and every service bar and portable bar operated by an establishment a fee of three hundred dollars per quarter-annual period;

(3) For each and every individual access license, the fee of one thousand dollars per quarter-annual period;

(4) For a tavern, a fee of three hundred dollars per quarter-annual period;

(5) For retail beer, a fee of one hundred twenty-five dollars per quarter-annual period;

(6) For retail beer and wine, a fee of one hundred fifty dollars per quarter-annual period;

(7) For a club liquor license, a fee of thirty-four dollars and seventy-five cents per quarter-annual period;

(8) For a supper club license, a fee of three hundred dollars per quarter-annual period;

(9) For a liquor caterer license, the fee of one hundred fifty dollars per quarter-annual period and a semiannual fee based on gross revenue pursuant to Title 6, with a permit fee of ten dollars for each portable bar operated per day at each event.

(b) For package licenses:

(1) For package liquor, a fee of four hundred fifty dollars per quarter-annual period unless operated in conjunction with a tavern by the same licensee at the same location, in which case the fee shall be one hundred fifty dollars per quarter-annual period;

(2) For package beer, a fee of one hundred twenty-five dollars per quarter-annual period;

(3) For package beer and wine, a fee of one hundred seventy-five dollars per quarter-annual period;

(c) Import-wholesale. For an import-wholesale alcoholic license, a fee of six hundred fifty dollars per quarter-annual period.

(d) For a special events permit, the fee shall be the same fee as set forth above for a quarter-annual period for the type of service for which the special events permit is issued, except that charitable organizations which meet the requirements for issuance of special events permits shall not be required to pay any fee.

A separate license is required for each fictitious name used by an entity in the conduct of liquor sales, distribution or gift. (Ord. L-96-89 § 3, 1989: Ord. L-62-87 §

NEW YORK

ır permit such premises to become disorderly. any part thereof, for the sale of lottery tickets, *, or as a simulcast facility or simulcast theater wagering and breeding law,* when duly autho- ɔn, shall not constitute gambling within the

ses consumption shall suffer or permit any the health, safety, and welfare of any person violation of this section shall be subject to the ee's license to sell alcoholic beverages for on- es of this section, the term "dwarfism" means all which is caused by heredity, endocrine eficiency or skeletal diseases that result in lt height of less than four feet ten inches.

operated on regularly scheduled flights by a nsed to sell liquors and/or wines for on- itted to sell liquors and/or wines only to except that a railroad operating licensed cars wines from portable carts located on station rand Central Station, Jamaica, *Hunterspoint* icensed railroad cars depart.

consumption shall be interested, directly or rs, wines or beer are manufactured or sold at ocking directors, mortgage or lien on any ıer means, except that liquors, wines or beer by the person licensed as a manufacturer or ıed by an interstate railroad corporation or a retail license for on-premises consumption, *siness constituting an overnight lodging and he boundaries of the town of North Elba, ard's survey, great lot numbers two hundred e, two hundred eight, two hundred ninety- e hundred, three hundred eighteen, three enty, three hundred thirty-five and three ve, Thorn's survey, great lot numbers one as shown on the Adirondack map, compiled state of New York - nineteen hundred sixty- at page twenty-seven in the Essex county , provided that such facility maintains not id suites for overnight lodging.* Any lien, w held by said retail licensee on or in the acturer or wholesaler, which mortgage, lien, fore December thirty-first, nineteen hundred the provisions of this subdivision; provided, the time of the accrual of the interest,

comprehended by this subdivision shall be upon the person who claims to be entitled to the protection and exemption afforded hereby.

[For sub 14, see parent volume]

15. All retail licensed premises shall be subject to inspection by any peace officer, *acting pursuant to his special duties, or police officer* and by the duly authorized representatives of the liquor authority, or the appropriate board during the hours when the said premises are open for the transaction of business.

(Added, L 1988)

16. No retail license to sell liquor and/or wine for consumption on the premises shall be granted for any public billiard or pocket billiard room, or for establishments of any description in which billiards is played or which maintains any apparatus or paraphernalia for the playing of billiards or pocket billiards and is conducted as a public place of business for profit. Notwithstanding any prohibition to the contrary, a license may be issued to an establishment wherein billiards or pocket billiards are played or may be played on a table which measures not more than three feet by six feet provided that not more than two such tables are in the establishment at any one time and further provided that the cue sticks used, and available for use, are made of light plexiglass or some similar light material.

(Added, L 1989)

17. Notwithstanding any other provision of law, a retail licensee for on-premises consumption that is a person or corporation operating a hotel shall be permitted to sell liquors, beer, and/or wines through a mechanical device or vending machine placed in the lodger's rooms and to which access to such device or machine is restricted by means of a locking device which requires the use of a key, magnetic card or similar device provided, however, that no such key, card or similar device shall be provided to any person under the age of twenty-one or to any person who is visibly intoxicated.

HISTORY:

Sub 1, amd, L 1985, ch 48, § 3, eff June 16, 1985.
Sub 6, amd, L 986, ch 919, § 22, eff Dec 29, 1986.
Sub 6-b, add, L 1990, ch 759, § 1, eff Aug 21, 1990.
Sub 11, amd, L 1983, ch 445, § 1, eff July 15, 1983, L 1985, ch 545, § 1, eff July 24, 1985.
Sub 13, amd, L 1988, ch 209, § 3, eff July 1, 1988.
Sub 15, amd, L 1980, ch 843, § 108, eff Sept 1, 1980.
Sub 16, add, L 1988, ch 64, § 20, eff April 24, 1988.
Sub 17, add, L 1989, ch 217, § 1, eff June 26, 1989.

NOTES:

Editor's Notes:
See 1988 note under § 101.

CROSS REFERENCES:
This section referred to in §§ 64-b, 97, 98, 130.

RESEARCH REFERENCES AND PRACTICE AIDS:

Annotations:
Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon. 98 ALR3d 694.

§ 50.02. Fee

(a) The annual state fee for an original limousine service beverage permit is $100 for each limousine operated by the limousine service.

(b) The annual state fee for the renewal of a limousine service beverage permit is $50 for each limousine operated by the limousine service.

Added by Acts 1987, 70th Leg., ch. 482, § 1, eff. Sept. 1, 1987.

§ 50.03. Recordkeeping; Display of Permit; Rulemaking

The commission shall adopt rules governing the conduct of the holder of a limousine service beverage permit, including defining the term "limousine service," requirements for recordkeeping, display of the permit, and prohibitions against removal from a limousine of alcoholic beverages in their original containers in which purchased.

Added by Acts 1987, 70th Leg., ch. 482, § 1, eff. Sept. 1, 1987.

§ 50.04. Taxes

(a) The taxes imposed by this code shall be paid on all alcoholic beverages in a limousine or in a storage area maintained by a limousine service beverage permittee in accordance with rules prescribed by the commission.

(b) The preparation and service of alcoholic beverages by the holder of a limousine service beverage permit is exempt from the tax imposed by the Limited Sales, Excise, and Use Tax Act (Section 151.001 et seq., Tax Code). A limousine service beverage fee of five cents is imposed on each individual serving of an alcoholic beverage served by the permittee inside the state. The fee accrues at the time the container containing the alcoholic beverage is delivered to the passenger. The permittee shall remit the fees to the commission each month under a reporting system prescribed by rules of the commission.

Added by Acts 1987, 70th Leg., ch. 482, § 1, eff. Sept. 1, 1987.

§ 50.05. Operation in Dry Area

A limousine service beverage permit is inoperative in a dry area.

Added by Acts 1987, 70th Leg., ch. 482, § 1, eff. Sept. 1, 1987.

CHAPTER 51. MINIBAR PERMIT [NEW]

§ 51.01. Eligibility for Permit

The commission or the administrator may issue a minibar permit only to the holder of a mixed beverage permit issued for operation in a hotel.

Added by Acts 1989, 71st Leg., ch. 692, § 2, eff. June 14, 1989.

§ 51.02. Authorized Activities

The holder of a minibar permit may sell the following alcoholic beverages out of a minibar:

(1) distilled spirits in containers of not less than one ounce nor more than two ounces;

(2) wine and vinous liquors in containers of not more than 13 fluid ounces; and

(3) beer, ale, and malt liquor in containers of not more than 12 fluid ounces.

Added by Acts 1989, 71st Leg., ch. 692, § 2, eff. June 14, 1989.

§ 51.03. Limited Access to Minibar

(a) Minibars shall be of such design as to prevent access to alcoholic beverages to all persons who do not have a minibar key. The minibar key shall be different from the hotel

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guestroom key, and the permittee shall not provide the minibar key to any person who is not of legal drinking age.

(b) A permittee may not provide a minibar key to any person other than an employee of the permittee or a registered guest of the hotel.

Added by Acts 1989, 71st Leg., ch. 692, § 2, eff. June 14, 1989.

§ 51.04. Stocking Restrictions

(a) All employees handling distilled spirits, wine, be , ale, and malt liquor being stocked in the minibar must be at least 18 years of age.

(b) A minibar may not be restocked or replenished between the hours of 9 p.m. and 9 a.m. or on any Sunday, and it may contain no more than 40 individual containers of alcoholic beverages at any one time.

(c) A minibar may only be maintained, serviced, or stocked with alcoholic beverages by a person who is an employee of the holder of a minibar permit, and no other person shall be authorized to add alcoholic beverages to a minibar or, with the exception of a registered hotel guest consumer, to remove alcoholic beverages from a minibar.

(d) The holder of a minibar permit shall adhere to standards of quality and purity of alcoholic beverages prescribed by the commission and shall destroy any alcoholic beverages contained in a minibar on the date which is considered by the manufacturer of the alcoholic beverage to be the date the product becomes inappropriate for sale to a consumer.

Added by Acts 1989, 71st Leg., ch. 692, § 2, eff. June 14, 1989.

§ 51.05. Fee

The annual state fee for an original minibar permit is $2,000. The annual state fee for the first renewal of a minibar permit is $1,500. The annual state fee for the second renewal of a minibar permit is $1,000. The annual state fee for the third and each subsequent renewal of a minibar permit is $750.

Added by Acts 1989, 71st Leg., ch. 692, § 2, eff. June 14, 1989.

§ 51.06. Prohibited Interests

The holder of a minibar permit may not have a direct or indirect interest in a package store permit, and no package store may be located on the premises of a hotel in which a mixed beverage permittee holds a minibar permit.

Added by Acts 1989, 71st Leg., ch. 692, § 2, eff. June 14, 1989.

§ 51.07. Mixed Beverage Permit is Primary

All purchases made by a minibar permittee shall be made under the authority of and subject to the limitations imposed on the mixed beverage permit held by the permittee. All sales made by a minibar permittee shall, for tax purposes, be considered sales under the mixed beverage permit held by the permittee and shall be taxed accordingly. To ensure that the marketing of alcoholic beverages for stocking minibars is not used by suppliers for purposes of inducement or unauthorized or illegal advertising, it is further provided that:

(1) No person who holds a permit or license authorizing sale of any alcoholic beverage to mixed beverage permittees may sell or offer to sell alcoholic beverages to a minibar permittee at a cost less than the seller's laid-in cost plus the customary and normal profit margin applicable to other container sizes. The laid-in cost shall be defined as the manufacturer's or supplier's invoice price, plus all applicable freight, taxes, and duties.

(2) Proof of laid-in cost shall become a part of the permanent records of each permittee or licensee supplying alcoholic beverages to minibar permittees and be available for a period of two years for inspection by the commission.

(3) No alcoholic beverages offered for use in a minibar may be sold in connection with or conveyed as part of any promotional program providing a discount on the purchase of any other type, size, or brand of alcoholic beverage.

(4) Distilled spirits in containers with a capacity of more than one but less than two fluid ounces must be invoiced separately from any other alcoholic beverage, and the price must be shown on the invoice.

(5) Distilled spirits in containers with a capacity of more than one but less than two fluid ounces may not be returned by the holder of a minibar permit. Neither may the beverages be exchanged by the holder of a minibar permit or redeemed for any reason other than damage noted at the time of delivery and approved by the commission. Claims for breakage or shortage after delivery to a minibar permittee shall not be allowed.

(6) No person holding a wholesaler's, local distributor's, or package store permit may participate in the cost of producing any room menu, beverage list, table tent, or any other device or novelty, written or printed, relating to the sale of distilled spirits in containers with a capacity of more than one but less than two fluid ounces. No permittee or licensee authorized to sell alcoholic beverages to a minibar permittee may pay for or contribute to the cost of providing in-house television or radio announcements to be used by any holder of a minibar permit to promote the sale of alcoholic beverages.

Added by Acts 1989, 71st Leg., ch. 692, § 2, eff. June 14, 1989.

§ 51.08. Distilled Spirits Purchases

Distilled spirits purchased for resale in a minibar must be purchased in unbroken cases, and the cases shall bear the appropriate identification stamps.

Added by Acts 1989, 71st Leg., ch. 692, § 2, eff. June 14, 1989.

§ 51.09. Coin-Operated Machines Prohibited

Nothing in this chapter shall be construed as authorizing nor may the commission or administrator authorize the sale of any alcoholic beverage from a coin-operated machine or similar device.

Added by Acts 1989, 71st Leg., ch. 692, § 2, eff. June 14, 1989.

§ 51.10. Commission May Adopt Rules

The commission may adopt rules necessary to regulate the use and operation of minibars.

Added by Acts 1989, 71st Leg., ch. 692, § 2, eff. June 14, 1989.

SUBTITLE B. LICENSES

Cross References

Judges of County Courts at Law Nos. 2 and 3 of Bexar County, grants or denials of licenses under this code, see V.T.C.A. Government Code, § 25.0172(b).

CHAPTER 61. PROVISIONS GENERALLY APPLICABLE TO LICENSES

SUBCHAPTER B. APPLICATION AND ISSUANCE OF LICENSES

Section

61.311. Masters in Certain Counties.
61.312. Delegation of Duties of County Judge. [New]
61.381. Notice by Sign.

Cross References

Food service establishments, standards enforced by counties and public health districts, conflict with provisions of this code, see Vernon's Ann.Civ.St. art. 4476-5g, § 5.

SUBCHAPTER C. CANCELLATION AND SUSPENSION OF LICENSES

Section

61.711. Retail Dealer: Conviction of Offense Relating to Discrimination.
61.712. Grounds for Cancellation or Suspension: Sales Tax.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

WISCONSIN

the original package or container. In addition, wine may be sold in the original package or container in any quantity to be consumed off the premises where sold. This paragraph does not apply in municipalities in which the governing body elects to come under par. (b) or to a winery that has been issued a "Class B" license. Paragraph (am) applies to all wineries that have been issued a "Class B" license.

(am) A "Class B" license issued to a winery authorizes the sale of wine to be consumed by the glass or in opened containers only on the premises where sold and also authorizes the sale of wine in the original package or container to be consumed off the premises where sold, but does not authorize the sale of fermented malt beverages or any intoxicating liquor other than wine.

(b) In all municipalities electing by ordinance to come under this paragraph, a retail "Class B" license authorizes the sale of intoxicating liquor to be consumed by the glass only on the premises where sold and also authorizes the sale of intoxicating liquor in the original package or container, in multiples not to exceed 4 liters at any one time, and to be consumed off the premises where sold. Wine, however, may be sold for consumption off the premises in the original package or otherwise in any quantity. This paragraph does not apply to a winery that has been issued a "Class B" license. Paragraph (am) applies to all wineries that have been issued a "Class B" license.

125.51(3)(c)

(bm) Notwithstanding pars. (a) and (b) and s. 125.04 (3) (a) 3 and (9), a "Class B" license authorizes a person operating a hotel to furnish a registered guest who has attained the legal drinking age with a selection of intoxicating liquor in the guest's room which is not part of the "Class B" premises. Intoxicating liquor furnished under this paragraph shall be furnished in original packages or containers and stored in a cabinet, refrigerator or other secure storage place. The cabinet, refrigerator or other secure storage place must be capable of being locked. The cabinet, refrigerator or other secure storage place shall be locked, or the intoxicating liquor shall be removed from the room, when the room is not occupied and when intoxicating liquor is not being furnished under this paragraph. A key for the lock shall be supplied to a guest who has attained the legal drinking age upon request at registration. The hotel shall prominently display a price list of the intoxicating liquor in the hotel room. Intoxicating liquor may be furnished at the time the guest occupies the room, but for purposes of this chapter, the sale of intoxicating liquor furnished under this paragraph is considered to occur at the time and place that the guest pays for the intoxicating liquor. Notwithstanding s. 125.68 (4) (c), the guest may pay for the intoxicating liquor at any time if he or she pays in conjunction with checking out of the hotel. An individual who stocks or accepts payment for alcohol beverages under this paragraph shall be the licensee, the agent named in the license if the licensee is a corporation or the holder of a manager's or operator's license or be supervised by one of those individuals.

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(1)(a) which read: "(a) Steam beer manufacturer exclusively

(2) substituted "7,000" for "10,000" in (35).

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s at the same time charging for product provided or service
, thereby necessitating alcoholic beverage license. (1985) 68

nicating liquor statutes, 100 ALR3d 850.

n 23320, each license shall bear an annual renewal
Section 23320. All money collected from the fees
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provided further that any duplicate license issued
bear the same fee specified by subdivision (35) of

CALIFORNIA

Amendments:
1981 Amendment: Substituted "100" for "45" before "calendar days" in the fourth sentence.
1985 Amendment: Amended the first sentence by (1) substituting "7,000" for "10,000" wherever it appears; and (2) deleting ", respecting which vessel a duplicate license has also been issued under Section 23321.6" at the end of the sentence.
License fee: B & P C § 23954.7.

§ 23355.2. Sale of alcoholic beverages by hotel or motel by means of controlled access beverage cabinet

(a) For purposes of this section, "controlled access alcoholic beverage cabinet" means a closed container, either refrigerated, in whole or in part, or nonrefrigerated, and access to the interior of which is (1) restricted by means of a locking device which requires the use of a key, magnetic card, or similar device, or (2) controlled at all times by the licensee.

(b) Notwithstanding any other provision of this division, a hotel or motel having an on-sale license may sell alcoholic beverages to its registered guests by means of a controlled access alcoholic beverage cabinet located in the guestrooms of those registered guests, provided that each of the following conditions is met:

(1) Access to a controlled access alcoholic beverage cabinet in a particular guestroom is provided, whether by furnishing a key, magnetic card, or similar device, or otherwise, only to the adult registered guest, if any, registered to stay in the guestroom.

(2) Prior to providing a key, magnetic card, or other similar device required to attain access to the controlled access alcoholic beverage cabinet in a particular guestroom to the registered guest thereof, or prior to otherwise providing access thereto to the registered guest, the licensee shall verify, in accordance with Article 3 (commencing with Section 25657), of Chapter 16 of this division, that each registered guest to whom a key, magnetic card, or similar device is provided, or to whom access is otherwise provided, is not a minor.

(3) All employees handling the alcoholic beverages to be placed in the controlled access alcoholic beverage cabinet in any guestroom, including, but not limited to, any employee who inventories or restocks and replenishes the alcoholic beverages in the controlled access alcoholic beverage cabinet, shall be at least 21 years of age.

(4) There is no replenishing or restocking of the alcoholic beverages in any controlled access alcoholic beverage cabinet between the hours of 2 a.m. and 6 a.m. of the same day.

(c) Notwithstanding any other provision of this division, a hotel or motel having an on-sale general license may, upon issuance of a permit from the department, sell from its controlled access alcoholic beverage cabinets distilled spirits in containers of 50 milliliters or less, or in containers of comparable size. The department shall charge an annual fee for a permit issued pursuant to this subdivision equal to the annual renewal fee applicable to an off-sale general license pursuant to Section 23320.

(d) Notwithstanding any other provision of this division, a hotel or motel having an on-sale general license and an off-sale general license may sell from its controlled access alcoholic beverage cabinets distilled spirits in containers of 50 milliliters or less, or in containers of comparable size, without having to obtain the permit specified in subdivision (c).

(e) A controlled access alcoholic beverage cabinet may be part of another cabinet or similar device, whether refrigerated, in whole or in part, or nonrefrigerated, from which nonalcoholic beverages or food may be purchased by the guests in hotel or motel guestrooms. However, in that event, the portion of the cabinet or similar device in which alcoholic beverages are stored shall be a controlled access alcoholic beverage cabinet, as defined in this section.

(f) For purposes of this section, "hotel" or "motel" shall mean an establishment which is licensed to sell alcoholic beverages and which contains guestroom accommodations with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this subdivision, the existence of other legal relationships as between some occupants and the owner or operator thereof shall be immaterial.

Added Stats 1985 ch 280 § 1; Amended Stats 1986 ch 458 § 1.

Amendments:
1986 Amendment: (1) Added "having an on-sale license" in the introductory clause of subd (b); (2) deleted former subd (b)(5) which read: "(5) Distilled spirits shall not be sold by means of a controlled access alcoholic beverage cabinet unless an off-sale general license is also issued for the premises."; (3) added subds (c) and (d); and (4) redesignated former subds (c) and (d) to be subds (e) and (f).

Note—Stats 1985 ch 280 provides:

SEC. 2. The Legislature declares that nothing in this act shall be construed in any manner whatsoever as modifying, revoking, repealing, or otherwise altering the prohibitions of Article 2 (commencing with Section 25631) of Chapter 16 of this division.

Hours of sale and delivery of alcoholic beverages: B & P C §§ 25631 et seq.

§ 23356.2. Beer manufactured for personal or family use

No license or permit shall be required for the manufacture of beer for personal or family use, and not for sale, by a person over the age of 21 years. The aggregate amount of beer with respect to any household shall not exceed (a) 200 gallons per calendar year if there are two or more adults in such household, or (b) 100 gallons per calendar year if there is only one adult in such household.

Any beer manufactured pursuant to this section may be removed from the premises where manufactured

P.A. 84–551, which revised terminology and extended a statute of limitations (ch. 10, ¶ 13–214), in the third from the last paragraph, substituted "allow" for "suffer".

P.A. 84–816 inserted the paragraph relating to provision of alcohol in long term care facilities.

P.A. 84–1081, in the first paragraph, added sentence relating to sales in fire protection district buildings.

P.A. 84–1111, which incorporated the amendments to this paragraph by all earlier Acts of the 84th General Assembly, inserted two paragraphs relating to sales of alcoholic liquor at the Willard Ice Building; and also inserted the paragraph relating to the use of catering establishments to sell or dispense alcoholic liquors at authorized functions.

Section 2 of P.A. 84–1111, approved Feb. 28, 1986, provided:

"This Act takes effect upon becoming a law."

P.A. 84–1228, which incorporated the amendments to this paragraph by all earlier Acts of the 84th General Assembly, inserted the paragraph relating to beer and wine sales at entertainment events on premises owned by the Kane County Forest Preserve District.

Section 2 of P.A. 84–1228, approved July 24, 1986, provided:

"This Act shall take effect upon becoming law."

References

Decisions

Individual who leases concession space in a state park must obtain both local and state license before selling alcoholic liquors. 1979 Op.Atty.Gen. No. S–1469.

This paragraph merely constitutes an exemption from general prohibition against sale or delivery of alcoholic beverages in any building belonging to or under control of state or any political subdivision thereof; it does not provide exemption from licensing. Id.

An Illinois Municipal Corporation may not lease or otherwise permit its facilities to be used by a charitable organization for function where alcoholic beverages will be distributed either by the sale of tickets or

ILLINOIS

gratuitous disbursement. 1976 Op.Atty. Gen. No. S–1139.

131. Sales to and possession by persons under 21, intoxicated persons, persons under legal disability or in need of mental treatment—Proof of identity and age—Gatherings where one or more persons are under 18—Violations and penalties—Renting hotel or motel rooms

§ 6–16. (a) No licensee nor any officer, associate, member, representative, agent or employee of such licensee shall sell, give or deliver alcoholic liquor to any person under the age of 21 years, or to any intoxicated person or to any person known by him or her to be under legal disability or in need of mental treatment. No person, after purchasing or otherwise obtaining alcoholic liquor, shall sell, give or deliver such alcoholic liquor to another person under the age of 21 years, except in the performance of a religious ceremony or service. Whoever violates the provisions of this paragraph of this subsection (a) is guilty of a Class A misdemeanor.

For the purpose of preventing the violation of this section, any licensee, or his agent or employee, may refuse to sell or serve alcoholic beverages to any person who is unable to produce adequate written evidence of identity and of the fact that he or she is over the age of 21 years.

Adequate written evidence of age and identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act,[1] or an identification card issued to a member of the Armed Forces. Proof that the defendant-licensee, or his employee or agent, demanded, was shown and reasonably relied upon such written evidence in any transaction, forbidden by this Section is competent evidence and may be considered in any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.

Any person who sells, gives, or furnishes to any person under the age of 21 years any false or fraudulent written, printed, or photostatic evidence of the age and identity of such person or who sells, gives or furnishes to any person under the age of 21 years evidence of age and identification of any other person is guilty of a Class A misdemeanor.

Any person under the age of 21 years who presents or offers to any licensee, his agent or employee, any written, printed or photostatic evidence of age and identity which is false, fraudulent, or not actually his own for the purpose of ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure, the serving of any alcoholic beverage, or who has in his possession any false or fraudulent written,

printed, or photostatic evidence of age and identity, is guilty of a Class B misdemeanor.

Any person under the age of 21 years who has any alcoholic beverage in his possession on any street or highway or in any public place or in any place open to the public is guilty of a Class B misdemeanor. This Section does not apply to possession by a person under the age of 21 years making a delivery of an alcoholic beverage in pursuance of the order of his or her parent or in pursuance of his or her employment.

(b) Except as otherwise provided in this Section whoever violates this Section shall, in addition to other penalties provided for in this Act, be guilty of a Class B misdemeanor.

(c) Any person shall be guilty of a petty offense where he or she knowingly permits a gathering at a residence which he or she occupies of two or more persons where any one or more of the persons is under 18 years of age and the following factors also apply:

(1) the person occupying the residence knows that any such person under the age of 18 is in possession of or is consuming any alcoholic beverage; and

(2) the possession or consumption of the alcohol by the person under 18 is not otherwise permitted by this Act; and

(3) the person occupying the residence knows that the person under the age of 18 leaves the residence in an intoxicated condition.

For the purposes of this subsection (c) where the residence has an owner and a tenant or lessee, there is a rebuttable presumption that the residence is occupied only by the tenant or lessee.

(d) Any person who rents a hotel or motel room from the proprietor or agent thereof for the purpose of or with the knowledge that such room shall be used for the consumption of alcoholic liquor by persons under the age of 21 years shall be guilty of a Class C misdemeanor.

Laws 1933–34, 2nd Sp.Sess., p. 57, art. VI, § 12, eff. Jan. 31, 1934. Amended by Laws 1951, p. 1557, § 1, eff. July 16, 1951; Laws 1953, p. 1182, § 1, eff. July 13, 1953; Laws 1961, p. 2479, § 1, eff. Aug. 1, 1961; Laws 1963, p. 2529, § 1, eff. Aug. 7, 1963; P.A. 77–2410, § 1, eff. Jan. 1, 1973; P.A. 78–26, art. VI, § 1, eff. Oct. 1, 1973; P.A. 78–630, § 1, eff. Oct. 1, 1973; P.A. 78–1297, § 15, eff. March 4, 1975; P.A. 81–212, § 1, eff. Jan. 1, 1980. Renumbered § 6–16 and amended by P.A. 82–783, Art. VI, § 2, eff. July 13, 1982. Amended by P.A. 83–706, § 27, eff. Sept. 23, 1983; P.A. 83–834, § 1, eff. July 1, 1984; P.A. 83–1362, Art. II, § 54, eff. Sept. 11, 1984; P.A. 84–272, § 6, eff. Jan. 1, 1986; P.A. 84–1379, § 1, eff. Jan. 1, 1987.

[1] 50 U.S.C.A. App. § 451 et seq.

Historical Note

This paragraph is derived from R.S. 1874, p. 438, §§ 6, 6½.

As originally enacted the paragraph read: "No licensee shall sell, give or deliver alcoholic liquor to any minor, or to any intoxicated person or to any person known

id identity, is guilty of a Class B

who has any alcoholic beverage
vay or in any public place or in
f a Class B misdemeanor. This
y a person under the age of 21
c beverage in pursuance of the
ance of his or her employment.

his Section whoever violates this
ties provided for in this Act, be

petty offense where he or she
ence which he or she occupies of
more of the persons is under 18
lso apply:

ice knows that any such person
f or is consuming any alcoholic

the alcohol by the person under
ct; and

ce knows that the person under
intoxicated condition.

(c) where the residence has an
rebuttable presumption that the
t or lessee.

motel room from the proprietor
ith the knowledge that such room
lcoholic liquor by persons under
Class C misdemeanor.

12, eff. Jan. 31, 1934. Amended by Laws 1953, p. 1182, § 1, eff. July 13, 1961; Laws 1963, p. 2529, § 1, eff. 1973; P.A. 78–26, art. VI, § 1, eff. 1973; P.A. 78–1297, § 15, eff. March Renumbered § 6–16 and amended 1982. Amended by P.A. 83–706, eff. July 1, 1984; P.A. 83–1362, Art. § 6, eff. Jan. 1, 1986; P.A. 84–1379,

Note

"No licensee shall sell, give or deliver coholic liquor to any minor, or to any toxicated person or to any person known

by him to be an habitual drunkard, spendthrift or insane, feeble-minded or distracted person."

The 1951 amendment substituted "mentally ill, mentally deficient or in need of mental treatment" for "feeble-minded or distracted person".

The 1953 amendment made the paragraph applicable to officers, agents, employees and others acting for a licensee, and it provided a penalty for violation of the paragraph.

The 1961 amendment substituted "person under the age of 21 years" for "minor".

The 1963 amendment in the first paragraph added what is now the second sentence.

P.A. 77–2410 provided that a person violating the paragraph was guilty of a Class B misdemeanor.

The amendment by P.A. 77–2410 was necessary to conform penalties under this paragraph with the Unified Code of Corrections, see ch. 38, ¶ 1001–1–1 et seq.

Section 2 of P.A. 77–2410 provided an effective date of January 1, 1973.

P.A. 78–26 designated the subdivisions of the paragraph; inserted subd. (b) which read:

"(b) Subsection (a) of this Section does not apply to the sale, gift or delivery of beer and wine to persons under the age of 21 years but at least 19 years of age."

and in subd. (a) referred to the exception of subd. (b).

P.A. 78–630 in what is now the first paragraph of subd. (a) following "21 years" inserted "or in the case of beer and wine, under the age of 19 years"; and in subd. (a) added the second to sixth paragraphs.

P.A. 78–1297, the 1974 Revisory Act, declared in its title that it related to "certain nonsubstantive revisions of the law to resolve differences among the several forms of certain Sections amended by more than one Act of the 78th General Assembly".

P.A. 81–212, in subd. (a), in the first, second, fifth and sixth paragraphs deleted "or in case of beer and wine, under the age of 19 years" where it appeared following "21 years"; deleted former subd. (b) as added by P.A. 78–26; and designated a penalty provision as subd. (b).

P.A. 82–783, Art. VI renumbered Sections of the Liquor Control Act of 1934 and amended other Acts to revise cross references to the renumbered Sections.

For provisions of P.A. 82–783, Art. I, § 1 relating to intent and supersedure and Art. XII, § 1 relating to effective dates and extension or revival of repealed Acts, see Historical Note following ch. 23, ¶ 4–2.

P.A. 83–706 revised statutory terminology related to persons under legal and developmental disabilities; deleted references to conservators or substituted references to guardians; and inserted gender references.

P.A. 83–834, in subd. (b), inserted "Except as otherwise provided in this Section"; and added subd. (c).

P.A. 83–1362, Art. II, the 1984 Revisory Act provided in § 0.1:

"This Article provides for the nonsubstantive revision or renumbering or repeal of Sections of Acts necessitated by the amendment, addition or repeal of Sections by two or more Public Acts of the 83rd General Assembly, which multiple action was not resolved by one of the Acts of the 83rd General Assembly affecting the particular Section."

For provisions of P.A. 83–1362, Art. I, § 1 relating to intent and Art. V, § 1 relating to effective date and nonacceleration, see Historical Note following ch. 5, ¶ 55.19.

P.A. 84–272, in the first paragraph of subd. (a), added "Whoever violates the provision of this paragraph of this subsection (a) is guilty of a Class A misdemeanor."

P.A. 84–1379, which incorporated the amendment by P.A. 84–272, added subd. (d).

Cross References

Liquor in jails, see ch. 75, ¶ 118.
Local licenses, revocation or suspension, see ¶ 149 of this chapter.
State licenses, revocation or suspension, see ¶ 108 of this chapter.

SB

187

(7)

HOUSE COMMITTEE REPORT

Date Referred: May 17, 1991 FURTHER REFERRALS:

Date of Committee Action: 5-19-91

The JUDICIARY Committee considered: CSSB 187(JUD)

CS FOR SENATE BILL NO. 187 (JUDICIARY) FAILURE TO DISCLOSE: SALES OF REALTY

"An Act relating to certain failures to disclose in real property transactions."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] 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) _____

[ ] zero fiscal note _____ [X] zero fiscal note(s) CED 4-12-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Terry Martin	✓				
Mark Farley	X				
Mike Miller	✓				
Jim Ellis	✓				
Debra Dudley	✓				
Bill Hinchey	✓				

Debra Dudley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1

Bill Version: SB 187

(S) Publish Date: 4/12/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Commerce & Economic Dev.

Title: An Act relating to the disclosure of certain facts in real property transactions

BRU: Occupational Licensing

Component: Administration

Sponsor: Senate Labor & Commerce

Requestor: Senate Labor & Commerce

COMPONENT SERIAL NO. 0 3 5 6

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						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

Changes in CS SB 187 (Jud) have no fiscal impact. This fiscal note is appropriate.

5-7-91 date — DiSalvo Comte Aide (initial)

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.) The bill releases liability of an owner, the owner's agent, and the agent of the transferee with an interest in real property, from disclosing certain facts in real property transactions. Although the bill affects real estate licensees, the bill does not impact the licensing of real estate agents.

Prepared By: Jennifer Strickler, Administrative Officer Phone: 465-2144

Division: Occupational Licensing Date: 3/22/91

Approved by Commissioner: Glenn A. Olds Asst. Comm.

Agency: Department of Commerce & Economic Development Date: 3-22-91

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

Rev 10/90
JS/dg19224D/032191a

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 187

Revision Date: _____ Department Affected: Commerce & Economic Dev.

Title: An Act relating to the disclosure of certain facts in real property transactions

BRU: Occupational Licensing

Component: Administration

Sponsor: Senate Labor & Commerce

Requestor: Senate Labor & Commerce

COMPONENT SERIAL NO. 0 3 5 6

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						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.) The bill releases liability of an owner, the owner's agent, and the agent of the transferee with an interest in real property, from disclosing certain facts in real property transactions. Although the bill affects real estate licensees, the bill does not impact the licensing of real estate agents.

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Rev 10/90
JS/dg19224D/032191a

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Halford
Senator Jay Kertula

WHILE IN JUNEAU
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(907) 561-2018

SENATE LABOR AND COMMERCE COMMITTEE

TO: Representative Dave Donley

FROM: Senator Drue Pearce

DATE: May 14, 1991

RE: Scheduling of Psychologically Impacted Properties Bill (SB-187).

Senate Bill 187 was requested by the Alaska Association of Realtors in an effort to bring state law into compliance with federal law.

Currently, under federal law, if a seller or his agent directly or inadvertently discloses that a previous inhabitant of a property had AIDs he is in violation of the Federal Fair Housing Act of 1968 Amendment. The federal law's intent is to protect handicapped individuals from unfair housing discrimination.

Under Alaska state tort law, if a seller or his agent does not disclose "material" facts that affect the value of the property under negotiation, he can be sued for the difference in perceived value. A "material" fact is broadly defined by state courts to mean anything that affects the price a reasonable consumer is willing to pay for a product or service.

Senate Bill 187 will make the following fact "immaterial": The disclosure of any information that is deemed discriminatory under the U.S. Fair Housing Act (42 U.S.C. 3601 - 3631).

Would you schedule this bill for a hearing in House Judiciary Committee as soon a possible pending a referral from the House Labor and Commerce Committee.

5/17/91

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 14, 1991 FURTHER REFERRALS: Judiciary

Date of Committee Action: 5-16-91

The LABOR AND COMMERCE Committee considered: CSSB 187(JUD)

CS FOR SENATE BILL NO. 187 (JUDICIARY)

FAILURE TO DISCLOSE: SALES OF REALTY

"An Act relating to certain failures to disclose in real property transactions."

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)

[ ] fiscal impact _____
[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____
[✓] Senate zero fiscal note(s) DCED 4-12-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Finkelstein					
		Parnell		✓	
		Ivan		✓	
		Brackman		—	

Finkelstein
CHAIRMAN'S SIGNATURE

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH
SECTION OF NURSING

WALTER J. HICKEL, GOVERNOR

JUNEAU HEALTH CENTER
320 WEST WILLOUGHBY
SUITE 202
JUNEAU, ALASKA 99801-1777
PHONE: (907) 586-3736

463

M E M O R A N D U M

DATE: MAY 17, 1991

TO: Representative Pat Parnell

FROM: Fran Kinkead
Public Health Nurse F. Kinkead

SUBJECT: SB 187

Human immunodeficiency virus is a virus that causes AIDS. Regarding ways the HIV virus can be transmitted:

1) Blood to blood: Infected blood from one individual coming in contact with blood from another individual ie;
   Sharing IV drug needles, ear piercing and tattoo needles, razor blades, tweezers and tooth brushes (if bleeding gums). Through organ donors and blood products before 1985.

2) Sexual Contact:
   Exchange of vaginal secretions or semen through unprotected oral, vaginal or anal sex.

3) Perinatal Transmission:
   Acquired in the womb, before birth during birth or through breast milk.

There is no evidence that HIV can spread through body fluids like saliva, tears, urine, feces and sweat. HIV is not spread through routine contact in households, schools, work places or public settings.

See enclosed

FK/kmlc
cc: Mary O'Bryan

MAR 18 19

REALTOR®

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

March 13, 1991

Senator Drue Pearce
Alaska State Legislature
P.O. Box V
Juneau, AK 99811
Telefax 463-5352

Re: S.B. 187

Dear Senator Pearce:

The Alaska Association of REALTORS® is writing in support of S.B. 187, "an act relating to the disclosure of certain facts in real property transactions."

This short bill, if enacted, would serve to clarify the duties and responsibilities of real property owners and real estate agents with regard to disclosure of certain facts surrounding so-called "psychologically impacted" properties.

Currently, fourteen other states have this type of legislation in place. The Alaska Association of REALTORS® supports S.B. 187 and urges the legislature to act on passage of this bill.

Sincerely,

Dea Turner ap

Dea Turner
Executive Vice President

REALTOR®

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

DATE: March 18, 1991

TO: Senator Drue Pearce

FROM: Dea Turner
Executive Vice President

SUBJECT: S.B. 187

In response to your request for an analysis of the proposed legislation, the Alaska Association of REALTORS® offers the following.

Enactment of S.B. 187 serves several important functions. First, it provides protection to an owner's interest in real property in that it limits the stigma that may be attached to a particular property through the acts of the former owner, or by events that may have occurred on the property. Acts or occurrences are not "material facts" that should have any bearing on establishing the value of a property. Likewise, the value of a property should not be indefinitely affected by an act or occurrence that may have taken place years previously. In short, this bill protects an owner's ability to receive fair market value for the property at time of sale or rental.

Secondly, S.B. 187 protects both an owner and his agent or representative from inadvertent violation of the Fair Housing Act of 1968 amendment, which establishes certain groups of people that are protected from discrimination. One of these groups is handicapped individuals, which includes victims of AIDS.

On May 9, 1990, HUD's General Counsel, Frank Keating, made the following statement in a letter to the National Association of REALTORS®: "We agree that unsolicited statements made by a real estate broker or agent that a current or previous occupant of the property has AIDS would violate

the (Federal Fair Housing Act). A broker's unsolicited statements to a prospective buyer or renter would indicate a discriminatory preference or limitation based on handicap." In this same letter, Mr. Keating went on to say that if asked whether an occupant has AIDS, a broker should decline to respond.

Finally, this bill reiterates for real estate agents as seller's/owner's representatives their fiduciary obligation to protect the client's confidences and not to disclose anything that would harm the client.

At the present time the following states have adopted similar legislation: Nevada, Connecticut, California, Rhode Island, Georgia, Oklahoma, Oregon, South Carolina, North Carolina, Florida, Hawaii, Texas, Illinois, and New Jersey.

We hope this clarifies for you the positive effect this legislation would have.

Director's Report

Between a Rock and a Hard Place

by Mary Bettis, The Bettis Co.

A new area of disclosure issues is emerging — psychologically impacted (or stigmatized) property — which involves disclosure of facts not associated with the real estate itself, but rather facts about the owner or occupant of the property.

REALTORS FIND THEMSELVES BETWEEN A ROCK . . .

Would you as a REALTOR disclose to a potential buyer or tenant that occupants of a residence have or had AIDS? Would you disclose the fact that the property was the site of a homicide, other felony, or a suicide? What is your responsibility to seek such personal information about the seller or previous tenant? Might it be considered a material factor?

. . . AND A HARD PLACE

If you were to disclose such psychological factors, would you be guilty of discrimination, or of invasion of privacy? By merely bringing up the matter in your disclosure, would you create or keep alive a stigman — feelings that adversely affect the value of the property? Would you violate your responsibility to your owner/client?

My partners and I discovered first hand the adverse effect of keeping a stigma alive. Three years ago, a woman and her two children were murdered in an apartment building which we own. Everyone, tenants and neighbors as well as ourselves, were determined to cooperate with the police investigation in any way possible. The apartment was sealed and the area cordoned off.

There was a prolonged investigation and notoriety. Tenants moved and were difficult to replace. Finally, when a relative of the victims was apprehended, tried, and convicted for the crime, and the victims' apartment was made new from the wallboard out, we thought we could put the matter behind us.

But soon after the conviction, the victims' husband and father called the new tenants living in the apartment. He told them his wife and children had been murdered there, and wondered if he could come over and look around one last time before leaving town. The tenants gave their moving notice that day.

On advice of council, we have since disclosed the matter to every prospective tenant. In doing so, we feel we needlessly keep alive the psychologically chilling effect, sabotage our efforts to create a pleasant environment, and adversely affect the value of our property.

IS DISCLOSURE REQUIRED . . .?

Much of the concern with the question of disclosure began with *Reed* v. *King*, 145 Cal. App. 3rd 261 Rprt. 130 (1983), a California court case, regarding the sale of a home in which a woman and her four children had been murdered 10 years prior to the sale. Neither the seller of nor his agent informed the purchaser that the murder had taken place. Both the seller and agent represented that the house was in good condition and fit for an alderly lady living alone. After the purchaser moved in, she was informed by the neighbors that no one had been interested in purchasing the property because of the stigma following the murders. The buyer sued alleging the property was worth less because of the murders. The trial court dismissed the case. But on appeal, the court held that a vendor of real property has a duty to disclose to the purchaser facts materially affecting the value of the property when the facts are known only to the vendor and are not readily detectable by the purchaser.

This case was the first to find a cause of action for the failure to disclose a stigma attached to a residential property. The same line of reasoning could be used for failure to disclose the stigma that might attach to a residence as a result of habitation by an AIDS victim.

The *Reed* v. *King* case was cited in a civil action involving the sale of a home in California. In *Roberts* v. *Heramb*, slip op. no. 5943942, the purchaser sued to rescind a purchase agreement and recover a $10,000 escrow desposit when she learned of the death of one of the sellers of hepatitis and the illness of the other seller with pneumonia. The purchaser suspected that at least one of the sellers had AIDS. The case was settled out of court. It has no value as precedent. But it did show that a complaint could be filed based on an allegation that the seller failed to disclose the habitation of an AIDS victim in a residence for sale.

OR IS DISCLOSURE PROHIBITED . . .?

In response to the problem, California enacted legislation which provides that no cause of action shall arise against a seller of real property, or his agent, for a failure to disclose deaths which occurred on the property more than 3 years prior to sale. The California statute also provides immunity for failure to disclose that a prior occupant had, or was suspected to have, AIDS.

The Federal Fair Housing Act of 1968 amendments, effective March 12, 1989, include the handicapped as a new protected class. Real estate agents and brokers are prohibited from discriminating agains the handicapped (which can include persons with AIDS) in the sale or rental of real property. Although the legislation does not directly address the issue of whether a real estate licensee can, without being specifically questioned by a potential buyer, disclose that an occupant of a property for sale had or was suspected to have AIDS, such a disclosure could be considered a discriminatory action which is clearly prohibited by the Federal Air Housing

Act. However, neither the Act nor the regulations, makes clear a licensee's course of action if directly asked by a potential buyer whether the property has been the home of an AIDS victim.

In response to the problem, The National Association of Realtors adopted a policy and model legislation. Anita Bates and her committee got to work seeing a sponsor to introduce a bill in Juneau this session. The text of the policy and model legislation follows:

NATIONAL ASSOCIATION OF REALTORS® POLICY

Psychologically Impacted Properties

The NATIONAL ASSOCIATION OF REALTORS® encourages states to adopt legislation to declare that all psychological impacts or stigmas which are associated with real property are not material facts and need not be disclosed to a potential purchaser or lessee. (1989 Statement of Policy, page 14)

NATIONAL ASSOCIATION OF REALTORS® ACTIVITY

In addition to the policy statement, the NATIONAL ASSOCIATION OF REALTORS® has provided each state REALTOR® Association with the following model legislative language on Psychologically Impacted Property:

The following language is proposed to be drafted into bill form appropriate to the legislative style of the state to amend the real estate license law:

Sections _____ of Chapter _____ of the laws of the State of _____ the Real Estate Licensure Act of (19____), are hereby amended to read as follows:

(1) Section _____: The fact or suspicion that a property might be or is psychologically impacted, such impact being the result of facts or suspicious, including but not limited to:
   (a) that an occupant of real property is, or was at any time suspected to be, infected or has been infected with Human Immuno-deficiency Virus or diagnosed with Acquired Immune Deficiency Syndrome, or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place; or
   (b) that the property was; or was at any time suspected to have been, the site of a homicide, or other felony or a suicide; is not a material fact that must be disclosed in a real estate transaction.

(2) Section _____: No cause of action shall arise against an owner of real estate or his or her agent for the failure to disclose to the transferee that the transferred property was psychologically impacted as defined in Section _____ of this Chapter.

(The National Association of Realtors provided the background information for this article.)

A Quarterly Publication of the Office of the General Counsel

For The Record . . .

REALTOR®

Vol. 1 Fall 1990

HUD Says AIDS Disclosure Can Violate Title VIII

by Robert D. Butters, Deputy General Counsel

One of the most perplexing issues confronting real estate brokers and their legal counsel is the relationship between the recent changes to Title VIII contained in the Federal Fair Housing Act Amendments of 1988 and state tort law. Nowhere is this ambiguity more acute than over the question of when, if ever, a real estate broker may disclose that an owner or occupant of a dwelling has, or recently died from, AIDS or an AIDS related illness. The issue arises from a direct confrontation between two well established public policies. The first is the policy of non-discrimination against persons with handicaps reflected in the recent Title VIII amendments. A second, and arguably conflicting, public policy is reflected in the evolving common law of misrepresentation, and the broad consumer protection statutes adopted by many states prohibiting acts or omissions that are, or can be, misleading or deceptive. The key issue in most misrepresentation or consumer fraud cases is whether the alleged statement or omission was "material." A "material" fact in turn is broadly defined to mean anything that bears upon the price a reasonable consumer is willing to pay for a product or service.

Broadly construing the "materiality" concept, a creditable argument can be made that a property owner's AIDS condition is material given the fear, albeit irrational, held by some persons that AIDS can be transmitted by casual contact notwithstanding the overwhelming scientific evidence to the contrary, and also the social stigma attached to homosexuality and intravenous drug use through which AIDS is known to be communicated. The argument that an owner's AIDS condition is a material fact is also bolstered by decisions such as *Reed v. King*, 145 Cal. App. 3d 261, 193 Cal. Rptr. 130 (1983), which held that a murder occurring on the premises several years earlier could be a material fact if the plaintiff could prove a loss of market value attributed to the property's stigma.

Given the conflict between the competing public policies of non-discrimination against AIDS victims in the provision of real estate related services, and prohibiting the withholding of material facts from consumers about products and services for sale, the National Association sought an opinion in January of 1990 from the General Counsel of the Department of Housing and Urban Development concerning whether, and under what circumstances, the federal fair housing laws prohibit a real estate broker from disclosing

In This Issue:

in the owner's household has ... from ... of ...

AIDS Legislation

Several states have passed legislation on disclosure of AIDS and other stigmas such as murders, suicides and ghosts. Most of the statutes provide that the particular stigmas are not material facts, and there is no cause of action against the owner or real estate agent for failing to disclose this information.

STATE RECAP

NY - AIDS and other stigmas
CT - AIDS and other stigmas
CA - AIDS and other stigmas
RI - AIDS and other stigmas
GA - AIDS and other stigmas
DC - AIDS and other stigmas
OR - AIDS and other stigmas
SC - AIDS and other stigmas
NC - AIDS and other stigmas
FL - AIDS only
HI - AIDS only
TX - AIDS only
IL - AIDS only
NJ - AIDS only (Real Estate Commission Advisory Opinion)

Note: Consult statute or regulation for specific information on the real estate agent's duties and obligations.

Please direct questions and information to Holly Heckathorne, Associate Counsel, Office of the General Counsel, NATIONAL ASSOCIATION OF REALTORS®, 430 North Michigan Avenue, Chicago, Illinois 60611.

occupant is a swimming ...

The National Association's concern, therefore, is not with the substance of HUD's advice regarding the proper response to a buyer's direct question about an occupant's AIDS condition, but rather HUD's rationale for its advice. In his May letter, Mr. Keating stated that a real estate broker "may run afoul of the Act by aiding a buyer or renter in steering clear of properties owned or occupied by people with AIDS." Mr. Keating further stated that once a broker is aware that a buyer harbors a preference not to live in or around a home occupied by an AIDS victim, the broker may not cooperate with the buyer by identifying properties to pursue or avoid.

This rationale implicitly adopts the view that any reference to the protected status of a person living in or around a dwelling violates Title VIII, even if the information is truthful and provided only in response to a direct unsolicited question from a buyer. This construction of Title VIII reflects an assumption that Title VIII limits a broker's ability to cooperate with a buyer who is exercising his or her own freedom of choice in housing -- a right supposedly guaranteed by Title VIII.

One will not find any provision in Title VIII, or its legislative history, that suggests that the Act contains any limitation upon a homeseeker's freedom to choose where he or she will live. To be sure, an owner's freedom to sell or rent to whomever they choose is directly restrained by Title VIII, and any broker who cooperates with an owner to discriminate against a homeseeker unquestionably violates Title VIII. But cooperation with a homeseeker is not equally constrained. So long as a homeseeker's freedom of choice is not limited by an owner, broker, property manager or any other person providing real estate related services, a homeseeker is free to choose where to live, even if that choice is based upon criteria an owner is expressly forbidden to employ in choosing to whom to sell or rent. Therefore, if a homeseeker is free to make a housing choice based upon criteria otherwise foreclosed to an owner, a real estate broker who provides truthful information, upon request, to a homeseeker to allow him or her to exercise their freedom of choice cannot violate the Act. By analogy, one cannot commit a crime by aiding and abetting an otherwise lawful act. "Aiding and abetting" is a crime only if the underlying act is also a crime.

In conclusion, the weight of authority supports the view that an occupant's AIDS condition, is a fact that a real estate broker does not have any duty to discover, or if known, to disclose to any prospective buyer. These are also facts that need not, and should not, be disclosed even if the broker is asked a direct question by a homeseeker. What still remains unclear is whether this course of conduct is dictated by concerns about protecting the occupant's right to privacy in areas not material to a real estate transaction, or by an interpretation of Title VIII that imposes liability upon a broker for assisting a homeseeker who has freely and unilaterally chosen to take racial, ethnic, or handicap considerations into account in selecting a dwelling.■

that a homeowner, or someone in the owner's household has, or died from, AIDS. On May 9, 1990, HUD's General Counsel, Frank Keating, responded to the National Association's inquiry. In that response, Mr. Keating made the following unambiguous statement:

> **"... we agree that unsolicited statements made by a real estate broker or agent that a current or previous occupant of the property has AIDS would violate the [federal Fair Housing Act]. A broker's unsolicited statements to a prospective buyer or renter would indicate a discriminatory preference or limitation based on handicap."**

This portion of Mr. Keating's response is consistent with the position the National Association took in its January, 1990 inquiry letter. In the National Association's view, an unsolicited reference by a real estate broker to the handicapped status of an occupant of a dwelling could be construed as a notice or statement that the property should be avoided because of the occupant's handicap and, therefore, violate Section 804(c) of Title VIII. It is also possible that such a reference could be construed as an attempt to steer a prospect away from a dwelling based upon handicap in violation of Section 804(a).

HUD's position that unsolicited disclosure of an occupant's AIDS condition violates the federal fair housing laws is strong persuasive authority for the proposition that the federal fair housing laws preempt any interpretation of state statutory or common law that might impose an affirmative duty upon a real estate broker to investigate and disclose whether an occupant of a dwelling has AIDS on the ground that AIDS is a "material" fact in a real estate transaction.

> ***"... if a broker is asked whether an occupant has AIDS they should decline to respond."***

Consequently, real estate brokers should be counseled that they do not have any duty to investigate whether an occupant has AIDS and, indeed, should scrupulously avoid making any inquiries that are likely to elicit this information. Likewise, if a real estate broker unavoidably learns that an occupant has AIDS, the broker does not have any affirmative duty to disclose that information while marketing the property. Hence, the obligations regarding an occupant's AIDS condition are no different than obligations regarding an occupant's race or religion. Clearly a broker does not have any duty to discover an occupant's religion, or disclose that fact, if known, to prospective buyers.

Uncertainty still remains, however, concerning the broker's liability under the federal fair housing laws for responding truthfully and objectively to a buyer's direct inquiry concerning whether a dwelling occupant has AIDS. In his letter, Mr. Keating offers his advice that if a broker is asked whether an occupant has AIDS they should decline to respond.

This is sound advice for a variety of reasons not directly related to liability under the fair housing laws. Brokers who list property for sale or rent owe fiduciary duties to owners under the common law of agency. These fiduciary duties include a duty to safeguard a client's confidences and secrets. An occupant's AIDS condition certainly could be reasonably construed to be information protected from disclosure without the client's prior consent. A person's private medical history also could be construed as information sufficiently personal to justify an invasion of privacy claim if disclosed without prior consent. For these reasons, the National Association agrees that brokers should not disclose a seller's AIDS condition, even if asked by a potential buyer. The National Association's advice to brokers who unavoidably learn of an occupant's AIDS condition, and who are subsequently asked an unsolicited question by a prospective buyer about that condition, is to respond by advising the buyer that the broker's company has a policy of not addressing that subject one way or the other. If the buyer believes this information is relevant to their purchasing decision they must pursue that investigation on their own.

Attention EOs!

Please help us keep our State and Board Legal Counsel records accurate and ensure timely delivery of NAR correspondence to your legal counsel. If your board or state association is presently retaining legal counsel, please complete the enclosed form giving us your counsel's name, firm name, mailing address, telephone number and board represented to Kim Johnson, Office of the General Counsel, NATIONAL ASSOCIATION OF REALTORS®, 430 N. Michigan Avenue, Chicago, IL 60611. Thanks!

QUESTIONS

HIV/AIDS

ANSWERS

QUESTIONS

WHY DO I NEED TO KNOW ABOUT HIV INFECTION AND AIDS?

Like many diseases, HIV infection and AIDS are preventable. It is estimated that between 945,000 and 1.5 million people in the United States are infected with human immunodeficiency virus (HIV), the cause of AIDS. Many of these people got infected before they knew about AIDS and the steps they could take to protect themselves and others. While it can be disturbing to think about AIDS and consider your risk, getting up-to-date information is the first step toward protecting yourself.

WHAT IS AIDS?

AIDS stands for Acquired Immune Deficiency Syndrome. It is a serious condition that weakens the body's immune system, leaving it unable to fight off illness. People with AIDS experience certain life-threatening infections and cancers that make them very sick and can eventually kill them.

WHAT CAUSES AIDS?

AIDS is caused by a virus known as the Human Immunodeficiency Virus, or HIV. HIV is sometimes called the "AIDS virus." This virus damages the cells in the immune (defense) system that fight off infections and diseases. As the virus gradually destroys these important cells, the immune system becomes less and less able to protect against illness. Typically, HIV lives in an infected person's body for months or years before any signs of illness appear.

IS THERE A CURE FOR HIV INFECTION AND AIDS?

Currently there is no way to get rid of all the virus once a person is infected. However, new medicines can slow the damage that HIV causes to the immune system. Also, doctors are getting better at treating the illnesses that are caused by HIV infection. Many people now consider HIV infection a manageable, long-term illness.

ANSWERS

QUESTIONS

HOW DO PEOPLE BECOME INFECTED WITH HIV?

This virus is spread through the blood, semen (cum), and vaginal secretions of an HIV-infected person. People put themselves at risk for getting HIV infection when they have contact with these fluids. This can happen by engaging in specific sexual and/or drug use practices. Also, HIV-infected women can pass the virus to their newborns during pregnancy and childbirth. Lastly, some people who received blood products between 1978 and 1985 got infected blood. Now all donated blood is screened for HIV.

Many people do not know they have this virus and therefore may unknowingly pass it to others. This is because they usually look and feel fine for many years after HIV infection occurs.

Sex and HIV

• Both men and women can pass HIV to a sex partner, whether the partner is the same sex or the opposite sex. This can occur during unprotected anal, vaginal, and oral (mouth) sex through contact with infected semen (cum), blood, or vaginal secretions.

Drugs, Sex, and HIV

• People can get infected with HIV through sharing needles, cookers, or cottons (works) with someone who is infected. This can happen even when the person passing the works looks clean and healthy.

• Some people stopped shooting and/or sharing works many years ago and do not realize that they may have become infected with HIV back when they were still shooting drugs. They also may not realize they are passing it through unprotected sex now.

Pregnancy and HIV

• More than a third of all babies born to an HIV-infected woman will have the virus and eventually get sick.

WHAT ABOUT GETTING AIDS FROM BODY FLUIDS LIKE SALIVA?

Although small amounts of HIV have been found in body fluids like saliva, feces, urine, tears, and sweat, there is no evidence that HIV can spread through these body fluids.

By now, HIV has been the subject of more research than most other diseases in history. Medical science is confident about these basic

ANSWERS

facts: You can't get HIV or AIDS from touching someone, through sharing items such as cups or pencils, or through coughing or sneezing. HIV is not spread through routine contact in restaurants, workplaces, or schools.

There has never been any danger of becoming infected with HIV from donating blood. The needles at blood collection sites in the United States are never used twice.

COULD I BE AT RISK FOR HIV INFECTION AND AIDS?

Until they know someone who has it, many people think this disease can't happen to them. Unfortunately, it can and does happen to all kinds of people. By carefully looking at your current and past sexual and drug practices (and your transfusion history), you can get a picture of your risk for HIV. Also you can figure out what you can do to reduce your future risk for HIV infection.

WHAT CAN I DO TO AVOID GETTING HIV INFECTION?

SIX WAYS TO REDUCE RISK

1. **Sex.** Many of the things that feel good are safe because no blood, semen (cum), or vaginal secretions get into the body. This includes hugging, cuddling, masturbating, kissing, fantasizing, body-to-body rubbing, and massage.

2. **Safer Sex.** Unless you're 100% sure your sexual partner is not infected with HIV, reduce your risk by using a latex condom (rubber) on the penis from start to finish if you decide to have anal, vaginal, or oral (mouth) sex.

3. After condoms, for vaginal sex the spermicides found in birth control foams and jellies are considered the next best protection against HIV and other STDs. Spermicides offer less protection than condoms and are more effective when used along with condoms – not in place of them.

4. If you use a lubricant, use one that is water-based. Lubricants containing oil (such as Vaseline) can damage the condom and might cause it to break. Learn to

QUESTIONS

talk with your partner about condoms and safer sex. The adjustment to condom use can be hard for everyone.

5. If you shoot **drugs**, seek help. And never share needles. If you do share works, clean it with a solution of 10% bleach and water before each use.

6. Avoid mixing **alcohol or other drugs** with sexual activities – they might cloud your judgment and lead you to engage in unsafe sexual practices.

IS THERE A RELATIONSHIP BETWEEN HIV AND OTHER SEXUALLY TRANSMITTED DISEASES?

Yes. Sexually transmitted diseases (STDs) do not by themselves lead to HIV infection or AIDS. But the presence of certain STDs increases the risk of getting HIV infection during contact with an HIV-infected person. Infection with certain STDs results in the presence of sores on or in the anus, vagina, or penis that permit the virus to enter the blood system more easily. These STDs include syphilis, genital herpes, and chancroid. See a health care provider for testing and treatment if you think you might have any STD.

HOW CAN I TELL IF I HAVE HIV INFECTION?

The only way to know for sure if you have this virus is by taking a blood test called the "HIV Antibody Test." Some people call it the "AIDS Test," even though this test alone cannot tell you if you have AIDS. The "HIV Test" can test for antibodies to the AIDS virus and will tell you if you are able to pass it to others in the ways already described. The HIV test is not a part of your regular blood tests – you have to ask for it by name. It is a very accurate test.

If your test result is "positive," it means you have HIV infection and could benefit from special medical care. Additional tests can tell you how strong your immune (defense) system is and whether drug therapy is indicated. Some people stay healthy for a long time with HIV infection, while others develop serious illness and AIDS more rapidly. Scientists do not know why people respond in very different ways to HIV infection.

ANSWERS

Q U E S T I O N S

If your test is "negative," and you have not had any possible risk for HIV for six months prior to taking the test, it means you do not have HIV infection. You can stay free of HIV by following prevention guidelines. (In the past five years, one study indicated that a few people with HIV infection took longer than six months to test "positive." This is an extremely rare possibility.)

Less than 2% of all people who test for HIV get an "inconclusive result." This means the test cannot determine whether or not they have the virus. Repeat testing is recommended.

SHOULD I TAKE THE HIV TEST?

Recent gains in HIV medical care and treatment have increased the benefit of learning whether you have HIV infection even before symptoms of illness appear. Also, if you are planning a pregnancy, you and your partner may want to know if either of you is infected before conceiving.

Individuals who are planning to be tested should be sure that counseling is provided, both before and after the test. Consult with a health care provider with experience in HIV care or call your local health department.

You can call the National AIDS Hotline at 1-800-342-AIDS to discuss testing, and to get the name of the test site nearest you. Many test sites provide free testing and counseling. Ask for more literature on HIV testing.

IF I AM HIV POSITIVE, WHAT SHOULD I DO?

If you've tested positive for HIV, consider the following:

- See a health care professional for a complete medical work-up for HIV infection and advice on treatment and health maintenance. Make sure you are tested for TB and other STDs. For women, this includes a regular gynecological exam.
- Inform your sexual partner(s) about their possible risk for HIV. Your health department has a partner notification program that can assist you.
- Protect yourself from any additional exposure to HIV.
- Avoid drug and alcohol use, practice good nutrition, and avoid fatigue and stress.

A N S W E R S

QUESTIONS

- Seek support from trustworthy friends and family when possible, and consider getting professional counseling.
- Find a support group of people who are going through similar experiences.
- Protect others from the virus by following the precautions talked about in this pamphlet (for example, always using condoms and not sharing needles with others).
- Do not donate blood, plasma, semen, body organs, or other tissue.
- Get as much information on HIV infection as you can.

WHAT IF A FRIEND OR ASSOCIATE HAS HIV INFECTION OR AIDS?

A friend or acquaintance will need your support and understanding, just as with any other life-threatening illness. Assurance of your continued friendship is very important. Most importantly, your friend will want to be treated as usual – as a valuable human being. And remember, casual contact – a hug, a handshake, a kiss on the cheek – poses no threat of infection to you.

ANSWERS

Q U E S T I O N S

For more information on HIV/AIDS, you can contact your personal physician, local health department, or AIDS information/education agency.

You can also call these toll-free telephone hotlines for information and referrals in your area:

National AIDS Hotline
(English-language)
1-800-342-AIDS
24 hours, 7 days a week

National AIDS Hotline
(Spanish-language)
1-800-344-SIDA
8 AM to 2 AM
Eastern Time,
7 days a week

National AIDS Hotline
(TTY-TDD)
1-800-243-7889
10 AM to 10 PM,
Eastern Time,
Monday through Friday

National STD Hotline
1-800-227-8922
8 AM to 11 PM
Eastern Time,
Monday through Friday

The American Social Health Association (ASHA), a non-profit, tax-exempt organization, operates the National AIDS Hotline and National STD Hotline under contract with the U.S. Centers for Disease Control.

ASHA publishes this and other pamphlets on sexually transmitted diseases, and maintains programs in the areas of education, public policy, and research. We need your support to continue and expand our efforts to combat AIDS and other STDs. Tax-deductible donations may be sent to the address below.

For more information, or to order pamphlets, write:

American Social Health Association
P.O. Box 13827
Research Triangle Park, NC
27709

A United Way Agency

BULK PRICES:
$16 PER HUNDRED
$140 PER THOUSAND

Prices subject to change without notice.

A N S W E R S

How You *Won't* Get AIDS

The U.S. Centers for Disease Control, Atlanta, discusses some myths and answers some questions about the AIDS virus.

AMERICA
RESPONDS
TO AIDS

An Important Message from the U.S. Public Health Service
Centers for Disease Control

People today are worried about getting AIDS. Some of them should be worried and need to take some pretty tough precautions. But many others are not in any real danger of contracting AIDS, even though they think they might be. The purpose of this brochure is to tell you how you can and, just as important, how you can't become infected with the AIDS virus.

Regardless of what you may have heard, the AIDS virus is easily avoided.

You can't just "catch" AIDS like a cold or flu, because the virus is a different type. The AIDS virus is transmitted through sexual intercourse, the sharing of drug needles, or to babies before or during birth.

- You can't get the AIDS virus through everyday contact with the people around you in school, in the workplace, at parties, stores, or by swimming in a pool, even if a person is infected with the AIDS virus. Students attending school with someone infected with the AIDS virus are not in danger from casual contact.
- You won't get AIDS from a mosquito bite. The AIDS virus is not transmitted through a mosquito's salivary glands like other diseases such as malaria or yellow fever. You can't get it from bed bugs, lice, flies, or other insects, either.
- You won't get it from clothes, a telephone, or a toilet seat.
- It can't be passed through a glass or eating utensils.
- You don't have to worry about shaking hands, hugging, or being in a crowded elevator with a person who is infected with the AIDS virus, or who has AIDS.
- You won't get AIDS from saliva, sweat, tears, urine, or excrement.

- You won't get AIDS from food that has been handled, prepared, or served by someone who is infected with the AIDS virus.
- You won't get AIDS from a kiss.
- Don't worry about getting AIDS from everyday contact with a person with AIDS. You need to take precautions such as wearing rubber gloves only when blood is present.

The Difference Between Giving And Receiving Blood

1. Giving blood. You are not now, nor have you ever been, in danger of getting AIDS from giving blood at a blood bank. The needles that are used for blood donations are brand new. Once they are used, they are destroyed. There is no way you can come into contact with the AIDS virus by donating blood.

2. Receiving blood. The risk of getting AIDS from a blood transfusion has been greatly reduced. In the interest of making the blood supply as safe as possible, donors are screened for risk factors and donated blood is tested for the AIDS antibody. Call your local blood bank if you have questions.

How *Do* You Get AIDS?

You can become infected by having sex — oral, anal, or vaginal — with someone who is infected with the AIDS virus. You can be infected by sharing drug needles and syringes with an infected person.

Babies of women who have been infected with the AIDS virus may be born with the infection because it can be transmitted from the mother's blood to the baby before or during birth.

People with hemophilia and others have been infected by receiving blood.

Can You Become Infected?

Yes, if you engage in high risk behavior. The male homosexual population was the first in this country to be affected by the disease. No matter what you have read or heard, the number of heterosexual cases is growing.

People who have died of AIDS in the United States have been male and female, rich and poor, white, black, Hispanic, Asian, and native American.

Would You Like More Information?

If you'd like to know more about AIDS or whether you should consider a blood test, talk to your doctor, local health department, or hospital. In addition, you can get helpful, confidential information from the National AIDS Information line, 1 800-342-AIDS. It's open 24 hours a day. The Spanish hotline is 1-800-344-SIDA (1-800-344-7432). The hotline number for the hearing impaired is 1-800-AIDS-TTY.

AMERICA
RESPONDS
TO AIDS

Part of the America Responds To AIDS brochure series.
This brochure has been prepared by the Centers for Disease Control, U.S. Public Health Service. The Centers for Disease Control is the government agency responsible for the prevention and control of diseases, including AIDS, in the United States.

UNITED STATES CODE SERVICE

Lawyers Edition

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By The Publisher's Editorial Staff

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(A) shall provide for the Secretary to make the determination to impose the penalty or to use an administrative entity to make the determination;

(B) shall provide for the imposition of a penalty only after the person has been given an opportunity for a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order, the determination or order shall be final.

(2) Factors in determining amount of penalty. In determining the amount of a penalty under subsection (f), consideration shall be given to such factors as the gravity of the offense, ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine in regulations to be appropriate.

(3) Reviewability of imposition of a penalty. The Secretary's determination or order imposing a penalty under subsection (f) shall not be subject to review, except as provided in subsection (h).

(h) Judicial review of agency determination. (1) In general. After exhausting all administrative remedies established by the Secretary under subsection (g)(1), a person against whom the Secretary has imposed a civil money penalty under subsection (f) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice of determination to impose a penalty under subsection (g)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the order or determination of the Secretary be modified or be set aside in whole or in part.

(2) Objections not raised in hearing. The court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (g)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

(3) Scope of review. The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

(4) Order to pay penalty. Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the Secretary.

(i) Action to collect the penalty. If any person fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (f), after the determination or order is no longer subject to review as provided by subsections (g)(1) and (h), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(j) Settlement by the Secretary. The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(k) Regulations. The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(l) Deposit of penalties. The Secretary shall deposit all civil money penalties collected under this section into miscellaneous receipts of the Treasury.

(m) Definitions. For the purpose of this section—

(1) The term "Department" means the Department of Housing and Urban Development.

(2) The term "Secretary" means the Secretary of Housing and Urban Development.

(3) The term "person" means an individual (including a consultant, lobbyist, or lawyer), corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

(4) The term "assistance within the jurisdiction of the Department" includes any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages.

(5) The term "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(n) Effective date. This section shall take effect on the date specified in regulations implementing this section that are issued by the Secretary after notice and public comment.

(Dec. 15, 1989, P. L. 101-235, Title I, Subtitle A, § 102, 103 Stat. 1990.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section was enacted as part of Act Dec. 15, 1989, P. L. 101-235, and not as part of Act Sept. 9, 1965, P. L. 89-174, popularly known as the Housing and Urban Development Act, which generally comprises this chapter.

Effective date of section:

This section is effective as provided by subsec. (n).

CHAPTER 45. FAIR HOUSING

Section

RESEARCH GUIDE

Forms:

5 Am Jur Pl & Pr Forms (Rev), Civil Rights, Form 71.

25 Am Jur Pl & Pr Forms (Rev), Zoning and Planning, Form 13.1.

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§ 3601. Declaration of policy

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Short titles:

Act Sept. 13, 1988, P. L. 100-430, § 1, 102 Stat. 1619, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as a note to this section, provides: "This Act may be cited as the 'Fair Housing Amendments Act of 1988'.".

Act Apr. 11, 1968, P. L. 90-284, § 1, 82 Stat. 73; Sept. 13, 1988, P. L. 100-430 § 2, 102 Stat. 1619, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as a note to this section, provides: "This Act may be cited as the 'Civil Rights Act of 1968'.".

Act Apr. 11, 1968, P. L. 90-284, Title VIII, § 800, 82 Stat. 81; Sept. 13, 1988, P. L. 100-430, § 4, 102 Stat. 1619, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as a note to this section, provides: "This title may be cited as the 'Fair Housing Act'.".

Other provisions:

Disclaimer of preemptive effect on other Acts. Act Sept. 13, 1988, P. L. 100-430, § 12, 102 Stat. 1636, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as a note to this section, provides: "Nothing in the Fair Housing Act [42 USCS §§ 3601 et seq., generally; for full classification, consult USCS Tables volumes] as amended by this Act limits any right, procedure, or remedy available under the Constitution or any other Act of the Congress not so amended.".

Effective date and initial rulemaking. Act Sept. 13, 1988, P. L. 100-430, § 13, 102 Stat. 1636, provides:

"(a) Effective date. This Act and the amendments made by this Act [amending 42 USCS §§ 3601 et seq., generally; for full classification, consult USCS Tables volumes] shall take effect on the 180th day beginning after the date of the enactment of this Act.

"(b) Initial rulemaking. In consultation with other appropriate Federal agencies, the Secretary shall, not later than the 180th day after the date of the enactment of this Act, issue rules to implement title VIII as amended by this Act [42 USCS §§ 3601 et seq.,

generally, for full classification, consult USCS Tables volumes]. The Secretary shall give public notice and opportunity for comment with respect to such rules.".

Separability of provisions. Act Sept. 13, 1988, P. L. 100-430, § 14, 102 Stat. 1636, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note, provides: "If any provision of this Act [for full classification, consult USCS Tables volumes] or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.".

CODE OF FEDERAL REGULATIONS

Add:
24 CFR Part 111.

RESEARCH GUIDE

Federal Procedure L Ed:

6 Fed Proc L Ed, Civil Rights §§ 11:132, 212, 220, 357, 358, 426, 486, 501.

Housing and Urban Development, Fed Proc, L Ed § 44:73.

Am Jur Proof of Facts:

Sexual Harassment by Landlord, 3 Am Jur Proof of Facts 3d, p. 581.

Forms:

10A Federal Procedural Forms L Ed, Highways and Bridges § 38:60.

10A Federal Procedural Forms L Ed, Housing and Urban Development §§ 39:1, 3, 33, 34, 44, 45, 61.

15 Federal Procedural Forms L Ed, Statutes of Limitation, and Other Time Limits § 61:32.

5 Am Jur Pl & Pr Forms (Rev), Civil Rights, Form 71.

5A Am Jur Pl & Pr Forms (Rev), Civil Rights, Form 74.

13A Am Jur Pl & Pr Forms (Rev), Housing Laws and Urban Redevelopment, Forms 41, 42.

25 Am Jur Pl & Pr Forms (Rev), Zoning and Planning, Form 13.1.

Annotations:

What constitutes illegal discrimination under state statutory prohibition against discrimination in housing accommodations on account of marital status. 33 ALR4th 964.

Law Review Articles:

Morales, Creating New Housing Opportunities for Families with Children: The Fair Housing Amendments Act of 1988. 22 Clearinghouse Rev 744, December, 1988.

Civil Rights—Racial Discrimination—Fair Housing Act of 1968—Standing for Testers—Havens Realty Corp. v. Coleman, 102 S. Ct. 1114. 21 Duquesne L Rev 295, Fall, 1982.

Wolff, The Fair Housing Amendments Act of 1988: A Critical Analysis of "Familial Status". 54 Mo L Rev 393.

Andersen, The 1988 Fair Housing Act Amendments. 35 Prac Law 79.

Kushner, The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing. 42 Vand L Rev 1049.

INTERPRETIVE NOTES AND DECISIONS

1. Generally

Remedies provided by 42 USCS §§ 1981 and 1982 are independent from those provided by Fair Housing Act (42 USCS §§ 3601 et seq.), and may be utilized to grant appropriate relief in case within coverage of both Act and Civil Rights Act. Wilkey v Pyramid Constr. Co. (1985, DC Conn) 619 F Supp 1453, 39 BNA FEP Cas 25, 120 BNA LRRM 3125.

Language of Fair Housing Act (42 USCS §§ 3601 et seq.) is broad and inclusive and subject to generous construction. Stackhouse v De Sitter (1985, ND Ill) 620 F Supp 208.

Hotel chain is denied motion under 28 USCS § 1404(a) to transfer New York motor hotel's action alleging that chain expelled hotel from affiliation because it was providing lodging to black and Hispanic homeless persons under contract with local welfare department despite existence of forum selection clause selecting Arizona for resolution of disputes between parties where transfer of action would contravene strong public policy interest of local residents in determining whether chain's actions were inimical to goal of ensuring fair housing and equal access to public accommodations. Red Bull Associates v Best Western International, Inc. (1988, SD NY) 686 F Supp 447, app gr (SD NY) 1988 US Dist LEXIS 5132, affd (CA2) 1988 US App LEXIS 16532.

2. Purpose

Action by challengers of housing project fails under 42 USCS § 1982 and Fair Housing Act (42 USCS §§ 3601 et seq.), where municipality's decision not to build low-income housing on site was motivated by financial concerns and not racially discriminatory intent or purpose. Strykers Bay Neighborhood Council, Inc. v New York (1988, SD NY) 695 F Supp 1531.

4. Duties created

With respect to administration of federal housing grants to city, HUD has not satisfied minimum levels of compliance with Title VIII of Civil Rights Act of 1968 (42 USCS §§ 3601 et seq.) where (1) HUD has continued community development block grant funding for city despite city's failure to file minority needs assessment, (2) HUD has never published regulations under Title VIII, thus discouraging local enforcement and (3) HUD has accepted from city cosmetic changes regarding fair housing policies, without utilizing any of its immense authority to provide adequate desegregated housing, despite fact that HUD-financed city programs were neither intentionally discriminatory nor had discriminatory impact. NAACP v Harris (1983, DC Mass) 567 F Supp 637.

Neighborhood integration is important goal of Fair Housing Act of 1968 (42 USCS §§ 3601 et seq.). Jorman v Veterans Admin. (1984, ND Ill) 579 F Supp 1407..

HUD does not violate its duties imposed under 42 USCS §§ 3601 et seq. by continuing to fund city redevelopment authority after it knew that authority was following racially discriminatory relocation practices, where HUD entered into cooperation agreement by which city assumed responsibility for relocation under urban renewal and neighborhood development plan, and where to have cut off funds would have penalized those most in need of housing. Jenkins v Missouri (1984, WD Mo) 593 F Supp 1485.

It has been clear at least since passage of Title VIII—if not from date of Executive Order 11063 and HUD's inception as federal agency—that HUD has affirmative duty to eradicate segregation, and necessary prerequisite for fulfilling this duty is to obtain information about discrimination practices under agency's auspices. Young v Pierce (1985, ED Tex) 628 F Supp 1037.

5. Standing

Only constitutional requirements for standing need be met in suit brought under Fair Housing Act by tenants' union challenging allegedly racially discriminatory housing practices and, therefore, tenants' union has standing where complaint alleges (1) injury to organization's goal of open housing, (2) Department of Housing and Urban Development failed to condition its provision of federal funds for housing project on municipality's compliance with non-discriminatory housing policy, (3) State of Rhode Island and municipality successfully lobbied for withdrawal of developer's financing commitment to housing project in least integrated area of municipality, and (4) corporate developer's withdrawal of funds prevented construction; causation element of standing is not properly alleged as to individuals associated with defendant organizations because they did not, as individuals, have legal authority to halt project. Project Basic Tenants Union v Rhode Island Housing & Mortg. Finance Corp. (1986, DC RI) 636 F Supp 1453.

6. Remedies

When plaintiff who has standing to bring suit shows substantial likelihood that defendant has violated specific fair housing statutes and regulations, that alone, if unrebutted, is sufficient to support injunction remedying those violations; in light of subtle, pervasive, and essentially irremedial nature of racial discrimination, proof of existence of discriminatory housing practices is sufficient to permit court to presume irreparable injury. Gresham v Windrush Partners, Ltd. (1984, CA11 Ga) 730 F2d 1417.

Court lacks authority to order innocent white tenants to vacate apartments to remedy discrimination against blacks or other minorities by apartment management. Gresham v Windrush Partners, Ltd. (1984, CA11 Ga) 730 F2d 1417.

Irreparable injury for purposes of injunction may be presumed from fact of discrimination and violations of fair housing statutes; unrebutted showing by plaintiff that defendant has violated specific fair housing statutes and regulations is sufficient to support injunction remedying those violations. Gresham v Windrush Partners, Ltd. (1984, CA11 Ga) 730 F2d 1417.

Scope of review of agency action under Title VIII (42 USCS §§ 3601 et seq.) is narrow; HUD has great discretion in choosing methods to achieve national housing goals, but its action will be overturned if found to be arbitrary and capricious within meaning of 5 USCS § 706(2)(a). Little Earth of United Tribes, Inc. v United States Dept. of Housing & Urban Dev. (1983, DC Minn) 584 F Supp 1292.

§ 3602. Definitions

(a)-(e) [Unchanged]

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 [42 USCS §§ 3604, 3605, 3606, or 3618].

(g) [Unchanged]

(h) "Handicap" means, with respect to a person—

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(i) "Aggrieved person" includes any person who—

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

(j) "Complainant" means the person (including the Secretary) who files a complaint under section 810 [42 USCS § 3610].

(k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(l) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

(m) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(n) "Respondent" means—

(1) the person or other entity accused in a complaint of an unfair housing practice; and

(2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 810(a) [42 USCS § 3610(a)].

(o) "Prevailing party" has the same meaning as such term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).

(As amended Sept. 13, 1988, P. L. 100-430, § 5, 102 Stat. 1619.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1988. Act Sept. 13, 1988 (effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note), in subsec. (f), substituted "806, or 818" for "or 806"; and added subsecs. (h)-*(o)*.

Other provisions:

Handicap definitions not applicable to transvestites. Act Sept. 13, 1988, P. L. 100-430, § 6(b)(3), 102 Stat. 1622, effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note, provides: "For the purposes of this Act as well as chapter 16 of title 29 of the United States Code [29 USCS §§ 701 et seq.], neither the term 'individual with handicaps' nor the term 'handicap' shall apply to an individual solely because that individual is a transvestite.".

RESEARCH GUIDE

Federal Procedure L Ed:

6 Fed Proc L Ed, Civil Rights §§ 11:212, 357-359, 363, 501.

Forms:

10A Federal Procedural Forms L Ed, Housing and Urban Development § 39:3.

INTERPRETIVE NOTES AND DECISIONS

4. "Familial status"

4. "Familial status"

Tenants lack standing to challenge their eviction under 42 USCS § 3602(k), where complaint alleges eviction is due to tenants' intent to house foster children but tenants, who are licensed to be foster parents, are not in process of securing legal custody of foster children to live with them, because tenants have not attained "familial status." Gorski v Troy (1989, ND Ill) 714 F Supp 367.

§ 3603. Effective dates of certain prohibitions

RESEARCH GUIDE

Federal Procedure L Ed:

6 Fed Proc L Ed, Civil Rights § 11:212, 357, 358, 360, 501.

Forms:

10A Federal Procedural Forms L Ed, Housing and Urban Development § 39:3.

§ 3604. Discrimination in the sale or rental of housing and other prohibited practices.

[Introductory matter unchanged]

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes—

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.[;]

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988 [enacted Sept. 13, 1988], a failure to design and construct those dwellings in such a manner that—

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

y shall encourage, but may not require, States and units of local clude in their existing procedures for the review and approval of l covered multifamily dwellings, determinations as to whether the uction of such dwellings are consistent with paragraph (3)(C), and nical assistance to States and units of local government and other ent the requirements of paragraph (3)(C).

his title shall be construed to require the Secretary to review or ı, designs or construction of all covered multifamily dwellings, to r the design and construction of such dwellings are consistent with of paragraph 3(C).

ragraph (5) shall be construed to affect the authority and responsibil- ry or a State or local public agency certified pursuant to section Act [42 USCS § 3610(f)(3)] to receive and process complaints or n enforcement activities under this title.

s by a State or a unit of general local government under paragraphs ll not be conclusive in enforcement proceedings under this title.

bsection, the term "covered multifamily dwellings" means—

ısisting of 4 or more units if such buildings have one or more

nits in other buildings consisting of 4 or more units.

itle shall be construed to invalidate or limit any law of a State or of a State, or other jurisdiction in which this title shall be effective, gs to be designed and constructed in a manner that affords handi- :r access than is required by this title.

ubsection requires that a dwelling be made available to an individual constitute a direct threat to the health or safety of other individuals uld result in substantial physical damage to the property of others.

1988, P. L. 100-430, §§ 6(a)-(b)(2), (e), 15, 102 Stat. 1622, 1623,

STORY; ANCILLARY LAWS AND DIRECTIVES

to in this section, is Title VIII of Act Apr. 11, 1968, P. L. 90-284, 82 opularly known as the Fair Housing Act, and appears generally as 42 . For full classification of this Title, consult USCS Tables volumes.

colon is inserted at the conclusion of subsec. (f)(3)(A) as the punctua- ed by Congress.

1988 (effective on the 180th day beginning after enactment, as provided Act, which appears as 42 USCS § 3601 note), in subsecs. (a) and (b), atus,"; in subsecs. (d)-(e), inserted "handicap, familial status,"; added para. (3)(A) of such subsec., substituted "except that, in the case of a may where it is reasonable to do so condition permission for a renter agreeing to restore the interior of the premises to the condition ne modification, reasonable wear and tear excepted." for the concluding xplanatory note to this section].

RESEARCH GUIDE

. Ed:
Civil Rights §§ 11:82, 106, 212, 220, 221, 223, 357, 358, 360, 483, 485,

ural Forms L Ed, Highways and Bridges § 38:60.
ural Forms L Ed, Housing and Urban Development §§ 39:2, 3, 31, 36-

Pr Forms (Rev), Housing Laws and Urban Redevelopment, Forms 43,

ing of denial of home loans or insurance coverage in certain neighbor- ation in violation of §§ 804 and 805 of Fair Housing Act (42 USCS ALR Fed 899.

gal discrimination under state statutory prohibition against discrimina- mmodations on account of marital status. 33 ALR4th 964.

s:
w Project, Mental Disability Law: 1988. Clearinghouse Rev 966,

n Title VIII: Importing an Employment Discrimination Doctrine into ct. 54 Fordham L Rev 563, March, 1986.

INTERPRETIVE NOTES AND DECISIONS

20.5. Class action
26. Limitations

5. Application

42 USCS § 3604(a, b, d) applies to prospective black tenants of apartment complex, not-for-profit corporation organized to further goals of Fair Housing Act, apartment complex owners, and rental agents employed by complex. Davis v Mansards (1984, ND Ind) 597 F Supp 334.

8. Generally

Rental housing practice may be found unlawful either because it is motivated by racially discriminatory purpose or because it is shown to have disproportionately adverse effect on minorities; in order to prevail in discriminatory impact case plaintiffs, members of discrete minority, are required to prove only that given policy had discriminatory impact on them as individuals. Betsey v Turtle Creek Associates (1984, CA4 Md) 736 F2d 983.

In determining whether particular practice violates 42 USCS § 3604(a), court looks to whether statement or conduct would have untoward effect on reasonable person under circumstances who is seeking housing, and behind statement or conduct to intent of agent; if statement or act would have discriminatory effect and is made with intent to steer, it violates § 3604(a). Heights Community Congress v Hilltop Realty, Inc. (1985, CA6 Ohio) 774 F2d 135.

Not every denial, especially temporary denial, of low-income public housing has discriminatory impact on racial minority sufficient to establish prima facie violation of Fair Housing Act (42 USCS §§ 3601 et seq.); accordingly, naked effect of action by governmental subdivision, without more, does not invoke provisions of Act. Arthur v Toledo (1986, CA6 Ohio) 782 F2d 565.

In order to state prima facie case of housing discrimination, plaintiff must establish following elements: (1) that he is member of protected class; (2) that he applied for and is qualified to purchase housing; (3) that he was rejected; and (4) that housing opportunity remained unavailable. Jiminez v Southridge Cooperative Section I, Inc. (1985, ED NY) 626 F Supp 732.

Constitution prohibits government from funding racial discrimination with public dollar, and indeed, any tangible assistance to segregation is prohibited if it has significant tendency to facilitate, reinforce, or support private discrimination; action of Department of Housing and Urban Development in form of federal funding, technical assistance and regulatory oversight of segregations in connection with public housing was federal action that constituted direct support for racial discrimination. Young v Pierce (1985, ED Tex) 628 F Supp 1037.

9. Refusals to sell

In action under 42 USCS § 3604 against real estate firm, 2 of its sales agents and sellers, for alleged racial discrimination in sale of real estate, jury verdict for black plaintiffs is supported by evidence where broker in informing sellers that offer came from black purchasers, failed to inform sellers that federal law prohibits sellers from taking race into account, or that black purchasers' financial resources were superior to white purchaser's resources, and where offer by blacks was not revived when white purchasers were unable to produce earnest money. Green v Century 21 (1984, CA6 Ohio) 740 F2d 460.

Real estate agency and individual brokers violated 42 USCS §§ 1982 and 3604 where (1) defendants stated to prospective black home buyers different and higher terms than they stated to prospective white buyers, (2) defendants offered different and more favorable terms to white buyers after rejection of plaintiffs' offer and (3) defendants never sold or listed home to black person. Hobson v George Humphreys, Inc. (1982, WD Tenn) 563 F Supp 344.

Hispanic plaintiffs failed to state cause of action under 42 USCS § 3604 against corporate owners of co-operative residential apartment building, arising from owners rejection of plaintiff's application for acquisition of apartment building, since plaintiffs have failed to show any purposeful or intentional discrimination as result of rejection, and since evidence reveals that rejection of plaintiff's application resulted from negative information corporation received relating to prior unbecoming business dealings involving plaintiffs. Kaplan v 442 Wellington Cooperatives Bldg. Corp. (1983, ND Ill) 567 F Supp 53.

Plaintiff, who applied to purchase apartment, did not establish that he was victim of housing discrimination where his applications did not indicate that he had enough assets to purchase apartment, and did not prove that he could meet job stability requirement for purchase; in any case, defendant proffered legitimate, non-discriminatory reason for its action where it showed that its refusal to consider plaintiff's later application was based upon its previous determination that plaintiff did not meet employment stability requirement and information it had received regarding competing applicant. Jiminez v Southridge Cooperative Section I, Inc. (1985, ED NY) 626 F Supp 732.

Minority homeseekers' suit against area planning association under 42 USCS § 3604(b) for discrimination in provision of services in connection with terms, conditions or privileges of sale or rental of dwelling is dismissed, where planning association voluntarily supplied limited housing information regarding only "non-traditional moves," those of whites into integrated areas and of minorities into predominantly white, nonintegrated areas, since such activity is far removed from transactions in commercial residential market to be considered in connection with sale or rental of dwelling. Steptoe v Beverly Area Planning Asso. (1987, ND Ill) 674 F Supp 1313.

10. Refusals to rent

In determining whether all-adult conversion policy had disproportionate impact on minorities in total group to which policy was applied court considers that majority of affected tenants and majority of tenants receiving eviction notices were members of racial minority; upon showing of discriminatory impact, defendants must prove business justification sufficiently compelling to justify challenged practice. Betsey v Turtle Creek Associates (1984, CA4 Md) 736 F2d 983.

White mother of daughter whose father is black states cause of action under 42 USCS § 3604 against owners and managers of trailer park, along with lessee of trailer pad at park, for defendants' race-conscious refusal to sublease available trailer

and paid to plaintiff and her daughter, since (1) manager's statement to lessee that manager did not allow black tenants in trailer park demonstrates that manager had actual control over rental of lessee's trailer, and that manger intended to exercise his control in discriminatory way and (2) manager's similar statement to plaintiff acted as continuation and confirmation of previous act of housing discrimination. Stewart v Furton (1985, CA6 Tenn) 774 F2d 706.

Black woman establishes prima facie case of racial discrimination under 42 USCS § 3604 arising from white defendant's refusal to rent apartment to plaintiff, where (1) plaintiff testified that defendant, upon seeing plaintiff, refused to rent apartment and stated that it was his prerogative to be prejudiced, (2) defendant had no good business reason for refusing to rent to plaintiff, in that plaintiff's salary clearly made apartment affordable and (3) defendant's claim that he rented only to elderly persons was impeached by his own deposition testimony that one of his tenants was in her thirties or forties. Hamilton v Svatik (1985, CA7 Ill) 779 F2d 383.

Evidence reasonably supported magistrate's finding that defendant landlord did not intentionally discriminate against prospective tenants when he refused to rent apartment to them, where almost all evidence in case was from parties themselves and close relatives or associates, and where there were 2 completely different renditions of events in case, both of which were potentially plausible, so that court felt obligated to defer to magistrate's credibility assessments of evidence. Vaughner v Pulito (1986, CA5 La) 804 F2d 873.

Apartment owners were properly held in civil contempt for violating consent decree arising from suit under Fair Housing Act (42 USCS §§ 3601 et seq.) enjoining owners from discriminating against possible tenants on basis of race, where trial court credited testimony of rental agent that owners refused to rent to prospective tenant because she was black. Hayden v Oak Terrace Apartments (1987, CA7 Ill) 808 F2d 1269.

Ample evidence supported finding that black applicant was discriminated against on basis of race in violation of 42 USCS § 1982 and 42 USCS §§ 3601 et seq. when she was refused opportunity to rent or inspect or negotiate for rental of townhouse or apartment, where evidence showed that applicant's white sister-in-law called apartment complex to inquire about availability on next day and was invited to view apartments and to see floor plans, and was not told as applicant was that children were restricted to townhouses rather than apartments, and sister-in-law was told apartments were available immediately and one would be held for her until following week, and evidence showed that there were in fact vacant townhouses at time black applicant was looking for rental unit; although landlord claimed that reasons for rejecting black applicant arose out of policies that families with one child could rent townhouses but not apartments, and families with more than one child were not permitted at all, applicant introduced evidence showing exceptions had been made to those rules on several occasions, and evidence of high percentage of minority occupancy at complex did not conclusively rebut claim of intentional racial discrimination. Asbury v Brougham (1989, CA10 Kan) 866 F2d 1276.

Claim by tenants that purchaser of apartment complex housing 95 percent Hispanic residents discriminated against tenants on basis of national origin in violation of Fair Housing Act (42 USCS §§ 3601 et seq.) when purchaser evicted all tenants in order to renovate apartments would fail, where apartments had to be closed for renovations because they had been found unfit for human habitation, not because of national origin of tenants, and where renovation project was designed to benefit persons of low to moderate income and there was no evidence of intent to force Hispanics from area. Gomez v Chody (1989, CA7 Ill) 867 F2d 395.

Evidence supported finding that apartment owners engaged in pattern or practice of making apartments unavailable to persons because of race in violation of 42 USCS §§ 3601 et seq., where owners refused to rent to black bona fide apartment seekers, gave black and white testors differing information on availability of apartments, and treated black testors significantly differently from white testors. United States v Di Mucci (1989, CA7 Ill) 879 F2d 1488.

Black couple made out prima facie case of discrimination under 42 USCS §§ 1982 and 3604 by showing that (1) they are members of racial minority, (2) they rented apartment from defendants, (3) they were locked out of their apartment and (4) apartment continued to be available and was subsequently rented to white family; defendants failed to overcome inference of discrimination by stating that they believed plaintiffs would not be good tenants where defendants (1) are experienced in business of renting apartments and have established procedures for dealing with problem tenants, (2) produced no direct evidence that plaintiff's checks would be dishonored and (3) knew that plaintiffs had good jobs and steady income. Shaw v Cassar (1983, ED Mich) 558 F Supp 303.

In order to prevail in 42 USCS § 3604 action alleging unlawful refusal to rent, plaintiff must show that defendant represented to him, because of race, color, religion, sex or nationality, that apartment was not available for rent, when apartment in fact was available for rent. Metro Fair Housing Services, Inc. v Morrowood Garden Apartments, Ltd. (1983, ND Ga) 576 F Supp 1090.

Owners and operators of apartment complex, and rental agents employed by complex, violated 42 USCS § 3604(a, b, d) by (1) failing to offer black prospective tenants available apartment for which they applied and were qualified, (2) causing to be produced, signed and disseminated letter telling prospective black tenants that no units were available at time when units were in fact available, (3) refusing to allow prospective black tenants to fill out application or place deposit for apartment, because of applicants' race and (4) engaging in systematic practice of discrimination against black applicants and homeseekers that frustrated counseling and referral services, drained resources and hindered mission of not-for-profit corporation organized to further goals of Fair Housing Act. Davis v Mansards (1984, ND Ind) 597 F Supp 334.

42 USCS § 3604 is not violated by section of application form for federally funded housing project which requests information on church affiliation, where information on religious affiliation was sought for secular purpose of allowing managers of project to notify tenant's clergyman in event of

death or serious illness, and where plaintiffs have offered no evidence that refusal to rent to plaintiffs was in any way affected by plaintiffs' religious affiliations. Knutzen v Nelson (1985, DC Colo) 617 F Supp 977.

Action by dark-skinned Puerto Rican woman under 42 USCS §§ 1981-1982 and 3601 et seq. and New York Real Property Law based on alleged racial discrimination in refusing to rent apartment, stated claim where plaintiff alleged that she learned of apartment vacancy in building owned by defendants, that she was told that apartment was no longer available, but shortly thereafter she learned that defendants were continuing to accept applications for apartment, and that at plaintiff's insistence defendants agreed to reconsider her application, but ultimately decided to lease apartment to another applicant, a white, non-Hispanic male with no children. Quinones v Nescle (1986, ED NY) 110 FRD 346.

Black and Hispanic housing applicants established prima facie case of housing discrimination, by showing housing corporation gave priority to white applicants and stated criteria applied only within group of white applicants, and corporation's defense that discrimination resulted because Jewish cultural and economic sites were near apartment complexes and thus Jewish people tended to congregate in neighborhood is totally inadequate, especially in view of testimony that corporation's employees systematically discouraged or rejected black and Hispanic applicants over many years. Huertas v East River Housing Corp. (1987, SD NY) 669 F Supp 1219, withdrawn, rereported Huertas v East River Housing Corp. (1987, SD NY) 674 F Supp 440.

Prima facie case of racial discrimination by apartment complex is established under 42 USCS § 3604, in class action by blacks and Hispanics, where white applicants for apartments were universally chosen over blacks and Hispanics despite more pressing needs of minority candidates, earlier filing of minority applications, and other factors which should have given minority candidates priority. Huertas v East River Housing Corp. (1987, SD NY) 674 F Supp 440.

Apartment complex fails to establish credible nondiscriminatory basis for disparate treatment of blacks and Hispanics in applying for apartments under 42 USCS § 3604, in class action, where defense is that discrimination resulted because Jewish cultural institutions and retail shops are clustered near complex and Jewish people wish to congregate together. Huertas v East River Housing Corp. (1987, SD NY) 674 F Supp 440.

11. —Public housing projects

City violated Fair Housing Act (42 USCS §§ 3601 et seq.) when it failed to approve housing project after earlier consent decree allowed freeway through residential area only if displacees were provided with housing unit replacements, where city's actions had greater adverse impact on minorities than on whites, where court properly limited consideration of adverse impact to current displacees, and where justifications for disapproval of housing project were pretextual; 35 percent cap used by city on possible low-income tenants as part of policy of dispersing low-income tenants was not used in other developments, and although city claimed disapproval of development would present school overcrowding, other development in same school zones were approved, and no evidence was submitted to justify claim by city that denial of development application was based on potential increase in traffic in area, and attempt to justify denial on basis of extensive housing density would fail where city approved other developments in area after disapproval of development in question. Keith v Volpe (1988, CA9 Cal) 858 F2d 467.

42 USCS § 3604 is violated through operation of tenant selection, assignment and transfer procedures which were adopted by municipal housing authority in order to achieve and maintain integration in authority's low-income public housing projects, where clear effect of selection procedure is to deny otherwise eligible applicant access to unit solely because of race; fact that authority's policy can also work to detriment of white applicants is not bar to relief under § 3604. Burney v Housing Authority of County of Beaver (1982, WD Pa) 551 F Supp 746.

Low income housing tenants who reside in city and who are about to be displaced by construction of freeway project through city state cause of action against city under 42 USCS § 3604 for city's imposition of 35 percent limitation on number of units in housing development that may be rented to low income tenants and city's denial of lot split, zone change, and site development applications for another housing development, since (1) evidence demonstrates that city's actions had racially discriminatory effect, (2) city's proffered justification for its actions are merely pretextual and (3) plaintiffs merely seek to enjoin city from interfering with private property developers who wish to provide low income housing. Keith v Volpe (1985, CD Cal) 618 F Supp 1132.

13. Preferential advertising

Section 3604(c) prohibition of unlawfully making, printing, publishing, or causing to be made, printed or published any notice statement or advertisement is not limited to advertisements or written matter, but is broad enough to cover all forms of communication; section prohibits only statements by owner or agent that pertain to renting of his dwelling; court considered whether various statements violated section. Heights Community Congress v Hilltop Realty, Inc. (1983, ND Ohio) 629 F Supp 1232.

Action against housing development and advertising agency alleging that advertisement campaigns of defendants in newspaper featuring exclusively white models indicated racial preference in violation of 42 USCS §§ 3604(a) and (c) is dismissed, where (1) plaintiffs did not file complaint within 180 days after alleged discriminatory housing practice pursuant to 42 USCS § 3612(a), and (2) neither defendants' ads nor ad campaigns indicated racially discriminatory preference. Spann v Colonial Village, Inc. (1987, DC Dist Col) 662 F Supp 541.

14. "Blockbusting"

District Court erred in finding that real estate agent committed unlawful "blockbusting" in violation of 42 USCS § 3604(e), when agent mailed cards to residents in racially transitional neighborhood seeking buyer for house in neighborhood, which was ultimately sold to white buyer, since solicitation card was racially neutral, and since there was no evidence of panic selling or other incidents of racially charged atmosphere that would impute to any real estate solicitation racial