

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

7462 SENATE JUDICIARY

promotions. If questions arise as to whether the promotion constituted prohibited lottery information, or if a contest is characterized as fraudulent or misleading or otherwise adverse to the public interest, the record can document the licensee's actions. (See the discussion of contest files above.)

NAB recommends that a broadcaster maintain a commercial record which notes the date, time, duration and sponsor of commercial announcements, including those which promote contests.

The elimination of the program logging requirements has no effect upon the sponsorship identification rules. 47 C.F.R. §1212 (1988). This rule provides that whenever a station broadcasts any material for which it has received or will receive any money, service or other valuable consideration, it must fully and fairly identify the person or group sponsoring the broadcast.

Compliance With FCC Contest Guidelines

Please note: The following guidelines are provided only to help the licensee interpret 47 C.F.R. §73.1216 (1988). The standards suggested below are not required by the Commission because they were never officially adopted.¹⁶ These examples should be viewed as merely illustrative of the everyday situations facing licensees.

Scope Of Rule

For the purpose of 47 C.F.R. §73.1216 (1988), a contest includes any arrangement in which a prize is offered to the public. A prize can be anything of value: cash, refunds, negotiable instruments, securities, merchandise, services, tickets, trips, recording contracts, personal appearances and so on. The means of selecting a winner are not significant for the purpose of defining a contest, but typically involve ability, skill, knowledge, chance or similar factors or combination of factors.

The rule applies to all contests conducted by the licensee and broadcast to the public. The rule does not apply to licensee-conducted contests not advertised to the public. For example, sales contests among station employees are a private matter between the licensee and its employees, and such contests are excluded from the scope of this rule. Broadcast stations often advertise contests for businesses, non-profit groups or others, with no licensee involvement in the actual conduct of the contests. Even where a licensee's only connection with a contest is to advertise it for another, its responsibility is the same as for commercial announcements in general. The licensee should "take all reasonable measures to eliminate any false, misleading or deceptive matter."

Material Contest Terms

The material terms of a contest are those factors that are significant in defining the operation of the contest. From the potential contestant's viewpoint, they are factors that affect his or her decision whether or not to participate in the contest and how to participate and win.

While the material terms of a contest will of course depend on the nature of the contest, in general they will include information about prizes, eligibility restrictions, how to enter or participate, how winners are selected, entry deadline dates, whether prizes can be won, when prizes can be won, the extent, nature and value of prizes, time and means of selecting winners, and tie-breaking procedures. For example, Station XXXX conducts a contest in which a \$100 cash prize is to be awarded. Anyone is eligible to enter as often as one wishes and may do so by mailing a postcard to the station. The winner will be selected by random drawing of the cards received. In this simple contest, the material terms are the prize, method of entering the contest, eligibility restrictions and the method of selecting the winner. The licensee should specify that the prize is \$100 cash, that the contest is entered by mailing postcards to the station, and that the winner will be selected by a drawing of the cards. The cut-off date for accepting entries (the only eligibility restriction in this contest) should be announced well before the deadline date. In more complex contests, special or unusual rules applying to the contest should be made clear. 47 C.F.R. §73.1216(b) (1988).

Disclosure Of Material Contest Terms

Method of Disclosing Material Contest Terms. The material terms should be disclosed by announcements broadcast on the station conducting the contest. They should be stated whenever the station purports to set out the conditions or terms of the contest (whether on the air or in other media), but need not be given in full with brief promotional announcements that do not purport to set out the conditions or terms of the contest.¹⁷ However, no contest description should be false, misleading, or deceptive with respect to any material term. The information given should be in letters of sufficient size to be readily legible to an average viewer, should be shown against a background that does not reduce their legibility, and should remain on the screen long enough to be read in full by the average viewer. Similarly, audio announcements should be understandable to the average listener. The nature of the station's audience should be taken into account. Licensees should, therefore, carefully review promotional material before its use to assure themselves that the material will be understood by the station's audience.

Sample Contests

Disclosure Of Material Terms

Example #1: Teaser announcements.

On May 15 Station XXXX begins promoting an upcoming contest with announcements such as, "The Spring Sweepstakes Contest is coming soon to XXXX!" On May 20 it adds announcements such as, "Enter the XXXX Spring Sweepstakes!" On May 25 announcements such as, "Win \$500 in the XXXX Spring Sweepstakes Contest!" are broadcast. On May 30 the audience is told how to enter the contest. When does the obligation arise to disclose the material terms of the Spring Sweepstakes Contest?

The obligation to disclose the material terms of the contest arises when potential contestants (a) are asked to participate in the contest and (b) have enough information about the contest to reasonably believe that participation is possible. The May 15 announcements neither invite participation nor tell how to participate, so disclosure is not required on May 15. The May 20 announcements invite participation, but do not tell how to participate; if information about how to participate has not been disseminated, disclosure is not required. Similarly, the May 25 announcements do not tell how to participate, so disclosure is not required. Disclosure is finally required on May 30, for then the audience has both been asked to participate and been told how to participate.

Eligibility Requirements

Example #2: Permissible eligibility requirements.

Station ZZZZ is promoting a contest in which only children attending religious schools can participate.

The rule does not prohibit the use of any eligibility restriction reasonably disclosed. However, some requirements (for example, race, gender, or religion) might be contrary to the public interest if the licensee were to air predominantly restricted contests. Permissible eligibility restrictions include residence, number of entries per person and time deadlines.

Example #3: Contestant calling from a particular exchange.

Station XXXX conducts a call-in contest, each time asking for a contestant from a specified telephone exchange. Once the announcer intends to ask for a caller from the 632 exchange, but forgets to name the exchange. The first caller is from the 456 exchange. Should the caller be permitted to participate in the contest?

Yes. Any eligibility restriction is a material contest term and should be disclosed fully



and accurately. If a restriction is not reasonably disclosed, that restriction must be presumed by the audience not to apply, and a licensee that applies a restriction not reasonably disclosed will not have conducted the contest substantially as announced.



Contest Prizes

Example #4: Prize packages.

Station XXXX conducts a contest offering dozens of prize packages collectively worth thousands of dollars, but each package is worth about \$5,000. The contest will have two winners, each of whom may choose one of the prize packages. How should the prizes be advertised?

Since only about \$10,000 in prizes will be awarded, the licensee should avoid giving the misleading impression that it may award hundreds of thousands of dollars worth of prizes. The truth is, the contest offers only two winners a single prize package each. Announcements indicating that a total of \$10,000 in prizes will be offered or given away would be acceptable, as would announcements that each winner will receive \$5,000 in prizes. Announcements indicating that, "You can win \$10,000 in prizes," would be unacceptable, since there is little chance that a single person would win both prizes.

Example #5: Match the number and win.

Station XXXX conducts a contest offering \$1,000 to any listener who can present a dollar bill matching a serial number read over the air. During the course of the contest, 1,000 serial numbers are to be broadcast. Would it be acceptable to advertise the contest as offering \$1,000,000 in prize money?

No. The licensee should not "offer" more in prizes than it can reasonably expect to award. Because the odds that a listener might have the dollar bill whose serial number is announced are so small, it is likely there will be but a few winners. The odds that there will be 1,000 winners (or any number even approaching that many) are extremely low.

Example #6: Treasure chests.

Station XXXX conducts a "Treasure Chest" contest, offering 25 different prizes each worth about \$40. There will be a single winner, who may win 1, 5, 10, or all 25 of the prizes. Would it be acceptable to advertise the contest as a \$1,000 Treasure Chest?

Yes. This differs from the contest in the previous example in that all \$1,000 in prizes can be won. As long as all the prizes in the chest can be won (in other words, as long as they are all offered), the sum of their individual values can be publicized without deceptively overstating the prize values.

Example #7: Prizes acquired in exchange for advertising time—fair market value.

Station XXXX conducts a contest offering an item of merchandise as grand prize. The item regularly sells for \$250 in the station's area, but was bought for \$300 worth of advertising time. As consolation prizes, the station made a wholesale purchase of 1,000 T-shirts for \$1.25 each, though the equivalent T-shirt sells for \$2.00 retail. For advertising purposes, how should XXXX value the prizes?

Prizes should be promoted at their normal retail value, the retail price a member of the station's audience could expect to pay for the identical prize or its equivalent. In the example given, XXXX should advertise the grand prize as worth \$250, and the consolation prizes as worth \$2.

Misleading The Contestant About Prizes Offered

Example #8: Vacation prizes.

Station XXXX promotes a contest as offering "vacations" at a distant resort. In fact the prizes consist of only hotel accommodations; winners must provide their own transportation, meals, and expense money. Are the announcements misleading?

Yes. Since the term "vacation" popularly connotes more than just lodging, it should not be used where the prize is so limited. Prize descriptions should clearly indicate the nature and value of prizes offered, and should not mislead, whether by misstatement, exaggeration, implication, or omission of material facts. The ultimate test of descriptions of material terms—including prize descriptions—is how they are likely to be perceived by the station's audience.

Example #9: Guessing the prize.

Station XXXX conducts a contest in which an entrant wins by correctly guessing the prize offered. What information should be disclosed about the prize?

In such a contest, a licensee may disclose as much or as little information about the prize as it chooses. Disclosure of the prize is not required in contests where non-disclosure is an essential element in the operation of the contest. However, any information broadcast must be accurate and not misleading. Thus, it would not be an accurate description for a station to advertise a secret-prize contest with cash prizes between \$1 and \$10,000 if the maximum prize to be offered is only \$2,000, even though \$2,000 does lie between \$1 and \$10,000.¹⁶ Reasonable rounding-off is of course not misleading.

Example #10: Joke prizes.

Station XXXX promotes a contest by saying the winner will receive the keys

to an automobile. In fact the winner receives just that, the keys, but no car. Is such advertising misleading?

Yes. The advertising implies that not only will the keys be awarded, but that an automobile will be part of the prize. If an automobile is not part of the prize, the station has not fully disclosed a material term of the contest, and its failure to award the car would constitute a failure to conduct the contest substantially as announced.

Example #11: Delay in awarding a prize.

Station XXXX conducts a contest offering an automobile and announces a winner. However, the winner does not receive the prize until more than a year after the contest ends. Is the delayed award of the prize improper?

Yes. The prompt award of prizes at the conclusion of a contest is an implied material term of every contest unless there is an announcement to the contrary. Unreasonable delay in awarding prizes, therefore, is a failure to conduct the contest substantially as announced.

Determining Winners

Example #12: Sham winners.

Station XXXX conducts a contest in which the winner is to be selected by a random drawing of entries. Before the drawing, though, a winner is selected by some other means, and the drawing is a sham. Has the contest been conducted substantially as announced?

No. A contest is not conducted substantially as announced if the means of determining the winner is not the same as announced to the public.¹⁷ It also is a serious deception when legitimate entrants have no chance to win, as when a non-existent winner is announced to avoid awarding the prize, or the prizes are awarded to predetermined winners.

Example #13: Controlling the number of winners.

Station XXXX conducts a "Turkey Shoot" contest. Once an hour a contestant who calls the station is permitted to guess how many "shots" will be required to hit the turkey target: one, two, three, or four. Following the guess, a tape recording of shots is played. If the number of shots matches the contestant's guess, the contestant wins a lovely ceramic turkey vase. If not, no prize or a small consolation prize is won. What problems can contests of this type present?

The most common problem is that the winner-determining process may not operate as implied. In the example given, contest procedures imply that whether a particular contestant wins depends entirely on the chance coincidence of his or her guess and the number of shots on the tape. If for any reason chance is not the sole factor in determining winners in such a

contest, the contest will not have been conducted substantially as announced. Thus, a contest would be conducted improperly if a station employee selects a tape that is known to match or not match the contestant's guess, or if the number of winners is controlled by some means other than chance.

Example #14: Special assistance to an entrant.

Station XXXX conducts a contest in which the winner will be the first entrant to identify a secret celebrity. XXXX broadcasts daily clues as to the identity of the celebrity. A listener, confused by a clue, calls the station requesting a clarification. What should XXXX do?

Fair conduct of a contest requires that each entrant have a fair opportunity to win. If special information or assistance that could affect the outcome of a contest is given to some entrants without being made available to all, the contest will not have been conducted substantially as announced. Thus, no contestant or group of contestants should be given special information or assistance that is not available to the station's entire audience.

Example #15: Thwarting a potential winner.

Station XXXX conducts a contest in which a person must listen for his or her name to be announced on the air, then call a special telephone number within five minutes in order to win. The telephone line is used for other station business, though, and is sometimes busy when contestants call the station. What should the station do?

The station should take special care to see that the telephone line is free when names are broadcast. If attempts to keep the line open do not succeed, the station should change the operation of the contest to assure that contestants have a reasonable chance to win. Failure to take such action may constitute failure to conduct the contest substantially as announced.

Example #16: Tie breakers.

Station ZZZZ announces that the child with the "goofiest Halloween costume" will win a \$100 gift certificate. This contest has been held for many years and ties frequently occur. The judges announce a tie between Patricia, dressed as a bag of french fries, and Marty, dressed as a washing machine. How should tie breaking procedures be disclosed?



Where it could reasonably be anticipated that there might be more than one winner for a

particular prize, the means of breaking the tie is a material contest term which should be disclosed in advance. For example, a contest with a \$10,000 cash prize ends with 100 eligible "winners." Will the station award each of the hundred \$10,000? Will it divide the \$10,000 equally among the 100? Will it conduct a random drawing to select a single winner? If the tie could reasonably have been anticipated, a tie-breaking procedure should have been adopted and disclosed.



Changes in Material Contest Terms

Example #17: Change made after contest has begun.

Station ZYZY announces that 10 "Zebra" cars will be awarded in a contest. The station is later informed by the Exotic Car Company that it is discontinuing its line of "Zebra" cars and that only two will be available as prizes. What should the broadcaster do?

The broadcaster should announce the substitution of prizes of equal value as soon as possible. Changes in material contest terms may constitute failure to conduct the contest substantially as announced. For the Commission's purposes, a licensee's liability under the rule will be determined by the circumstances of the change, and if the licensee's actions are reasonable, no sanction will be imposed. Factors considered include:

- the extent and significance of the change;
- whether the change unfairly disadvantages some contestants;
- if the change is necessitated by circumstances beyond the licensee's control; and,
- whether the circumstances requiring the change could have been anticipated.

When it is determined that a material contest term must or should be changed, the impact of the change should be minimized to reduce the possibility of disadvantaging some contestants, and the change should be announced promptly and conspicuously.

Example #18: Changes in eligibility requirements.

Station XXXX begins an hourly call-in contest without mentioning any eligibility restrictions, but decides to limit each contestant to a single call after noticing that a small group of entrants is making most of the calls. Is this proper?

Yes. Like all other changes in material contest terms, changes in eligibility restrictions will be considered in light of such factors as those mentioned in Contest Example #17. Since this change is made to make the contest more fair to a greater number of potential contestants, and does not unfairly disadvantage any, it is a proper change. However, adequate notice of the change should be given, and it should not be applied retroactively.

Example #19: Disclosing contest deadlines.

Station XXXX begins a contest in which the winner will be selected by drawing a postcard entry, but does not state a deadline date for accepting entries. Has it failed to disclose a material contest term properly?

Yes. The deadline date should be announced at the outset so that any person who wishes to enter the contest may do so. In the case of mail entries, it should be specified whether the deadline date is the date of postmark or the date of receipt. A licensee may prefer to use the date of receipt as the deadline, since properly postmarked entries may be delayed in the mail.

Example #20: Substituting prizes.

Station XXXX conducts a contest with an announced prize of a vacation trip to Buenos Aires. After the contest begins, though, arrangements for the trip fall through, and XXXX substitutes a different prize. Has the licensee failed to properly conduct the contest substantially as announced?

The answer depends on the circumstances of the change, as mentioned in Contest Example #17. In this case the licensee should:

- take reasonable steps from the beginning to assure itself that the prizes offered will be available when the contest is concluded;
- attempt to secure an equivalent prize if the original becomes unavailable;
- substitute a prize of comparable value if an equivalent prize cannot be secured; and,
- announce the change to its audience as soon as possible.

The Commission may find the change improper if the licensee fails to take these reasonable steps.

Ambiguous Rules

Example #21: Scavenger hunts.

Station XXXX conducted a Scavenger Hunt contest, publishing a list of items to be collected. As the contest progressed, it became apparent that the list was ambiguous, and XXXX modified the requirements slightly.

At the end of the contest there was not a clear winner, though two contestants claimed to have met all the requirements.

How should the station have avoided these problems?

Contest rules and procedures should have been carefully reviewed in advance to assure that all likely problems had been anticipated and avoided. In this case, scavenger list



descriptions should have been thoroughly analyzed to eliminate the ambiguities, and special attention should have been given to the procedure for determining the winner. Any clarifications required during the course of the contest should have been announced to the station's audience so no contestant would have an unfair advantage. Where such precautions are not taken, the contest may not be conducted substantially as announced.

Example #22: Increasing the value of prizes.

Station XXXX conducts a contest offering a year's car washes as the prize. Two weeks after the contest begins, a set of tires is added to the prize. Two weeks later, a car is added. Is there anything improper about these prize changes?

No. Since no contestant is unfairly disadvantaged by the increases in prize value, these changes are not improper. However, reductions in prize value are suspect, raising the question whether there ever was a reasonable chance that the larger prizes could have been won.

Misrepresentations

Example #23: Evaporating prizes.

Station XXXX conducts an hourly \$25 "guess the singer" contest, but once a day adds a bonus of \$100 if the contestant makes a correct guess during a particular hour. On a particular day, the bonus prize hour occurs in the early morning. However, the station's announcers continue to tell contestants later in the day that they may win an extra \$100. Has the contest been conducted improperly?

Yes. When a station states or implies that a prize can be won when in fact it cannot, a material contest term (whether the prize can be won) has not been fully and accurately disclosed, and the contest has not been conducted substantially as announced. Similar misrepresentations occur when: a station urges its audience to look for a hidden prize before it is hidden; a station urges submission of entries that it knows no longer have any chance of winning (for example, after receipt of a correct entry in a contest where the earliest correct entry is the winner); and, a station announces a \$1,000 Treasure Chest contest (see Contest Example #10), but there is no way all \$1,000 can be won.

Example #24: Stay tuned and stay tuned, etc.

Station XXXX conducts a contest offering \$5,000 in merchandise to a single winner. The winner will be the first person to call a designated telephone number once the station announces that calls will be accepted. The station urges its audience to stay tuned for an imminent

announcement that calls will be accepted ("maybe in five minutes, maybe in five hours, maybe in five days") though the announcement will not be made for two weeks. Are the promotional announcements improper?

Yes. Representations that it is possible to win the contest in the immediate future are false if it will not be possible to win until much later. Such announcements do not accurately disclose a material contest term (when the prize can be won), and, therefore, are improper.

Conclusion

The purpose of this handbook has been to clarify the revised federal lottery laws and to guide broadcasters who are considering promotions that may still be subject to federal and/or state restrictions. NAB hopes that this booklet, and the examples contained within, has been a useful tool for broadcasters confronted with questions about federal and/or state lottery laws. We must stress, however, that there is no substitute for the advice of counsel when particular situations arise. Moreover, because most state lottery laws are subject to constant change, NAB urges broadcasters to consult their state broadcaster associations or state governments for information concerning the current status of individual state lottery laws.

As an indication of the varying nature of state lottery laws and restrictions, Appendix A contains a state-by-state rundown of the lottery law provisions that were in effect on the date of this publication. Because these state laws change over time—and are expected to undergo special scrutiny by state legislatures as a result of the recent federal law change—it is important that broadcasters carefully check these state laws periodically. The NAB Legal Department plans to update its own lists of state laws and may be contacted by individual member stations when state law questions arise. Broadcasters are also advised to contact their state broadcaster associations or state attorneys general offices. (See list of contacts in Appendix B.)

Lotteries conducted by commercial organizations must be promotional activities which are clearly occasional and ancillary to the primary business of that organization.

By using the words "occasional" and "ancillary," Congress originally intended to distinguish casino gambling from events sponsored time to time by commercial organizations whose primary business is not gambling. In an informal opinion, however, the FCC has indicated that it *does not* consider an event "occasional" if it is held on a daily basis, or if it is held at regular intervals so close together (i.e., weekly, monthly) that the event appears to be part of one ongoing promotion or a series of promotions.

Notwithstanding the FCC's informal opinion, as this book was going to press, neither the FCC, nor any other government body, had developed a firm set of policies as to how the language of the revised federal law would be interpreted in factual situations. As such, NAB urges special caution in broadcasters' implementation of contests under the revised statute.

The FCC pointed out that it is the licensed location (city of license) of a station, rather than the actual location of a transmitter or studio, to which the statute refers in providing a limited exemption from the prohibitions of Section 1304.

47 C.F.R. §73.1211(c)(2).

47 C.F.R. §§73.4125, 73.4126, 73.4130.

Report and Order in MM Docket 83-842, *In the Matter of Elimination of Unnecessary Broadcast Regulation*, 56 R.R. 2d (P&F) 976 (1984).

18 U.S.C. §§1084, 1952, 1955, 1962.

For greater detail on the topic, see page 8.

State Law Summary—March 1990

This state law summary which follows is the result of research conducted by NAB's Legal Department and in conjunction with state broadcaster associations. It is based on information available at the date of publication.

Because state lottery laws are subject to constant change, broadcasters are urged to consult with the appropriate state authorities and/or state broadcaster association (see Appendix B) or their local attorney for the current status of individual state laws.

See page 4 for more information on skill versus chance. For information on horse racing and pai alai, see page 17.

It is important to inform the contestant that he or she will be on the air before you broadcast his or her voice, unless such a broadcast of the contestant's voice would be presumed from the nature of the program (e.g., a "call-in" show). For guidelines, see page 51.

United Broadcasting Co. (WOOK-FM), FCC 78-819, November 27, 1978.

A licensee who airs a contest which threatens lives or property may face a lawsuit for deaths, injuries and/or damage that result from such a broadcast.

For more information, see Contest Example #12, page 57.

Letter to Colonial Broadcasting Co., (WFIF), 44 RR 2d 1191 (1978).

The rules of the contest should include: (a) eligibility requirements; (b) the prize structure (i.e., the nature and value of prizes offered); (c) the number of entries permitted; (d) the type of submission required; (e) where, when and how entries are to be submitted; (f) the basis on which "prizes" will be awarded (including, where applicable, tie-breaking procedures); (g) the termination date of the contest; and (h) any conditions or limitations.

Report and Statement of Policy re: Commission En Banc Programming Inquiry, FCC 60-970, 25 Fed. Reg. 7291, 20 R.R. 1901 (1960). See also Public notice re: Applicability of Lottery Statute to Certain Contests and Merchandise Sales Promotion, 18 F.C.C. 2d 52, 16 R.R. 2d 1559 (1969)

Examples of such promotional announcements are: "Win up to \$1,000 on XXXX!" "Play Easy Bucks with XXXX! You may win!" "XXXX, your Cash Words station!"

High-Low contests present a unique problem, and somewhat greater flexibility in announcing the prize range would be reasonable. An example of High-Low is a contest in which a contestant is asked to guess the amount of money in a barrel. If the guess is incorrect, the announcer informs the audience that the guess was too high or too low. The next caller has the benefit of the clue. A serious question of prize overstatement would be raised if several successive "jackpots" were offered, all worth substantially less than the maximum announced.

This and some of the following examples may also involve violations of Section 509 of the Communications Act of 1934, as amended, 47 U.S.C. §509 (1976).

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
ALABAMA			
None as of date of publication.	Only Bingo conducted by licensed entities in certain counties (state constitution).	Not legal (state constitution).	Yes, advertising of all lotteries, even those of other states is illegal. No restrictions on bingo advertising by stations licensed in counties with bingo.
ALASKA			
None as of date of publication.	Only certain groups as identified by Alaska law can apply for permit. Limit on proceeds.	Not legal (statutory law).	Yes, can only advertise lawful non-profit lotteries.
ARIZONA			
Yes	Allowed if certain conditions are met (Opinion of Attorney General).	Not legal.	Yes, can only advertise lawful non-profit lotteries. No advertising restrictions for state operated lotteries (statutory law).
ARKANSAS			
None as of date of publication.	Not legal (case law).	Not legal (state constitution).	Yes, cannot even advertise out of state lotteries (statutory law).
CALIFORNIA			
Yes	Bingo allowed if proceeds go to charity and there is a local government ordinance allowing bingo (statutory law).	Not legal (opinion of Attorney General).	Yes, can only advertise lawful non-profit lotteries (statutory law). No advertising restrictions for state operated lotteries.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
COLORADO			
Yes	Allowed for certain organizations. Bingo allowed for certain organizations licensed by the secretary of state (state constitution).	Not legal (state constitution).	Yes, can only advertise state operated lotteries. However, certain restrictions apply (statutory law).
CONNECTICUT			
Yes	Traditional lotteries not allowed. Bazaars, bingo, Las Vegas Nights and raffles, allowed under certain conditions by certain organizations (statutory law).	Not legal (statutory law).	Yes, ads 30 seconds or longer for state operated lottery tickets require a statement of the chance of winning per ticket. Cannot advertise time, prize, or location of bazaar, raffle, or games of chance (statutory law).
DELAWARE			
Yes	Allowed for specific organizations. Restrictions apply (state constitution).	Not legal (state constitution).	Yes, can only advertise state operated and lawful non-profit lotteries.
DISTRICT OF COLUMBIA			
Yes	Only bingo if for charitable or educational purposes and regulated by lottery and charitable games control board (statutory law).	Not legal (statutory law).	Yes, can only advertise lawful non-profit bingo.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
FLORIDA			
Yes	Only eligible organizations that have been in existence for three years may conduct bingo or guest games. Proceeds must be donated to non-profit organizations (statutory law).	Not legal (state constitution).	Yes, can advertise state operated bingo. Cannot advertise non-profit bingo (statutory law).
GEORGIA			
None as of date of publication.	Bingo allowed (statutory law).	Not legal (state constitution).	Yes, can only advertise lawful non-profit bingo.
HAWAII			
None as of date of publication.	Not legal (statutory law).	Not legal (state law).	Yes, cannot even advertise other state lotteries.
IDAHO			
Yes	Not legal (statutory law).	Not legal (statutory law).	Yes, can only advertise state operated lotteries. Subject to regulation by lottery commission.
ILLINOIS			
Yes	Lotteries allowed. Bingo allowed. License required.	Not legal (statutory law).	Yes, can advertise state operated lotteries but specific groups or economic classes cannot be targeted. Lawful non-profit lotteries and bingo can also be advertised (statutory law).

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
INDIANA			
Yes	Not legal.	Not legal.	No restrictions apply to state operated lotteries.
IOWA			
Yes	Lotteries allowed. Bingo allowed but license required (statutory law).	Allowed if commercial organization's activity is occasional and ancillary to the primary business or activity of the organization.	No additional restrictions. Amended state statute to conform with federal law.
KANSAS			
Yes	Bingo allowed. License required. Restrictions apply (statutory law).	Not legal (state constitution).	Yes, can only advertise state operated lotteries. Cannot advertise bingo (state law). Legislation to allow bingo advertising was pending as of date of publication.
KENTUCKY			
Yes	Bingo allowed (statutory law).	Not legal.	Yes, can only advertise state operated lottery and non-profit lawful bingo.
LOUISIANA			
None as of date of publication.	Charitable raffle, bingo and keno allowed. License required (statutory law).	Not legal (state constitution).	Yes, can only advertise lawful non-profit bingo, raffle and keno (statutory law).

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
MAINE			
Yes	Bingo and games of chance allowed for some organizations. License required (statutory law).	Not legal (statutory law).	Yes, the lottery director may pick a person or firm to advertise state operated lotteries. State advertising guidelines apply to bingo and games of chance.
MARYLAND			
Yes	Bingo and raffles are legal in certain counties (statutory law).	Not legal (statutory law).	Yes, can only advertise state operated lottery and lawful bingo and raffle games.
MASSACHUSETTS			
Yes	Bingo allowed if licensed by State Lottery Commission and approved by city council and mayor. Other restrictions apply. Raffles and bazaars are legal with a permit and if net proceeds go to non-profit organizations. Other restriction apply (statutory law).	Not legal (statutory law).	Yes, cannot advertise bingo. No advertising restrictions for state operated lotteries. No advertising restrictions for lawful raffles and bazaars (statutory law).

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
MICHIGAN			
Yes	Bingo, Millionaire Parties and raffles allowed. License required. Restrictions apply (statutory law).	Not legal (statutory law).	Yes, can only advertise non-profit bingo if Commissioner permits. Restrictions apply. No advertising restrictions for state operated lotteries. Can advertise lawful lotteries of other jurisdictions.
MINNESOTA			
Yes	Raffles, paddlewheels, tipboards and pull tabs allowed by certain organizations. License required in certain cases.	Not legal as of date of publication. According to Minnesota Broadcasters Association, as of May 7, 1990, Minnesota law will change to conform to revised federal lottery laws.	Yes, restrictions apply to the content of state operated lottery advertisements. Cannot advertise non-profit lotteries. According to MN Broadcasters Assn., as of 5/7/90, Minnesota law will change to conform to revised federal lottery laws.
MISSISSIPPI			
None as of date of publication.	Certain organizations under certain conditions can hold bingo and raffles (statutory law).	Not legal (statutory law).	Yes, can only advertise lawful bingo (statutory law).
MISSOURI			
Yes	Bingo allowed. State license required (statutory law and state constitution).	Not legal (state constitution).	Yes, several restrictions on state operated lotteries. Cannot advertise bingo.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
MONTANA			
Yes	Bingo and raffles allowed. License required.	Bingo and raffles allowed. License required. Prize limit and other restrictions apply. Rodeo and agricultural lotteries allowed (statutory law).	Yes, must state odds in state operated lottery advertisements. Can advertise lawful bingo and raffles.
NEBRASKA			
None as of date of publication.	License required for lottery only where gross proceeds are more than \$1,000. Each organization may conduct one small lottery per calendar month. License required for raffle only where gross proceeds are more than \$5,000. Bingo allowed if conducted by licensed charitable organization and municipality (statutory law).	Legislature can authorize lotteries that are business promotions (state constitution).	Yes, advertising restrictions apply for bingo.
NEVADA			
None as of date of publication.	Lotteries are not allowed (Attorney General's opinion) Bingo allowed. License required (statutory law).	Lotteries are not allowed (state constitution). Bingo allowed. License required (statutory law).	Yes, can only advertise bingo.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
NEW HAMPSHIRE			
Yes	Bingo allowed, raffles allowed. Permit from city council required. Lotteries and gambling allowed (statutory law).	Special bingo licenses issued to certain groups. In very limited situations, gas stations can promote games of chance (statutory law).	No advertising restrictions for state operated lotteries, lawful bingo, and non-profit raffles and lotteries (statutory law).
NEW JERSEY			
Yes	Not legal (statutory law).	Only state regulated casino gambling is allowed (statutory law).	Yes. Federal prohibition preempts state advertising law allowing casino advertising.
NEW MEXICO			
None as of date of publication.	Two lotteries per year per organization allowed if all proceeds are expended in state for public purposes. No part of proceed can go to any individual or employee of organization. Bingo and raffles allowed.	Drawings at fairs are allowed if proceeds benefit certain organizations. Movie theaters can offer prizes (cash and merchandise for advertising purposes) (statutory law).	Yes, only lawful non-profit lotteries may be advertised. However, lawful non-profit bingo or raffles may not be advertised (statutory law).
NEW YORK			
Yes	Subject to state and municipal control. Proceeds must be for charitable purposes. Bingo is allowed, license required (statutory law).	Not legal (state constitution).	Yes, cannot advertise non-profit lotteries. Can advertise bingo on the radio, certain restrictions. No advertising restrictions for state operated lotteries.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
NORTH CAROLINA			
None as of date of publication.	Bingo and raffles allowed, license required (statutory law).	Not legal (state law).	Yes, can only advertise bingo or raffles. Cannot advertise lawful out-of-state lotteries.
NORTH DAKOTA			
None as of date of publication.	Lotteries allowed. All net proceeds must be used for non-profit uses. License required if more than \$2,000 is raised. If less, organization needs city approval in city where event is held (state constitution and statutory law).	Not legal.	No restrictions on how lawful lotteries can be advertised.
OHIO			
Yes	Allowed if conducted for charitable purposes by licensed charitable organization.	Not legal (statutory law and state constitution).	Yes, can only advertise state operated lotteries and charitable bingo. Cannot advertise charitable lotteries (state constitution).
OKLAHOMA			
None as of date of publication.	Bingo and games of chance allowed. License required (statutory law).	Not legal (statutory law).	Yes, can only advertise lawful bingo.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
OREGON			
Yes	Bingo, raffles and other games of chance allowed. License from State Department of Justice required (statutory law).	Not legal (statutory law).	Yes, for TV advertisements, certain restrictions apply. No restrictions for radio. No advertising restrictions for bingo, raffles, etc.
PENNSYLVANIA			
Yes	Bingo allowed if conducted for a charitable or civic purpose (statutory law).	Not legal.	No advertising restrictions apply for state operated lotteries and lawful bingo.
PUERTO RICO			
Yes	Charitable lotteries are allowed for certain organizations if: 1) proceeds are used for non-profit purposes; 2) organization files a report with the Department of Treasury (Puerto Rico statutory law).	Not legal.	No advertising restrictions apply for state operated lotteries or charitable lotteries.
RHODE ISLAND			
Yes	Annual or semi-annual commercial lotteries by clubs or societies permitted as long as all proceeds are donated to charity (statutory law).	Commercial events to promote retail businesses permitted. Promoter must file with Secretary of State where total of prizes is more than \$500 (statutory law).	No advertising restrictions apply for state operated lotteries or state authorized lotteries.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
SOUTH CAROLINA			
None as of date of publication.	Bingo allowed (statutory law and state constitution).	Bingo allowed if conducted at state and county fairs (statutory law and state constitution).	Yes, cannot advertise lotteries (state constitution).
SOUTH DAKOTA			
Yes	Bingo and other games of chance allowed if conducted by certain organizations and all net proceeds go to charitable purposes (statutory law).	Not legal (state constitution).	No advertising restrictions for state operated lotteries and other lawful non-profit lotteries.
TENNESSEE			
None as of date of publication.	Not legal (state constitution and statutory law).	Not legal (state and statutory law).	Not applicable.
TEXAS			
None as of date of publication.	Bingo allowed, license required. Restrictions apply (state constitution).	Not legal (state constitution).	Yes, the amount of a prize or series of prizes offered at a lawful bingo occasion cannot be included in the advertisement.
UTAH			
None as of date of publication.	Not legal (state constitution and statutory law).	Not legal (state constitution and statutory law).	Not applicable.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
VERMONT			
Yes	Bingo, raffles and games of chance allowed. Political parties are included in this category (statutory law).	Not legal (statutory law).	Yes, ads for state operated lotteries must state odds of winning. No restrictions for lawful non-profit bingo, raffles or games of chance.
VIRGINIA			
Yes	Bingo and raffles allowed if conducted by certain organizations, annual local permit required. Subject to other restrictions (statutory law).	Not legal (statutory law).	Yes, several restrictions apply to advertising state operated lotteries. No restrictions on non-profit bingo and raffles (statutory law).
WASHINGTON			
Yes	Raffles, social card games and fundraising events allowed. Restrictions apply (statutory law).	Agricultural fair can conduct bingo. Not more than 12 consecutive days in a calendar year (statutory law).	Yes, ads for state operated lotteries must include odds. No restrictions on agricultural fairs, non-profit raffles, bingo, etc. (statutory law).
WEST VIRGINIA			
Yes	Bingo allowed if conducted by charitable or public service organizations. License required. Prize limits. Raffles allowed by charitable or public service organizations. License not required.	Not legal (statutory law and state constitution).	No advertising restrictions for state operated lotteries and lawful bingo and raffles.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
WISCONSIN Yes	Bingo and raffles allowed. Prize limits, license required.	Not legal (statutory law).	Yes, advertising for state operated lotteries is limited to "informational advertising." Several restrictions apply for lawful non-profit lotteries.
WYOMING None as of date of publication.	Lotteries, bingo raffles, pull tabs, calcula wagering allowed by charitable organizations. Several restrictions apply (statutory law).	Not legal (statutory law and state constitution).	No advertising restrictions on lawful bingo or raffles.

Appendix B

Sources of Information Concerning State Lottery Laws

To help broadcasters obtain information about their individual state lottery laws, we have included the following list of state government addresses and phone numbers, and appropriate state broadcaster association phone numbers. Because state lottery laws are subject to change, it is important for broadcasters to contact the numbers listed to find out about the current status of their state's lottery laws.

- Alabama**
 Public Information Dept.
 Attorney General's Office
 South House, 11 So. Union St.
 Montgomery, AL 36130
 (205) 242-7440
 Alabama Broadcasters Association
 205-942-4571
- Alaska**
 Gaming Supervisor
 Division of Occupational Licensing
 Department of Commerce and Economic Development
 (907) 465-2534
 Attorney General's Office
 P.O. Box K, State Capitol
 Juneau, AK 99811-0300
 (907) 465-3600
 Alaska Broadcasters Association
 907-258-2424
- American Samoa**
 Attorney General's Office
 P.O. Box 7
 Pago Pago, American Samoa
 96799
 (684) 633-4163
- Arizona**
 Civil Division
 Attorney General's Office
 1275 West Washington
 Phoenix, AZ 85007
 (602) 542-1610
 Arizona Broadcasters Association
 602-991-1760
- Arkansas**
 Consumer Division-Lottery
 (501) 682-2341
 Attorney General's Office
 Press Secretary-Gambling
 200 Tower Building
 4th and Center Sts.
 Little Rock, AK 72201
 (501) 682-2007
 Arkansas Broadcasters Association
 501-227-7564
- California**
 Deputy Attorney General
 1515 K Street, Suite 638
 Sacramento, CA 95814
 (916) 324-5465
 California Broadcasters Association
 916-444-2237

7. **Colorado**
Marketing Director
Colorado Lottery
(303) 837-3411
Colorado Broadcasters
Association
303-894-0911
8. **Connecticut**
Executive Assistant
Division of Special Revenue
(203) 566-1807
Connecticut Broadcasters
Association
203-633-5031
9. **Delaware**
Deputy Attorney General in
Charge of Lotteries and
Sweepstakes
820 French Street
Wilmington, DE 19801
(302) 571-2500
10. **Washington, D.C.**
Attorney General
of the United States
Department of Justice
Room 5111
10th and Constitution, N.W.
Washington, DC 20530
(202) 633-2001
11. **Florida**
General Counsel
State Department of the Lottery
(904) 487-7724
Florida Association of
Broadcasters
904-681-6444
12. **Georgia**
Office of Legislative Counsel
General Assembly
(404) 656-5000
Georgia Association of
Broadcasters
404-993-2200
13. **Guam**
Attorney General of Guam
Department of Law
238 F.C. Flores Street, #701
Agana, Guam 96910
(671) 472-6441
14. **Hawaii**
Supervising Attorney for the
Criminal Justice Division
Department of the Attorney
General
State Capitol, Room 405
Honolulu, HI 96813
(808) 548-5336
Hawaii Association of
Broadcasters
808-531-4511
15. **Idaho**
Department of the Attorney
General
State House
Boise, ID 83720
(208) 334-2424
Idaho State Broadcasters
Association
208-345-3072
16. **Illinois**
Public Information Officer
State Attorney General's Office
500 S. Second Street
Springfield, IL 62706
(217) 524-4173
Illinois Broadcasters
Association
217-753-2636
17. **Indiana**
Attorney General of Indiana
219 State House
Indianapolis, Indiana 46204
(317) 232-6201
Hoosier Lottery Department
(317) 264-4990
Caller will probably be referred
to local county prosecutor's
office
Indiana Broadcasters
Association
317-638-1332
18. **Iowa**
Department of Inspections and
Appeals
Racing and Gaming Division
(515) 281-7357
Lottery
(515) 281-7900
Iowa Broadcasters Association
319-366-8016
19. **Kansas**
Public Information Officer
of the Kansas Lottery
(913) 296-5708
Kansas Association of
Broadcasters
913-235-1307
20. **Kentucky**
Director, Civil and
Environmental Law Division
Attorney General's Office
State Capitol, Room 116
Frankfort, KY 40601
(502) 564-4010
Kentucky Broadcasters
Association
502-692-6888
21. **Louisiana**
Public Relations Dept.
Attorney General's Office
P.O. Box 94005
Baton Rouge, LA 70804-9005
(504) 342-7013
State Police—Charitable
Gaming Division
P.O. Box 66614
Baton Rouge, LA 70896
(504) 925-1835
Louisiana Association of
Broadcasters
504-383-7486
22. **Maine**
Maine State Police, Licensing
Division
(207) 582-8765
Maine Association of
Broadcasters
207-623-3870
23. **Maryland**
Assistant Attorney General
200 Saint Paul Place
Baltimore, MD 21202
(301) 576-6300
Maryland/DC/Delaware
Broadcasters Association
(301) 385-0224

24. **Massachusetts**
General Counsel's Office
Massachusetts State Lottery
Commission
(617) 849-5555
Massachusetts Broadcasters
Association
508-921-6400
25. **Michigan**
Assistant Attorney General in
charge of Lotteries & Racing
(517) 373-3517
Michigan Association of
Broadcasters
517-484-7444
26. **Minnesota**
Assistant Attorney General
Gaming & Regulation Division
(612) 296-7862
Minnesota Broadcasters
Association
612-926-8123
27. **Mississippi**
White Collar Crime Division
Attorney General's Office
(601) 354-6344
Mississippi Association of
Broadcasters
601-957-9121
28. **Missouri**
Chief Counsel to Attorney
General
Supreme Court Building
101 High Street
Jefferson City, MO 65102
(314) 751-3321
Missouri Broadcasters
Association
314-636-6692
29. **Montana**
Assistant Attorney General
Staff Counsel for Gambling
Control Division
Justice Bldg.
215 North Sanders
Helena, MT 59620
(406) 444-2026
Montana Broadcasters
Association
406-442-3961
30. **Nebraska**
Assistant Attorney General
(402) 471-4795
Nebraska Broadcasters
Association
402-330-7701
31. **Nevada**
Chief Deputy, Attorney General
Division of Gaming
(702) 687-6532
Nevada Broadcasters
Association
702-457-8450
32. **New Hampshire**
Sweepstakes Commission
Public Relations & Customer
Service Representative
(603) 271-3391 or (800) 852-3324
New Hampshire Association of
Broadcasters
603-472-9800
33. **New Jersey**
Deputy Attorney General
New Jersey State Lottery
(609) 292-1526
New Jersey Broadcasters
Association
201-247-3337
34. **New Mexico**
Gaming Administrator
Alcohol & Gaming Division
Division of Regulations &
Licensing
(505) 827-7760
New Mexico Broadcasters
Association
505-299-6908
35. **New York**
Counsel-New York State
Division
of the Lottery
(518) 474-5498
New York State Broadcasters
Association
518-434-6100
36. **North Carolina**
Assistant Attorney General
Department of Justice
2 East Morgan Street
Raleigh, NC 27602
(919) 733-2011
North Carolina Association of
Broadcasters
919-821-7300
37. **North Dakota**
Public Information Officer
Attorney General's Office
Department of Justice
2115 State Capitol
Bismarck, ND 58505
(701) 224-2210
North Dakota Broadcasters
Association
701-777-4200
38. **Ohio**
Chief Legal Counsel-Ohio
Lottery Commission
(216) 622-3344
Director for Media Relations
(216) 622-3200
Ohio Association of
Broadcasters
614-228-4052
39. **Oklahoma**
Assistant Attorney General
112 State Capitol
Oklahoma City, OK 73105
(405) 521-3921
Oklahoma Association of
Broadcasters
405-528-2475
40. **Oregon**
Business Manager Oregon State
Lottery
(503) 373-0268
Oregon Association of
Broadcasters
503-257-3041
41. **Pennsylvania**
Attorney General of
Pennsylvania
Strawberry Square—16th Floor
Harrisburg, PA 17120
(717) 787-3391
(Will probably refer caller to the
local District Attorney's office)
Pennsylvania Association of
Broadcasters
717-534-2504

42. **Puerto Rico**
 Attorney General of Puerto Rico
 Department of Justice
 P.O. Box 192
 San Juan, Puerto Rico 00902
 (809) 721-2900
 Radio Broadcasters Association
 of Puerto Rico
 809-724-8150
43. **Rhode Island**
 Rhode Island State Police
 Headquarters
 P.O. Box 185
 North Scituate
 Providence, RI 02857
 (401) 647-3311
 Rhode Island Broadcasters
 Association
 401-769-0600
44. **South Carolina**
 Attorney General of South
 Carolina
 Public Information Department
 Rembert Dennis Office Building
 1000 Assembly Street
 Columbia, SC 29211
 (803) 734-3970
 South Carolina Broadcasters
 Association
 803-777-6783
45. **South Dakota**
 Assistant Attorney General
 State Capitol Building
 Pierre, SD 57501
 (605) 773-3215
 South Dakota Broadcasters
 Association
 605-334-2682
46. **Tennessee**
 Attorney General's Office
 (Will only provide information
 re: relevant statutes and
 opinions their office issued. No
 statutory interpretation)
 Paralegal for legislative affairs
 and reporting
 (615) 741-5860
 Tennessee District Attorney's
 General Office
 Suite 306
 Capital Blvd. Building
 226 Capital Blvd.
 Nashville, Tennessee 37219
 Executive Secretary
 (615) 741-1696
 Tennessee Association of
 Broadcasters
 615-399-3791
47. **Texas**
 Attorney General of Texas
 P.O. Box 12548
 Capitol Station
 Austin, TX 78711
 (512) 463-2100
 Office will probably refer caller
 to District Attorney's office
 Texas Association of
 Broadcasters
 512-322-9944
48. **Utah**
 Assistant Attorney General
 Fair Business Enforcement Unit
 (801) 538-1331
 Utah Broadcasters Association
 801-359-9521
49. **Vermont**
 Assistant Attorney General
 Pavilion Office Building
 Montpelier, VT 05602
 (802) 828-3171
 Vermont Association of
 Broadcasters
 802-658-1230
50. **Virgin Islands**
 Deputy Attorney General
 Department of Justice
 No. 48B-50C Kronprindsens
 Gade
 G.E.R.S. Complex, 2d Floor
 Charlotte Amalie
 St. Thomas, Virgin Islands
 00802
 (809) 774-5666 ext. 611
51. **Virginia**
 Assistant Attorney General,
 Criminal Enforcement Division
 (804) 786-4624
 Virginia Association of
 Broadcasters
 804-977-3716
52. **Washington**
 Assistant Attorney General,
 General Legal Division
 (206) 753-2693
 Washington State Association
 of Broadcasters
 206-621-9722
53. **West Virginia**
 Deputy Attorney General
 (304) 348-2522
 West Virginia Broadcasters
 Association
 304-344-3798
54. **Wisconsin**
 Paralegal, Criminal Litigation,
 Economic Crimes, Antitrust
 Division
 Attorney General's Office
 (608) 266-8505
 Wisconsin Broadcasters
 Association
 608-255-2600
55. **Wyoming**
 Attorney General
 123 State Capitol
 Cheyenne, WY 82002
 (307) 777-7841
 Wyoming Association of
 Broadcasters
 307-632-7622

Federal Statutes Concerning Lotteries and Indian Bingo

The following appendix contains selected sections of the federal "Lotteries" statute and the "Indian Gaming Regulation Act." NAB feels that these particular sections will be an important reference for broadcasters when they encounter problems or questions pertaining to federal lottery laws.

Lotteries

(As amended, effective May 7, 1990)

§1304. Broadcasting lottery information

Whoever broadcasts by means of any radio or television station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Each day's broadcasting shall constitute a separate offense.

§1307. Exceptions relating to certain advertisements and other information and to State-conducted lotteries.

- (a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to
 - (1) an advertisement, list of prizes, or other information concerning a lottery conducted by a State acting under the authority of State law which is—
 - (A) contained in a publication published in that State or in a State which conducts such a lottery; or
 - (B) broadcast by a radio or television station licensed to a location in that State or a State which conducts such a lottery; or
 - (2) an advertisement, list of prizes, or other information concerning a lottery, gift enterprise, or similar scheme, other than one described in paragraph (1), that is authorized or not otherwise prohibited by the State in which it is conducted and which is—
 - (A) conducted by a not-for-profit organization or a governmental organization; or
 - (B) conducted as a promotional activity by a commercial organization and is clearly occasional and ancillary to the primary business of that organization.

(b) The provisions of sections 1301, 1302, and 1303 shall not apply to the transportation or mailing—

(1) to addresses within a State of equipment, tickets, or material concerning a lottery which is conducted by that State acting under the authority of State law, or

(2) to an addressee within a foreign country of equipment, tickets or material designed to be used within that foreign country in a lottery which is authorized by the law of that foreign country.

(c) For purposes of this section (1) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and (2) "foreign country" means any empire, country, dominion, colony, or protectorate, or any subdivision thereof (other than the United States, its territories or possessions).

(d) For the purposes of subsection (b) "lottery" means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds or parts thereof by chance to one or more chance takers or ticket purchasers. "Lottery" does not include the placing or accepting of bets or wagers on sporting events or contests. For purposes of this section, the term a "not-for-profit organization" means any organization that would qualify as tax exempt under section 501 of the Internal Revenue Code of 1986.

Indian Gaming Regulatory Act—Pub.L. No. 100-497, 102 Stat 2467

DECLARATION OF POLICY

Sec. 3. The purpose of this Act is—

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

DEFINITIONS

Sec. 4. For purposes of this Act—

(6) The term "class I gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations.

(7)(A) The term "class II gaming" means—

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards,

including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that—

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State,

but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term "class II gaming" does not include—

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(C) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such State by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.

(D) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on the date of enactment of this Act, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after the date of enactment of this Act, to negotiate a Tribal-State compact under section 11(d)(3).

(8) The term "class III gaming" means all forms of gaming that are not class I gaming or class II gaming.

TRIBAL GAMING ORDINANCES

Sec. 11. (b)(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(d)(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by an ordinance or resolution that—

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b), and

(iii) is approved by the Chairman.

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

DISSEMINATION OF INFORMATION

Sec. 21. Consistent with the requirements of this Act, sections 1301, 1302, 1303, and 1304 of title 18, United States Code, shall not apply to any gaming conducted by an Indian tribe pursuant to this Act.

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**SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE**

BILL NUMBER: SB 86
 ABBREVIATED TITLE: Revisor of Statutes B.11
 SPONSER: Leg Council ORIGINAL RECEIVED: 1-26-91 LB
 WRITTEN REQUEST TO SCHEDULE REC'D: _____ FROM: _____
 SPONSER'S STATEMENT REC'D: _____ FROM: _____
 SECTIONAL ANALYSIS RQST'D: _____ FROM: _____
 SECTIONAL ANALYSIS RECEIVED: _____
 FISCAL NOTE (ORIGINAL)
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____
 FISCAL NOTE (C.S.)
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____
 FIVE DAY NOTICE GIVEN: 3/7/91 NOTICE OF HEARINGS GIVEN: _____
 COMMITTEES OF REFERRAL: FIRST: Jud SECOND: _____ THIRD: _____

COMMITTEE ACTION

DATE: 3-14 Hear 3-21 Scheduled - then cancelled.
4-4-91 Next Hearing - Sec 8 Deleted - Balance
Passed on 2nd Rec. - Amended - No Rec.
Roller Do Pass - Frank; Callum; Adams - No Rec.
Withdrawn to Sen Sec. 4-8-91 LB.

PERSONS TO BE NOTIFIED OF HEARING Deaftun Deirdaett
2450

- | | |
|---------------------------------|-----------|
| 1. SPONSOR <u>leg Affairs -</u> | 6. _____ |
| 2. AGENCY _____ | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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


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

MEMORANDUM

April 5, 1991

SUBJECT: CSSB 86(Judiciary) (W.O. 7-LS0444\D)

TO: Senator Rick Halford
Chair, Senate Judiciary Committee

FROM: David R. Dierdorff 
Revisor of Statutes

Enclosed is CSSB 86(Judiciary). Because the only change was the deletion of sec. 8 from SB 86, I did not prepare a new sectional analysis. You may wish to inform your colleagues that the sectional prepared for SB 86, and published as Senate Journal Supplement No. 2 on January 25, 1991, may still be used with CSSB 86(Judiciary). Simply ignore the discussion of sec. 8, and treat the discussion of bill secs. 9 - 39 as dealing with secs. 8 - 38 of the CS.

DRD:mi
91-067.mai

Enclosure

DIVISION OF LEGAL SERVICES

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Mail Stop 3101*

MEMORANDUM

February 21, 1991

SUBJECT: Amendment for SB 86 (1991 Revisor's Bill)

TO: Senator Rick Halford
Attn: Doug Baily

FROM: David R. Dierdorff 
Revisor of Statutes

Enclosed is an amendment for SB 86, the revisor's bill, and a sectional analysis of that amendment. The amendment represents additional material that has come to my attention during the past two months. Although I anticipate the discovery or arrival of even more, I think that it would be prudent to begin the hearings process and start the bill moving. We can always add additional material in the House.

Consequently, I would appreciate it if you would set a time for the first hearing on SB 86, at which time I assume a subcommittee will be appointed. As always, I look forward to working with you and your staff.

If it would be easier for you and the committee, I would be happy to prepare a draft CS that incorporates the amendment.

DRD:gc
91-086.glc

Enclosure

DIVISION OF LEGAL SERVICES

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Mail Stop 3101

MEMORANDUM

February 21, 1991

SUBJECT: Amendment A.1, SB 86 - Sectional Analysis

TO: Senator Rick Halford
Chair, Senate Judiciary Committee

FROM: David R. Dierdorff 
Revisor of Statutes

SECTIONAL ANALYSIS - AMENDMENT A.1, SB 86

Sec. 11. This amendment corrects a long-standing error in the definition of edible meat for the fish and game code. The error was brought to our attention by a staff biologist in the division of wildlife conservation.

Sec. 12. This amendment corrects three erroneous references in one of the provisions of the law regulating outdoor advertising along highways. The errors date back to the 1968 enactment of the provision. The reference should only be to those laws regulating outdoor advertising, not to the entire chapter (AS 19.25), because the chapter includes provisions relating to the use of highway rights-of-way for utilities, and to encroachments, all of which have their own remedy provisions.

Secs. 16 - 18. These sections correct erroneous internal references in AS 21.18.110, the standard valuation law for life insurance. The errors are the result of oversights when converting a model Act for use in the Alaska Statutes. All of the corrections have been reviewed by the division of insurance.

Secs. 20 and 21. These sections delete references to dates that are no longer relevant to a reading of the law.

Senator Rick Halford
February 21, 1991
Page 2

Additional Repealers. Finally, several additional provisions are proposed for repeal. AS 02.15.260(14), AS 05.15.210(21), AS 05.35.070(4), AS 21.75.340, and AS 46.03.-900(16) are all definitions of "municipality" that are redundant to the definition at AS 01.10.060 for all Alaska Statutes. AS 14.36.070(1) defines a word that is not used in AS 14.36. AS 14.36.070(2) and 14.36.070(4) define terms that are defined for AS 14 in AS 14.60.010.

If I may be of further assistance, please advise.

DRD:gc
91-087.glc

A M E N D M E N T

OFFERED IN THE SENATE JUDICIARY COMMITTEE

TO: SB 86

Page 4, following line 31:

Insert new bill sections to read:

**** Sec. 11.** AS 16.30.030(3) is amended to read:

(3) "edible meat" means, in the case of big game animals, the meat of the ribs, neck, brisket, front quarters as far as the distal joint of [JUNCTURE OF THE HUMERUS AND] the radius-ulna (knee), hindquarters as far as the distal joint of the tibia-fibula (hock), and that portion of the animal between the front and hindquarters; in the case of wild fowl, the meat of the breast; however, "edible meat" of big game or wild fowl does not include

(A) meat of the head;

(B) meat that has been damaged and made inedible by the method of taking;

(C) bones, sinew, and incidental meat reasonably lost as a result of boning or a close trimming of the bones;

(D) viscera;

*** Sec. 12.** AS 19.25.150 is amended to read:

Sec. 19.25.150. UNLAWFUL ADVERTISING. An advertising sign, display, or device which violates the provisions of AS 19.25.080 - 19.25.180 [THIS CHAPTER] is a public nuisance. The department shall give 30 days' notice, by certified mail, to the owner of the land on which the advertising sign, display, or device is located, ordering its removal if it is prohibited by AS 19.25.080 - 19.25.180 [THIS CHAPTER] or ordering the owner to cause it to conform to regulations if it is authorized by AS 19.25.080 - 19.25.180 [THIS CHAPTER]. If the owner of the property fails to comply within 30 days as required in the notice, the department shall remove the outdoor advertising sign, display, or device at the expense of the owner of the land or the person who erected it."

Renumber the following bill sections accordingly.

Page 5, following line 28:

Insert new bill sections to read:

**** Sec. 16.** AS 21.18.110(b)(5) is amended to read:

(5) If in any contract year the gross premium charged by a life insurer on a policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve on the policy or contract but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for that policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract, or the reserve calculated by the method actually used for the policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. In this paragraph, the minimum valuation standards of mortality and rate of interest are those standards referred to in (b) and (c) [(C)] of this section [PARAGRAPH]. Notwithstanding this paragraph, for a life insurance policy issued on or after January 1, 1987 for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess premium and which provides an endowment benefit or a cash surrender value or a combination of these in an amount greater than the excess premium the provisions of this paragraph shall be applied as if the method used in calculating the reserve for such a policy were based on a net one-year term premium for the benefits provided for in the first policy year [THE METHOD DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION, IGNORING THE SECOND PARAGRAPH OF PARAGRAPH (2) OF THIS SUBSECTION]. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated under (2)(B) of this subsection [IN ACCORDANCE WITH PARAGRAPH (2), INCLUDING THE SECOND PARAGRAPH OF THAT PARAGRAPH], and the minimum reserve calculated under [IN ACCORDANCE WITH] this paragraph.

*** Sec. 17.** AS 21.18.110(b)(8) is amended to read:

(8) This paragraph [SECTION] applies to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a

partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement annuities under 26 U.S.C. 408 (Internal Revenue Code), as amended. Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in those contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by those contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable before the end of that respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of those contracts to determine nonforfeiture values.

* **Sec. 18.** AS 21.18.110(e) is amended to read:

(e) Notwithstanding (d) [(2)] of this section [SUBSECTION], if the calendar year statutory valuation interest rate for a life insurance policy differs from the corresponding actual rate for a similar policy issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for the life insurance policy shall be equal to the corresponding actual rate for the immediately preceding calendar year. For the purpose of this paragraph, the calendar year statutory valuation interest rate shall be determined for 1980 using the reference interest rate defined for 1979 and shall be determined for each following calendar year regardless of the operative date under AS 21.45.300(w) [WHEN SUBSECTION (w) OF THE STANDARD NONFORFEITURE LAW FOR LIFE INSURANCE BECOMES OPERATIVE]."

Renumber the following bill sections accordingly.

Page 6, following line 1:

Insert new bill sections to read:

** **Sec. 20.** AS 21.66.370(f) is amended to read:

(f) A [BEGINNING NOVEMBER 12, 1974, A] title insurance company or agent of a title insurance company may not charge a rate for a policy or contract of title insurance except in accordance with filings or rates which are in effect for the title insurance company as provided

in this chapter.

* **Sec. 21.** AS 21.75.300(a) is amended to read:

(a) The [WITHIN SIX MONTHS OF JULY 13, 1978, THE] director shall, by regulation, provide a general plan for the implementation of cooperative insurance coverage limited to the risks defined in AS 21.75.330."

Renumber the following bill sections accordingly.

Page 13, line 11, after "* **Sec. 38.**":

Insert "AS 02.15.260(14); AS 05.15.210(21); AS 05.35.070(4); AS 14.36.070(1), 14.36.070(2), and 14.36.070(4); AS 21.75.340;"

Page 13, line 12, after "AS 46.03.314":

Insert "and 46.03.900(16)"

SENATE BILL NO. 86

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL

Introduced: 1/25/91
 Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act making corrective amendments to the Alaska Statutes as recommended by the
 2 revisor of statutes; and providing for an effective date."

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

4 * Section 1. AS 01.10.040 is amended by adding a new subsection to read:

5 (b) When the words "includes" or "including" are used in a law, they shall be construed
 6 as though followed by the phrase "but not limited to."

7 * Sec. 2. AS 08.04.120 is amended to read:

8 Sec. 08.04.120. EDUCATIONAL AND EXPERIENCE REQUIREMENTS. An applicant
 9 shall meet the following requirements of education and experience: [.]

10 (1) the [REPEALED

11 (2) AFTER APRIL 26, 1965, THE] educational requirement is (A) satisfactory
 12 completion of two years of study at one or more colleges or universities recognized by the board,
 13 or (B) graduation from a junior or community college in Alaska or otherwise recognized by the
 14 board, or (C) the substantial equivalent of (A) or (B) of this paragraph; the [. THE] experience

1 requirement is four years of accounting experience satisfactory to the board; [.]

2 (2) [(3) AFTER APRIL 26, 1960,] the education and experience requirements may
3 also be satisfied by

4 (A) the satisfactory completion of four years of study with a
5 nonaccounting major at one or more colleges or universities recognized by the board, and
6 three years of accounting experience satisfactory to the board; [.] or

7 (B) the satisfactory completion of four years of study with an accounting
8 major at one or more colleges or universities recognized by the board, and two years of
9 accounting experience satisfactory to the board.

10 * Sec. 3. AS 08.84.065(a) is amended to read:

11 (a) The board may issue a nonrenewable temporary permit to an applicant for licensure
12 by acceptance of credentials or by examination who

13 (1) meets the requirements of

14 (A) AS 08.84.030(a)(1) or (b)(1); or

15 (B) AS 08.84.032(a)(2) and (4) or (b)(2) and (3); [AS 08.84.030(2) ANL
16 08.84.032(2) AND (4)] and

17 (2) pays the required fee.

18 * Sec. 4. AS 08.88.460(a) is amended to read:

19 (a) A person seeking reimbursement for a loss suffered in a transaction as a result of
20 fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate
21 broker, associate real estate broker, or real estate salesman licensed under this chapter shall make
22 a claim to the commission for reimbursement on a form furnished by the commission. The form
23 shall be executed under penalty of unsworn falsification [PERJURY], and must
24 [INFORMATION REQUIRED TO BE SUPPLIED SHALL] include the following:

25 (1) the name and address of the real estate broker, associate real estate broker,
26 or real estate salesman;

27 (2) the amount of the alleged loss;

28 (3) the date or period of time during which the alleged loss occurred;

29 (4) the date upon which the alleged loss was discovered;

30 (5) the name and address of the claimant; and [OR]

31 (6) a [THE] general statement of facts relative to the claim [CLAIMANT].

1 * Sec. 5. AS 09.35.060 is amended to read:

2 Sec. 09.35.060. EXECUTION AFTER DEATH OF JUDGMENT DEBTOR. If the
3 judgment debtor dies after judgment, execution may be issued on the judgment in the manner and
4 with the effect as if the debtor were still living, except as provided in AS 13.16.505 [EXCEPT
5 THAT NO ACTION MAY BE TAKEN WITHIN SIX MONTHS FROM THE GRANTING OF
6 LETTERS TESTAMENTARY OR OF ADMINISTRATION UPON THE ESTATE OF THE
7 DECEASED WITHOUT LEAVE OF THE COURT HAVING JURISDICTION OVER THE
8 PROBATE OF THE ESTATE].

9 * Sec. 6. AS 12.30.030(b) is amended to read:

10 (b) When a court denies a motion under (a) of this section or conditions of release have
11 been imposed by the court having original jurisdiction over the offense, an appeal may be taken
12 to the court having appellate jurisdiction over the court denying the motion or imposing the
13 conditions subject to the applicable court rules [OF THE SUPREME COURT OF ALASKA,
14 AND THE DISTRICT COURT RULES OF CRIMINAL PROCEDURE]. The order of the lower
15 court shall be affirmed unless it is found that the lower court abused its discretion. If it is held
16 that the lower court did abuse its discretion, the appellate court may modify, vacate, set aside,
17 reverse, remand the action for further proceeding, or remand the action directing entry of the
18 appropriate order, which may include ordering the person to be released under AS 12.30.020(a).
19 The appeal shall be determined promptly.

20 * Sec. 7. AS 12.55.155(d)(6) is amended to read:

21 (6) in a conviction for assault under AS 11.41.200 - 11.41.220 [11.41.230], the
22 defendant acted with serious provocation from the victim;

23 * Sec. 8. AS 16.05.221 is amended to read:

24 Sec. 16.05.221. BOARDS OF FISHERIES AND GAME. (a) For purposes of the
25 conservation and development of the fishery resources of the state, there is created the Board of
26 Fisheries composed of seven members appointed by the governor, subject to confirmation by a
27 majority of the members of the legislature in joint session. The appointed members shall be
28 residents of the state and shall be appointed without regard to political affiliation or geographical
29 location of residence. The commissioner is not a member of the Board of Fisheries, but shall
30 be ex officio secretary. Members serve staggered terms of three years.

31 (b) For purposes of the conservation and development of the game resources of the state,

*If we put this in AS 39, it will
support the claims of several SB 86
of course*

1 there is created a Board of Game composed of seven members appointed by the governor, subject
2 to confirmation by a majority of the members of the legislature in joint session. The appointed
3 members shall be residents of the state, and shall be appointed without regard to political
4 affiliation or geographical location of residence. The commissioner is not a member of the Board
5 of Game, but shall be ex officio secretary. Members serve staggered terms of three years.

6 * Sec. 9. AS 16.05.340(a)(17) is amended to read:

7 (17) Waterfowl conservation tag 5

8 (A) A person may not engage in waterfowl hunting without having the
9 current year's waterfowl tag in the person's actual possession, unless that person

10 (i) qualifies for a \$5 license fee under (6) of this subsection;

11 (ii) is a resident under the age of 16;

12 (iii) is 60 years of age or older and is [HAS BEEN] a resident
13 [FOR AT LEAST ONE YEAR];

14 (iv) is a disabled veteran eligible for a free license under
15 AS 16.05.341.

16 (B) The Board of Game shall by regulation exempt the requirement of a
17 waterfowl conservation tag for waterfowl hunting in areas of the state not likely to benefit
18 from programs described in AS 16.05.130(b)(2) - (4).

19 * Sec. 10. AS 16.05.450 is amended to read:

20 Sec. 16.05.450. ISSUANCE OF LICENSES. (a) The commissioner or an authorized
21 agent shall issue a crewmember fishing license under AS 16.05.480 to each qualified person who
22 files a written application at a place in the state designated by the commissioner, containing the
23 reasonable information required by the commissioner together with the required fee. The
24 application shall be simple in form and shall be executed by the applicant under the penalty of
25 unsworn falsification [PERJURY].

26 (b) The Commercial Fisheries Entry Commission shall issue a vessel license under
27 AS 16.05.490 to each qualified vessel for which a written application has been filed, at a place
28 in the state designated by the commission, containing the reasonable information required by the
29 commission together with the required fee. The application shall be simple in form and shall be
30 executed by the applicant under the penalty of unsworn falsification [PERJURY].

31 (c) Repealed

1 * Sec. 11. AS 21.09.070(c) is amended to read:

2 (c) After January 1, 1992 [JUNE 30, 1991], an insurer may not renew and continue its
3 certificate of authority unless the insurer possesses at least the basic capital or basic surplus, and
4 additional surplus required under this section.

5 * Sec. 12. AS 21.09.080(a) is amended to read:

6 (a) In order for a domestic insurer to renew and continue the insurer's certificate of
7 authority after January 1, 1992 [JUNE 30, 1991], the insurer must possess at least the basic
8 capital, basic guarantee surplus, and additional maintained surplus required under
9 AS 21.09.070(a).

10 * Sec. 13. AS 21.12.020(c) is amended to read:

11 (c) A reduction from liability, for reinsurance ceded to an assuming insurer not meeting
12 the requirements of (a) of this section, shall be allowed in an amount not exceeding the liabilities
13 carried by the ceding insurer. The reduction shall be equal to the amount of money held by or
14 on behalf of the ceding insurer, including money held in trust for the ceding insurer, under a
15 reinsurance contract with the assuming insurer as security for the payment of obligations under
16 it, if [. IF] the security is held in the United States subject to withdrawal solely by, and under
17 the exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified United
18 States financial institution. The [, THE] security must be in the form of

19 (1) cash;

20 (2) securities listed by the Securities Valuation Office of the National Association
21 of Insurance Commissioners that qualify as admitted assets under AS 21.21;

22 (3) clean, irrevocable, unconditional letters of credit issued or confirmed by a
23 qualified United States financial institution; letters of credit meeting applicable standards of issuer
24 acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing
25 or confirming institution's subsequent failure to meet applicable standards of issuer acceptability,
26 continue to be acceptable as security until their expiration, extension, renewal, modification, or
27 amendment, whichever occurs first; or

28 (4) other security acceptable to and approved in advance by the director.

29 * Sec. 14. AS 21.33.021(e) is amended to read:

30 (e) A plaintiff or complainant is not entitled to a judgment by default in an action, suit
31 or proceeding in which the process is served under this section unless there is compliance with

1 the Rules of Civil Procedure governing default judgments.

2 * Sec. 15. AS 28.10.161(a) is amended to read:

3 (a) The [EXCEPT AS PROVIDED IN AS 28.10.181(I), THE] department, upon
4 registering a vehicle, shall issue the owner one fully reflectorized registration plate for a trailer
5 or a motorcycle and two fully reflectorized registration plates for every other vehicle. Except
6 as specifically provided in AS 28.10.181, the plate or plates must remain with the vehicle as long
7 as the vehicle is subject to registration under this chapter.

8 * Sec. 16. AS 28.35.035(c) is amended to read:

9 (c) If a chemical test is administered to a person under (a) or (b) of this section, that
10 person is not subject to the penalties for refusal to submit to a chemical test provided by
11 AS 28.35.032 [AND 28.35.034].

12 * Sec. 17. AS 29.20.170 is amended to read:

13 Sec. 29.20.170. VACANCIES. The governing body may provide by ordinance the
14 manner in which a vacancy occurs in any elected office except the office of mayor or school
15 board member. Unless otherwise provided by ordinance, the governing body shall declare an
16 elective office, other than the office of mayor or school board member, vacant when the person
17 elected

18 (1) fails to qualify or take office within 30 days after election or appointment;

19 (2) is physically absent from the municipality for 90 consecutive days unless
20 excused by the governing body;

21 (3) resigns and the resignation is accepted;

22 (4) is physically or mentally unable to perform the duties of office as determined
23 by two-thirds vote of the governing body;

24 (5) is convicted of a felony or of an offense involving a violation of the oath of
25 office;

26 (6) is convicted of a felony or misdemeanor described in AS 15.56 and two-thirds
27 of the members of the governing body concur in expelling the person elected;

28 (7) is convicted of a violation of AS 15.13;

29 (8) no longer physically resides in the municipality and the governing body by
30 two-thirds vote declares the seat vacant; this paragraph does not apply to a member of the
31 governing body who forfeits office under AS 29.20.140(a); or

1 (9) if a member of the governing body, misses three consecutive regular meetings
2 and is not excused.

3 * Sec. 18. AS 29.35.050(a) is amended to read:

4 (a) Notwithstanding AS 29.35.200 - 29.35.220, a [A] municipality may by ordinance

5 (1) provide for the establishment, maintenance, and operation of a system of
6 garbage and solid waste collection and disposal for the entire municipality, or for districts or
7 portions of it;

8 (2) require all persons in the municipality or district to use the system and to
9 dispose of their garbage and solid waste as provided in the ordinance;

10 (3) award contracts for collection and disposal, or provide for the collection and
11 disposal of garbage and solid waste by municipal officials and employees;

12 (4) pay for garbage and solid waste collection and disposal from available money;

13 (5) require property owners or occupants of premises to use the garbage and solid
14 waste collection and disposal system provided by the municipality;

15 (6) fix charges against the property owners or occupants of premises for the
16 collection and disposal; and

17 (7) provide penalties for violations of the ordinances.

18 * Sec. 19. AS 29.35.210(a) is amended to read:

19 (a) A second class borough may by ordinance exercise the following powers on a
20 nonareawide basis:

21 (1) provide transportation systems;

22 (2) regulate the offering for sale, exposure for sale, sale, use, or explosion of
23 fireworks;

24 (3) license, impound, and dispose of animals;

25 (4) subject to AS 29.35.050, provide garbage, solid waste, and septic waste
26 collection and disposal;

27 (5) provide air pollution control in accordance with AS 46.03.140 - 46.03.230;

28 (6) provide water pollution control;

29 (7) participate in federal or state loan programs for housing rehabilitation and
30 improvement for energy conservation;

31 (8) provide for economic development;

1 (9) provide for the acquisition and construction of local service roads and trails
2 under AS 19.30.111 - 19.30.251;

3 (10) establish an emergency services communication center under AS 29.35.130;

4 (11) subject to AS 28.01.010, regulate the licensing and operation of motor
5 vehicles and operators;

6 (12) engage in activities authorized under AS 29.47.460.

7 * Sec. 20. AS 34.40.120 is amended to read:

8 Sec. 34.40.120. "LAND" AND "ESTATE AND INTEREST IN LAND" DEFINED. The
9 term "land" as used in this chapter [AS 34.40.010 AND 34.40.070 - 34.40.130,] shall be
10 construed as coextensive in meaning with "lands, tenements, and hereditaments," and the term
11 "estate and interest in land" shall be construed to embrace every interest, freehold, and chattel,
12 legal and equitable, present and future, vested and contingent in land as defined in this section.

13 * Sec. 21. AS 34.40.130 is amended to read:

14 Sec. 34.40.130. "CONVEYANCE" DEFINED. The term "conveyance," as used in this
15 chapter [AS 34.40.010 AND 34.40.070 - 34.40.130], shall be construed to embrace every
16 instrument in writing except a last will and testament, of whatever form and by whatever name
17 it may be known in law, by which an estate or interest in land [LANDS] is created, aliened,
18 assigned, or surrendered.

19 * Sec. 22. AS 34.60.150(2) is amended to read:

20 (2) "displaced person" means any person who [, ON OR AFTER JANUARY 2,
21 1971] moves from real property, or moves personal property from real property, as a result of
22 the acquisition of the real property, in whole or in part, or as a result of the written order of the
23 state agency to vacate real property, for a program or project undertaken by the state agency, and
24 solely for the purpose of AS 34.60.040(a) and 34.60.090, as a result of the acquisition of, or as
25 a result of the written order of a state agency to vacate other real property on which the person
26 conducts a business or farm operation for the program or project;

27 * Sec. 23. AS 43.20.014(a) is amended to read:

28 (a) A taxpayer is allowed as a credit against the tax due under this chapter 50 percent
29 of cash contributions accepted for direct instruction, research, and educational support purposes,
30 including library and museum acquisitions, by an accredited, nonprofit, public or private, Alaska,
31 two- or four-year, college, [OR] university, or university foundation. The credit may not

1 exceed the lesser of 10 percent of the amount of tax due under this chapter or \$100,000. A
2 contribution claimed as a credit under this section may not be claimed as a credit under another
3 provision of this title. A deduction is not allowed under 26 U.S.C. 170, if the credit provided by
4 this section is claimed.

5 * Sec. 24. AS 43.23.005(a) is amended to read:

6 (a) An individual is eligible to receive one permanent fund dividend each year in an
7 amount to be determined under AS 43.23.025 if the individual applies to the department, and if

8 (1) on the date of application the individual is a state resident;

9 (2) the individual was a state resident for a period of at least 12 [24] consecutive
10 months immediately preceding April 1 of the current dividend year; and

11 (3) the individual has been physically present in the state at some time during the
12 period beginning July 1 two years before the date of application and ending on the date of
13 application.

14 * Sec. 25. AS 43.23.015(b) is amended to read:

15 (b) The department shall prescribe and furnish an application form for claiming a
16 permanent fund dividend. The application must contain a statement of eligibility and a
17 certification of residency in substantially the following form:

18 I certify that

19 () I am a state resident on the date of this application, I have been a state resident for
20 at least 12 [24] months immediately preceding April 1 of the current dividend year, and I have
21 been physically present in the State of Alaska at some time during the period beginning July 1
22 two years before the date of application and ending on the date of this application; or

23 () (name), the individual on whose behalf I am applying, is a state resident on the date
24 of this application, has been a state resident for at least 12 [24] months immediately preceding
25 April 1 of the current dividend year, and has been physically present in the State of Alaska at
26 some time during the period beginning July 1 two years before the date of application and ending
27 on the date of this application. I understand that a false claim of eligibility to obtain a permanent
28 fund dividend for myself or for another is a criminal offense, that if convicted I will forfeit future
29 dividends, and that I must repay all dividends that have been paid to me. I understand that if I
30 wilfully misrepresent, exercise gross negligence, or recklessly disregard a material fact regarding
31 my eligibility for a permanent fund dividend I will forfeit the dividend, be subject to a civil fine

1 of up to \$5,000, and lose my eligibility for the next five dividends. I understand that these
2 penalties are in addition to any criminal penalties imposed.

3
4 _____
5 (signature of individual, parent,
6 guardian, or other authorized
7 representative)

8 * Sec. 26. AS 43.50.080(a) is amended to read:

9 (a) On or before the last day of each calendar month a licensee shall file with the
10 department a return, under penalty of unsworn falsification [PERJURY], for each place of
11 business. The return shall state the number of cigarettes manufactured, imported, or acquired by
12 the licensee during the preceding calendar month, and other information which the department
13 requires. If a licensee ceases to import or acquire cigarettes, the licensee shall immediately file
14 with the department a return for the period ending with the cessation.

15 * Sec. 27. AS 43.55.019(a) is amended to read:

16 (a) A producer of oil or gas is allowed as a credit against the tax due under
17 AS 43.55.011 - 43.55.150 50 percent of cash contributions accepted for direct instruction,
18 research, and educational support purposes, including library and museum acquisitions, by an
19 accredited, nonprofit, public or private, Alaska, two- or four-year, college, [OR] university, or
20 university foundation. The credit may only be applied against the tax liability accruing during
21 the month the contribution is made. The credit may not exceed the lesser of 10 percent of the
22 amount of tax due under AS 43.55.011 - 43.55.150 or \$10,000. A contribution claimed as a credit
23 under this section may not be claimed as a credit under another provision of this title.

24 * Sec. 28. AS 43.56.018(a) is amended to read:

25 (a) The owner of property taxable under this chapter is allowed as a credit against the
26 tax due under this chapter 50 percent of cash contributions accepted for direct instruction,
27 research, and educational support purposes, including library and museum acquisitions, by an
28 accredited, nonprofit, public or private, Alaska, two- or four-year, college, [OR] university, or
29 university foundation. The credit may only be applied against the tax liability accruing during
30 the month the contribution is made. The credit may not exceed the lesser of 10 percent of the
31 amount of tax due under this chapter or \$10,000. A contribution claimed as a credit under this
section may not be claimed as a credit under another provision of this title.

1 * Sec. 29. AS 43.65.018(a) is amended to read:

2 (a) A person engaged in the business of mining in the state is allowed as a credit against
3 the tax due under this chapter 50 percent of cash contributions accepted for direct instruction,
4 research, and educational support purposes, including library and museum acquisitions, by an
5 accredited, nonprofit, public or private, Alaska, two- or four-year, college, [OR] university, or
6 university foundation. The credit may not exceed the lesser of 10 percent of the amount of tax
7 due under this chapter or \$100,000. A contribution claimed as a credit under this section may not
8 be claimed as a credit under another provision of this title.

9 * Sec. 30. AS 43.65.020(a) is amended to read:

10 (a) A person subject to tax under this chapter shall make a return stating specifically the
11 items of gross income from the property, including royalty received and the deductions and
12 credits allowed by this chapter, and other information for carrying out this chapter that the
13 department prescribes. The return must show the mining license number and must be signed by
14 the taxpayer or an authorized agent of the taxpayer, under penalty of unsworn falsification
15 [PERJURY]. If receivers, trustees, or assigns are operating the property or business, they shall
16 make returns for the person engaged in mining, or the recipient of royalty in connection with
17 mining property. The tax due on the basis of the returns shall be collected in the same manner
18 as if collected from the person of whose business they have custody and control.

19 * Sec. 31. AS 43.75.018(a) is amended to read:

20 (a) A person engaged in a fisheries business is allowed as a credit against the tax due
21 under this chapter 50 percent of cash contributions accepted for direct instruction, research, and
22 educational support purposes, including library and museum acquisitions, by an accredited,
23 nonprofit, public or private, Alaska, two- or four-year, college, [OR] university, or university
24 foundation. The credit may not exceed the lesser of 10 percent of the amount of tax due under
25 this chapter or \$100,000. A contribution claimed as a credit under this section may not be
26 claimed as a credit under another provision of this title.

27 * Sec. 32. AS 43.75.030(a) is amended to read:

28 (a) A person subject to the tax shall file a return stating the value of fisheries resources
29 processed during the license year, computed as required by this chapter, and such other
30 information as the department prescribes by regulation. The return must show the license number
31 and must be signed by the taxpayer or an authorized agent, under penalty of unsworn

1 falsification [PERJURY]. If a receiver, trustee, or assign is operating the property or business,
2 that person shall file the return for the person. A tax due on the basis of such a return shall be
3 collected in the same manner as if collected from the person of whose business the receiver,
4 trustee, or assign has custody and control.

5 * Sec. 33. AS 43.75.110 is amended to read:

6 Sec. 43.75.110. DUTY OF TAXPAYER AND PAYMENT OF TAX. A person subject
7 to taxes under AS 43.75.100 shall make a return stating the value of fisheries resources taken,
8 purchased, or otherwise acquired during the license year for sale to fisheries businesses outside
9 of the taxing jurisdiction of the state computed as required by AS 43.75.100, and other
10 information to carry out the provisions of AS 43.75.100 as may be prescribed by the department.
11 The return must contain the license number and must be signed by the taxpayer or an authorized
12 agent, under penalty of unsworn falsification [PERJURY]. If a receiver, trustee, or assign is
13 operating the property or business, that person shall make the return for the person. A tax due
14 on the basis of such return shall be collected in the same manner as if collected from the person
15 of whose business the receiver, trustee, or assign has custody and control. The requirements for
16 time and place of payment of tax, and the obligation to keep records and make the records
17 available to the commissioner are the same as those prescribed in AS 43.75.011 - 43.75.050.

18 * Sec. 34. AS 44.33.270(a) is amended to read:

19 (a) The commissioner of commerce and economic development may sell or transfer at
20 par value or at a premium to a bank or other private purchaser for cash or other consideration
21 the mortgages and notes held by the department as security for loans made under AS 44.33.240 -
22 44.33.275 [THIS CHAPTER].

23 * Sec. 35. AS 46.03.313(b) is amended to read:

24 (b) The [BY JULY 1, 1986, THE] department shall adopt regulations that
25 (1) interpret and clarify the factors listed in (a) of this section; and
26 (2) establish procedures for processing, reviewing, and approving or disapproving
27 applications for the siting and operation of privately owned hazardous waste management
28 facilities.

29 * Sec. 36. AS 46.03.313(d) is amended to read:

30 (d) The department shall hold public hearings in each election district in which a
31 hazardous waste management facility site is proposed to be located. The department shall give

1 reasonable public notice of the time, date, and place of each public hearing at least 30 days
2 before the hearing. The public shall be afforded an opportunity at each hearing to submit written
3 and oral testimony concerning a potential site. [THE DEPARTMENT SHALL CONSIDER THE
4 TESTIMONY SUBMITTED AT PUBLIC HEARINGS WHEN IT PREPARES REPORTS
5 UNDER AS 46.03.314.]

6 * Sec. 37. AS 47.45.010(a) is amended to read:

7 (a) A person who is 65 years of age or over, who resides in the state for at least one
8 year [TWO YEARS] immediately preceding application for a longevity bonus under this chapter,
9 may apply to the commissioner of administration for qualification to receive a monthly bonus of
10 \$250.

11 * Sec. 38. AS 34.03.360(9); AS 34.65.100(1); AS 43.20.310 and 43.20.320; AS 43.23.005(e);
12 AS 46.03.314; and AS 47.45.010(d) are repealed.

13 * Sec. 39. This Act takes effect immediately under AS 01.10.070(c).

No more reports due

Hafford - Sec 8 - Terms of Board of Fish -

can delete sections - But can not add. Const Provision
one single subject "except revision bill."

any motion "must be" to delete entire section.

S B

9 3

**SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE**

BILL NUMBER: SB93
 ABBREVIATED TITLE: Confidentiality - CFA B Records -

SPONSER: ZHAR off. A. I. S. C. ORIGINAL RECEIVED: 3-25-91
 WRITTEN REQUEST TO SCHEDULE REC'D: _____ FROM: _____
 SPONSER'S STATEMENT REC'D: _____ FROM: _____
 SECTIONAL ANALYSIS RQST'D: _____ FROM: _____
 SECTIONAL ANALYSIS RECEIVED: _____

FISCAL NOTE (ORIGINAL)
 RQST'D OF: _____ REC'D FROM: Div Banking DATE: With File -
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____

FISCAL NOTE (C.S.)
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____

FIVE DAY NOTICE GIVEN: Banking NOTICE OF HEARINGS GIVEN: _____
 COMMITTEES OF REFERRAL: FIRST: _____ SECOND: _____ THIRD: _____

COMMITTEE ACTION Draftsman - Terry Barnister
2450

DATE: _____
4-11-91 Heard - Held over -
4-12 Request Amend: P-Fund Residency / Disclosure Name -
4-16-91 Heard - amend Bill moved on local Rec -
Funds / Resid / Collin Holland Dallas
Calvin about TV Sen Sec 4-16-91

PERSONS TO BE NOTIFIED OF HEARING

- | | |
|---------------------------------|---------------------------------|
| 1. SPONSOR <u>Zhar off</u> | 6. <u>Ed Gane CFA B 2762007</u> |
| 2. AGENCY <u>Div of Banking</u> | 7. _____ |
| 3. <u>John Lindauer 92-4684</u> | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 93

Revision Date: _____ Department Affected: Commerce & Economic Dev
 Title: Confidentiality of the BRU: Banking, Securities & Corporations
Commercial Fishing & Agriculture Bank Component: Banking
 Sponsor: Sen. Zharoff
 Requestor: _____ COMPONENT SERIAL NO.

1	2	3	3
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521
 Division: Banking, Securities & Corporations Date: _____
 Approved by Commissioner: Glenn A. Olds
 Agency: Department of Commerce & Economic Development Date: 3-20-91

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 93

Revision Date: _____ Department Affected: Commerce & Economic Dev
 Title: Confidentiality of the BRU: Banking, Securities & Corporations
Commercial Fishing & Agriculture Bank Component: Banking
 Sponsor: Sen. Zharoff
 Requestor: _____ COMPONENT SERIAL NO.

1	2	3	3
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521
 Division: Banking, Securities & Corporations Date: _____
 Approved by Commissioner: Glenn A. Olds
 Agency: Department of Commerce & Economic Development Date: 3-20-91

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



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5250

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • HISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Rick Halford
Chairman
Senate Judiciary Committee

FROM: Senator Fred F. Zharoff

DATE: April 12, 1991

RE: Senate Bill 93 - CFAB Confidentiality

A number of questions arose regarding the Alaska Commercial Fishing and Agriculture Bank during yesterday's hearing on SB 93. For the benefit of the members of the Judiciary Committee, I wish to try to address those questions.

First, a request was made for CFAB to provide the committee with the names and addresses of its borrowers in response to concerns raised about their residency. My reading of current statutes indicates that CFAB is prohibited from complying with this request. AS 44.81.260 states:

"....the directors, officers, and employees of the bank shall hold in strict confidence all information regarding the business records of the bank...."

This leaves two solutions: (1) Amend SB 93 to allow the release of the names and addresses of CFAB's borrowers. Or, (2) Request the Legislative Auditor to determine if CFAB has followed the statutory residency requirements for making loans.

I had requested the Legal Services Division to research the legal questions surrounding the first solution. In reply, I received a memorandum from Ms. Theresa L. Bannister, legislative counsel, dated April 10, 1991. I distributed the memorandum to the committee members at the April 11 meeting. Ms. Bannister said the amendment is not without problems. She explained on page 3:

"If the names, addresses, and phone numbers of current CFAB borrowers were made available to the public by state statute, CFAB would have to determine whether or not to comply with the statute. If CFAB released the information and a court subsequently held that the release violated the

borrowers' privacy rights, CFAB would be liable to the borrowers for the release.

"In addition to liability under the privacy provision, if CFAB releases the information on current borrowers it may be exposed to court actions by its borrowers. Depending on the borrowers' agreements with CFAB, the borrowers may allege that CFAB is violating an agreement with them to keep their records confidential, and may seek damages for the release."

Ms. Bannister also noted:

"The public release of the information does not seem to be necessary because the state can already determine confidentially through the audits authorized under AS 44.81.270 whether CFAB is complying with the state residency requirements."

Because Mr. John Lindauer made serious charges during his testimony, I have taken the initiative of requesting the Legislative Budget and Audit Committee to authorize an audit into CFAB. Since the question arose about the residency of CFAB's borrowers, I would like to obtain a definite answer. I have attached a copy of my memorandum to the Legislative Budget and Audit Committee.

On the issue of residency, I note AS 44.81.210(a)(1) gives CFAB the power to make loans to individuals "who are residents". "Residents" are not defined in the statute. In 44.81.210(a)(20), CFAB's loans for the purchase of limited entry permits may only be made to individual commercial fishermen who have been state residents "for a continuous period of two years immediately preceding the date of application for the loan...."

In its official "Credit Policy" (copy attached), CFAB sets forth the standards it uses to determine residency. CFAB requires applicants to offer evidence relating to place(s) of domicile, Alaska Permanent Fund dividend status, driver's license, real property ownership, voter registration, foreign income tax status, and sport fishing/hunting license. It appears the protections for resident-only loans -- absent the exemptions specifically in statute -- are already in place.

I hope this will clear up the committee's concerns, and that SB 93 will be able to move forward.

If you or the committee members have further questions, please let me know. I look forward to further discussions on this bill at the next Judiciary Committee meeting.

cc: Judiciary Committee members

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

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

RECEIVED APR 10 1991

MEMORANDUM

April 10, 1991

SUBJECT: Release of certain CFAB records to the public
(SB 93, W.O. 7LS0451A)

TO: Senator Fred Zharoff
Attn: Karl 3473

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have asked whether state law could allow CFAB, upon written request, to release the names, addresses, and phone numbers of its borrowers to the public. This would take the form of an amendment to SB 93, your bill that amends CFAB's record confidentiality provisions. The purpose of the amendment would be to allow individuals to independently verify whether CFAB's borrowers are Alaska resident.^{1/}

You have also requested other information relating to this issue. Most of those questions are answered in the text and footnotes of the discussion of the main issue. One additional question is answered separately at the end.

1. **SHORT ANSWER TO MAIN QUESTION.** The state constitutional right to privacy may prevent CFAB from releasing the names, addresses, and telephone numbers of its borrowers, even if allowed by statute. However, if the amendment only applies to persons who become borrowers after the effective date of the amendment, the right to privacy would not apply since these borrowers would have no expectation of privacy in this information.

2. **DISCLOSURE OF CERTAIN INFORMATION TO THE PUBLIC.** The confidentiality of CFAB records is governed by AS 44.81.260. It does not appear that any federal statutes govern the confidentiality of its records.^{2/} AS 44.81.010 exempts

^{1/} Contrary to your memo, some loans may be made to persons who are not Alaska residents. See AS 44.81.210(a)(23) and (c).

^{2/} The only federal statute that appears to govern bank record confidentiality is the Right to Financial Privacy Act, 12 U.S.C. 3401 - 3421. That act restricts the access by government authorities to the records of certain financial institutions. After discussion of this act with Mr. Crane of CFAB, it appears that CFAB does not fit into any of the categories of financial institutions that are governed by the Act.

Senator Fred Zharoff

April 10, 1991

Page 2

CFAB from AS 06.05 (Alaska Banking Code), so its records are not covered by the confidentiality provisions of AS 06.05.175.^{3/}

Whether or not the names, addresses, and telephone numbers of CFAB borrowers could be made public by statute depends on whether or not their release would violate the borrowers' right to privacy under art. I, sec. 22 of the state constitution or the federal right to privacy doctrine (developed from the due process clause of the fourteenth amendment and other federal constitutional provisions).

The federal position with regard to bank records is that a bank customer has no reasonable expectation of privacy that society is prepared to recognize in financial statements that the customer voluntarily turns over to the bank. United States v. Miller, 425 U.S. 435, 440 - 43, 96 S.Ct. 1619, 1622 - 24, 48 L.ED.2d 71 (1976). Thus, it does not appear that the United States Supreme Court would recognize a borrower's right to privacy in the borrower's name, address, and phone number that the borrower had voluntarily turned over to CFAB.

Although the state has not decided this specific question, under the state's privacy provision the Alaska appellate court has held that the right to privacy does not extend to the name and address held by a utility for a utility customer. State v. Chryst, 793 P.2d 538, 542 (Alaska 1990). On the other hand, the Alaska Supreme Court has held that the right to privacy does extend to the names of a doctor's patients. Falcon v. Alaska Public Offices Commission, 570 P.2d 469 (Alaska 1977). This was due, in part, to the medical information that can be revealed in some cases by identifying the physician one uses (due to the fact that some physicians have practices limited to certain types of medical treatment), and because the required disclosure covered all classes of patients or physicians.

Since the appellate court in Chryst felt that a person's name and address, by themselves, do not constitute information about which a person can have a reasonable expectation of privacy that society is willing to recognize, it is possible that the supreme court may not extend the right to privacy to the names, addresses, and telephone numbers of CFAB members, unless it determines that the context of this situation indicates that the expectation of privacy is greater and the state is willing to recognize that expectation of privacy as reasonable. See Chryst at 540.

Whether or not people regard the fact that they are borrowers at CFAB as private information would have to be determined. A person would certainly consider financial information (e.g., that the person has a loan at CFAB) to be more private than whether the person is a utility user. However, on the other hand, when a person uses an organization such as CFAB for financial transactions, the expectation

^{3/}This statute requires that banks in the state keep their customer records confidential, except as otherwise allowed by the statute. The statute applies to all banks in the state, including federally chartered banks.

Senator Fred Zharoff

April 10, 1991

Page 3

of privacy is certainly less, since the organization is subject to more examination and public scrutiny than the usual lending institution.

When considering this issue, it is possible that the court may consider the fact that the information is being made generally available to the public. An affirmative requirement in the statute that the information be made available generally to the public may be considered an excessive and unnecessary approach to the problem of determining CFAB's compliance with the Alaska residency. This may cause the court to be more conservative when determining whether to find a privacy interest. The public release of the information does not seem necessary because the state can already determine confidentially through the audits authorized under AS 44.81.270 whether CFAB is complying with the state residency requirement.

In conclusion, it is not clear whether the court would hold that the right to privacy extends to this information when applied to current borrowers. If it did, then CFAB could not release the information on current borrowers to the general public as envisioned by the requested amendment.

However, if the amendment were drafted to apply prospectively only, thereby only covering persons who become CFAB borrowers after the effective date of the amendment, the right to privacy would not apply because those borrowers would have no expectation of privacy in the information. If you would like an amendment drafted along these lines, please advise.

3. LEGAL IMPLICATIONS FOR CFAB IF RECORDS PUBLIC. If the names, addresses, and phone numbers of current CFAB borrowers were made available to the public by state statute, CFAB would have to determine whether or not to comply with the statute. If CFAB released the information and a court subsequently held that the release violated the borrower's privacy rights, CFAB would be liable to the borrowers for the release.

In addition to liability under the privacy provision, if CFAB releases the information on current borrowers it may be exposed to other court actions by its borrowers. Depending on the borrowers' agreements with CFAB, the borrowers may allege that CFAB is violating an agreement with them to keep their records confidential, and may seek damages for the release.

If I may be of further assistance, please advise.

TLB:pl:gc
91-240.plm



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99815 (907) 486-5250

DURING SESSION:

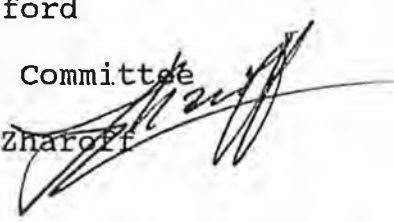
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DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Rick Halford
Chairman
Senate Judiciary Committee

FROM: Senator Fred F. Zharoff 

DATE: April 2, 1991

RE: Senate Bill 93 - "An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

Senate Bill 93 passed out of the Senate Labor and Commerce Committee on March 25 with three "do pass" recommendations. I respectfully request that SB 93 be scheduled for a hearing before the Senate Judiciary Committee at the committee's earliest convenience.

SB 93 rewrites AS 44.81.260, the statute governing the confidentiality of the Alaska Commercial Fishing and Agriculture Bank's records. The bill was introduced at CFAB's request.

The statute presently holds CFAB to a very strict standard of confidentiality, saying, "...the directors, officers, and employees shall hold in strict confidence all information regarding the business records of the bank..." The statute allows exemptions for the legislative auditor, the legislature (statistical and impersonal information only), the farm credit system, and for specific litigation.

This language has created problems for CFAB in the time period since its adoption (SLA 1981). On at least four occasions, attorneys, regulators, law enforcement agents, and judges have sought access to CFAB's records. Under the law, CFAB's only option has been to say "no", forcing formal confrontations before the courts. The end result -- after much time and expense -- is that CFAB predictably loses the cases and the court issues orders requiring CFAB to produce the records. This has happened so far in three cases, with one case still pending.

SB 93 rewrites the statute to avoid unnecessary litigation and provide avenues for the legitimate release of information.

While preserving the confidential nature of CFAB's records, it allows exemptions for search warrants, subpoenas, court orders, investigations, legislative audits, etc.

The following backup information is attached:

1. Sectional analysis.
2. Department of Commerce & Economic Development position paper.
3. Department of Commerce & Economic Development fiscal note.
4. Current CFAB confidentiality statute.
5. Current confidentiality statute for banks and financial institutions.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 488-5259

DURING SESSION:

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DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIEBLOF ISLANDS • SHUMAGIN ISLANDS

1

SECTIONAL ANALYSIS

SENATE BILL 93

"An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

SECTION 1

Rewrites AS 44.81.260, the section that currently establishes the confidentiality requirements for the records of the Alaska Commercial Fishing and Agriculture Bank (CFAB).

- (a) Provides for the confidentiality of those records identified with a specific borrower, bank member, or loan applicant, or can be identified as being from the records of one of those persons. Allows exemptions (1) through (9).
- (b) Allows CFAB to keep all of its other records confidential, subject to exemptions (a)(1)-(5).
- (c) Allows disclosure of records if a borrower, bank member, or loan applicant authorizes the disclosure in writing.
- (d) Defines "member" and "records".

SECTION 2

Immediate effective date.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERENCE

DATE: 1/30/91

FURTHER: Judiciary

Date of 5-Day Notice: 3/21/91
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: _____

L&C Committee considered SB 93

Confidentiality of the records of the Commercial Fishing and Agriculture Bank; efd.

and recommended:

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

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) _____

zero fiscal note(s) COMMERCE 1/3-20-91

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

Richard C. Calhoun

OTHER RECOMMENDATIONS:

Lawrence - do Pass

Chair: Signature and Recommendation



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

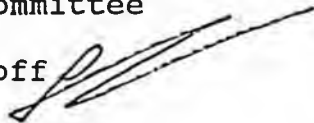
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DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Drue Pearce
Chair
Labor and Commerce Committee

FROM: Senator Fred F. Zharoff 

DATE: March 8, 1991

RE: Senate Bill 93 - "An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

I respectfully request that SB 93 be scheduled for a hearing before the Senate Labor and Commerce Committee at the committee's earliest convenience.

SB 93 rewrites AS 44.81.260, the statute governing the confidentiality of the Alaska Commercial Fishing and Agriculture Bank's records. The bill was introduced at CFAB's request.

The statute presently holds CFAB to a very strict standard of confidentiality, saying, "...the directors, officers, and employees shall hold in strict confidence all information regarding the business records of the bank..." The statute allows exemptions for the legislative auditor, the legislature (statistical and impersonal information only), the farm credit system, and for specific litigation.

This language has created problems for CFAB in the time period since its adoption (SLA 1981). A number of instances have occurred when attorneys, regulators, law enforcement agents, and judges have sought access to CFAB's records. Under the law, CFAB's only option has been to say "no", forcing formal confrontations before the courts. The end result -- after much time and expense -- is that CFAB predictably loses the cases and the court issues orders requiring CFAB to produce the records.

SB 93 rewrites the statute to avoid unnecessary litigation and provide avenues for the legitimate release of information. While preserving the confidential nature of CFAB's records, it allows exemptions for search warrants, subpoenas, court orders, investigations, legislative audits, etc.

Memo to Senate Labor and Commerce - page 2

The following backup information is attached:

1. Sectional analysis.
2. Current CFAB confidentiality statute.

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 93

Title Change?

BY SENATOR HALFORD

Page 1, line 2, following "Bank":

Insert "and the residency requirements for its loans"

Page 1, following line 3:

Insert a new bill section to read:

"* Section 1. AS 44.81.210(a)(1) is amended to read:

(1) make variable rate or fixed rate loans to individuals who are residents and who are engaged in commercial agriculture or fishing, including harvesters, processors, suppliers, and marketers, or to corporations, partnerships, or joint ventures engaged in commercial agriculture or fishing, the majority interest of which is beneficially owned by residents of the state and a majority of the owners of which are residents of the state, if the recipient of the loan is a member of the bank; however, the bank may make a loan under this paragraph to a corporation, partnership, or joint venture for the purchase of a new or existing fishing vessel or for the repair or renovation of an existing fishing vessel, the primary purpose of which is to commercially harvest fishery resources, only if the corporation, partnership, or joint venture is wholly owned and controlled by residents of the state and if the recipient of the loan is a member of the bank; in this paragraph, "resident" means an individual who is eligible for a permanent fund dividend under AS 43.23.005 for the dividend year during which the individual applies for a loan under this section whether or not the individual has applied for the permanent fund dividend;"

Page 1, line 4:

Delete "* Section 1."

Insert "* Sec. 2."

Renumber the following bill section accordingly.

Page 2, following line 18:

Insert a new subsection to read:

"(d) Notwithstanding the other provisions of this section, the bank shall release to the public the names and addresses of its borrowers."

Reletter the following subsection accordingly.

Page 2, following line 22:

Insert a new bill section to read:

"* Sec. 3. AS 44.81.210(a)(1), as amended by sec. 1 of this Act, and AS 44.81.260(d), enacted by sec. 2 of this Act, do not apply to a person who is a borrower at the Commercial Fishing and Agriculture Bank unless the person applies for a loan from the bank after the effective date of this Act."

Renumber the following bill section accordingly.

John Lundown says -

Fred introduced at Request of CFAB
CFAB wants bill to conceal fact they are
loaning to Non Alaskan.

They advertise in outside papers.

Booth at Seattle Show had application
for AK Driver license, voter registration
& P Fund. Some non residents could
become residents.

Only CFAB can loan on Id Entry permit.

SB 93 - CFAB -

4-11-91

Defense of records access cases has cost CFAB
\$40,000

Checks Subpoena power of legislature.

Ed Crane - Here -

John Hindman -

Is CFAB loaning only to Bona Fide Residents -
Comte should require audit of residences of all borrowers
before passing.

Amend - Require Name & address of each borrower
to be reported to legislature each year.

Rick - Seems reasonable to have access to names
& addresses for legislature -

Rodley - Other state financial banks provide this.

Ed Crane Drags his feet on this -

Asstow - What Loan Programs provide name disclosure.

4-16-91 Heard Again -

Where is New Draft CS With P Fund?

Rodley feels can disclose names now.

Zaroff has requested Audit. Think P Fund might
weaken residence standard as they may require more
than a year in some cases -

7-LS0451ND
Bannister
4/16/91

CS FOR SENATE BILL NO. 93 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS ZHAROFF, Sturgulewski

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the confidentiality of the records of the Commercial Fishing and
2 Agriculture Bank and the residency requirements for its loans; and providing for an
3 effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. AS 44.81.210(a)(1) is amended to read:

6 (1) make variable rate or fixed rate loans to individuals who are residents and
7 who are engaged in commercial agriculture or fishing, including harvesters, processors, suppliers,
8 and marketers, or to corporations, partnerships, or joint ventures engaged in commercial
9 agriculture or fishing, the majority interest of which is beneficially owned by residents of the
10 state and a majority of the owners of which are residents of the state, if the recipient of the loan
11 is a member of the bank; however, the bank may make a loan under this paragraph to a
12 corporation, partnership, or joint venture for the purchase of a new or existing fishing vessel or
13 for the repair or renovation of an existing fishing vessel, the primary purpose of which is to
14 commercially harvest fishery resources, only if the corporation, partnership, or joint venture is

1 wholly owned and controlled by residents of the state and if the recipient of the loan is a member
 2 of the bank; in this paragraph, "resident" means an individual who is eligible for a
 3 permanent fund dividend under AS 43.23.005 for the dividend year during which the
 4 individual applies for a loan under this section whether or not the individual has applied
 5 for the permanent fund dividend;

6 * Sec. 2. AS 44.81.260 is repealed and reenacted to read:

7 Sec. 44.81.260. CONFIDENTIALITY OF RECORDS. (a) The records of the bank that
 8 are identified with, or identifiable as being derived from the records of, a specific borrower,
 9 member of the bank, or applicant for a loan are confidential and may not be disclosed by the
 10 bank or by its directors, officers, employees, or agents to a person other than the directors,
 11 officers, employees, or agents of the bank, except

- 12 (1) when required by a federal or state statute;
- 13 (2) under AS 44.81.270;
- 14 (3) under a search warrant issued under federal law or the law of this state;
- 15 (4) under a subpoena or court order issued in a civil action under federal law or
 16 the law of this state;
- 17 (5) under a subpoena or court order issued in connection with a proceeding before
 18 a federal grand jury or grand jury of this state;
- 19 (6) under a summons or subpoena issued by an agency or a department of the
 20 United States or this state, or an officer, employee, or agent of the agency or department;
- 21 (7) under a request by a financial institution, if the request is solely for the stated
 22 written purpose of determining the credit worthiness of a member or borrower as an applicant
 23 for credit, and if the information disclosed by the bank pertains only to the payment history of
 24 the member or borrower;
- 25 (8) under a request by a lender that has extended or is considering extending
 26 credit to the bank if the credit is or may be secured by the pledge of a loan by the bank;
- 27 (9) when disclosed to the attorney general of the United States or to a law
 28 enforcement agency of this state if the records may be relevant to a report or investigation of a
 29 possible violation of federal law or a law of this state.

30 (b) The records of the bank that are not subject to (a) of this section may be kept
 31 confidential by the bank, subject to the exceptions listed in (a)(1) - (5) of this section.

1 (c) Notwithstanding (a) - (b) of this section, a borrower, a member of the bank, or an
2 applicant for a loan may authorize the bank in writing to disclose records provided to the bank
3 by the borrower, member, or applicant.

4 (d) Notwithstanding the other provisions of this section, the bank shall release to the
5 public the names and addresses of its borrowers.

6 (e) In this section,

7 (1) "member" includes past and present members;

8 (2) "records" means financial and other records, including information known to
9 have been derived from the records, in any form, including original documents and copies.

10 * Sec. 3. AS 44.81.210(a)(1), as amended by sec. 1 of this Act, and AS 44.81.260(d), enacted by sec.
11 2 of this Act, do not apply to a person who is a borrower at the Commercial Fishing and Agriculture
12 Bank unless the person applies for a loan from the bank after the effective date of this Act.

13 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

SENATE BILL NO. 93

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS ZHAROFF, Sturgulewski

Introduced: 1/30/91

Referred: L&C and Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the confidentiality of the records of the Commercial Fishing and
2 Agriculture Bank; and providing for an effective date."

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

4 * Section 1. AS 44.81.260 is repealed and reenacted to read:

5 Sec. 44.81.260. CONFIDENTIALITY OF RECORDS. (a) The records of the bank that
6 are identified with, or identifiable as being derived from the records of, a specific borrower,
7 member of the bank, or applicant for a loan are confidential and may not be disclosed by the
8 bank or by its directors, officers, employees, or agents to a person other than the directors,
9 officers, employees, or agents of the bank, except

- 10 (1) when required by a federal or state statute;
11 (2) under AS 44.81.270; *Present law -*
12 (3) under a search warrant issued under federal law or the law of this state;
13 (4) under a subpoena or court order issued in a civil action under federal law or
14 the law of this state;

1 (5) under a subpoena or court order issued in connection with a proceeding before
2 a federal grand jury or grand jury of this state;

3 (6) under a summons or subpoena issued by an agency or a department of the
4 United States or this state, or an officer, employee, or agent of the agency or department;

5 (7) under a request by a financial institution, if the request is solely for the stated
6 written purpose of determining the credit worthiness of a member or borrower as an applicant
7 for credit, and if the information disclosed by the bank pertains only to the payment history of
8 the member or borrower;

9 (8) under a request by a lender that has extended or is considering extending
10 credit to the bank if the credit is or may be secured by the pledge of a loan by the bank;

11 (9) when disclosed to the attorney general of the United States or to a law
12 enforcement agency of this state if the records may be relevant to a report or investigation of a
13 possible violation of federal law or a law of this state.

14 (b) The records of the bank that are not subject to (a) of this section may be kept
15 confidential by the bank, subject to the exceptions listed in (a)(1) - (5) of this section.

16 (c) Notwithstanding (a) - (b) of this section, a borrower, a member of the bank, or an
17 applicant for a loan may authorize the bank in writing to disclose records provided to the bank
18 by the borrower, member, or applicant.

19 (d) In this section,

20 (1) "member" includes past and present members;

21 (2) "records" means financial and other records, including information known to
22 have been derived from the records, in any form, including original documents and copies.

23 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

SB 93: An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

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



Asst. Comm.

Glenn A. Olds, Commissioner

Date: 3-21-91



2550 Denali Street, Suite 1201
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(907) 276-2007

April 15, 1991

Senator Rick Halford
Chairman, Senate Judiciary Committee
Post Office Box V (M.S. 3100)
Juneau, Alaska 99801

Dear Chairman Halford,

I wish to convey my regrets that due to schedule conflicts I will be unable to appear in Juneau on April 16, when the Senate Judiciary Committee is scheduled to again consider SB93. I wish to submit this letter, for incorporation into your committee's files, in order to respond to questions raised at the April 11 hearing.

I am particularly anxious that the questions stimulated by Mr. Lindauer's testimony not be permitted to delay SB93, which corrects what have been some costly inadequacies for CFAB. The references to "cover-up" are absurd. SB93 was drafted specifically to broaden the circumstances under which CFAB may release information which must presently be held confidential.

It would appear that the discussion on April 11 gave rise to two distinct issues (neither of which is related to SB93): (a) Mr. Lindauer's vague allegations, and (2) your expressed concerns with regard to what CFAB's past conduct has been -- it was not clear whether those concerns are independent or if they arise because of Mr. Lindauer's remarks.

As to the first issue, it would seem that Mr. Lindauer should be urged to step forward with his evidence. In any event, I am prepared to state -- and would repeat under oath -- that, at least since mid-1985 if not throughout its existence, CFAB has not knowingly made any loan which violated any provision of its governing statute. If Mr. Lindauer disagrees, I would expect him to support that with some reasonable evidence.

With regard to your own concerns, I believe they can be resolved within the existing provisions of AS44.81.270. CFAB would certainly not resist that in any way. As I mentioned on April 11, it would likely not take over 3 days for one of the Legislative Auditor's staff to review the evidence concerning residency for every loan on CFAB's books. A "spot check" approach would be even faster.

Senator Rick Halford
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In any event, I would be better able to address your concerns if you could inform me of their bases. As background, I should mention that CFAB has seven Directors. Five of them are Alaska fishermen, one is an Alaska farmer. Five are elected by their borrowing peers. I do not understand what motivation could conceivably exist for seven Directors and eighteen employees to conspire to routinely violate a State statute in an area which can so readily be reviewed under AS44.81.270. I cannot imagine what potential reward could make that a viable risk! Attached are the first two pages of CFAB's Credit Policy adopted by its Board of Directors and which I am charged with implementing; as you can see, the first two items mentioned are compliance with AS44.81 in general and with the residency requirement in particular. Also attached are the pages of CFAB's standard loan application which bear numerous questions relating to residency as well as the applicant's certification in that regard.

You and I have had enough discussions in the past for me to recognize that you have reservations, at least philosophical reservations, about the appropriateness of CFAB's existence and purpose. That's understandable; for other reasons, I have certain reservations myself! If the appropriateness is to be debated, you certainly have access to the means and the forum for such a debate. We at CFAB are hired hands whose only guidance is the owners' expressions of intent and expectations written thirteen years ago. Speaking for myself, I take considerable personal pride in, and receive considerable satisfaction from, making things work right. It is admittedly true that in the early stages of its existence CFAB's judgments were not always prudent and its conduct not always responsible. In recent years, however, there has been total commitment to meeting the mandated purpose and to positioning the institution for the required repurchase of the State's investment in the year 2000. We do not issue press releases and seek headlines, and we do not attempt or presume to be of political consequence. CFAB provides audited financial statements annually to the Legislature and the Governor. At CFAB's instigation (in 1987) and expense, a State Bank Examiners' report is also provided annually to the Legislature and the Governor. CFAB routinely responds to random requests for information from Legislators, from the Legislative Auditor, and from various State agencies and the press. CFAB is not, and does not try to be, a "secret" organization. Our policy with Legislators and Legislative bodies is to speak with candor. Even though we recognize that CFAB's uniqueness, combined with legislative turnover, will always engender some difficult or complex discussions and explanations during committee hearings, it is debilitating to be confronted with a need to defend the institution's existence each time we tell the Legislature, "Here's a way you can make your owners' directions to us more effective and more in harmony with the world of commerce in which CFAB operates."

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In closing, I would like to stress again our commitment to accountability to the Legislature. That is the position of CFAB's Board of Directors and it is my position, both personally and as CFAB's president. We believe the means for accountability exist, and urge that they be utilized. We do not believe that accountability would be achieved simply through publication of CFAB's borrowers' names and mailing addresses. We cannot identify any favorable purpose which would likely be served; and there is potential for considerable harm, not the least of which would be to CFAB's own competitive position. We do not believe the rationale, "Those people are borrowing State money" is valid from either a legal standpoint or a practically realistic one. The State has not exempted CFAB from paying State corporate income tax "because it is loaning State funds." The State has not stepped in to assist in the defense when CFAB has been sued as a lender. The State has no standing in an action against a defaulting CFAB borrower; as a matter of fact, on at least one occasion CFAB has found itself in legal conflict with the State as a competing creditor. AS 4.81 requires CFAB to repurchase the State's investment in total; there is no provision for the deduction of amounts which may have been lost through uncollectible loans.

Again, we do not deny the accountability of CFAB and its officers and directors for effective and proper implementation of CFAB's statute. That accountability extends to all aspects of CFAB's conduct and operations. If it is to be sought, it should not simply be limited to the identification of those individuals who have sought, and pay for, the benefits of CFAB's services. Neither should the accountability process be permitted to delay the meaningful benefits which will be made available by passage of SB93.

Thank you for your consideration.

Very truly yours,



Edward E. Crane
President

KEG:cmv
Enclosures

cc: Senate Judiciary Committee Members

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK

CREDIT POLICY

ADOPTED DECEMBER 14, 1989

The cornerstone of CFAB's credit policy and lending activities is its statute, AS44.81, supplemented by other State and Federal laws or regulations which apply to lenders generally.

While it is CFAB's policy to adhere strictly to both the letter and the spirit of AS44.81, CFAB also intends that all loan applications and proposals be thoroughly investigated and analyzed to be certain that rejections are not unnecessarily or inappropriately premised on the superficial application of that statute.

Residency

CFAB is authorized to finance only residents of Alaska (or legal entities which are primarily owned and controlled by Alaska residents). The term "resident" is not extrinsically defined for CFAB, however. It shall be CFAB's policy to require applicants or principals to offer a range of evidence as to their respective residencies, including but not limited to: Place(s) of domicile; driver's license; real property ownership; voter registration; foreign income tax status; Alaska Permanent Fund dividend status; and sport fishing/hunting license, etc. Absent an awareness of contradictory factors or

Credit Policy
Adopted December 14, 1989

matters suggesting further investigation, CFAB shall accept all such representations at face value if they are certified as correct by the submitters. Questionable situations must be referred to a CFAB senior officer for review, and that officer's conclusion with regard to residency must be reported in a signed memorandum which documents the evidence considered.

In general, CFAB shall consider circumstances existing for a year or more in its determinations of residency. As a specific exception, however, AS44.81.210.(a)(20) provides that a loan whose purpose is to finance the purchase of an Alaska limited entry permit may be made only to a person who has continuously been a state resident for the preceding two years.

Industry Orientation

CFAB's statute permits and directs it to make loans to entities "...who are engaged in commercial agriculture or fishing, including harvesters, processors, suppliers and marketers..." Of the various terms used, only "supplier" is defined by the statute; it "...means a person whose main source of income is from providing goods or services that are directly related to commercial fishing or agriculture to individuals, corporations, partnerships or joint ventures engaged in commercial fishing or agriculture."

In its Bylaws, CFAB has defined "farming" in broad and comprehensive terms and has incorporated into it many activities related to forest

ALASKA COMMERCIAL FISHING & AGRICULTURE BANK

2550 Denali Street, Suite 1201

Anchorage, Alaska 99503

(907) 276-2007

APPLICATION FOR COMMERCIAL FISHING LOAN

Application is hereby made by the undersigned (hereinafter called "Applicant," whether one or more natural persons or legal entities) to Alaska Commercial Fishing and Agriculture Bank (CFAB) for a loan amount of \$ _____ for the purpose of _____ to be paid over a term of _____ year(s) in (circle one) monthly, quarterly, semi-annual, or annual payment(s), based upon the representations, terms, and conditions set forth below, and in the supplemental documents forming a part of this application. Applicant is a bona fide harvester or processor or marketer or supplier of aquatic products for economic gain.

I propose that the loan be secured by the following collateral: (Include USCG document number(s), permit number(s), legal description(s), etc.)

I have been a resident of Alaska since month _____ year _____

I have held a commercial fishing license from _____ to _____

PERSONAL DATA

Name of Applicant _____

Social Security # _____ and/or IRS Identification # _____

Birthdate _____ Place of Birth (city and state) _____

Residence Address _____ Residence Phone _____

City _____ State _____ Zip _____ How Long? _____ Rent Own

Mailing Address _____ Business or Contact Phone _____

City _____ State _____ Zip _____

Physical addresses of all prior residences during the past three years and dates occupied:

Address _____ from _____ to _____

Address _____ from _____ to _____

Address _____ from _____ to _____

Address _____ from _____ to _____

Do you own an interest in residential real property in any other state? Yes No

If yes, specify _____