

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7078 HOUSE LABOR & COMMERCE

Sec. 16.10.268. Notice of liability. (a) The commissioner of labor shall print posters that contain notice of the requirements of AS 16.10.265. The commissioner shall distribute the posters to fish processors, primary fish buyers, and cooperative corporations organized under AS 10.15 for the purpose of buying fish.

(b) A fish processor, primary fish buyer, or cooperative corporation organized under AS 10.15 for the purpose of buying fish shall display in a prominent place on its business premises posters provided by the commissioner of labor under (a) of this section. (§ 2 ch 94 SLA 1982)

Sec. 16.10.270. Purchase of fish by the pound. (a) A fish processor or primary fish buyer shall purchase raw fish by the pound. The poundage of the fish to be purchased shall be determined by weighing the fish unless both the buyer and seller agree in writing upon a sample weighing technique which will fairly determine the average weight of the fish purchased.

(b) A person who violates this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,000, or by both. (§ 1 ch 49 SLA 1965; am § 1 ch 34 SLA 1969; am § 1 ch 102 SLA 1977)

NOTES TO DECISIONS

Cited in *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

Sec. 16.10.275. Regulations. The commissioner may adopt regulations to carry out the provisions of AS 16.10.270 — 16.10.296. (§ 1 ch 18 SLA 1981)

Sec. 16.10.280. Price disputes between fishermen and fish processors. In an area where a price dispute exists between at least one-third of the registered commercial fishermen for that area, as estimated by the Department of Fish and Game on the basis of information available to the department, and fish processors on the price to be paid for salmon, and no agreement has been reached up to 120 days before the opening of the salmon fishing season in that area, a representative from the Department of Labor shall intervene as mediator of the dispute upon request of either party. (§ 1 ch 242 SLA 1970; am § 1 ch 59 SLA 1980; am § 27 ch 132 SLA 1984)

Revisor's notes. — Enacted as AS 16.10.290. Renumbered in 1970. Amendment substituted "estimated" for "certified" and inserted "on the basis of information available to the department." Effect of amendments. — The 1984



§ 16.10.267  
not hold a license or  
not hold an endorsement  
issued or transferred in  
ance with AS 16.42.01  
subsection.  
identification by  
man shall possess  
e permit issued or  
ther document an-  
try permit or in-  
he fisherman by a  
of the fisherman  
peace officer, the  
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issued under AS  
AS 18.65.310.  
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an entry permit"  
agraph (a)(1).

# Jacko bill would require early salmon price posting

by Jim Paulin  
BayTimes Staff

**BRISTOL BAY** — Salmon prices posted in March, about the time of Dillingham's Beaver Round-Up? That's the scenario if a bill calling for mandatory early salmon price posting is approved by the state legislature.

Rep. George Jacko Jr. (D-Pedro Bay) is proposing legislation requiring fish buyers to publish a base price for salmon at least 120 days before the start of the fishing season. The legislation would also require prices to be included on fish tickets and posted on fish-buying vessels.

Industry reaction to Jacko's proposal was mixed.

Mitch Kink, Alaska Independent Fishermens Marketing Association official, said his organization supports the bill.

"It would fit the legislation that's there now," Kink said, pointing to a law on the books allowing for state mediation if a price isn't posted within 120 days of the start of the salmon season.

Former state Rep. Joe McGill of Dillingham said he sponsored the law allowing for mediation, but said he can't remember it ever being used. McGill said he supports Jacko's proposal, but questioned its effectiveness.

"All (processors) have got to do is say 'we've got a posted price,' and it won't have much effect," McGill said. Fishermen will still need to fight for a decent price, McGill said.

A Jacko press release announcing his bill said, in part: "This past summer we saw fishermen actively organizing for higher prices — in part because information was not available. I think the time has arrived to review the traditional method of disseminating marketing information to fishermen."

"Hopefully this will act as a vehicle to promote meaningful dialogue to improve communication of marketing information.

As a fisherman myself, I've witnessed firsthand the frustration and misperceptions involved."

Bristol Bay Driftnetters Association Executive Director Dean Paddock, of Lunenburg, was unimpressed with Jacko's proposal.

"Nobody knows what the price is going to be that far in advance," Paddock said.

"It would force the industry to post an artificially low price to cover itself," Anchorage resident and Bay salmon fisherman Trefon Angason. The bill's chances of becoming law are extremely slim, he added.

Norman Van Vactor, Peter Pan Seafoods' Dillingham plant manager, said "I don't see how you're going to put government in a position of legislating something like that."

Van Vactor also recalled Peter Pan fishermen negotiating preseason prices, only to see prices rise during the season.

"When prices fluctuated in season, they were the ones who lost out. The guys that negotiated the preseason price got the lowest price," he said.

Van Vactor said he's sent fishermen two newsletters describing market conditions.

Van Vactor said his "gut feeling" is for higher salmon prices this year. "Hopefully we hit the bottom of the barrel last season," he said.

HB

389



FISCAL NOTE

No. 1  
 Bill Version HB 389  
 (H) Publish Date: 2/7/92

STA. \_\_\_\_\_  
**1992 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Department Affected: Environmental Conservation  
 Title: Recycling of automobile batteries BRU: Environmental Quality  
 Component: Solid & Hazardous Waste Management  
 Sponsor: Rep. Ulmer  
 Requestor: (H) Resources COMPONENT SERIAL NO. 

1	4	2	7
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS. CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>						

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Janice Adair Phone: 465-5050  
 Division: Commissioner's Office Date: January 26, 1992  
 Approved by Commissioner: *Janice Adair*  
 Agency: Environmental Conservation Date: 1/27/92

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# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



### REPRESENTATIVE FRAN ULMER

MEMORANDUM

February 25, 1992

TO: Rep. David Finkelstein, Chair  
House Labor and Commerce Committee

FROM: Rep. Fran Ulmer

RE: Proposed CSHB 389 "An Act relating to recycling of lead acid batteries."

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The following changes have been included in CSHB 389 work draft #7-LS1561\J dated 2/25/92.

In section 1 a new section replaces the old which:

- \* in subsection (a) requires that batteries be in reasonably sound and clean condition when delivered for a refund.
- \* beginning in subsection (b) and continuing through the CS, lowers the number of days to claim a refund from 6 months to thirty days. This will help reduce administrative costs for retailers and encourage prompt recycling by the consumer. This is a the same requirement as in several other states.
- \* in subsection (c) allows the purchaser to return a used battery to a municipally run or other "drop off" center. There they would be given a receipt which can be used at the original point of purchase to receive a refund. This amendment will given the consumer more options to recycle.
- \* in subsection (d) changes the notice requirement to reflect the changes in the CS.
- \* in subsection (f) states that the bill does not apply if the sale occurs, or the battery is delivered to, an area where no transporters possessing an EPA ID number under federal RCRA statutes exists. This subsection will have the effect of 1) exempting communities that do not have access to qualified transporters and 2) insure that carriers of lead acid batteries are listed with the EPA under their hazardous waste program.

February 25, 1992  
CSHB 389  
Page Two

\* in subsection (g), defines batteries covered under this bill as those weighing less than 25 kilograms. This is the cut off weight for transporting by passenger air carriers under FAA rules.

I believe these changes have satisfied a majority of the concerns expressed by retailers, recyclers and consumers.

Thank you for your consideration.

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



### REPRESENTATIVE FRAN ULMER

#### MEMORANDUM

February 5, 1992

TO: Rep. David Finkelstein, Chair  
House Labor & Commerce Committee

FROM: Rep. Fran Ulmer

RE: HB 389 - Recycling of lead acid batteries.

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I am requesting a hearing for HB 389 at your earliest convenience. HB 389 is designed to help remove a highly toxic chemical (lead) from the environment. Every year thousands of lead acid batteries are disposed of improperly in Alaska, posing a significant health risk. HB 389 seeks to alleviate this problem by offering incentives to both the consumer and the distributor to recycle lead acid batteries. In short HB 389 would:

- \* require retailers and wholesalers to accept a used battery in exchange for a new one.
- \* allow for the assessment of a minimum \$5.00 "core charge" redeemable once a used battery is returned for exchange.
- \* allow the retailer to keep the "core charge" if a used battery is not returned within six months.
- \* require that notices be posted at the place of business informing consumers of the requirements, including the fees and the right to a refund.
- \* provide for penalties under the state's Unfair Trade articles for noncompliance with the law.
- \* delay the effective date for one year for small communities with no access to the state road system, marine highway system, or regular jet service.

February 5, 1992  
HB 398  
Page Two

Many people are already aware of the terrible effects that can be brought about by tiny amounts of lead, especially in children (neurological damage, abnormal development, IQ deficits, etc.). Lead is an especially pernicious poison because it cannot be destroyed. Any amount released represents an increase in the environment, often concentrating in the food chain.

While lead paint represents the most dangerous source of poisoning, lead-acid batteries are also a significant concern. According to the EPA, lead acid batteries contain 80% of all the lead produced in this country. The lead, when combined with the acid contained in the batteries creates a soluble mixture that is rapidly dispersed into the environment once the battery casing deteriorates or is damaged. In Alaska, dozens of sites have been identified as contaminated by lead acid batteries. New laws prohibit the dumping of lead acid batteries in landfills. However, many batteries continue to be disposed of improperly. Removing this prime source of lead will represent a significant safeguard against the contamination of our environment.

Many Alaskans are already familiar with the "core charge" concept as it is required by several retailers for automobile batteries and many automobile parts. In fact, some retail outfits (such as Sears) are already producing a profit by taking advantage of the market for recycled batteries.

The provision in HB 389 allowing retailers to keep the fees after 6 months will also provide added compensation for their new responsibilities under this proposed bill.

Your prompt consideration of this legislation is greatly appreciated.

February 5, 1992  
HB 398  
Page Three

ORGANIZATIONS THAT SUPPORT HB 389

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

ALASKA MUNICIPAL LEAGUE

ALASKA HEALTH PROJECT

ALASKA BATTERY - FAIRBANKS

CITIZENS ADVISORY COMMITTEE ON WASTE MANAGEMENT - JUNEAU

ALASKA CENTER FOR THE ENVIRONMENT

MAYOR JEROME SELBY - KODIAK ISLAND BOROUGH

NAPA AUTO PARTS - CAPITOL MOTOR SUPPLY, INC.

E&L AUTO - JUNEAU

CHANNEL SANITATION - JUNEAU

ALASKA ENVIRONMENTAL LOBBY

NORTH SLOPE BOROUGH - DEPARTMENT OF INDUSTRIAL DEVELOPMENT

ALEUTIANS WEST COASTAL RESOURCE SERVICE AREA

FRIENDS OF RECYCLING - JUNEAU

SECTIONAL ANALYSIS - CSHB 389 (RESOURCES) "relating to the recycling of lead acid batteries."

Section 1. Adds a new section to AS 46.06 (AS 46.06.105.

(a) Requires retailers and wholesalers of lead acid batteries to accept for recycling a used battery in exchange for the purchase of a new one.

(b) Requires that the batteries be recycled.

(c) Allows that if a battery is not exchanged at the time of purchase the retailer (but not the wholesaler) may charge a minimum \$5.00 fee, refundable upon receipt of a used battery within 6 months of the original purchase. If the fee is not claimed within that time, the retailer may keep the fee.

(d) Requires retailers to post a notice containing a universal recycling symbol and detailing the purchaser's right to exchange a battery, the retailers's ability to charge a fee and the six month time limit for reclaiming the fee.

(e) Requires retailers who advertize lead acid batteries to indicate in the advertisement that an extra charge will be added to the sale price if a used battery is not exchanged.

(f) Defines "retailer."

Section 2. Amends AS 45.50.471(b) of the Unfair Trade Practices and Consumer Protection statute, Article 3 to include failure to comply with Section 1 of this bill.

Under the article, the Attorney General may investigate and seek an injunction against persons engaging in an unlawful act under 45.50.471(b) The courts may make additional orders or judgments to restore property or money lost as a result of the violation (AS 45.50.495 - 501).

The Attorney General is permitted to negotiate voluntary compliance agreements (AS 45.50.511).

Penalties for violations of an injunction or restraining order may not exceed \$25,000 per violation. Practices or actions deemed unlawful by the courts may be subject to a civil penalty of not more than \$5,000 per violation (AS 45.50.551).

Individuals may also bring civil suit for actual damages or \$200, whichever is greater. In cases of willful violations the courts may award up to three times the actual damages (AS 45.50.531).

February 5, 1992  
CSHB 389 (RESOURCES)  
Page Two

Section 3. Delays the effective date of this bill for communities with populations under 1,000, which do not have access to the state road system, the marine highway system, or regularly scheduled jet service.

7-LS1561V  
Bannister  
2/25/92

CS FOR HOUSE BILL NO. 389 ( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES ULMER, Brown, B.Davis, Boyer, Finkelstein, Koponen

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the recycling of lead acid batteries."

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

3 \* Section 1. AS 46.06 is amended by adding a new section to read:

4 Sec. 46.06.105. LEAD ACID BATTERY RECYCLING. (a) Each of the following shall  
5 accept for recycling a used lead acid battery that is unbroken and in reasonably sound and clean  
6 condition, and shall recycle the used batteries that are received under this subsection:

7 (1) a person who sells lead acid batteries at retail or at wholesale;

8 (2) a person other than the seller of lead acid batteries at retail or at wholesale  
9 if in the course of business operations the person accepts used lead acid batteries for the purpose  
10 of recycling the batteries.

11 (b) If a person who purchases a lead acid battery from a retailer does not provide the  
12 retailer with an unbroken and reasonably sound and clean used lead acid battery when making  
13 the purchase, the retailer shall charge the purchaser an additional fee of not less than \$5. The  
14 retailer shall refund the fee to the purchaser if within 30 days of the purchase the purchaser

1 provides the retailer with an unbroken and reasonably sound and clean used lead acid battery.  
2 The retailer may keep the fee if the purchaser does not claim the fee within the 30 days.

3 (c) The purchaser of a lead acid battery who does not provide the retailer with a used  
4 lead acid battery under (b) of this section may return an unbroken and reasonably sound and  
5 clean used lead acid battery to a person who handles used batteries under (a)(2) of this section.  
6 In exchange for the used battery, the used battery handler shall provide the purchaser with a  
7 receipt indicating that the purchaser has returned a used battery to the handler. A purchaser may  
8 claim the fee under (b) of this section if, within the time allowed for claim of the fee, the  
9 purchaser presents to the retailer

10 (1) the receipt showing the purchaser's previous purchase of a new lead acid  
11 battery from the retailer; and

12 (2) the receipt of the used battery handler issued under this subsection.

13 (d) A retailer shall post in a manner that is clearly visible to purchasers of lead acid  
14 batteries a notice that is at least 8-1/2 inches by 11 inches, that contains the universal recycling  
15 symbol, and that states:

16 NOTICE: USED BATTERIES

17 This retailer is required to accept your used lead acid battery for recycling when  
18 you purchase a lead acid battery from the retailer. If you do not give the retailer  
19 a used lead acid battery when you make your purchase, the retailer must charge  
20 you an additional fee of not less than \$5. The retailer is required to refund the fee  
21 to you if you provide the retailer with a used lead acid battery within 30 days  
22 after you purchase the battery from the retailer. The retailer is also required to  
23 refund the fee to you if you provide the retailer, within 30 days after you purchase  
24 the battery from the retailer, (1) the receipt of purchase for the battery, and (2) the  
25 receipt written by a used battery recycler to show that you have provided a used  
26 battery to the recycler. If you do not claim the fee within the 30 days, the retailer  
27 may keep the fee. A retailer or used battery recycler is not required to accept a  
28 used battery from you unless the battery is unbroken and in reasonably sound and  
29 clean condition.

30 (e) A retailer who advertises lead acid batteries shall indicate in the advertisement that  
31 an extra charge will be added to the price of the battery at the time of the sale if an unbroken

1 and reasonably sound and clean used lead acid battery is not exchanged for the new one.

2 (f) This section does not apply to the sale of a lead acid battery if

3 (1) the sale of the battery occurs in, or the seller delivers or arranges for the  
4 delivery of the battery to the purchaser in, a municipality or unincorporated community; and

5 (2) the municipality or unincorporated community does not have a person located  
6 in the municipality or community who

7 (A) possesses a current valid federal Environmental Protection Agency  
8 identification number under 40 CFR 263.11; and

9 (B) is reasonably available and willing to transport lead acid batteries for  
10 recycling or reclaiming under this section; in this paragraph, "reclaiming" has the meaning  
11 given to "reclaimed" in 40 CFR 261.1.

12 (g) In this section,

13 (1) "battery" or "lead acid battery" means a battery that

14 (A) has a core consisting of elemental lead; and

15 (B) weighs 25 kilograms or less when filled with all necessary fluids;

16 (2) "recycle" and "recycling" have the meaning given to "recycled" under 40  
17 CFR 261.1;

18 (3) "retailer" means a person who sells lead acid batteries at retail.

19 \* Sec. 2. AS 45.50.471(b) is amended by adding a new paragraph to read:

20 (31) failing to comply with AS 46.06.105.

21 \* Sec. 3. APPLICABILITY. For one year after the effective date of this Act, AS 46.06.105, enacted  
22 by sec. 1 of this Act, does not apply to the sale of a lead acid battery if the sale occurs in a municipality  
23 or unincorporated community that has a population less than 1,000, that is not on the state road or  
24 marine highway system, and that does not have regular jet service.

B

HOUSE COMMITTEE REPORT

2-7-92

(9)  
Date Referred: January 13, 1992

FURTHER REFERRALS:

Labor & Commerce

Date of Committee Action: 2/5/92

The RESOURCES Committee considered:

HB 389

HOUSE BILL NO. 389

AUTOMOBILE BATTERY RECYCLING

"An Act relating to the recycling of automobile batteries."

RECOMMENDATIONS:

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

CS HB 389 (Res)

the same title  
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

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

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

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

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

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

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

zero fiscal note DEC

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Clay Davidson</i> DAVIDSON	<input checked="" type="checkbox"/>				
<i>Eric Ivan</i> IVAN	<input checked="" type="checkbox"/>				
<i>Don Moyer</i> MOYER	<input checked="" type="checkbox"/>	<i>Pat Carnes</i> CARNES	<input checked="" type="checkbox"/>		
<i>David Finikelstein</i> FINIKELSTEIN	<input checked="" type="checkbox"/>	<i>Soren Apfelman</i> APFELMAN		<input checked="" type="checkbox"/>	
		<i>Bill Hudson</i> HUDSON	<input checked="" type="checkbox"/>		

*Clay Davidson*  
CHAIRMAN'S SIGNATURE



# Alaska State Legislature

## HOUSE RESOURCES COMMITTEE

P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3715

6 February, 1992

Commissioner John Sandor  
Department of Environmental Conservation  
410 Willoughby Avenue, Suite 105  
Juneau, AK 99801-1795

Dear Commissioner Sandor:

The House Resources Committee has considered House Bill 389 "An Act relating to recycling of lead acid batteries." During our deliberations, an issue arose that the committee feels is beyond the scope of this legislation, but requires the prompt attention by the Department of Environmental Conservation.

House Bill 389 would require retailers to charge a deposit on the purchase price of a lead acid battery, refundable upon receipt of a used battery. Retailers would then send the batteries to recyclers so that the lead may be recycled for use in new batteries.

House Bill 389 is designed to encourage the recycling of lead acid batteries in the future. However, the Committee notes that there is no provision for dealing with safe disposal of lead acid batteries currently causing health problems and threatening the well-being of Alaskans. This condition is especially acute in rural communities where proper disposal facilities and the ability to transport hazardous waste are significantly limited. In addition, little or no "information programs" or efforts are available to alert rural residents of the health hazards of the lead acid battery problem wherever they are improperly disposed of in the environment.

The effective date for rural communities as proposed in CSHB289(RES) will be one year after enactment of this legislation. During that one year period of time, in an effort to address the problem outlined above, the Committee request the Department

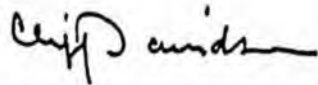
Page 2

consider expanding the existing Household Hazardous Waste Program to specifically address removing used lead acid batteries from communities with limited access to the major transportation hubs in Alaska.

The Committee also asks the Department to work with the Alaska Municipal League's Municipal Pollution Prevention Roundtable and representatives of rural communities, particularly from the unorganized borough, to assist them in planning for lead-acid battery recycling. The Household Hazardous Waste Program, in conjunction with HB 389, presents your Department with a unique opportunity to focus your efforts on the health menacc posed by lead acid batteries and to clean up this problem before it is unmanageable.

Thank you for your cooperation in this matter.

Sincerely,



Representative Cliff Davidson  
Chairman, House Resources Committee

cc: DEC budget subcommittee  
Alaska Municipal League

# MEMORANDUM

State of Alaska

TO: Representative Fran Ulmer

DATE: December 20, 1991

FILE NO: BATTERYULMR.LTE

THRU: Janice Adair, Special  
Assistant, Office of  
the Commissioner

TELEPHONE NO: 465-5275

SUBJECT: Comments on draft legislation  
related to battery recycling

FROM: David Wigglesworth, Chief   
Pollution Prevention Office

In response to your letter concerning proposed legislation entitled, "An Act Relating to the recycling of Automobile Batteries", the Department offers the following preliminary comments:

## General Comments:

The department supports the intent and purpose of this draft legislation. Improperly "disposed" batteries are found throughout Alaska presenting a potential threat to public health and the environment. The proper management of batteries will likely be enhanced by establishing a system such as that proposed in this legislation.

## Concerns:

The department has five concerns about the draft legislation at this point in time:

1. All retailers should accept batteries regardless of original purchase.

To encourage greater recycling of batteries, the bill should require that retailers of lead acid batteries accept used batteries for recycling when a new one is purchased--regardless of whether the used battery was originally purchased from the retailer. Line 6 in the draft bill appears to limit a person's ability to recycle batteries to only "the retailer" from whom the battery was originally purchased. All retailers could assess a core charge of \$5.00 at the time of purchase which could be reimbursed to the purchaser if a used battery is supplied at the time of purchase, or within some specified time period.

2. How will the bill address situations where a person simply wants to recycle a battery without purchasing a new one?

We want to encourage battery recycling. At the same time, we need to consider the retailer's concerns about the costs for handling batteries for recycling. Some battery suppliers in the state will accept a used battery (without a new purchase) for a fee. The fees appear to range between \$4.00 and \$16.00 depending on the handling and paperwork costs, recycling markets, and labor costs. Consideration should be given to including language that encourages, but does not obligate a retailer to accept a battery for recycling outside of a new purchase.

3. The bill must address rural concerns.

The proposed bill will present some problems for rural Alaskans who have to buy their batteries outside of their community. There will be additional expense to these purchasers if they have to ship their used batteries back to their supplier/retailer in an urban center to avoid the \$5.00 fee. Other questions related to rural concerns include: Will rural residents have to send their old batteries in first, prior to receiving a new battery? Will the purchaser, or the retailer, have to pay shipping costs for the old battery? Will airline companies (particularly small airlines servicing bush communities) take used batteries on their aircraft? Will this bill force small rural retailers to stop selling batteries because of concerns about these costs and the added effort to handle used batteries.

The department suggests that you consider: 1) setting up a meeting with rural representatives to address these potential concerns prior to formal committee hearings on the bill, or 2) include a rural exemption in this bill with the requirement that the department and rural communities develop a scenario for battery recycling that addresses rural conditions and report back to the Legislature on a specified date. If an exemption is considered, it should cover rural residents only. Large companies operating in rural parts of the state should not be excluded from the requirements of this bill.

4. The bill should address existing stockpile of abandoned batteries.

The stockpiling of old batteries continues to be a problem, particularly in rural Alaska. Perhaps the bill could include incentives to encourage a "one time" battery recycling effort to address this problem--with emphasis on those areas of the state lacking battery recycling outlets, or where transportation costs are high.

5. The definition of retailer should be expanded to include distributors and manufacturers who may supply batteries.

Retailers are not the only source for battery purchases. The bill should be expanded to include distributors, manufacturers and other "sellers" or suppliers of batteries.

Thank you for the opportunity to comment on the draft legislation. Please contact David Wigglesworth at the number listed above if you need any additional information or comments.



U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

ALASKA OPERATIONS OFFICE  
410 WILLOUGBY AVE. SUITE 100  
JUNEAU, ALASKA 99801

REPLY TO  
ATTN OF:

AOO

February 5, 1992

Barnaby Dow  
c/o Representative Fran Ulmer  
Room 421, Capitol  
PO Box V  
Juneau, AK 99811

Dear Mr. Dow:

You recently requested clarification from EPA regarding the application of the Resource Conservation and Recovery Act (RCRA) to recycling spent lead-acid batteries. The requirements for recyclable materials are addressed in CFR 40, Part 261.6, EPA Hazardous Waste Regulations (pertinent portions of regulations attached). Specifically, 261.6(a)(2)(v) exempts spent lead-acid batteries that are being reclaimed from RCRA generator, transporter, and storage requirements. Further, CFR 40, Part 266.80 (Subpart G - Spent Lead-Acid Batteries Being Reclaimed) exempts persons who generate, transport, collect or store spent batteries but do not reclaim ("crack" or break open batteries to reclaim salvageable materials) from RCRA requirements.

In summary, operations which generate, transport, collect or store spent lead-acid batteries are exempt from federal hazardous waste regulations provided those operators are not engaged in reclaiming or dismantling said batteries to recover salvageable material, and provided the manner in which they store the batteries prior to reclamation does not constitute disposal. Air shipment of lead-acid batteries is permissible provided adherence with the International Air Transport Association (IATA) dangerous goods regulations.

While disposal of spent lead-acid batteries is strictly regulated under federal and state hazardous waste regulations, the absence of a convenient, cost effective mechanism has left the actual fate of these batteries uncertain throughout Alaska. The result has been serious environmental harm from the haphazard discarding of batteries along Alaska's highways, streams and in landfills, only to be eventually dealt with at a later date at extreme expense. We are encouraged by Representative Ulmer's proposed legislation (HB #389) which, if enacted, would provide a positive incentive and mechanism to recycle spent lead-acid batteries in Alaska.

Barnaby Dow  
c/o Representative Fran Ulmer  
February 5, 1992  
Page 2

If I can be of further assistance, please do not hesitate to contact me.

Very truly yours,



Steven A. Torok  
Chief, State Operations Section

enclosure

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rators of between 100  
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as well as the require-  
263 through 266, 268,  
nd 124 of this chapter,  
cable notification re-  
section 3010 of RCRA,  
d of § 262.34(d) for so-  
wastes on-site begins for  
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ator may either treat or  
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to manage municipal or in-  
l waste; or  
y which:

(A) Beneficially uses or reuses, or leg-  
itimately recycles or reclaims its  
waste; or

(B) Treats its waste prior to benefi-  
cial use or reuse, or legitimate recy-  
cling or reclamation.

(h) Hazardous waste subject to the  
reduced requirements of this section  
may be mixed with non-hazardous  
waste and remain subject to these re-  
duced requirements even though the  
resultant mixture exceeds the quanti-  
ty limitations identified in this section,  
unless the mixture meets any of the  
characteristics of hazardous waste  
identified in subpart C.

(i) If any person mixes a solid waste  
with a hazardous waste that exceeds a  
quantity exclusion level of this sec-  
tion, the mixture is subject to full reg-  
ulation.

(j) If a conditionally exempt small  
quantity generator's wastes are mixed  
with used oil, the mixture is subject to  
subpart E of part 266 of this chapter if  
it is destined to be burned for energy  
recovery. Any material produced from  
such a mixture by processing, blend-  
ing, or other treatment is also so regu-  
lated if it is destined to be burned for  
energy recovery.

(51 FR 10174, Mar. 24, 1986, as amended at  
51 FR 23682, Aug. 3, 1986; 51 FR 40637, Nov.  
7, 1986; 53 FR 27163, July 19, 1988)

§ 261.6 Requirements for recyclable mate-  
rials.

(a)(1) Hazardous wastes that are re-  
cycled are subject to the requirements  
for generators, transporters, and stor-  
age facilities of paragraphs (b) and (c)  
of this section, except for the materi-  
als listed in paragraphs (a)(2) and  
(a)(3) of this section. Hazardous  
wastes that are recycled will be known  
as "recyclable materials."

(2) The following recyclable materi-  
als are not subject to the requirements  
of this section but are regulated under  
subparts C through H of part 266 of  
this chapter and all applicable provi-  
sions in parts 270 and 124 of this chap-  
ter:

(i) Recyclable materials used in a  
manner constituting disposal (subpart  
C);

(ii) Hazardous wastes burned for  
energy recovery in boilers and indus-  
trial furnaces that are not regulated

under subpart O of part 264 or 265 of  
this chapter (subpart H);

(iii) Used oil that exhibits one or  
more of the characteristics of hazard-  
ous waste and is burned for energy re-  
covery in boilers and industrial furn-  
aces that are not regulated under  
subpart O of part 264 or 265 of this  
chapter (subpart E);

(iv) Recyclable materials from which  
precious metals are reclaimed (subpart  
E);

(v) Spent lead-acid batteries that are  
being reclaimed (subpart G).

(3) The following recyclable materi-  
als are not subject to regulation under  
parts 262 through parts 266 or parts  
268, 270 or 124 of this chapter, and are  
not subject to the notification require-  
ments of section 3010 of RCRA:

(i) Industrial ethyl alcohol that is re-  
claimed except that, unless provided  
otherwise in an international agree-  
ment as specified in § 262.58:

(A) A person initiating a shipment  
for reclamation in a foreign country,  
and any intermediary arranging for  
the shipment, must comply with the  
requirements applicable to a primary  
exporter in §§ 262.53, 262.56 (a)(1)-(4),  
(6), and (b), and 262.57, export such  
materials only upon consent of the re-  
ceiving country and in conformance  
with the EPA Acknowledgment of  
Consent as defined in subpart E of  
part 262, and provide a copy of the  
EPA Acknowledgment of Consent to  
the shipment to the transporter trans-  
porting the shipment for export;

(B) Transporters transporting a  
shipment for export may not accept a  
shipment if he knows the shipment  
does not conform to the EPA Acknowl-  
edgment of Consent, must ensure that  
a copy of the EPA Acknowledgment of  
Consent accompanies the shipment  
and must ensure that it is delivered to  
the facility designated by the person  
initiating the shipment.

(ii) Used batteries (or used battery  
cells) returned to a battery manufac-  
turer for regeneration;

(iii) Used oil that exhibits one or  
more of the characteristics of hazard-  
ous waste but is recycled in some other  
manner than being burned for energy  
recovery;

(iv) Scrap metal;

§ 266.70

ing, or other treatment to meet the specification provided under § 266.40(e) must obtain analyses (or other information) documenting that the used oil meets the specification.

(e) *Recordkeeping.* A burner who receives an invoice under the requirements of this section must keep a copy of each invoice for three years from the date the invoice is received. Burners must also keep for three years copies of analyses of used oil fuel as may be required by paragraph (d) of this section. In addition, he must keep a copy of each certification notice that he sends to a marketer for three years from the date he last receives off-specification used oil from that marketer.

(The notification requirements contained in paragraph (b) of this section were approved by OMB under control number 2050-0023. The certification requirements contained in paragraph (e) of this section were approved by OMB under control number 2050-0047. The analysis requirements contained in paragraph (d) of this section were approved by OMB under control number 2050-0047. The recordkeeping requirements contained in paragraph (e) of this section were approved by OMB under control number 2050-0047.)

[50 FR 49206, Nov. 29, 1985, as amended at 52 FR 11822, Apr. 13, 1987]

**Subpart F—Recyclable Materials Utilized for Precious Metal Recovery**

§ 266.70 Applicability and requirements.

(a) The regulations of this subpart apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these.

(b) Persons who generate, transport, or store recyclable materials that are regulated under this subpart are subject to the following requirements:

(1) Notification requirements under section 3010 of RCRA;

(2) Subpart B of part 262 (for generators), §§ 263.20 and 263.21 (for transporters), and §§ 265.71 and 265.72 (for persons who store) of this chapter;

(c) Persons who store recycled materials that are regulated under this sub-

40 CFR Ch. I (7-1-91 Edition)

part must keep the following records to document that they are not accumulating these materials speculatively (as defined in § 261.1(c) of this chapter);

(1) Records showing the volume of these materials stored at the beginning of the calendar year;

(2) The amount of these materials generated or received during the calendar year; and

(3) The amount of materials remaining at the end of the calendar year.

(d) Recyclable materials that are regulated under this subpart that are accumulated speculatively (as defined in § 261.1(c) of this chapter) are subject to all applicable provisions of parts 262 through 265, 270 and 124 of this chapter.

**Subpart G—Spent Lead-Acid Batteries Being Reclaimed**

§ 266.80 Applicability and requirements.

(a) The regulations of this subpart apply to persons who reclaim spent lead-acid batteries that are recyclable materials ("spent batteries"). Persons who generate, transport, or collect spent batteries, or who store spent batteries but do not reclaim them are not subject to regulation under parts 262 through 266 or part 270 or 124 of this chapter, and also are not subject to the requirements of section 3010 of RCRA.

(b) Owners or operators of facilities that store spent batteries before reclaiming them are subject to the following requirements:

(1) Notification requirements under section 3010 of RCRA;

(2) All applicable provisions in subparts A, B (but not § 264.13 (waste analysis)), C, D, E (but not § 264.71 or § 264.72 (dealing with the use of the manifest and manifest discrepancies)), and F through L of part 264 of this chapter;

[50 FR 666, Jan. 4, 1985, as amended at 50 FR 23543, Aug. 7, 1985]

**Subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces**

Source: 56 FR 7208, Feb. 21, 1991, unless otherwise noted.

Environmental Protection

DATE NOTE AT 5  
§ 266.100 through  
§ 266.100 were added, effective

§ 266.100 Applicability.

(a) The regulations of this subpart apply to hazardous waste that is burned in a boiler or industrial furnace (as defined in § 261.1(c) of this chapter) irrespective of the quantity of waste being burned or processed, except as provided by paragraphs (b), (c), and (d) of this section. In this subpart, "burn" means burning for energy recovery or destruction, or for materials recovery or reuse. The emissions of particulate matter, § 266.104, 266.105, and 266.107 apply to facilities operating under interim status or under a permit as provided in §§ 266.102 and 266.103.

(b) The following facilities and processes are excluded from this subpart:

(1) Used oil burned in a boiler or industrial furnace that is also a hazardous waste solely because it exhibits one or more characteristics of hazardous waste under subpart C of part 261 of this chapter. Such used oil is subject to regulation under subpart E of part 261 of this chapter rather than this subpart;

(2) Gas recovered from solid waste landfills which is burned for energy recovery;

(3) Hazardous waste that is burned in a boiler or industrial furnace that is exempt from regulation under §§ 261.6(a)(3) (v-viii) of this chapter and hazardous wastes that are burned in a boiler or industrial furnace that are conditionally exempt small quantities under § 261.5 of this chapter;

(4) Coke ovens, if the waste burned is EPA Hazardous Waste No. K087, decanter tar from coking operations.

(c) Owners and operators of facilities engaged in burning, melting, and refining, including pyrometallurgical processes, as cupolas, sintering machines, and foundry furnaces, including cement kilns, as well as or halogen acid furnaces (hazardous waste) that process waste solely for metal recovery are conditionally exempt from regulation under this subpart, §§ 266.101 and 266.112.



February 10, 1992

~~Representative Fran Ulmer  
House of Representatives  
State of Alaska  
Pouch V  
Juneau, Alaska 99811~~

Re: H. B. 389

Dear Representative Ulmer:

N C Machinery Co. has done business in Alaska for almost two hundred years. As such, this company shares the concerns for the environment which prompted the introduction of House Bill 389. We have reached the conclusion that the bill, while well intended, should not be enacted in its present form, for the following reasons.

House Bill 389 does not effectively promote the responsible recycling and disposal of used batteries. The focus of legislation on this subject should be the recycler, not the retailer and the responsibility for the proper recycling batteries should rest with recyclers, not retailers. The success of a battery recycling program will depend on the availability of a network of battery recyclers with the capability of collecting, storing, handling, transporting and, if necessary, properly disposing of batteries and battery components in accordance with the requirements of all applicable laws. House Bill 389 does not address in any way the promotion of such a network. By focusing on the retailer instead of the recycler, the bill creates an illusion that effective action is being taken to promote the responsible disposal of used batteries.

Additionally, if enacted, this bill would create a host of issues of serious concern pertaining to health and safety. The bill places the responsibility for the collection and

*only  
remote locations*

Representative Fran Ulmer  
February 10, 1992  
Page 2

recycling of batteries on the retailer which may or may not have the necessary training or facilities to safely and lawfully handle the used batteries. Unlike many other types of recyclables, used batteries contain corrosive chemicals which, when removed from the used battery, may be considered to be hazardous waste and which would require special storage, handling, transportation and disposal in accordance with law and safety standards. Obviously, leaking batteries may create specific health and safety hazards. Even batteries which are not leaking may be of concern, however, as they may be covered with a film of acid as a result of prior leakage or overfilling. The corrosion of used batteries may make them more subject to damage in transportation and handling than new batteries. This law would require retailers, regardless of their capabilities in these areas, to accept, store, handle and transport used batteries, including those which are damaged or in poor condition.

We agree that the responsible recycling of used batteries is an important goal and one which N C Machinery Co. supports. We feel, however, that before addressing this issue through legislation, the above issues must be carefully considered, as well as the following:

Should all lead acid batteries be covered by legislation? Lead acid batteries are found in numerous applications and may weigh as much as 2,500 pounds.

Is the law intended to apply to bulk batteries ordered from out of state?

How are batteries sold in remote locations to be handled? Are air transportation companies willing and available to carry used batteries or their components from remote areas?

Should any person be required to accept, handle, store or transport used batteries in any condition when, in his or her best judgment, he or she may not be equipped to do so safely?

We believe that consideration of all of these points will lead to the conclusion that House Bill 389 is not the appropriate means of addressing concerns about responsible battery disposal and recycling in Alaska. We therefore request the withdrawal of House Bill 389 as written.

**NC** N C MACHINERY CO.

Representative Fran Ulmer  
February 10, 1992  
Page 3

Thank you for your consideration. We would be happy to work with you or your committee as you continue to explore responsible solutions to this concern. Please let me know if we can be of assistance.

Very truly yours,

N C MACHINERY CO.

  
Lynn Edelstein Du Bey  
Secretary & General Counsel

cc: Rep. Cliff Davidson  
Rep. David Finklestein ✓  
Bill Hopper, Vice President/Alaska, N C Machinery Co.  
Lynn Laszewski, Environmental Manager, N C Machinery Co.  
Errol D. Champion, Juneau Branch Manager



**Battery  
Council  
International**

WASHINGTON OFFICE:  
Weinberg, Bergeson & Neuman  
1300 Eye Street, N.W.  
Suite 600 East  
Washington, D.C. 20005  
(202) 962-8585 / FAX (202) 962-8599

February 6, 1991

The Honorable Representative Cliff Davidson  
Resources Committee  
P.O. Box V  
Juneau, AK 99811

Re: Lead Battery Recycling Legislation

Dear Representative Davidson:

The Battery Council International ("BCI") writes to encourage you to introduce our model lead battery recycling legislation.<sup>1/</sup> (See enclosed) As you likely are aware, there is significant public pressure to ensure that recyclable materials are not discarded in trash, but rather are returned for recycling. Lead batteries are among these materials. Two years ago, BCI developed its model recycling bill both in response to environmental concerns, and the fact that as an industry, we want to improve the existing system so that a 100 percent recycling rate is achieved.

To date, due mostly to BCI's efforts, twenty-eight states have enacted prohibitions on the disposal of lead batteries in the municipal solid waste stream. (See also the enclosed list of states with enacted legislation) Twenty-four of these states have gone further than this by also mandating specific take back requirements similar, and in many cases identical, to those contained in BCI's model legislation.

Nationally, lead batteries are recycled at an 80 to 90 percent recycling rate. The industry's ability to achieve this rate is predicated on the fact that there is a sophisticated reverse distribution system, which ensures that the batteries are returned to the recycling chain. Yet, BCI knows that some

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<sup>1/</sup> BCI is a nonprofit trade association whose members are engaged in the production of lead storage batteries for automotive, marine, industrial, stationary, specialty and commercial uses. BCI's members also include entities engaged in the reclamation and recycling of lead batteries once they are spent. BCI represents more than 99 percent of the nation's domestic lead battery manufacturing capacity and more than 92 percent of its lead battery recycling capacity. Our members include all the large, multi-plant domestic manufacturers as well as the majority of the nation's smaller firms.

The Honorable Representative Cliff Davidson  
February 6, 1991  
Page 2

batteries do escape recycling. To close the remaining gap, BCI recommends enacting requirements similar to those contained in our model legislation. Specifically BCI's model would:

- Prohibit used lead batteries from being discarded in the solid waste stream;
- Require all persons who sell lead batteries to take them back; and
- Require that persons who sell lead batteries to educate their customers by posting point-of-sale signs indicating that it is illegal to discard lead batteries in the trash, that lead batteries are recyclable, and that state law requires retailers, and everyone else in the recycling chain, to take back lead batteries for recycling.

BCI believes that requirements such as these will close any remaining gap in the recycling chain efficiently and cost effectively. In this regard, and for the reasons outlined above, we strongly encourage you to review the model and consider introducing it in your state.

BCI is very interested in working with the State of Alaska on this issue. If you have questions on the information provided above or enclosed, or if you want BCI's participation in the legislative process, please contact Jodi Bakst, in our Washington, D.C. office, at (202) 962-8573.

Sincerely,

*Tom Douglas*  
Tom Douglas, President  
BCI

Enclosures

# CHANNEL CORPORATIONS

CHANNEL SANITATION CORP  
CHANNEL EQUIPMENT RENTAL I  
CHANNEL LANDFILL.

1) file w/  
this bill  
file  
2) BD Followup, 8/11

November 20, 1991

Representative Fran Ulmer  
Alaska State Legislature  
PO Box V  
Juneau, AK 99811-3100

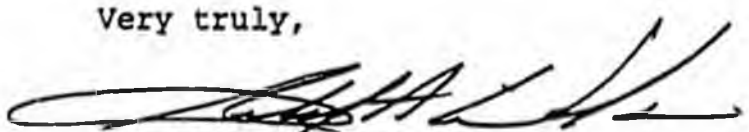
Dear Representative Ulmer;

We would like to congratulate you on addressing a very important issue with your proposed house bill concerning battery regulation. Our only suggestion might be to increase the fee from \$5.00 to \$10.00 as that figure may be more inducement to allow your bill to do what it was intended. We might also suggest the bill not only be for automobile batteries but for any transportation battery such as, motorcycle, snowmobile, trucks, and any other heavy equipment.

You are aware that Channel currently charges \$.06 per pound or a minimum of \$2.50 for each battery disposed. One average automobile battery costs \$2.50. I would assume the retailer would add this disposal fee to the price of each new battery purchased so at the time of purchase if the buyer presented a used battery, there would be no additional charge. However, if the customer did not present an old battery at the time of purchase, the customer would pay an additional \$10.00 fee. Hopefully, this would deter people from not bringing in their old battery. One question, who keeps the \$10.00?

Again, thank you for your efforts in helping to solve our environmental problems.

Very truly,



Gerald A. Wilson  
President

GAW/jak  
cc:file

E&L AUTO  
NOVEMBER 13, 1991

REPRESENTATIVE FRAN ULMER  
DISTRICT 4B JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811-3100

SUBJECT: Enforcement of battery recycling bill  
work order no. 71s-1561


To respond to your letter dated November 7, 1991 we are glad to see some type of bill go into law because we need a way to control how many batteries that end up all over the area. In the past there have been people that dump there batteries in the water and forrest and other places.

We at E&L Auto have a free drop off for batteries but people thank that we are out of the way so they just don't bring in there batteries to us. We even pick up batteries when we see them on are roadways.

We have talked to other people that sale batteries and they thank it is a good way to get people to turn in the batteries that they buy at there location.

They only store that require a core charge at least in Juneau is NAPA stores.

Thank You for sending a draft of the bill to us.

Staff from E&L Auto  
  
Garry O. Strickler



# Batteries & Chargers

P.O. Box 14205, Reading, PA 19612-4205  
215/378-0500 FAX: 215/378-0388

November 30, 1990

TO: ALL NAPA BATTERY CUSTOMERS  
FROM: EXIDE CORPORATION ENVIRONMENTAL RESOURCES DEPARTMENT  
SUBJECT: RECYCLING OF SPENT LEAD-ACID BATTERIES

To help you understand the regulations for spent lead-acid batteries and Exide's management practices. Outlined below are a few pertinent facts:

- o In most states, spent lead-acid batteries are exempt from management as hazardous waste when they are being recycled. This means that if you generate, transport, collect or store spent batteries prior to recycling but do not recycle them yourself, you do not need to comply with federal or state requirements for hazardous waste labels, markings, manifest, etc.
- o The spent battery exemption applies only to spent lead-acid batteries only when they are being recycled/reclaimed. If you dispose of these batteries in any other way, or if you generate any other type of spent battery (for example: nickel-cadmium, nickel-iron, etc.), you must comply with hazardous waste regulations. Exide Corporation facilities are authorized to handle only lead-acid batteries.
- o Many states have enacted laws which prohibit the disposal of spent lead-acid batteries in any manner other than shipment to a recycling facility, such as a secondary lead smelter. (For information regarding such a law in your state, contact your Exide Account Representative).
- o Spent lead-acid batteries returned to Exide Corporation are recycled for lead recovery at one of several secondary lead smelters operated in the U.S. Exide itself owns and operates three secondary lead smelters for the recycling of spent batteries (lead-acid only) and other recyclable lead-bearing materials:

<u>Facility</u>	<u>Location</u>	<u>EPA Identification No.</u>
General Battery Corp.	Reading, PA	PAD990753089
Dixie Metals Company	Dallas, TX	TXD068999622
General Battery Corp.	Muncie, IN	IND000717959

**The NAPA LEGEND.™ The Better Battery.**

TO: ALL NAPA BATTERY CUSTOMERS

Page Two

- o Exide's Reading smelter is currently operating under a hazardous waste facility permit issued by the U.S. EPA and the PA Department of Environmental Resources. The smelter facilities located in Dallas and Muncie are operating under interim status, as provided by the U.S. EPA and applicable state regulatory agencies, pending approval of Part 9 permit applications which have been submitted for these facilities.

- o New batteries and spent batteries destined for recycling are packaged and shipped by Exide Corporation in accordance with applicable U.S. DOT regulations for hazardous materials.

- o Wastes which are generated at Exide's recycling facilities are recycled, treated, discharged and/or disposed of in accordance with all applicable environmental regulations.

Exide's "vertically-integrated" operations are designed to provide a recycling chain for our products, and assure you of the best possible management option for your spent lead-acid batteries.

EXIDE CORPORATION

Environmental Resources Department

# Public Health Law Bulletin

March 4, 1991

Volume 1, No. 22

## Officials cite efforts to reduce lead exposure risk

Lead poisoning was the subject of a hearing in the Senate Subcommittee on Toxic Substances, Environmental Oversight, Research and Development on February 21, in which high-ranking officials of four federal agencies testified to their joint and separate efforts to reduce the public health risks of lead exposure.

The Environmental Protection Agency is spearheading the federal effort. William Reilly, Administrator of the EPA, listed the three major sources of lead exposure as lead-based paint, urban soil and dust, and drinking water. Although paint is the most significant source of lead poisoning in children, he testified that "lead-contaminated soil might contribute as much as thirty percent of

exposures leading to elevated blood levels in children."

Among the "action elements" of EPA's strategy for reducing lead exposure are developing and disseminating to local governments inexpensive but effective technology for lead testing and abatement, public education, lead pollution prevention, and the coordination of research and enforcement among federal agencies.

Because lead is indestructible, EPA is also investigating recycling to reduce the introduction of lead into all media. "Recycling lead acid storage batteries is important because of the sheer volume of lead involved—80% of domestic lead is used in batteries," Reilly testified. Greater enforcement of national ambient air quality standards ("NAAQS") in areas near lead smelters, refineries and remelters would also reduce lead exposure. Reilly estimated that "the number of affected children with blood lead levels greater than 10 ug/dl would be reduced about 50% if the current NAAQS were attained in all areas of the country."

Dr. James O. Mason, head of the Public Health Service in the Department of Health and Human Services, testified, "Lead is the number one environmental poison for children." It can cause neurobehavioral problems, learning disabilities and deficits in IQ. Very severe lead exposure can cause coma, convulsions and death.

Mason stated in his written testimony that in 1984, at least 3 to 4 million children in the United States—17% of all children—had blood lead levels above 15 ug/dl. However, when this estimate is updated in 1992 it is expected to show a dramatic decrease in blood lead levels due to the phaseout of leaded gasoline and the reduction of lead in food. "While we know that blood lead levels above 25 ug/dl are the most dangerous," he testified, "the more that is learned about lead's effects on children and fetuses, the lower the

See *LEAD EXPOSURE*, page 4

### In The States 2

Abortion continues to be the focus of legislative attention: an abortion rights bill is enacted in Maryland, and a bill to restrict abortions is narrowly defeated in South Dakota

### In The Courts 3

Two recent decisions by the Massachusetts Supreme Judicial Court addressed the right of individuals to refuse blood transfusions for themselves or for their minor children

### In Washington 4

A report by Congress' Office of Technology Assessment says basic information and consensus on some key issues are missing from the efforts to formulate a national medical waste policy . . . Around Capitol Hill . . . Washington Calendar

### Bulletin Board 8

In Brief

## In Washington . . .

### **Report: Information, national consensus is lacking from efforts to devise a medical waste policy**

More is now known about medical waste management practices than was known prior to passage of the Medical Waste Tracking Act in 1988, according to a recent report by Congress' Office of Technology Assessment (OTA), but basic information and consensus on some key issues continue to be missing from the efforts to formulate a national medical waste policy.

**Defining medical waste:** The OTA report, which examined medical waste policy developments over the past two years, concluded that "critical aspects of medical waste issues need to be addressed further." Among the critical issues identified by OTA is development of a definition of regulated medical wastes, based on the potential health risks these wastes present – that is, the ability of medical waste to present a risk of infectious disease transmission beyond that ordinarily associated with municipal solid waste.

**Waste reduction, recycling:** The report calls for investigation of potential waste reduction and recycling opportunities, including a study of product redesign to produce reusable and recyclable medical products where appropriate, and to avoid the use of materials such as lead or cadmium.

**Occupational exposure:** The need for development by governmental agencies of appropriate workplace practices for occupational groups, such as health care workers, in frequent contact with medical wastes was noted by the report, along with the need for implementation of such policies to minimize the occupational risks associated with medical wastes.

**Information on waste generation, treatment technologies:** The report also cited a need for more precise information on the generation of medical waste, particularly by nonhospital sources. In addition the report noted that information on treatment technologies – particularly on alternatives to waste incineration – needs to be more readily available to those who regulate medical waste at the state and local level, to the generators of medical waste, and to the general public.

The report also suggests that management options for small generators of medical waste – including households – need to be more readily available. Completion of air emission standards for medical waste incinerators by the EPA is necessary, the report stated, and procedures for establishing the safety and efficacy of new treatment technologies are also needed.

**Federal policy issues:** Of the specific issues involved that could benefit from congressional examination, the OTA report noted, "a fundamental one of critical importance . . . is the extent to which medical wastes are to be regulated on the basis of potential threat to public health and their aesthetic characteristics." Reauthorization of the Resource Conservation and Recovery Act (RCRA) in 1991 will provide an opportunity for Congress to revisit medical waste issues, the report added.

### **LEAD EXPOSURE, from page 1**

blood lead level at which adverse effects can be documented. A current reassessment may place the new threshold for concern at 10-15 ug/dl."

HHS's 20-year strategic plan to reduce lead exposure concentrates first on better and more intensive screening and medical treatment for children with blood levels above 25 ug/dl and abatement of lead-based paint in housing.

John C. Weicher, Assistant Secretary of the Department of Housing and Urban Development, testified that of 57 million American homes painted with lead-based paint, approximately 9.9 million house children under seven years old, and 3.8 million have "priority hazards" – peeling lead-based paint or excessive dust lead or both. Weicher told the Subcommittee that testing and abating all homes with young children or priority hazards would cost between \$1.9 and \$2.4 billion annually.

The federal effort also aims at adults. Gerard Scannell, Assistant Secretary of Labor for Occupational Safety and Health, testified that workers in at least 120 occupations are exposed to lead, which can cause impotence or sterility in men, infertility in women, kidney disease, and peripheral and central nervous system damage ranging from mild behavioral symptoms to fatal brain damage. OSHA standards permit employee blood levels no higher than 50 micrograms per 100 grams of blood. Scannell testified, "During the past three years, we have cited employers for more than 1500 violations of the lead standard."



**PERMANENT FUND:** Dividend applications go out to

## LISA SLIWA

Guardian Angel  
and fashion model

Lifestyles, Page D-1

## CHANGING TIME

Come Easter Sunday  
many of us will be

Nation Page A-1



# Anchorage Daily News

VOL. XLII, NO. 92 68 PAGES

ANCHORAGE, ALASKA, FRIDAY, APRIL 1, 1988

## Lead contamination from battery shop found in area yards

By PATTI EPLER  
Daily News reporter

Lead contamination from a Mountain View battery shop has moved out of the company's yard and into the surrounding neighborhood, a new federal report shows.

Moreover, PCBs in concentrations dozens of times higher than considered safe also have been documented in the yard at Alaska Husky Battery, surprising environmental officials who say something will eventually have to be done to clean up the property and surrounding area.

Public health advocates on Thursday said the levels of lead and PCBs were high enough to constitute a "health emergency." Two community

groups, which criticized the government for lack of action on a site known to be a problem for the last several years, want immediate steps taken to prevent contaminated dust from being blown off-site.

But state and federal environmental officials said they had no plans to take immediate action to prevent further spread of contaminants.

And state officials said the state simply lacks the money to clean up the site.

The battery store, at 4450 Mountain View Drive, has been of concern to environmental officials since at least 1980, according to the new report

See Back Page, CONTAMINATION

## Records detail claims of kickbacks on Slope

By RICHARD MAUER  
Daily News reporter

A chain of checks and invoices has been disclosed by the government that publicly detail for the first time its claim that money flowed from the North Slope Borough through two consulting firms and into the bank accounts of lobbyist Lewis Dischner and businessman Carl W. Mathisen.

The documents, filed in U.S. District Court, also give the most comprehensive look yet of the government's

Mathisen were paid substantial kickbacks by contractors.

The records show how, during the month of June 1984, a \$56,000 payment was passed from Coffman Engineers of Bellevue, Wash., through a Seattle architectural firm, McCool-McDonald, for disposition to Dischner and Mathisen.

Dischner and Mathisen are facing trial in September on 36 counts of racketeering, bribery and tax evasion stemming from the government's three-year investigation into corrup-

## LAST LUNCH



Barbara J. ...  
Thursday ...  
closed ...



Piermattet and David Coffman, the firm's president, didn't return calls left at their office in Bellevue. A spokesman for the firm, Bruce Pozzi, described the payment as "an architect's override," which he said was a standard industry fee paid from one design firm to another for directing business its way. "In no way were monies paid, that we have knowledge of, for kickbacks," Pozzi said. He said he couldn't explain why Dischner would have asked McDonald to collect fees from Coffman Engineers.

A receptionist at McCool-McDonald said Donna White didn't work there anymore, and her home telephone in Bellevue was unlisted. She didn't respond to a telegram sent there today, McDonald was said to be out of town.

The firm's lawyer, Dan Dubitzky of Seattle, declined to comment specifically on the documents. He referred to an earlier statement in which the firm denied wrongdoing and said: "All our dealings with the North Slope Borough were completely open and above-board, as were all payments made to Trust Consultants."

McCool-McDonald has filed a sealed motion

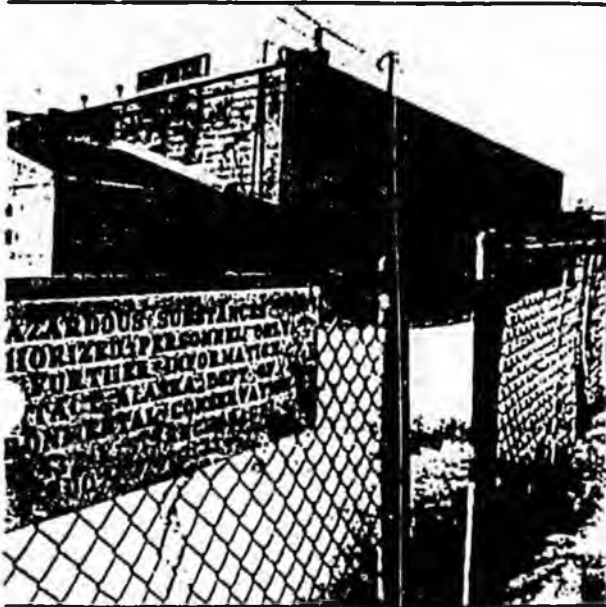
demonstrate to Judge James Fitzgerald that the U.S. Attorney's office had complied with fair-trial rules by providing the defense with the significant documentary evidence. In all, Gamache testified, the government has turned over 10,832 pages of records, including 5,546 pages of North Slope contracts and nearly 1,000 pages of documents from the Alaska Public Offices Commission, the state's political disclosure agency.

The defense and the government are quarreling over the significance of an additional half-million pages of records stored in 141 file cabinets and boxes in a room in the U.S. Attorney's office. While the government says the defense can examine and copy the material, it has refused to provide a detailed index.

Defense lawyers have argued that without knowing what those documents contain, they cannot adequately prepare for trial.

Judge Fitzgerald has given them until June 6 to complete their inspection. If they haven't finished by then, he ordered all the records brought to his courtroom and all the attorneys to appear there, and to work every day until they are done.

## I found in yards neighboring battery shop



Anchorage Daily News/Fran Durner

on the site of Alaska Husky Battery to neighboring land.

It simply has no way to allow the testing and

problem right now ample of a situation have the re-stigation and no for cleanup," he

We can't continue kinds of sites, you get one that's

— the American local chapter and for the Environment now to prevent unants while fur-

ther testing is done. The groups have been urging DEC and EPA to do something about the battery shop since last summer, when reports of high lead levels came out.

"I think the report shows there is a risk to the residents of the area and that, because of that, immediate protective measures should be taken," said Kristine Benson, hazardous waste specialist for the Center for the Environment.

Benson suggested covering the contaminated areas with some sort of impermeable plastic covering and blocking off the alley to traffic and pedestrians, particularly neighborhood children who might play there.

"To allow the exposure to continue

is inexcusable at this time," she said. "The highest levels were found in 1984 and now we're four years later with the same situation."

Deborah Williams of the Lung Association said her group will be asking for the formation of a state, federal and municipal task force to immediately begin working to resolve the problem.

"I think this represents a public health emergency in our own backyard," Williams said. "It seems clear to me that one of the most important things to do would be to take immediate steps that would reduce the amount of lead and PCBs that become airborne when breakup comes."

Lead has been shown to cause a number of health problems, including high blood pressure, neuro-muscular problems, learning disabilities, behavioral problems and anemia, she said.

"Acute" or short-term exposure to high levels causes nausea, diarrhea and other illness, she said, adding that, "If it's a real windy day I think it's very possible we could have acute lead poisoning."

Lautenberger said EPA did not expect to find PCBs in the soil but decided to run the on-site samples for the pollutant because officials were told the shop might have handled transformers at one time.

PCBs were detected in every sample taken in the yard. Because it binds with soil and can migrate just like lead, further sampling off-site now will be done, he said.

The shop, which has been in business for about 30 years under differing owners, used to manufacture batteries and, in the process, lead and other chemicals were spilled into the yard. The most recent battery manufacturing process was shut down by the current owners after government investigations began but still operates as a retail outlet for batteries.

## runs ads to counter move against tax exemption

Production Co. Hopkins declined to divulge the cost of the ad campaign.

state revenue of \$1 million, will cost the treasury more than \$1 million in taxes over the next five years. Gov. Steve Coatsworth's House Democrats are pushing for a tax exemption for the ELF that

million barrels of oil a day.

Oil industry officials, including the presidents of Standard Alaska Production Co. and ARCO Alaska, Inc., say Prudhoe is wearing out. They say it has reached its economic limit at current oil prices and tax rates, and needs the severance tax reduction.

North Slope could be retarded or halted if the industry is forced to shoulder a heavier tax burden.

Grussendorf and other lawmakers worry that revenue lost to the ELF may be made up in a budget crunch with earnings reserves of the Alaska Permanent Fund.

Hopkins and other industry officials say state govern-

more than 60,000 barrels of oil with Canada swap of oil

## Dividend booklets mailed

### State kicks off application period

By LARRY PERSLY

The Associated Press

JUNEAU — The application period for Alaska Permanent Fund dividends opens today, with the start of state-wide delivery of 1988 dividend forms.

The Department of Revenue estimates about \$430 million will be distributed in this year's program, with more than \$800 going to every Alaskan.

An estimated \$773 of this year's dividend will come from the usual source of permanent fund earnings. An extra \$40 bonus is expected for each applicant if the legislature passes a measure to distribute money left over from previous years' dividends.

The measure is expected to win legislative approval.

Last year's dividend was \$708.

The application period runs from April 1 through June 30. The exact dividend will be announced Oct. 1, with the state's check-printing machine then to start sending out the dividends.

The revenue department expects to have most of the checks out by the end of December.

But before people can deposit their checks they must make correct applications on time, and the department is urging Alaskans to send in their forms as early as possible.

More than 270,000 application booklets were delivered to regional postal facilities at Anchorage, Fairbanks and Juneau earlier this month, with delivery to start Friday, said Mike McGee, dividend operations chief at Revenue.

The booklets will be mailed to every postal customer in the state, with delivery expected to be completed by mid-April, McGee said.

Each booklet contains forms for three adults and four children.

Residents who do not receive an application by mail by mid-April may pick up copies at legislative information offices, city halls, and other local distribution points.

As in past years, the department will send reminders to all applicants. People should have receipts for their applications on time.

# Battery shop exceeds safe lead levels

## Dangerously high contamination found behind Mountain View business

By PATTI EPLER  
Daily News reporter

Lead in levels dozens of times higher than considered safe has been found at a Mountain View battery shop, but state environmental officials say more testing is necessary before they'll know what cleanup action to pursue.

A state report on Alaska Husky Battery, 4450 Mountain View Drive, outlines a battery-manufacturing process that over the years apparently has caused lead contamination of soils at the shop itself, in an alley behind the business, in groundwater in the area and the shop's well.

The report also says sulfuric acid apparently has been washed into the municipal sewer system, to the point that the company's own sewer line was eaten away. Sulfuric acid also has contaminated the groundwater and the soil, the report said.

Lead as high as 74,000 parts per million was discovered in October 1984 behind the shop building. A November 1985 sampling found 2,700 parts per million lead in the general area, according to the report.

A level of 1,000 parts per million in soil in areas where children could be exposed is considered by federal health agencies to be high enough to warrant cleanup, a spokesman for the U.S. Environmental Protection Agency said Wednesday. He said 2,000 parts per million is the recommended cleanup level for an industrial site.

Municipal law prohibits the discharge of untreated acid into the sewer because it can corrode pipes and, in large amounts, damage sewage treatment plants.

Although the state Department of Environmental Conservation has known about the high lead levels since 1984, officials say they want more tests of the soil, air, groundwater and wells in the neighborhood. They also want to see what action the business owner will take before they decide how to proceed.

Husky Battery owner James Welker, who has had the business since the 1960s, said Tuesday he does not agree that the soil is



Batteries are stacked behind Husky Battery in Mountain View.

seriously contaminated. And he questioned the testing done by DEC contractors.

Welker told DEC investigators the manufacturing facility was moved in 1985 to the Matanuska Valley, according to the report.

He said Tuesday soil where lead has been spilled is cleaned up "every so often."

The shop sits on the corner of a quiet residential street, on the east

end of North Mountain View. Hundreds of old batteries are stacked in the backyard of the shop. Although a fence runs behind the property, it is open on the east side allowing easy access to the yard.

Environmental officials are concerned that residents in the area, especially children who sometimes play in the alley, could be at risk. A recent EPA Superfund report said inhalation of lead-bearing

dust can cause damage to the central nervous system.

The site has drawn the attention of the Alaska Center for the Environment. Kristine Benson, a hazardous waste specialist with the center, said her organization thinks state officials should do something about the site now, even if it's just covering the exposed soil to keep it from blowing around the neighborhood.

"I think they don't even know the extent of the problem yet," said Benson. "But they found over 7 percent lead in the surface soils."

"I see no reason why some corrective action can't be taken, such as covering the site, putting a fence around it or knocking on doors to see who has wells that are being used," she said.

Bill Lamoreaux, DEC regional supervisor in Anchorage, said environmental officials agree that some sort of cleanup is needed.

"We're trying to figure out what is the right level of cleanup," he said. "Sometimes you see a real high number but until there is a more thorough investigation to see if it's isolated or covers a wide area, it's hard to draw conclusions."

The state was hoping to obtain EPA money to continue investigating the site. But Irene Alexakos of EPA in Juneau said the site did not meet Superfund criteria; so it's unlikely additional federal money will be available.

That could change, however, if air sampling the state wants to do this summer shows lead-bearing dust in the air, state officials said.

Welker, the owner of Husky Battery, said he is not convinced that lead contamination exists or that it is a serious problem.

Still, he said, "We're going to take care of some of the problem, but at our convenience." He declined to say exactly what action his company would take.

The battery shop has operated on the same site since 1952, he said.

The DEC report said Welker told investigators the battery-manufacturing facility was moved to a site in the Matanuska Valley prior to November 1985.

## No decline expected by oil firms

Oil firms reports - Gulf Oil Co. said - ... Bay oil - ... at 1.5 - ... through - ...



## Agency says cartel broke oil output ceiling for April

The Associated Press

PARIS — OPEC oil production rose sharply last month and topped the cartel's self-imposed ceiling for the first time since January, the International Energy Agency said Wednesday night.

Five of the 13 member countries were reported to be exceeding their national quotas set by a production

The agency said OPEC output 10.6 million barrels daily, up from an average of 9.7 million daily in the January. The January production was the official ceiling of 10.5 million barrels because of technical ... ing back output ... record.

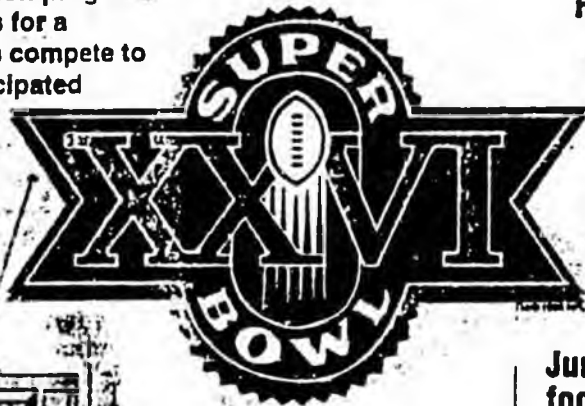
# Super Bowl:

a

# DIG MONEY

## Game

Watch the Super Bowl television program. Ticket prices for a number of cities compete to meet anticipated ticket prices.

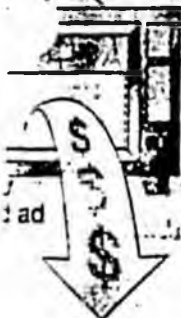


### Host state



Minnesota hopes for revenues of: **\$100 million**

NFL for season 1992



### Tickets

\$150 each for about 64,000 tickets

Total: **\$9.6 million**



### Junk food sales



- 12,000 gal. of beer
- 8,000 gal. of soda
- 40,000 hot dogs, sausages
- 350 gal. frozen yogurt, ice cream
- 9,500 bags of peanuts
- 10,000 boxes of popcorn
- 11,000 soft pretzels
- 5,000 slices of pepperoni and cheese pizza

### Player bonuses

Winning team: **\$36,000** per player

Losing team: **\$18,000** per player

SOURCE: National Football League, Advertising Age, Minneapolis Task Force, Volume Services Corp.; Research by PAT CARR

# Cleanup bills irk polluters

## Alaskan Battery costs could grow

The Associated Press

FAIRBANKS — A meeting with federal officials did little to pacify local business owners being tapped to pay a \$3.2 million bill for environmental cleanup at the Alaskan Battery site.

The Environmental Protection Agency met Tuesday with about 30 of the 36 firms and agencies identified as contributors to lead contamination at the battery recycling site.

The Fairbanks meeting focused on a settlement offer for 25 parties considered minor contributors.

EPA says the polluters each contributed less than 1 percent of the 43,594 batteries the agency said were dumped at the site.

Terms call for minor contributors to pay \$69.25 for each battery dropped off, with parties paying between \$277 and \$21,266.

The settlement would cover \$146,296 of the cleanup bill, leaving more than \$3 million to be paid by the 11 parties named as major contributors.

EPA said total cleanup costs would be \$3.2 million.

But the offer lets EPA seek additional payments from minor polluters if the cleanup exceeds estimates by more than \$1.56 million.

The provision angered those it was meant to entice.

"This ain't a settlement," said Darrell Russell of Russell's Texaco, a minor contributor being assessed almost \$10,000 under the agreement.

"I don't have a lot of confidence in your quote-unquote figures," Russell said.

ADN 1-23-92

### UNITED TECHNOLOGIES

Industry: Aerospace, defense, heating and ventilating, elevators, automotive supplies.  
Announced: Jan. 21 1992.

# Decision may doom plan to divvy pollock

HB

392

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Bill No. HB 392

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act relating to nonprobate trans- BRU: Trial Courts  
fers and multiple-person accounts Components: \_\_\_\_\_  
 Sponsor: Ulmer  
 Requestor: Labor & Commerce COMPONENT SERIAL NO. 000 | 000 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	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)  
 No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 264-8228  
 Division: Alaska Court System Date: 01/22/92

Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CSC*  
 Agency: Alaska Court System Date: 01/22/92

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

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



### REPRESENTATIVE FRAN ULMER

#### MEMORANDUM

February 10, 1992

TO: Rep. David Finkelstein, Chair  
House Labor and Commerce Committee

FROM: Rep. Fran Ulmer

Re: Questions regarding HB 392, non-probate transfers on death

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Attached is a list of questions and answers which address the basic issues relating to HB 392, non-probate transfers on death. I prepared this summary for those of my constituents who may not be familiar with probate law. Incorporated within the summary (#10) is the answer to Rep. Taylor's question regarding protection of the rights of a spouse and other legal heirs.

Briefly, HB 392 makes no changes to current protections for legal heirs. AS 13.11.070 - AS 13.11.100 protects the interest of the surviving spouse; no change is made to those protections. A POD transfer is not effective against the estate to the extent necessary to pay a surviving spouse and children the amounts allowed under law, such as the homestead allowance and the family allowances.

HB 392 provides a further protection in the proposed AS 13.33.226 in that, if a financial institution receives written notice from the surviving spouse or a legal representative of the estate that payment should not be made under the terms of the POD contract and the institution pays the POD beneficiary in spite of written notice, the institution is potentially liable.

Although there is no way for the law to prevent a person from naming someone other than the legal spouse as the POD beneficiary, protections in law appear to be adequate to protect the interests of the legal heirs. POD clauses have been in use for multiple-party accounts without any apparent problems of the type suggested by Rep. Taylor. The benefit accruing to the majority of beneficiaries from being able to avoid the expense and delay of probate outweighs the risk posed by the rare person who deliberately sets out to circumvent the rights of the legal heirs.

I hope this information is helpful.



## HB 392 - Non-Probate Transfers

### Questions and Answers

1. Q: What is the purpose of HB 392?

A: The purpose of HB 392 is to simplify the transfer of property when the owner dies and thus avoid the delay and expense of probate court. HB 392 affects deposit accounts in banks and other financial institutions, and securities and security accounts. Transfer of deposit accounts and securities is affected by the law of "joint tenancy" and "tenancy in common."

2. Q: What is the law of joint tenancy and tenancy in common?

A: A "joint tenant" has a right of survivorship which means that, when one of the owners of an account dies, the surviving owners of the account inherit the dead person's share. "Tenancy in common" means that when one of the owners of an account dies, the deceased person's heirs inherit the decedent's share.

3. Q: How does HB 392 clarify the law of joint tenancy and tenancy in common for deposit accounts?

A: Current law presumes a right of survivorship in multiple-party accounts unless there is "clear and convincing evidence of a different intention when the account was created." HB 392 provides a simple, easy to use form that allows a definitive selection of any type of account, with or without POD designation, and with or without the right of survivorship.

4. Q: How does HB 392 add to non-probate transfer provisions in current law?

- A: (1) HB 392 clarifies current law by clearly allowing POD clauses for single party accounts as well as multiple-party accounts.  
(2) HB 392 provides for an account with an "agency" designation. An agent acts for the principal or account holder and can make deposits or withdrawals.  
(3) HB 392 adds "transfer on death" (TOD) provisions for investment securities.

5. Q: Why is the inclusion of "agency" powers an improvement to current law?

A: HB 392 treats all agency powers as "durable" powers which survive the incapacity of the account holder unless there is specific language limiting them. HB 392 eliminates any ambiguity regarding agency powers.

6. Q: HB 392 allows pay-on-death clauses in deposit accounts to be "non-testamentary." What does "non-testamentary" mean?

A: "Non-testamentary" means that the funds in the account may be paid to the beneficiary named in the pay-on-death clause even though the clause does not meet the formal

requirements for a will. The money is paid out without going through the estate (going through probate court) of the deceased account holder.

**7. Q: How do POD clauses work for deposit accounts?**

**A: Single-party accounts:** The account holder controls the funds while alive; the POD beneficiary takes them when the account holder dies.

**Multiple-party accounts:** There are several options available under HB 392:

- (a) The parties may have a right of survivorship and designate a POD beneficiary who receives ownership when the last surviving party to the account dies.
- (b) The parties may have a right of survivorship and not bother with any POD beneficiary so that ownership passes to the surviving parties.
- (c) The parties can have an account without any right of survivorship. If this is the case, the decedent's share falls into the estate.

**8. Q: How does HB 392 affect banks and other financial institutions offering deposit accounts?**

**A:** HB 392 does not change the law or have any new effect on banks and other financial institutions except that, in addition to being authorized to provide POD clauses on multiple-party deposit accounts, financial institutions may also include POD clauses on single-party accounts as well. However, HB 392 does not require banks to provide POD accounts. If a bank does offer POD accounts, it may deal with parties, agents, and POD beneficiaries according to the terms of the POD statutes and the bank's contract which sets out the type of account, names the beneficiaries, etc.

**9. Q: What protections are in place for creditors should the decedent's estate be insufficient to pay all claims against it?**

**A:** No change is made to current protections for creditors. The bill states that if the estate is not sufficient to pay claims against it, a transfer is not effective against the estate and the person to whom the funds are transferred (POD beneficiary) is liable to the extent of the decedent's share of the account and to the extent necessary to pay the claims. The creditor may bring suit to recover monies due.

**10. Q: What protections are available to legal heirs, such as a spouse, should an account holder name a third party as POD beneficiary?**

**A:** No change is made to current protections for legal heirs. A POD transfer under HB 392 is not effective against an estate to the extent necessary to pay a surviving spouse and children the amounts allowed under law (e.g. homestead allowance, etc.). However, there is nothing in the law which prevents a person from attempting to give his or her property to whomever he/she wishes, either as an outright cash gift or by naming someone as a joint tenant in the ownership of property. Thus, although legal heirs may bring suit to enforce their legal rights against a POD beneficiary, there is no effective way to prevent this situation from arising.

**11. Q: How do "transfer on death" (TOD) clauses work for investment securities?**

**A:** A TOD clause has the same function for securities that a POD clause has for a deposit account; the ownership of the security transfers to the named beneficiary without going through probate.

**12. Q: Can a TOD designation be made for all securities?**

**A:** No. Securities held by tenants in common cannot be registered with a TOD designation in order to prevent fractional ownership rights. A TOD designation may be made only by a sole owner or multiple owners with right of survivorship.

**13. Q: How can a TOD designation be made?**

**A: Certificated securities:** TOD terms and the name of the beneficiary are listed on the certificate.

**Uncertificated securities:** TOD designations must be on the records of the issuing entity.

**Security Accounts:** TOD beneficiaries may be registered on the account.

**14. Q: How does HB 392 affect a securities issuer?**

**A:** No issuer is forced to register TOD designations. However, if an issuer does register TOD designations, he may set the rules for accepting them and is entitled to deal with parties on the face of any representations made. There is no obligation to look beyond such representations to guarantee their authenticity.

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

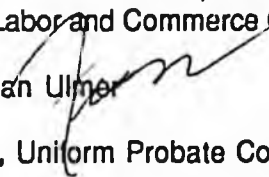


### REPRESENTATIVE FRAN ULMER

#### MEMORANDUM

January 21, 1992

TO: Rep. David Finkelstein, Chair  
House Labor and Commerce Committee

FROM: Rep. Fran Ulmer 

RE: HB 392, Uniform Probate Code amendments

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HB 392 makes amendments to Article VI of the Uniform Probate Code which simplify transfers of property on death to avoid probate. This legislation was modeled after legislation provided by the Joint Editorial Board for Uniform Probate Code which is comprised of representatives from the Uniform Law Commissioners, the American Bar Association, the American College of Trust and Estate Counsel, and the State Courts and Law School Liaisons.

In brief, the bill does the following:

1. Article VI clarifies the law of joint tenancy and tenancy in common for deposit accounts, with or without the right of survivorship, and declares that pay-on-death (POD) clauses in the contracts that establish deposit accounts are non-testamentary. Funds will be paid to the beneficiary named in the POD clause even though the clause does not meet the requirements for a will. Money is paid without passing through the estate of the decedent. The expense and delay of probate is thereby avoided.

-In single party accounts, the account holder has all power over the funds while alive. At death, the POD beneficiary takes them. In a multiple-party situation, there are options but, in all options, the multiple parties have power over the fund during their lives. If there is any POD beneficiary, his or her rights begin upon the death of the last party to the account.

-Code revisions provide an easy to use statutory form that allows selection of any option with a simple check-off for the type of account and thus definitively establish their intent.

-The revisions treat all agency powers as durable powers, surviving the incapacity of the account holder, unless there is specific language limiting them (agency powers are only implied in the original Article VI) and eliminates any ambiguity regarding these accounts.

-Financial institutions may deal with parties, agents and POD beneficiaries according to the terms of the contract, and may take representations of rights to funds in deposit accounts on their face.



2. Article VI also provides for transfer-on-death (TOD) investment securities. The transfers, like POD deposit accounts, are nontestamentary thus making a whole new echelon of property which can be kept out of the probate estate. A TOD clause, naming a beneficiary, registered in the appropriate place for the type of security, accomplishes distribution. If the last owner (in the case of multiple owners) of a security dies, then the ownership of the security transfers to the named beneficiary without probate. TOD designation may be made only by a sole owner or multiple owners with right of survivorship. Securities held by tenants in common cannot be registered with a TOD designation (in order to preclude fractional ownership rights). A securities issuer, like a financial institution, is subject to the contract and is entitled to deal with parties on the face of any representations made. No issuer is forced to register TOD designations.

-Certificated securities: TOD terms and the name of the beneficiary on the certificate are adequate for transfer.

-Uncertificated securities: TOD designation must be on the records of the issuing entity.

-Security Accounts: Brokerage customers can register TOD beneficiaries on their accounts for nontestamentary disposition at death.

I believe there will be a positive response from the consumer, as well as the legal and financial communities, to the provisions of HB 392. These revisions both simplify and clarify the law.

## HB 392 - Nonprobate Transfers and Multiple-person Accounts

### Sectional Analysis

#### Section 1.

**Article 1. Sec. 13.33.101, Nonprobate transfers on death:** Declares that a provision for a nonprobate transfer on death in certain instruments is nontestamentary.

**Article 2.** Clarifies the law of joint tenancy and tenancy in common for deposit accounts, with or without the right of survivorship, and declares that pay-on-death (POD) clauses in the contracts that establish deposit accounts are non-testamentary.

**Sec. 13.33.201, Definitions:** Definition of terms, including "POD designation" for Article 2.

**Sec. 13.33.202, Limitation on scope:** Article 2 does not apply to an account established for a partnership, joint venture or organizations formed for business purposes, to certain unincorporated association, charitable, or civic organization accounts; Article 2 does not apply to fiduciary or trust accounts in which the relationship is established outside the terms of the account.

**Sec. 13.33.203, Types of account:** Allows single or multiple party accounts; accounts existing before or after January 1, 1994, are governed by Article 2 (AS 13.33.201 - 13.33.227).

**Sec. 13.33.204, Forms:** Lists the contents of the simple, check-off form to be used to designate the type of account and beneficiaries.

**Sec. 13.33.205, Designation of agent:** Allows an agent to be designated whose authority survives disability and incapacity of a party. Authority of an agent terminates on the death of the sole or last surviving party.

**Sec. 13.33.206, Applicability:** Defines the applicability of the provisions of AS.13.33.211-13.33.216.

**Sec. 13.33.211, Ownership during lifetime:** Defines ownership rights during the lifetime of the parties. In single party accounts, the account holder has all power over funds while alive; at death the POD beneficiary takes them. In multiple-party accounts, the account belongs to the parties in proportion to their net contributions.

**Sec. 13.33.212, Rights at death:** Defines the rights of surviving parties in multiple-party accounts; outlines rights of payment from multiple-party accounts with and without a POD designation.

**Sec. 13.33.213, Alteration of rights:** Rights at death are determined by the type of account at the death of the party; type of account may be altered by written notice to the financial institution. A right of survivorship or a POD designation may not be altered by will.

**Sec. 13.33.214, Accounts and transfers nontestamentary:** Except as otherwise provided, transfers under AS 13.33.212 are not testamentary.

**Sec. 13.33.215, Rights of creditors:** If other assets of the estate are insufficient, a payment resulting from a right of survivorship or a POD designation may not take place until all claims against the estate are satisfied.

**Sec. 13.33.216, Community property and tenancy by the entireties:** Community property deposited in an account does not alter community rights in the property.

**Sec. 13.33.221, Authority of financial institution:** Authorizes financial institutions to enter into a contract of deposit for multiple party accounts and may provide for a POD designation.

**Sec. 13.33.222, Payment on multiple-party account:** Authorizes financial institutions to pay sums on deposit in multiple-party accounts to one or more of the parties, or to personal representatives, heirs or devisees of the last surviving party upon proof of death, unless the account is without right of survivorship.

**Sec. 13.33.223, Payment on POD designation:** Allows financial institutions to pay sums on account with a POD designation to one or more of the parties, beneficiaries, personal representatives or heirs.

**Sec. 13.33.224, Payment to designated agent:** Allows a financial institution to make payment, on request, to an agent under an agency designation for an account.

**Sec. 13.33.225, Payment to minor:** Allows financial institutions to make payment to a minor who is designated a beneficiary.

**Sec. 13.33.226, Discharge:** Payment made in accordance with the type of account discharges the financial institution from all claims for amounts so paid, unless notified in writing to the effect that payment should not be permitted.

**Sec. 13.33.227, Setoff:** If a party is indebted to a financial institution, the institution has a right to setoff against the portion of the account to which the party is beneficially entitled.

### **Article 3, Uniform Transfer-on-Death Security Registration Act**

**Sec. 13.33.301, Definitions:** Defines terms used in Article 3.

**Sec. 13.33.302, Registration in beneficiary form; sole or joint tenancy ownership:** Only persons demonstrating sole ownership of a security, or persons showing multiple ownership with right of survivorship rather than as tenants in common, may obtain registration in beneficiary form.

**Sec. 13.33.303, Registration in beneficiary form; applicable law:** Allows a security to be registered in beneficiary form if it is authorized by this or a similar

TOD statute in the appropriate state; a registration governed by a law in which TOD legislation is not in force is nevertheless valid and authorized as a matter of contract law.

**Sec. 13.33.304, Origination of registration in beneficiary form:** A security is registered in beneficiary form when the registration designates a beneficiary.

**Sec. 13.33.305, Form of registration in beneficiary form:** Registration in beneficiary form may be shown by the words "transfer on death" or "TOD," or by the words "pay on death" or "POD."

**Sec. 13.33.306, Effect of registration in beneficiary form:** Designation of a TOD beneficiary has no effect on ownership until the owner's death; may be cancelled or changed at any time.

**Sec. 13.33.307, Ownership on death of owner:** Upon the owner(s)'s death, securities registered in beneficiary form pass to the beneficiary. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole, or last of multiple, owner.

**Sec. 13.33.308, Protection of registering entity:** A registering entity is not required to register securities in beneficiary form but, if it does offer such registration, it agrees that the registration will be implemented; the registering entity shall receive the protections granted under AS 13.33.301-310.

**Sec. 13.33.309, Nontestamentary transfer on death:** A transfer resulting from a registration in beneficiary form is effective by reason of the contract regarding registration and is not testamentary.

**Sec. 13.33.310, Terms, conditions, and forms for registration:** A registering entity may establish the terms and conditions under which it will register securities in beneficiary form; includes illustrations of registrations in beneficiary form.

**Section 2. Definition.** Provides a revised definition of "trust" because AS 13.31 is repealed and AS 13.33 does not contain a definition of "trust account."

**Section 3. Sec. 13.16.260, Bond amount; security; procedure; reduction.** Outlines procedures to be used if a bond is required.

**Section 4. Repeals AS 13.31, relating to nonprobate transfers.**

**Section 5. Transition provisions:** Describes the dates on which this act applies to the various circumstances relevant to the provisions of the bill.

**Section 6. Effective date:** Takes effect January 1, 1994.

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February 10, 1992

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Hon. David Finkelstein, Chair  
House Labor and Commerce Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Re: HB 392, Uniform Probate Code, art. VI  
(non-probate transfers)

Dear Rep. Finkelstein:

This letter is a follow-up to my January 28, 1992 letter to you. That letter, setting out seven points of explanation, addressed a question that arose at your committee's January 23, 1992 hearing on this bill. I would like to add a general observation in support of HB 392.


The bill does two beneficial things for Alaska law:

1. It updates part of Alaska's Uniform Probate Code, in line with the national recommendations of the National Conference of Commissioners on Uniform State Laws.
2. It provides an option, for deposit accounts and for investment securities, for people to use to help assure that their intended beneficiaries receive the intended property without the expense and delay of the probate courts.

In achieving the second feature, the bill creates no new concept, but relies on existing law. Although a person bent on disinheriting his wife and rewarding his sweetheart could apply this law toward that end (the illustration for the January question), present law already provides a variety of means for accomplishing that end, as explained in my January 28 letter. This bill, however, alone and in combination with existing law, includes a number of protections for surviving spouses.

To deny the benefits of this bill to the overwhelming majority of Alaska's population simply because someone might use its options in an undesirable way would indeed be to allow the tail to wag the dog. I urge your committee's favorable action.

Yours truly,

  
Arthur H. Peterson  
Uniform Law Comr. for Ak.

cc: Rep. Fran Ulmer

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January 28, 1992

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Hon. David Finkelstein, Chair  
House Labor and Commerce Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Re: HB 392, Uniform Probate Code, art. VI  
(non-probate transfers)

Dear Rep. Finkelstein:

At your committee's hearing on this bill last Thursday, January 23, a question arose regarding the protection of creditors and spouses in the case of a person who dies after opening a deposit account with a "pay on death" (POD) clause in the account agreement. Specifically, the example was given of a married man who names his extramarital sweetheart as the POD beneficiary; upon his death, she withdraws the money from the account.

After reviewing the bill and current law again, and after talking with Professor Richard Wellman, Executive Director of the Joint Editorial Board for the Uniform Probate Code, I offer the following:

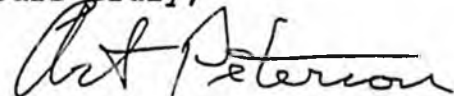
1. The bill's proposed AS 13.33.214 refers to the current law's provisions on the elective share of a surviving spouse (AS 13.11.070 -- 13.11.100), and thus protects that interest. If the sweetheart grabs the money and leaves town, she is still liable to the estate and thus to the spouse. Nevertheless, if she gets away with it, her situation is not really any different from the present one. Nothing in the law prevents a person from giving his property to his sweetheart, as an outright cash gift or by naming her as a joint tenant in the ownership of some property. There are some relationships against which the law just does not protect.

2. Current Alaska law, in AS 13.31 (enacted in 1972), provides for POD clauses for multiple-party accounts. That law does not appear to have caused any problem for unfortunate spouses and creditors. This bill merely extends the benefits of the POD arrangement (avoiding the expense and delay of probate) to single-party accounts.
3. A POD beneficiary is, in some respects, like a joint tenant in the ownership of property. A "joint tenant" has a "right of survivorship," meaning that, upon the death of one of the owners, the survivors own the dead person's share. Joint tenancy with a right of survivorship is an ancient concept in Anglo-American law. It was not created by the Uniform Probate Code.
4. The bill's proposed AS 13.33.215 provides protections to creditors and others in the case of assets outside the POD account being insufficient.
  - Subsection (a) says that a transfer resulting from a right of survivorship or POD designation is not effective against the estate in such a situation.
  - Subsection (b) makes the surviving party or beneficiary who has already been paid liable to the estate to the extent necessary to discharge any claims and allowances.
  - The one-year time limit for starting a proceeding for a claim or allowance facilitates wrapping up the estate, and is consistent with existing statutory limits for filing claims (e.g., AS 13.16.460's four-month limit).
5. The bill's proposed AS 13.33.226 provides further protection. If the financial institution has received written notice from a party, from the personal representative of the estate, or from the surviving spouse that payment under the terms of the account agreement should not be made, and the institution pays anyway, it is potentially liable.

6. Current AS 13.16.450 provides that notice to creditors must be published once a week for three successive weeks in a newspaper of general circulation in the judicial district. The bill does not change that standard notice provision. Although it is possible that the sweetheart will beat the creditor to the money in the account, she would have to be fast, since public notice will be given.
7. The bill does not require financial institutions to provide POD accounts. They retain all current options, such as joint accounts using "or" between the names of the owners of the account (so that payment may be made to A or B or C). The bill merely provides statutory answers to questions that can arise in connection with this type of account. And it does so in the form recommended by the National Conference of Commissioners on Uniform State Laws, the body that promulgated the Uniform Probate Code itself.

Thank you for considering these comments. I hope that you find them helpful, and I urge a "Do Pass" from your committee, for HB 392.

Yours truly,



Arthur H. Peterson  
Uniform Law Commissioner  
for Alaska

cc: Rep. Fran Ulmer

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January 23, 1992

Hon. David Finkelstein, Chair  
House Labor & Commerce Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: HB 392, amending Uniform Probate Code, art. VI,  
nonprobate transfers

Dear Rep. Finkelstein:

As a uniform law commissioner for Alaska, I support Rep. Fran Ulmer's HB 392, proposing the revised art. VI of the Uniform Probate Code (UPC).

The bill updates a part of Alaska's UPC in line with the proposal of the National Conference of Commissioners on Uniform State Laws (NCCUSL). Since Alaska has enacted the UPC, it is important to keep it up to date and to maintain the desired uniformity among the various states.

At the risk of duplicating what Rep. Ulmer has told you about the bill, I will offer a few comments.

Current Alaska law provides for the rights of survivorship at the death of a party to a multiple-person deposit account with a "pay on death" (POD) clause in the account agreement. HB 392 does two things:

1. it improves (by reorganizing, clarifying, and simplifying) art. VI's POD provisions and adds language dealing with POD clauses in single-party accounts;
2. it adds "transfer on death" (TOD) provisions for investment securities.

The purpose of both POD and TOD clauses is to achieve the parties' intended passing of the decedent's interest, without the expense

Hon. David Finkelstein, Chair  
Page Two  
January 23, 1992

and delay of probate proceedings. Our current law and this bill are directed at that same purpose.

In Alaska's statute-numbering system, UPC, art. VI, currently is AS 13.31. This bill replaces AS 13.31 with AS 13.33. While the title, chapter, part, and article designations differ between our system and the Uniform Act, the section numbers are the same; for example, AS 13.33.101 is the same as UPC Section 6-101.

This bill meticulously follows the text of the official NCCUSL version. I understand from the Legislative Affairs Agency attorney who prepared the bill for Alaska introduction that the only changes are those necessitated by Alaska's style and format requirements, with a very slight rewording of sec. 6-303 (AS 13.33.303) for clarity, and the addition of definitions of "POD" and "TOD" in AS 13.33.301; no substantive change is intended.

A copy of an NCCUSL four-page synopsis of the art. VI changes is attached. The official publication of the new art. VI includes the NCCUSL's detailed section-by-section commentary. I believe that Rep. Ulmer has already furnished you a brief section-by-section description of the bill, and I will not duplicate it.

This bill reflects the continuing national effort to keep the UPC current and to improve it. HB 334, now pending in the House Judiciary Committee, proposes the Uniform Statutory Rule Against Perpetuities, and is another part of that effort. Also, I believe that the NCCUSL's revision of UPC, art. II, on wills and intestacy, will be presented to the Alaska Legislature.

For the general benefit of the people of this state, I urge your favorable action on HB 392 (as well as on those other UPC changes when they come before you).

Thank you for your consideration.

Yours truly,



Arthur H. Peterson  
Uniform Law Commissioner  
for Alaska

AHP:sh

# UNIFORM LAW COMMISSIONERS

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## AMENDMENTS TO UNIFORM PROBATE CODE ARTICLE VI

### UNIFORM NONPROBATE TRANSFERS ON DEATH ACT

### UNIFORM MULTIPLE-PERSON ACCOUNTS ACT

### UNIFORM TOD SECURITY REGISTRATION ACT

#### INTRODUCTION

The Uniform Probate Code (UPC) was promulgated in 1969. One of its most popular features has been Article VI, which is entitled Nonprobate Transfers. Article VI clarifies the law of joint tenancy and tenancy in common for deposit accounts, with or without right of survivorship, and declares that pay-on-death (POD) clauses in the contracts that establish deposit accounts are nontestamentary. What this latter means is that such clauses allow the payment of the funds in an account to the beneficiary named in a POD clause even though the clause does not meet the formal requirements for a will. Further, the money is paid without passing through the estate of the decedent account holder. The expense and delay of probate is thereby avoided. Article VI has stimulated legislative activity well beyond the states that have adopted the whole UPC. Over half the states have adopted provisions in their law analogous to Article VI.

In 1989, significant amendments to Article VI of the UPC have been promulgated by the Uniform Law Commissioners (ULC).

The amendments offer substantial improvements to Article VI over the 1969 version. In addition to improved pay-on-death deposit accounts, the amended Article VI provides for transfer-on-death (TOD) investment securities - stocks, bonds, mutual fund shares, security accounts, and the like. Such securities can be transferred on death to named beneficiaries. The transfers, like POD deposit accounts, are nontestamentary and do not fall into the probate estate of the deceased holder of these securities. A whole new echelon of property can be kept out of the probate estate, therefore, and estate planning for the purpose of avoiding probate becomes easier.

These amendments to Article VI of the UPC are also presented as separate uniform acts that can be adopted independently, even if a state has not adopted the UPC. Three acts are actually created from these amendments to Article VI. They are the UNIFORM NON-PROBATE TRANSFERS ON DEATH ACT (UNPTODA), UNIFORM MULTIPLE-PERSON ACCOUNTS ACT (UMPACA) and the UNIFORM TOD SECURITY REGISTRATION ACT (UTODSRA). Some explanation, however, is necessary as to the

arrangement of these three acts. UNPTODA is the whole UPC Article VI, and contains both UMPACA and UTODSRA within it. UMPACA and UTODSRA are set out, separately, to allow states to pick up the act not duplicated in existing law. The ULC would encourage every state to adopt the full text of UNPTODA, but leaves options for states that have parallel law to any part of UNPTODA.

UPC ARTICLE VI. PARTS 1 AND 2.  
(UNPTODA) (UMPACA)

Article VI of the UPC deals primarily with multiple-party accounts in the original 1969 version. In the 1969 UPC, a "multiple party account" was defined as "any of the following types of account: (1) joint account, (ii) a P.O.D. account, or (iii) a trust account." Original Article VI governs ownership of such accounts during life, rights of survivorship at death of a party, the effect of pay-on-death provisions, creditors' rights, and the rights and liabilities of financial institutions pertaining to such accounts.

UPC Article VI, Parts 1 and 2, also known as UMPACA governs the same topics. Original Article VI is reorganized and considerably clarified, however. It also makes the use of multiple-party accounts simpler. The definition of "multiple-party account" in UMPACA for example, is different, "an account payable on request to one or more of two or more parties, whether or not mention is made of a right of survivorship." A POD account is not, therefore, automatically a multiple-party account, as it is under original Article VI. POD becomes a disposition that can be made in

either single-party or multiple-party accounts. Under original Article VI, that was not so clear.

Under UMPACA both single-party and multiple-party accounts can have POD provisions. In a single-party account, the account holder has all power over the account funds while alive. At death, the POD beneficiary takes them. In a multiple-party situation, there are options. The parties may have a right of survivorship that precedes a POD beneficiary. They may have right of survivorship and not bother with any POD beneficiary. They also can have a multiple-party account without any right of survivorship. If a party dies when there is no right of survivorship, his or her share falls into the estate. In all cases, the multiple parties have power over the funds during their lives. If there is any POD beneficiary, his or her rights commence upon the death of the last party to the account.

Original Article VI presumed right of survivorship in a multiple-party account unless there is "clear and convincing evidence of a different intention at the time the account is created." UMPACA takes a slightly different approach. It provides an easy-to-use statutory form that allows selection of any option, from a simple single-party account to a multiple-party account with or without POD designation, and, with or without right of survivorship. By checking the form, the parties choose their type of account, definitively establishing their intent.

UMPACA explicitly provides for an account with an agency desig-

nation, something that is only implied in original Article VI. An agent is a person appointed to act for the person who opens the account. An agent acts in the place of the principal who appoints the agent and binds the principal by his or her actions. UMPACA treats all agency powers as durable powers, surviving the incapacity of the account holder, unless there is specific language limiting them. When the powers of an agent are durable, they continue when the principal (account holder) becomes incapable of exercising his or her own powers. UMPACA eliminates any ambiguity as to the applicability of Article VI to such accounts.

UMPACA puts financial institutions in much the same position that they were in under original Article VI. They may deal with parties, agents, and POD beneficiaries according to the terms of the contract, and may take representations of rights to funds in deposit accounts on their face. These are the principal features of UMPACA both as a separate act and as a part of the new Article VI of the UPC, and UNPTODA.

UPC ARTICLE VI, PART 3 (UNPTODA)  
(UTODSRA)

The principal addition to new Article VI is also the subject matter of the separate UTODSRA. Prior to UTODSRA there has been no simple way to make nontestamentary dispositions of investment securities to designated beneficiaries when their owner dies. The TOD designation authorized in UTODSRA provides the simple mechanism. A TOD clause, naming a beneficiary, registered in the appropriate place vis-a-vis the particular kind of in-

vestment security accomplishes such a distribution. If the last owner (there may be multiple ownership of securities, also) of a security dies, then the ownership of the security transfers to the named beneficiary without probate.

Investment securities come in a number of different forms, and what steps become a registration is dependent upon that form. A "security" is defined in UTODSRA as "a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account." This definition should not be confused with other definitions for other purposes.

In practice there are three kinds of securities, certificated securities, uncertificated securities, and security accounts. Traditionally, stocks and bonds are represented by a certificate and appropriate transfer of the certificate transfers the security. If there is a certificate, registration means issuance of a certificate showing its ownership - if in TOD form, with the terms TOD or equivalent and the name of the beneficiary.

Some securities are traditionally uncertificated, and some, like corporate stock may be either certificated or uncertificated. Examples of commonly uncertificated securities are mutual fund shares, options contracts, and U.S. Treasury bonds. Registration with respect to these kinds of securities is accomplished by putting the TOD desig-

nation on the records of the issuing entity.

Registering TOD designations on certificates or on the books of the issuer is not a practical solution for many investors. Most investors use brokers and brokerage accounts, and never see any evidence of their ownership of securities, except in the form of brokerage statements. So it is important that the definition of "security" in UTODSRA includes "security account." This means that brokerage customers can register TOD beneficiaries on their accounts for an effective, nontestamentary disposition at death. Probably most people will use the TOD designation on their brokerage accounts as the most expeditious and efficient way to accomplish desired estate planning.

There are some other aspects of TOD registration that should be mentioned. A TOD designation may be made only by a sole owner or multiple owners with right of survivorship. Securities held by tenants in common cannot be registered with a TOD designation. This restriction is to preclude difficulty with fractional ownership rights. Like a financial institution with multiple party accounts, a securities issuer is subject to the contract and is entitled to deal with parties on the face of any representations made. There is no obligation to look beyond such representations to guarantee their authenticity. The issuer sets the rules for accepting TOD designations. No issuer is forced to register TOD designations.

## CONCLUSION

These are the principal provisions of amended UPC Article VI, and the new acts, UNPTODA, UMPACA and UTODSRA, which are derived from Article VI. Adoption in the complete form as part of the UPC or in the free-standing form of UNPTODA is the most desirable. But the existence of UMPACA and UTODSRA, separately, expands options. The full benefits of POD and TOD designations cannot be achieved unless the law in every state recognizes them in the same way. Uniformity is demanded.

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Founded in 1892, the National Conference of Commissioners on Uniform State Laws is a confederation of state commissioners on uniform laws. Its membership is comprised of 300 practicing lawyers, judges, and law professors who are appointed by each of the 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands to draft uniform and model state laws and work toward their enactment.

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HB

394

(7)

Date Referred: January 14, 1992

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 2-11-92

The LABOR AND COMMERCE Committee considered:

HB 394

HOUSE BILL NO. 394

REGULATION OF NOTARIES PUBLIC

"An Act relating to notaries; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CSHR 394 (L+C)  the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

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

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

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

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

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

zero fiscal note Office of Governor

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

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				

*[Signature]*  
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. \_\_\_\_\_

Revision Date: \_\_\_\_\_ Department Affected: Office of the Governor  
 Title: "An Act relating to notaries public;..." BRU: Executive Operations  
 Component: Office of the Lt. Governor

Sponsor: \_\_\_\_\_  
 Requestor: Governor COMPONENT SERIAL NO. 

0	0	1	1
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EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

POSITIONS:

FULL-TIME	n/a	n/a	n/a	n/a	n/a	n/a
PART-TIME						
TEMPORARY						

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

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

Prepared By: Michael Nizich, Director Phone: 465-3616  
 Division: Division of Administrative Services Date: 12-26-91  
 Approved by Commissioner: D. Max Hodel, Chief of Staff  
 Agency: Office of the Governor Date: [Signature]

# State of Alaska

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LEGISLATIVE COUNCIL



Representative Max E. Gruenberg, Jr.

District 11

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MEMORANDUM

TO: Representative David Finkelstein  
Chair, House Labor and Commerce

FROM: Representative Max Gruenberg *MG*

DATE: January 21, 1992

RE: Scheduling of HB 394

I would very much appreciate it if you would Schedule HB 394, An Act Relating to Notaries; and providing for an effective date, for a hearing as soon as soon as possible. I understand you are considering a hearing about February 8. I'd appreciate a hearing by that date if at all possible.

HB 394 deals with three important notary issues: (1) it would require all notaries to use a rubber stamp instead of the embossed seal; (2) it would require notaries to keep a journal; (3) it would require the notary's expiration date to be included with the information already required on the seal.

If you have any questions, please call me or Stan Robbins, my Chief of staff, at ext.4968.

Thank you for your consideration.

*Stan Robbins*

Sectional Analysis

**Section 1.** Requires the notary to include the date of notarization, the city and state where the notarization was performed; and the fact that the notarization was entered on the date of the notarization in the journal maintained by the notary under AS 44.50.095. Replaces the words "print or emboss" with the word "place" to comply with Section 10.

**Section 2.** Requires information supplied in Section 1 for verification's.

**Section 3.** Requires information supplied in Section 1 for acknowledgements.

**Section 4.** Adds a new subsection preventing convicted felons from being commissioned notaries.

**Section 5.** Allows the lieutenant governor to set notary commission fees by regulation.

**Section 6.** Deletes [The certificate shall be signed by the notary in the notary's own handwriting] and inserts it in section 7.

Requires the notary to keep a journal under AS 44.50.095 which is referenced in section 11. Deletes [A deposition, affidavit, oath, or affirmation shall be signed by the notary in the notary's own handwriting, and the notary shall endorse after the signature the date of expiration of the notary's commission.]

**Section 7.** Requires a notary to sign a notarial act if needed and also requires the notary to insert the information required by AS 09.63.030(c)(1).

**Section 8.** Prevents a notary from performing a notarial act under specific guidelines set forth in AS 44.50.065.

**Section 9.** Adds a section defining impartiality, and requires a notary to perform notarial acts in lawful transactions, unless the notary has stated a reason for refusal and recorded that reason in the journal as required by AS 44.50.095(c).

Prohibits a notary from knowingly executing a false certificate, and from endorsing or promot'ng a product, service, contest, or other offering if the notary's title or seal is used in the endorsement or promotional statement.

Prohibits the notary from the unauthorized practice of law as specified in AS 44.50.078 but does not prohibit a notary who is qualified in, and, if required, licensed to practice, a particular profession from giving advice relating to matters in that

professional field.

Prohibits the notary from making representations to have powers, qualifications, rights, or privileges that the office of notary does not have.

**Section 10.** Requires a notary to use a rubber inking stamp in compliance with AS 44.50.080(b).

**Section 11.** Adds a journal requirement as specified in AS 44.50.095.

**Section 12.** Amends AS 44.50.100 with language in regards to the seal and journal.

**Section 13.** Deletes [To revocation of notary commission] and adds "and in the adoption of regulations under this chapter."

**Section 14.** Adds a new section giving the lieutenant governor the authority to adopt regulations to carry out the purposes of AS 44.50. Requires the lieutenant governor to produce, and distribute a handbook with a summary of the provisions of AS 44.50 and any adopted regulations.

**Section 15.** Defines notary as notary public.

**Section 16.** Allows for a transition period for these changes to go into effect.

**Section 17.** The Act takes effect on July 1, 1992.

CS FOR HOUSE BILL NO. 394 (L&C)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE GRUENBERG

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to notaries; and providing for an effective date."

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

3 \* Section 1. AS 09.63.030(c) is amended to read:

4 (c) If the document is sworn to or affirmed before a notary public of the state, the notary  
5 public shall

6 (1) endorse after the signature of the notary public

7 (A) the date of expiration of the notary's commission;

8 (B) the date of the notarization;

9 (C) the city and state where the notarization was performed; and

10 (D) the fact that the notarization was entered on the date of  
11 notarization in the journal maintained by the notary under AS 44.50.095;

12 (2) place [PRINT OR EMBOSS] the notary's seal on the document;

13 (3) comply with AS 44.50 [AS 44.50.060 - 44.50.080] or other applicable law.

14 \* Sec. 2. AS 09.63.040(d) is repealed and reenacted to read:

1 (d) If the verification is sworn to or affirmed before a notary public of the state, the  
2 notary public shall comply with AS 09.63.030(c).

3 \* Sec. 3. AS 09.63.100(b) is repealed and reenacted to read:

4 (b) If a document is acknowledged before a notary public of the state, the notary public  
5 shall comply with AS 09.63.030(c).

6 \* Sec. 4. AS 44.50.020 is amended by adding a new subsection to read:

7 (b) A person may not be appointed and commissioned a notary public under  
8 AS 44.50.010 if the person has been convicted within five years before the appointment of a  
9 crime involving dishonesty.

10 \* Sec. 5. AS 44.50.040 is amended to read:

11 Sec. 44.50.040. FEES. A fee established by the lieutenant governor by regulation [OF  
12 \$40] shall be paid to the lieutenant governor for each commission issued to a person other than  
13 a state employee.

14 \* Sec. 6. AS 44.50.060 is amended to read:

15 Sec. 44.50.060. DUTIES. A notary public shall

16 (1) when requested, demand acceptance and payment of foreign and inland bills  
17 of exchange, or promissory notes, protest them for nonacceptance and nonpayment, and exercise  
18 the other powers and duties that by the law of nations and according to commercial usages, or  
19 by the laws of any other state, government, or country, may be performed by notaries;

20 (2) take the acknowledgment or proof of powers of attorney, mortgages, deeds,  
21 grants, transfers, and other instruments of writing, and give a certificate of the proof or  
22 acknowledgment, endorsed on or attached to the instrument; [THE CERTIFICATE SHALL BE  
23 SIGNED BY THE NOTARY IN THE NOTARY'S OWN HANDWRITING;]

24 (3) take depositions and affidavits, and administer oaths and affirmations, in all  
25 matters incident to the duties of the office, or to be used before a court, judge, officer, or board  
26 in the state;

27 (4) keep a journal under AS 44.50.095 of the notarial acts performed by the  
28 notary [A DEPOSITION, AFFIDAVIT, OATH, OR AFFIRMATION SHALL BE SIGNED BY  
29 THE NOTARY IN THE NOTARY'S OWN HANDWRITING, AND THE NOTARY SHALL  
30 ENDORSE AFTER THE SIGNATURE THE DATE OF EXPIRATION OF THE NOTARY'S  
31 COMMISSION].

1 \* Sec. 7. AS 44.50.060 is amended by adding a new subsection to read:

2 (b) When a notarial act requires the signature of a notary, the notary shall sign the  
3 document and comply with AS 09.63.030(c).

4 \* Sec. 8. AS 44.50 is amended by adding a new section to read:

5 Sec. 44.50.065. DISQUALIFICATIONS. A notary is disqualified from performing a  
6 notarial act if the notary

7 (1) is a signer of or named in the document that is to be notarized;

8 (2) will receive directly from a transaction connected with the notarial act a  
9 commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding  
10 in value the normal fee charged by the notary for the notarial act; or

11 (3) is related to the person whose signature is to be notarized as a spouse, sibling,  
12 or lineal ascendant or descendant to the second degree of kindred.

13 \* Sec. 9. AS 44.50 is amended by adding new sections to read:

14 Sec. 44.50.072. IMPARTIALITY. (a) A notary may not influence a person to enter or  
15 not enter into a lawful transaction involving a notarial act by the notary.

16 (b) A notary shall perform notarial acts in lawful transactions for a requesting person  
17 who tenders the fee charged by the notary, if a fee is required by the notary, unless the notary  
18 has stated a reason for refusal and recorded that reason in the journal as required by  
19 AS 44.50.095(c).

20 Sec. 44.50.074. FALSE CERTIFICATE. A notary may not execute a certificate  
21 containing a statement known by the notary to be false or perform an official action with intent  
22 to deceive or defraud.

23 Sec. 44.50.076. TESTIMONIALS. A notary may not endorse or promote a product,  
24 service, contest, or other offering if the notary's title or seal is used in the endorsement or  
25 promotional statement.

26 Sec. 44.50.078. UNAUTHORIZED PRACTICE. (a) A notary who is not an attorney  
27 may complete but may not select notarial certificates, and may not assist another person in  
28 drafting, completing, selecting, or understanding a document or transaction requiring a notarial  
29 act.

30 (b) This section does not prohibit a notary who is qualified in, and, if required, licensed  
31 to practice, a particular profession from giving advice relating to matters in that professional

1 field.

2 (c) A notary may not make representations to have powers, qualifications, rights, or  
3 privileges that the office of notary does not have.

4 \* Sec. 10. AS 44.50.080(b) is repealed and reenacted to read:

5 (b) A notary public seal must be on a stamp, contain the information required by (a) of  
6 this section, and be printed in black ink. The seal may be circular and not over two inches in  
7 diameter, or may be rectangular and not over an inch wide and two and one-half inches long.

8 \* Sec. 11. AS 44.50 is amended by adding a new section to read:

9 Sec. 44.50.095. NOTARY JOURNAL. (a) A notary public shall maintain and preserve  
10 a chronological, permanently bound journal of the notarial acts performed by the notary.

11 (b) When a notary performs a notarial act, the notary shall record in the journal at the  
12 time of the notarial act at least

13 (1) the date and time of day of the notarial act;

14 (2) the type of notarial act;

15 (3) a description of the document or proceeding that is the subject of the notarial  
16 act;

17 (4) the name and address of each person for whom a notarial act is performed;

18  
19 (5) a description of the evidence used to identify each person for whom a notarial  
20 act is performed;

21 (6) the fee, if any, charged for the notarial act; and

22 (7) the address where the notarial act was performed if the notarial act was not  
23 performed at the notary's business address.

24 (c) If a notary refuses to perform or complete a notarial act because the particular act  
25 cannot be performed or completed in compliance with this chapter, the notary shall record the  
26 circumstances of the refusal in the journal.

27 (d) The journal is an official record that is available at reasonable times and in the  
28 notary's presence for public inspection or reproduction. A notary may charge a fee for  
29 reproducing pages of the journal.

30 (e) A notary shall keep the journal in the exclusive custody of the notary. The journal  
31 of a notary may not be used by another notary.

1 \* Sec. 12. AS 44.50.100 is amended to read:

2 Sec. 44.50.100. RETURN OF PAPERS TO LIEUTENANT GOVERNOR. If a notary  
3 public dies, resigns, is disqualified, removed from office, or permanently moves [OR  
4 REMOVES] from the state, or if a notary public's commission is not reissued when it expires,  
5 [ALL] the notary's seal, journal, and other public papers that are related to the notary  
6 commission shall be delivered to the office of the lieutenant governor.

7 \* Sec. 13. AS 44.50.110 is amended to read:

8 Sec. 44.50.110. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT [TO  
9 REVOCATION OF NOTARY COMMISSION]. The procedures set out in the Administrative  
10 Procedure Act (AS 44.62) shall be followed in the revocation of the commission of a notary  
11 public and in the adoption of regulations under this chapter.

12 \* Sec. 14. AS 44.50 is amended by adding a new section to read:

13 Sec. 44.50.185. REGULATIONS AND HANDBOOK. (a) The lieutenant governor may  
14 adopt regulations to carry out the purposes of this chapter. The regulations must include  
15 standards for the revocation of the commission of a notary.

16 (b) The lieutenant governor shall produce a handbook for notaries and distribute the  
17 handbook to each person who is appointed and commissioned a notary public under this chapter.  
18 The handbook must contain a summary of the provisions of this chapter and the regulations  
19 adopted under this chapter.

20 \* Sec. 15. AS 44.50 is amended by adding a new section to read:

21 Sec. 44.50.200. DEFINITION. In this chapter, "notary" means notary public.

22 \* Sec. 16. TRANSITIONAL PROVISION. Notwithstanding AS 44.50.080(b), amended by sec. 10  
23 of this Act, a person who has a valid notary public commission on July 1, 1992, may use a stamp with  
24 an ink color other than black or a seal press until the person's commission that is in effect on July 1,  
25 1992, terminates.

26 \* Sec. 17. This Act takes effect July 1, 1992.

7-LS1728D /  
Barnister  
2/6/92

CS FOR HOUSE BILL NO. 394 ( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE GRUENBERG

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