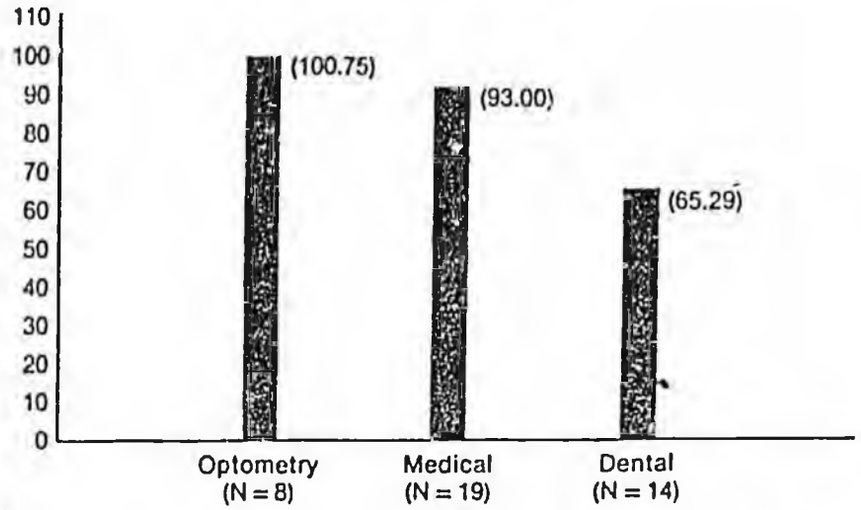
ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7466 SENATE JUDICIARY

Basic Principles in Pharmacology

The range of hours in category 1 of the instrument is 15. Four schools spend only three hours and two spend 18 hours on this category. The overall mean for the entire sample is 8.71 hours. An F-ratio of 5.48 shows that there are significant differences among the three school types in hours spent in this study category.

Schools of optometry are not significantly different than either schools of medicine ($t = 2.51$, $df = 16.2$, $p = .02$) or schools of dentistry ($t = 0.04$, $df = 14.3$, $p = .97$). Medical schools do, however, spend more hours on this category than schools of dentistry ($t = 3.01$, $df = 30.8$, $p = .005$).

FIGURE 1
Total Class Hours In Pharmacology Training for Schools of Optometry, Medicine and Dentistry



Drug Effects on the Nervous System

The second category for comparison within the pharmacology study instrument involves class hours spent studying drug effects on the nervous system. The range of hours was found to be 23 with two schools spending only five hours and one school spending 28 hours on this category.

The mean is 13.24 overall and an F-ratio of 8.61 showed that there are significant differences among the three school types on this category of the instrument. Comparatively, optometrists and dentists do not differ on this category ($t = 0.99$, $df = 13.1$, $p = .922$), whereas medical schools devote more hours than either optometry ($t = 2.97$, $df = 14.8$, $p = .009$) or dental schools ($t = 3.83$, $df = 30.9$, $p = .001$).

Psychopharmacology

The range for hours spent teaching psychopharmacology is 10. The grand mean for this category is 4.75 with the three school types averaging between four and six class hours. According to the calculations, there are no significant differences ($F = 1.74$, $p = .189$/n.s.) among optometry schools ($\bar{X} = 4.37$, $SD = 3.25$), schools of medicine ($\bar{X} = 5.47$, $SD = 2.24$) and schools of dentistry ($\bar{X} = 4.00$, $SD = 1.80$).

Central Nervous System Depressants and Stimulants

The fourth category within the questionnaire involves classroom hours spent on the CNS depressants and stimulants. No significant differences are present among schools of optometry, medicine and dentistry for hours spent in this content area ($F = 1.02$, $p = .368$/n.s.). The three school types average between seven and ten class hours on the CNS depressants and stimulants.

Anesthetics

The hourly range on the instrument category identified as anesthetics is 10. The overall mean for the entire sample is 4.63. Although schools of optometry and medicine are not significantly different in this category ($t = 1.56$, $df = 21.0$, $p = .133$), an F-ratio of 6.91 indicates that significant differences do exist among the three groups. The comparisons between schools on hours spent teaching anesthetics show that schools of optometry require significantly less hours than schools of dentistry ($t = 3.80$, $df = 18.9$, $p = .001$).

Cardiovascular Agents

Category six within the pharmacology study questionnaire deals with cardiovascular agents. An F-ratio of 14.31 shows that significant differences exist among the school types on this category. According to the analysis, optometry schools and schools of dentistry do not differ on this category ($t = 1.24$, $df = 19.8$, $p = .229$). The mean hours for schools of medicine ($\bar{X} = 12.26$) fall above the grand mean of 9.49 and indicate that medical schools spend more time on cardiovascular agents than dental schools and schools of optometry (Med vs Den, $t = 3.74$, $df = 23.8$, $p = .001$; Med vs Opt, $t = 6.41$, $df = 20..$ $p = .000$).

Ocular Pharmacology

The seventh category within the instrument asks for classroom hours spent on ocular pharmacology. The overall mean hours spent by the sample schools is 7.12. According to the data, schools of optometry average ($\bar{X} = 34.00$) more than the grand mean whereas medical and dental schools spend less time than the overall average ($\bar{X} = 0.63$ and 0.57 respectively). All three groups had relatively large standard deviations that indicate extensive variability.

The results of the analysis of variance (ANOVA) show that there are statistically significant differences among the groups on this category of the pharmacology study questionnaire. The comparative analyses show that optometry schools spend more hours than schools of medicine ($t = 8.97$, $df = 7.0$, $p = .000$) and schools of dentistry ($t = 8.94$, $df = 7.0$, $p = .000$) teaching ocular pharmacology to their students.

COMPARISON OF EDUCATION OF GENERAL PRACTITIONER & OPTOMETRIST

GENERAL PRACTITIONER*		OPTOMETRIST**	
Undergraduate School		Undergraduate School	
Medical School (4 Years)		**Optometry School (4 Years)**	
Systemic Disease	9 hrs.***	Systemic Disease	6.5 hrs.***
Pathophysiology (Does NOT include ocular disease)	9	Pathophysiology (Includes ocular disease)	12.0
TOTAL	18	TOTAL	18.5
Pharmacology	8	Pharmacology	9.5
Human Anatomy & Physiology	29	Human Anatomy & Physiology	17.0
Neurophysiology	6	Neurophysiology	4.5
TOTAL	35	TOTAL	21.5
Clinical experience in ocular conditions and disease	4	Clinical experience in ocular conditions and disease	47

General Practitioners have a 1-year internship after medical school, but the internship is in a hospital and the General Practitioner would not be likely to see routine ocular problems.

---

* Hours reported in CU Health Sciences School of Medicine Schedule of Courses 1987-88.

** Hours reported in The Southern California College of Optometry 1987-89 catalog.

*** Hours reported in quarter hours, not classroom hours.

OPP
Optometric Protector Plan

Continuously
Serving Optometrists
Since 1973

November 7, 1991

TO WHOM IT MAY CONCERN:

RE: OPTOMETRIC PROTECTOR PLAN

This letter is in response to your inquiry relative to professional liability rates and therapeutic drug usage.

The Optometric Protector Plan which is endorsed by the American Optometric Association currently insures over 7,000 O. D.'s nationwide. Our professional liability experience reflects both therapeutic and non-therapeutic states and the information provided is based on this information.

Poe & Associates, in the past has reviewed on a comprehensive basis the underwriting results for three major carriers for a period of seven years, and found that there is no significant actuarial coordination between therapeutic drug usage and liability insurance rates based on the current underwriting results.

Our current carrier of record, Great American Insurance Companies, does not charge a premium differential or surcharge for therapeutic drug usage in any of the states in which they are currently providing coverage. Because claims and premiums are so closely related to incidents of harm and injury to patients, we do not have evidence at this time that there is a correlation between the use of therapeutic drugs by Optometrists and malpractice claims.

Please contact me if I can be of any further help.

Sincerely,

Kathy Szuszczewicz

Kathy Szuszczewicz
Program Coordinator

KS/sv

National Administrator
Poe & Associates, Inc.

P.O. Box 1348
Tampa, Florida 33601-1348
(813) 222-4100
Fax (813) 221-4109

American Public Health Association

1015 Fifteenth Street, NW
Washington, DC 20005
202/789-5600

January 10, 1991

Hal V. Marsell
Chairman, Utah State Optometry Board
Utah State Legislature
190 South Fort Lane, #1
Layton, UT 84041

Dear Chairman Marsell:

I am very pleased to write in support of the legislation soon to be introduced which would update your state's laws concerning optometric care.

As you may know, at its 118th Annual Meeting, the American Public Health Association (APHA), which represents a combined national and affiliate membership of over 52,000 public health professionals and community health leaders, adopted a resolution entitled "Access to Treatment for Eye Care by Optometrists." A copy is enclosed for your immediate reference.

This resolution acknowledges that the expansion of clinical privileges of optometrists has increased the availability, accessibility, and cost effectiveness of eye care to the American public. The resolution recommends that States update their optometric practice acts to allow for optometric use of those diagnostic and therapeutic pharmaceuticals which have been determined by the State Board of Examiners in Optometry as being within the scope of competency of pharmaceutically certified optometrists. We further recommend that dispensing of such pharmaceuticals be regulated by state pharmacy laws.

Currently, ~~25~~ 30 states allow optometrists to use therapeutic drugs for the benefit of their patients. APHA urges your support for legislation which encompasses the principles endorsed in the APHA resolution, and would result in better access to comprehensive eye care of the American citizens.

I am confident that the citizens of Utah will be well served and will benefit greatly if comparable legislation is adopted by your state. As an MD. a Dean of a School of Public Health, and President-elect of APHA, I strongly endorse its passage.

Sincerely,

Joyce C. Lashof, MD
President-elect, APHA and
Dean, School of Public Health
University of California at Berkeley

JCL:mam/APHA

enclosure

Jeff Gonnason - Optometrist

FROM: Rick Urion

DOCTOR TO DOCTOR.

Building Better Referral Relationships with Opthalmologists

by Barbara J. Munson

Bolstered by a new-found confidence that comes with their increasing scope of care, optometrists are seeking referral relationships with ophthalmologists in which everyone's a winner.

In years past, good referral relationships with ophthalmologists consisted of one question: "Do they return the patients I refer?" In more recent years optometrists have also developed good comanagement relationships with MDs to whom they refer.

But, according to prominent optometric leaders Irvin M. Borish, O.D., and Irving Bennett, O.D., there are two other important considerations in developing good referral relationships with ophthalmology.

The first is asking ophthalmologists for referrals of *their* patients. Dr. Bennett describes how he went about getting cross-referrals from ophthalmologists 30 years ago:

"I went through my records and counted 42 cataract surgeries I had referred to one ophthalmologist—a significant number for one year—and invited him to lunch at my country club (so I would pick up the tab).

"'By the way,' I told him, 'we sent you 42 patients last year; aren't you happy with us?'

"'Oh yeah, you're great,' he replied. 'What's wrong? I sent back your patients.'

"'They were my patients to begin with,' I said. 'You know, since you don't do contact lenses, what do you tell your patients?'

"'I just tell them we don't do contact lenses,' he said.

"'Well, I'm just as expert a contact lens fitter as you are a surgeon. Maybe I should tell mine I don't do cataract surgeries.'

"He got the idea, and from then on the relationship blossomed."

The second consideration in establishing referral relationships is the necessity of referring to doctors who don't offer competing services. As Dr. Borish points out:

"If the ophthalmologist to whom you refer offers refractive and contact lens services either personally or by others in his or her office, there's a great possibility you will eventually lose the patient and perhaps other members of the family. This can happen even if the MD assiduously attempts to return the patient to you.

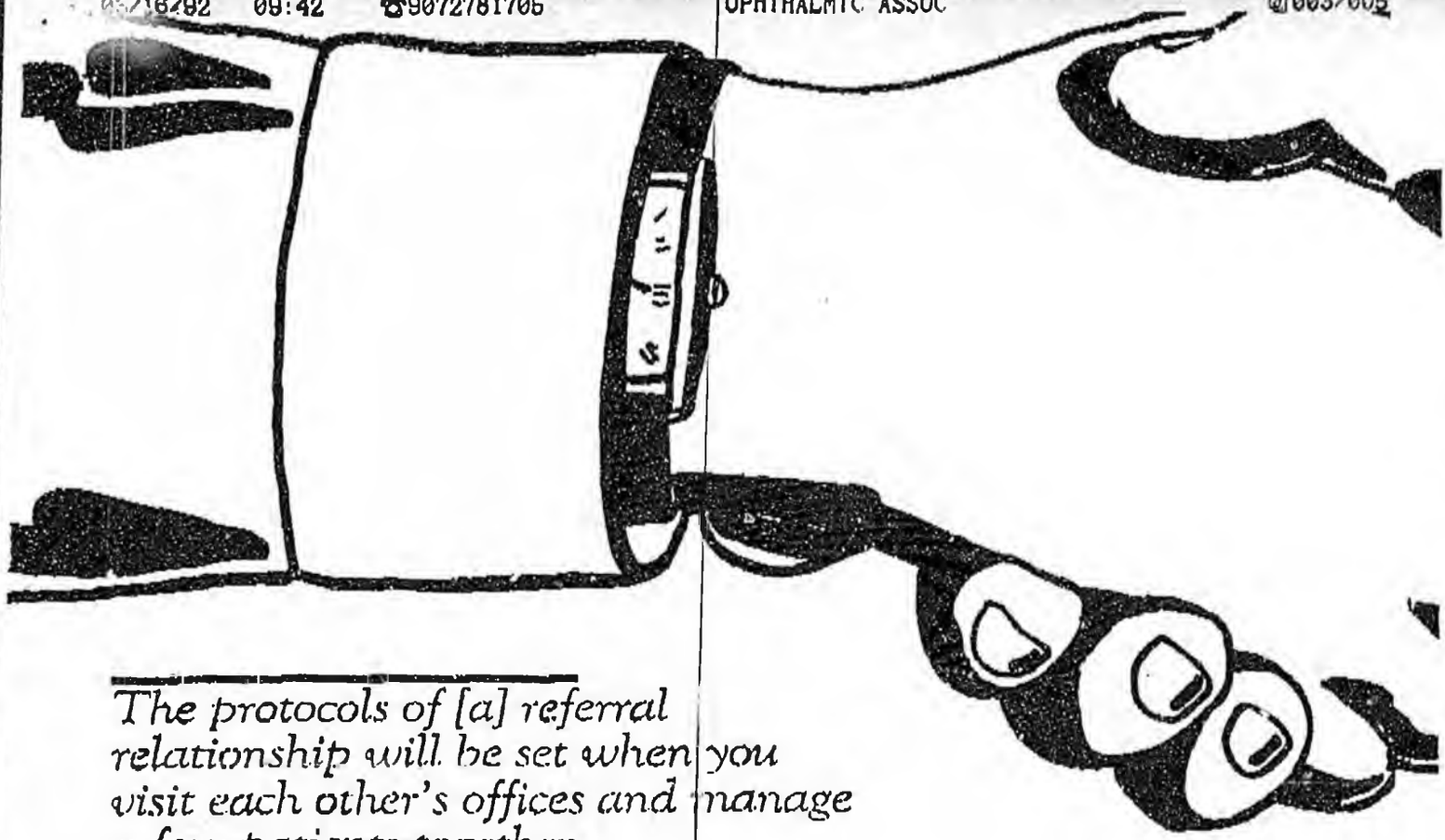
"As an example, I once was referred a difficult contact lens case by another OD. When I completed my work, I returned the patient to the referring OD. But a few weeks later, the patient's mother tried to bypass the other OD and make an appointment with me.

"ODs must lick the habit of referring to ophthalmologists who do refractions and contact lenses, thinking they have a good relationship when they get a turkey from the MD on Christmas."

"With the advent of TPAs and primary care in optometry," says James C. Leadingham, O.D., president-elect of the American Optometric Association, "optometrists no longer have to refer to general ophthalmologists who offer competing services. I find I am referring directly to tertiary specialists – retinal, cataract, corneal, etc.—who of course do not offer competing services that can cause loss of patients."

CHANGING ATTITUDES IN BOTH PROFESSIONS

Ophthalmologists' attitudes are changing along with optometrists', says Randall N. Reichle, O.D., of Houston, Texas. Dr. Reichle is vice president of managed care at Omega Health Systems, Inc., a comanagement company. "Even in testimony for therapeutic legislation, they (ophthalmologists) are



The protocols of [a] referral relationship will be set when you visit each other's offices and manage a few patients together.

admitting optometrists are better educated now than ever . . . a new breed," he says.

Establishing a good two-way referral relationship also depends on maintaining a confident attitude and expecting positive results, optometrists are saying. Dr. Leadingham says, "The process is just not that complicated. Those new to a community [should] simply ask their colleagues who they work well with."

In Ashland, Kentucky, where Dr. Leadingham practices, there are 10 ophthalmologists. "Four absolutely refuse to comanage care," he says. "The ones I work with are 20 miles away and are very happy to work with me.

"If I am treating a patient, I've got to be in a comanagement situation; I need to get reports back. It's very difficult to make decisions without the communication," he says.

The initial communication may develop over lunch (Dr. Leadingham recommends dinner, when you are not as likely to be interrupted) or during a visit to the other's office. "Talk about your prescribing and treatment philosophies and discuss how you want your patients managed—after all, they are your patients," he adds. "Tell them specifically what information you will send them and what you'd like them to send back."

Also, suggest they visit your office. Ask specifically about their preferences (types of visual fields, glaucoma pressures, etc. Establish that your therapies will mesh.

"What you'll actually establish is a common interest." The protocols of the referral relationship will be set when you visit each other's offices and manage a few patients together. "You'll initially spend a lot of time on the phone, then later more will be done through letters," Dr. Leadingham adds.

James F. Morrison, O.D., of Colby, Kansas, says he can't understand why optometrists expect ophthalmologists to refer patients to them when ODs are notorious for never writing letters. "The ophthalmologists have heard (in school) that the OD is undertrained and never writes reports. They're amazed to find out otherwise," he says.

The experience of Dr. Morrison and partner Larry Washburn, O.D., typifies successful referral relationships in rural TPA states. Ophthalmologists travel to Colby on regular schedules from outlying towns. Competition from them is nonexistent—those ophthalmologists are too busy doing surgery and using the new YAG lasers, they say.

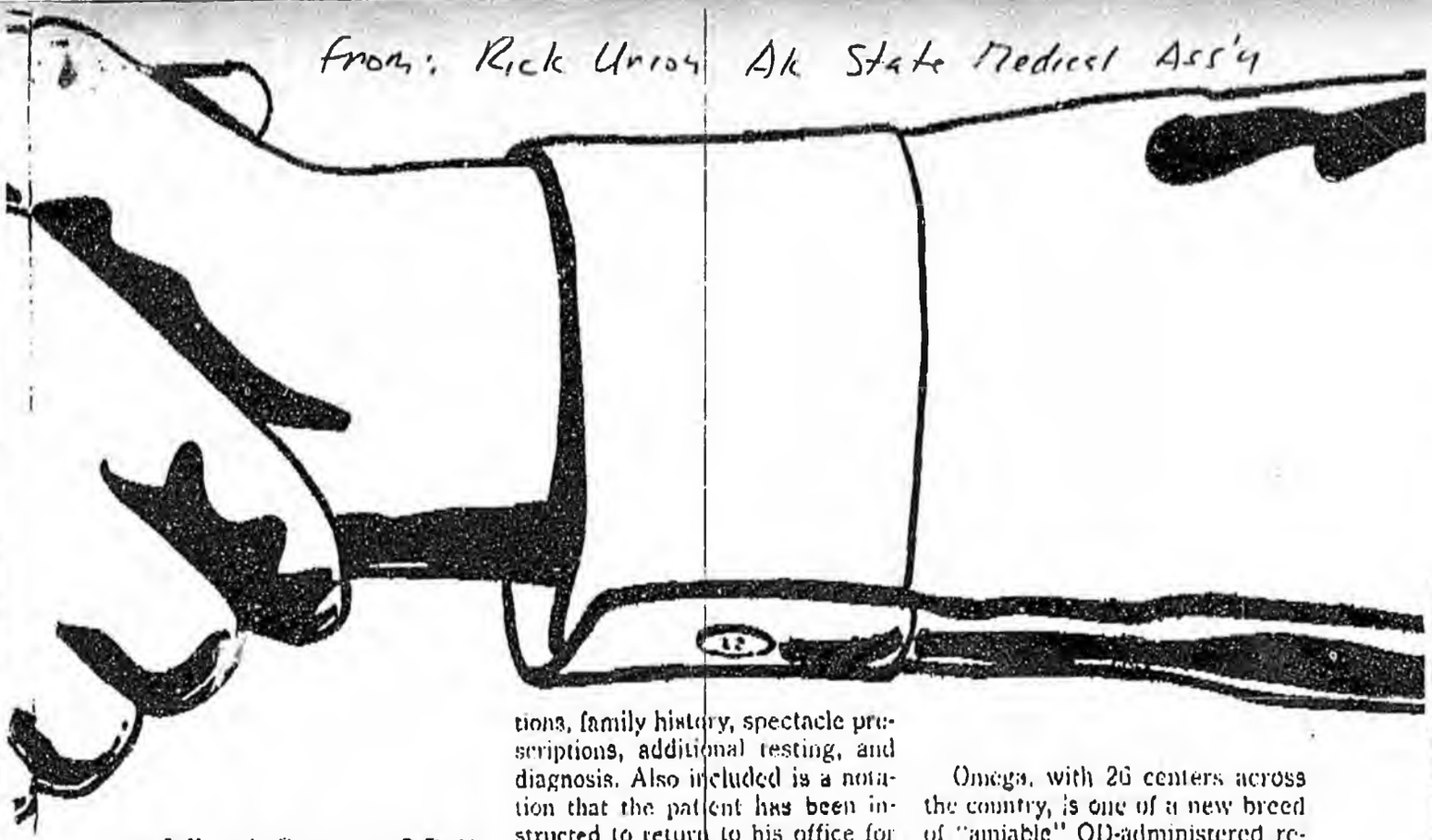
Homespun respect and caring have helped to establish these relationships, Dr. Morrison says. "It's like anything else; just get to know them.

"Meet regularly and talk shop," he adds. "Most importantly, show how deeply you care and ask how you can help." Then follow up with reports.

"Most MDs want to do high end . . . if they are comfortably freed to do that, they will feed you [patients] like crazy." With that in mind, Dr. Morrison has added equipment to his practice the surgeons are comfortable with. "Make life simpler for them" is the motto, which includes providing ultrasounds, visual fields, and monitoring medications.

The picture is a little different in Anchorage, Alaska, where optometrists have yet to achieve TPA's, ophthalmologists provide similar services, and competition is still.

From: Rick Urion Ak State Medical Ass'n



says Jeffrey A. Gonnason, O.D. He refers many of his patients to the Pacific Cataract and Laser Institute in Washington state, where he knows they will receive good care and be returned to him.

"Things are pretty informal here," Dr. Gonnason says. When he refers a patient to an ophthalmologist locally, he's often told, "Sure, we have a doc here, but hurry . . . he's going fishing at 3:00."

REPORTS COUNT

More typically, optometrists elsewhere are finding that reports, formal or informal, are helping to shore up weak relationships with MDs. "If you don't have a referral center," adds John M. Roberts, O.D., of Denver, Colorado, "it's important to set up a referral relationship that is a two-way street—ophthalmologists understand that."

No time to write a report? No excuse, says Frank D. Puzio, O.D., of Dennis, Massachusetts, who has computerized the whole process. A letter to an ophthalmologist can be generated in two minutes; a letter to a school nurse or teacher takes 15 seconds using his Optometric Patient Information System (OPISYS).

Dr. Puzio's software provides clinical findings from his examinations, including symptoms, medications, family history, spectacle prescriptions, additional testing, and diagnosis. Also included is a notation that the patient has been instructed to return to his office for routine optometric care at the conclusion of the MD's treatment plan.

He uses other modules to send reports to health care professionals on everything from ocular manifestations to vision therapy to office policies. "For every patient, the goal is to send one letter out into the community," Dr. Puzio says. "No doubt, it's been the number one practice builder in my experience."

INSTITUTIONALIZED REFERRAL SYSTEMS

Referral or comanagement centers grew out of a need to guarantee getting patients back, says Dr. Reichle, who is center director of the Houston Omega center. "Fifteen years ago, an ophthalmologist would gladly accept referrals, then tell the patient that his optometrist is not a real doctor," he says. "And I'd be telling my patients that I'm referring them to a specialist—inferring that they are going to someone higher.

"Now the ophthalmologist says, 'Dr. Reichle correctly diagnosed your disease and after you see me, I want you to go back to him.'

"And I now tell my patients I want to send them to an associate of mine."

Omega, with 26 centers across the country, is one of a new breed of "amiable" OD-administered referral setups. Omni, with 15 locations, is another. The centers are independent and provide tertiary care; the environment is guaranteed noncompetitive.

Due in large part to the success of these pioneering clinics, ODs elsewhere are jumping on the bandwagon. In Toledo, Ohio, for example, optometrists sat down with local ophthalmologists and expressed their frustration with their referral relationships. From that meeting, the Eye Center of Toledo was born, says center director Kevin L. Alexander, O.D., Ph.D.

All patients referred to the Toledo clinic see Dr. Alexander first and then one of four ophthalmologists on staff. Referring ODs get more involved in their patients' surgeries than elsewhere, Dr. Alexander adds. "Patients love this—their family optometrist, whom they've known for years, is there, giving them more attention."

Optometrists who are members of referral centers are assured that the ophthalmologist on staff is top-notch and that their patients will return, usually with compliments all around, adds Dr. Reichle.

These clinics also serve as excellent training grounds for students and residents, adds Robert Prouty, O.D., center director of the Denver Omni Eye Specialists. Although

the clinics are now independently owned and operated, center directors continue to network with colleagues and lecture often.

Dr. Borish, an outspoken advocate of comanagement centers, envisions a day when all eye care professionals have access to similar arrangements. "Every optometrist's office would be the entry point into eye care." Advertising on television, in the Yellow Pages, and in brochures could then tout "a cooperative arrangement of outstanding optometrists and ophthalmologists," he adds.

"Now, let's suppose we don't do this. With more and more cataract surgeries in fewer ophthalmologists' hands, that leaves the MDs with identical resources saying, 'look, we better form our own referral network before they (the ODs) do,' " Dr. Borish cautions.

"The ophthalmologist has painted himself into a high-tech corner," adds Dr. Leadingham, "and his or her only chance at long-term professional survival is to either adopt a primary care practice or one with a high economic return such as consulting networks with optometrists."

The "love affair" practitioners are having with referral centers may be cooling, however, says Dr. Alexander. Now that MDs have had a chance to observe how well optometric centers are working, he says, they are coming to the realization that all they really have to do is treat (optometrists) as the trained professionals they are.

The irony of the situation, Dr. Alexander adds, is that "ophthalmologists are now paying more attention to referral etiquette- being more careful, getting letters back."

THE FIRST CONSIDERATION

Keeping your patients is of obvious importance to your practice, and is worth the extra effort required to develop relationships with MDs and improve your interprofessional communication. But it is still only of secondary importance. The *first* consideration, as always, must be the patients' welfare.

Fortunately the best specialists almost invariably offer non-competing services, return your patients, and—out of respect for your abilities—leave the primary care to you.

Barbara J. Munson is a freelance writer in Denver, Colorado. She is the former editor of the American Optometric Association News.

ESTABLISHING AND MAINTAINING GOOD REFERRAL RELATIONSHIPS

To initiate referral relationships, start by researching the ophthalmologists within a wide radius of your practice. Look for MDs who do not offer services similar to yours (including those who have ODs on staff). Ask colleagues to whom they refer.

If asked for referrals by an ophthalmologist, require that the relationship be a two-way street; say you expect referrals from them as well (point out your capabilities and specialties). Be sure of the MD's competence and compatibility.

To start a two-way referral system, suggest a lunch or dinner engagement to discuss basics. Initiate a second meeting at the MD's office; have him or her also visit yours.

Be specific about what you expect from the relationship, and work out as many details as you can prior to comanaging patients. Your part is to provide written reports and/or phone calls prior to referrals and as follow-up.

A few more tips:

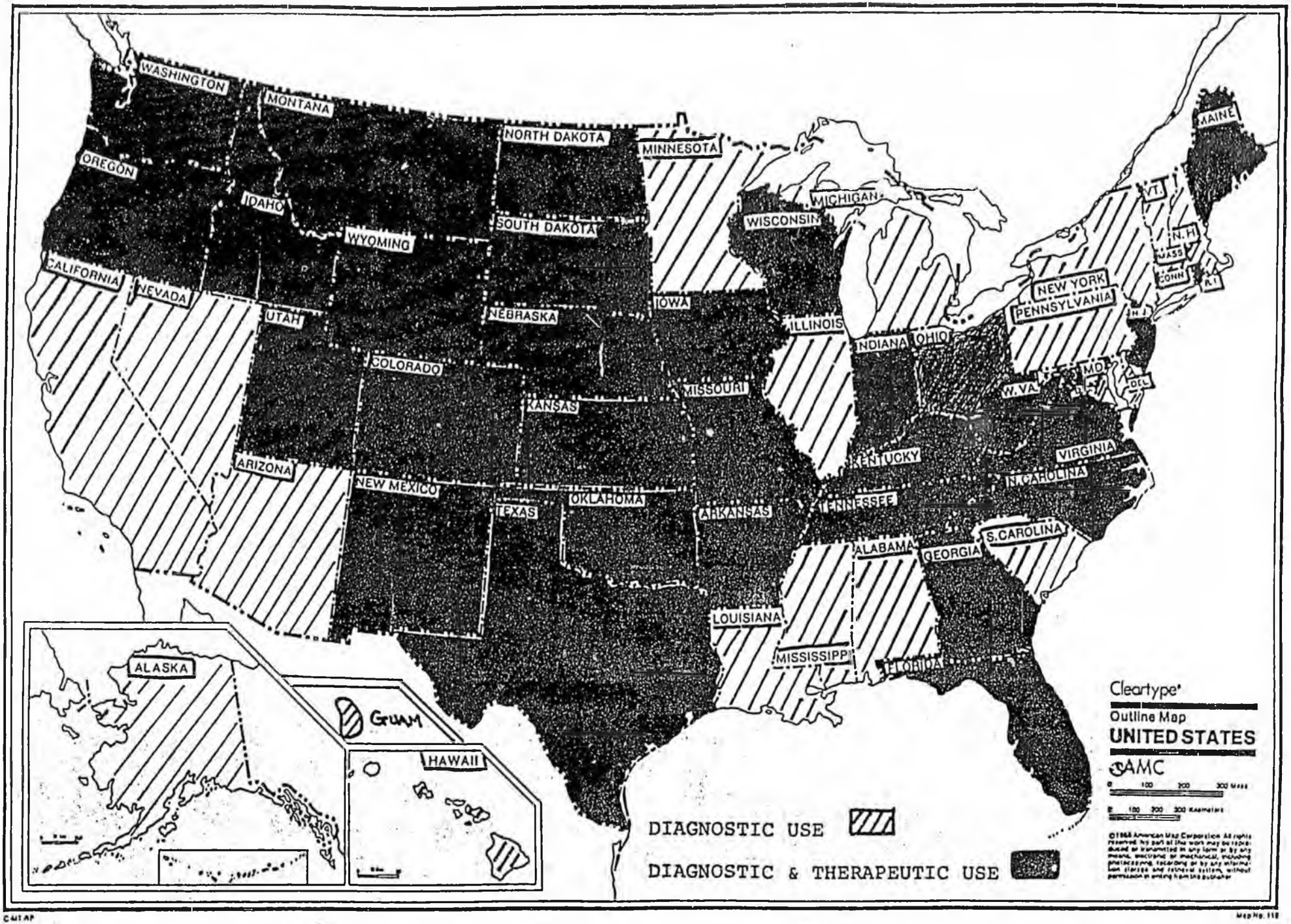
- Remember to thank colleagues for their referrals and compliment them on their good work.
- Keep the MDs abreast of new equipment and new policies in your office.
- Pass along articles and brochures you feel may be of interest to them.
- Introduce your staff to theirs.
- If there is a problem, don't let it persist.
- If a patient fails to return to you, call him or her and ask what the problem is.
- Talk to the MD as well; be candid.

Remember that communication, concern, and professionalism are the three key elements to a good referral relationship.

—Barbara J. Munson

STATUS OF PHARMACEUTICAL LEGISLATION

February ~~January~~ 16, 1992



CAM AP

Map No. 118

STATE	DIAGNOSTIC USE	THERAPEUTIC USE
ALABAMA	*	
ALASKA	May 25, 1988	
ARIZONA	April 25, 1980	
ARKANSAS	April 2, 1979	March 3, 1987
CALIFORNIA	July 9, 1976	
COLORADO	June 10, 1983	April 20, 1988
CONNECTICUT	April 2, 1986	
DELAWARE	July 10, 1975	
D.C.	March 25, 1986	
FLORIDA	July 10, 1986**	July 10, 1986**
GEORGIA	February 14, 1980	February 25, 1988
GUAM	December 28, 1982	
HAWAII	June 12, 1985	
IDAHO	March 23, 1981	March 31, 1987
ILLINOIS	September 15, 1984	
INDIANA	***	***
IOWA	June 8, 1979	May 31, 1985
KANSAS	April 12, 1977 (2:00 p.m.)	April 17, 1987
KENTUCKY	March 29, 1978	February 7, 1986
LOUISIANA	July 6, 1975	
MAINE	June 24, 1975	June 25, 1987
MARYLAND	January 13, 1989	
MASSACHUSETTS	December 23, 1985	
MICHIGAN	March 26, 1984	
MINNESOTA	March 8, 1982	
MISSISSIPPI	March 17, 1982	
MISSOURI	July 24, 1981	June 24, 1986
MONTANA	April 12, 1977 (10:10 a.m.)	April 23, 1987
NEBRASKA	February 13, 1979	March 26, 1986
NEVADA	May 25, 1979	
NEW HAMPSHIRE	June 6, 1985	
NEW JERSEY	*	January 16, 1992
NEW MEXICO	March 4, 1977	April 5, 1985
NEW YORK	July 15, 1983	
NORTH CAROLINA	June 3, 1977	June 3, 1977
NORTH DAKOTA	March 22, 1979	April 10, 1987
OHIO	March 15, 1984	February 15, 1992
OKLAHOMA	April 6, 1981	March 22, 1984
OREGON	May 20, 1975	August 9, 1991
PENNSYLVANIA	March 1, 1974	
RHODE ISLAND	July 16, 1971	June 26, 1985
SOUTH CAROLINA	March 21, 1984	
SOUTH DAKOTA	March 15, 1979	March 15, 1986
TENNESSEE	May 8, 1975	April 22, 1987
TEXAS	August 5, 1981	June 15, 1991
UTAH	March 21, 1979	March 20, 1991
VERMONT	April 23, 1984	
VIRGINIA	February 25, 1983	April 11, 1988
WASHINGTON	April 23, 1981	April 18, 1989
WEST VIRGINIA	March 4, 1976	March 4, 1976
WISCONSIN	April 29, 1978	August 3, 1989
WYOMING	February 17, 1977	March 2, 1987

FOOTNOTE KEY:

** = General legislation, favorable attorney general opinion.*

*** = Previous favorable attorney general opinion. Specific legislation enacted in 1986.*

**** = General legislation, favorable attorney general opinion. Legislation which would have prohibited pharmaceutical utilization defeated. Appeal from dismissal of litigation which would have prohibited pharmaceutical utilization denied by state supreme court, February 27, 1986. Clarification legislation adopted May 13, 1991.*

SB

185

SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE

BILL NUMBER: SB185
ABBREVIATED TITLE: Legislative Ethics

SPONSER: ~~Senate~~ Special Comte ORIGINAL RECEIVED: March 11, 1991
Verbal ~~WRITTEN~~ REQUEST TO SCHEDULE REC'D: 3-11 91 FROM: Collins office
SPONSER'S STATEMENT REC'D: _____ FROM: _____
SECTIONAL ANALYSIS RQST'D: _____ FROM: _____
SECTIONAL ANALYSIS RECEIVED: March 15, 1991
FISCAL NOTE (ORIGINAL)
RQST'D OF: Pam Stamps REC'D FROM: _____ DATE: March 15, 1991
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: _____ NOTICE OF HEARINGS GIVEN: _____
COMMITTEES OF REFERRAL: FIRST: Jud SECOND: — THIRD: —

COMMITTEE ACTION Drafter John Donaghue

DATE:	
4-11-91	Heard - Held over -
5-[illegible]-91	Heard Adopt CS 4/5/2/91 plus Amdmt #2
_____	Held over —
5-7-91	CS adopted and Before Comte - Aloc will Send Fiscal
_____	Passed as Ind Rec -
5-7-91	Rd to Sen Sec. 293
_____	
_____	
_____	
_____	
_____	
_____	
_____	
_____	
_____	

PERSONS TO BE NOTIFIED OF HEARING

1. SPONSOR Ethics Spl Comte
2. AGENCY SRA Pam Stamps
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO: SB 185

Revision Date:
Title: "An Act relating to conduct of Legislators... and to the Select Comm. on Leg. Ethics."
Sponsor: Senate Judiciary
Requestor: Senate Special Committee on Ethics

Department Affected: Legislative Affairs Agency
BRU: Legislative Council
Component: Council & Subcommittees

COMPONENT SERIAL NO: 783

Expenditures/Revenues: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact.

Prepared By: Pamela A. Stoops, Director — Phone: 465-3850
Division: Administrative Services — Date: 3/14/91

Approved By: Warren W. Endicott, Executive Director
Agency: Legislative Affairs Agency — Date: 3/14/91

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

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 30, 1991

SUBJECT: Comments on Senator Adams' proposed amendments to SB 185

TO: Senator Virginia Collins
Chair, Special Committee on Ethics Reform
Attn: S. Armstrong

FROM: John B. Gaguine JBG
Legislative Counsel

You have asked for my comments on Senator Adams' proposed amendments to SB 185, contained in an April 28 memorandum to Judiciary Committee Chair Senator Halford. Here they are.

OK Amendment #1: I think this is an excellent clarification.

Amendment #2: If the committee initiates a complaint, I do not think that it is necessary for the committee to adopt a resolution on the scope of the investigation, since the committee presumably will not initiate a complaint that is outside of the scope of the ethics law. The main point of the scope requirement now is to throw out at an early stage any allegations in a complaint that are clearly outside of the committee's jurisdiction, either because they allege wrongdoing that is not covered by the ethics law (e.g., being rude to a constituent) or that is clearly outside of the statute of limitations (e.g., a well-publicized act of misconduct ten years ago). However, amendment #2 is not going to cause any great hardship to the committee if it is adopted, only a little paperwork that is (in my opinion) unnecessary.

NO

OK Amendment #3: I agree with this proposal, and think that it would fit appropriately as a new subsection (e), following page 9, line 25.

Amendment #4: I also agree with this proposal, as well as with Senator Adams' suggestion that discovery should be automatic, and not at the discretion of the committee. I would recommend a new subsection (h), on page 10, following line 17: "A person charged under (g) of this section may engage in discovery in a manner consistent with the Alaska Rules of Civil Procedure. The committee may impose reasonable restrictions on the time for this discovery and on the materials that may

OK

be discovered." I would hope that this language would meet Senator Adams' concerns but would also allow the committee to prevent a respondent from unnecessarily delaying a hearing and from obtaining inappropriate materials (e.g., committee counsel's legal theories of the case, or confidential information that is not to be presented as evidence).

Amendment #5: The language that Senator Adams wants to delete is in the bill because some people want to waive confidentiality, and want to make sure that they have the right to do so. Representative Martin raised this exact point before the House Judiciary Committee, and accordingly HB 4 was amended to specifically include it. Frankly, I don't think that the language is necessary - I believe that, since the confidentiality provisions are in the bill to protect the subject of a complaint, the subject can waive them, whether or not the bill specifically provides for this.

NO

Note that Senator Adams' analogy to criminal proceedings is incomplete. It is true, as he notes, that grand jury proceedings are closed, even if the subject of a grand jury hearing wants it opened. However, other aspects of a criminal case, such as the charging document and the arraignment, are open to the public, whereas their counterparts under the ethics procedures are closed. These are usually the hearings that the subject of an ethics complaint would want open.

Amendment #6: This is a policy call. Michael Josephson, the ethics "guru", included the legal defense fund concept in his bill last year, so he sees nothing wrong with it. I have no big problems with it in the narrow form that Senator Adams proposes (his proposal comes from HB 4), although I still wonder why allowing a lobbyist to give you $1,000 to defend a lawsuit is really any different from allowing the lobbyist to give you $1,000 to repair your house, or to go to Hawaii. $1,000 is $1,000, regardless of the purpose for which it is given.

NO

Amendment #7: I have no major disagreement with this suggestion. I would, however, recommend deleting the requirement that the subject of a complaint be notified when the committee turns over information to a law enforcement agency or to APOC. Since the subject of a criminal investigation is not generally put on notice that he or she is being investigated, I do not see why that should be done here.

YES - with recommendation

If I may be of further assistance, please advise.

JBG:mi
91-083.mai

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 12, 1991

SUBJECT: Constitutionality of nepotism law (SB 185)

TO: Senator Rick Halford
Chair, Senate Judiciary Committee

FROM: John B. Gaguine JBG
Legislative Counsel

During the committee hearing yesterday on SB 185, you raised some questions as to the constitutionality of nepotism laws. I indicated to you that I had never heard of a court rejecting such a law. My research has pretty much confirmed what I said.

I am enclosing a portion of a general legal treatise on the issue of nepotism. As you will note, under section 102 of the treatise, the courts have generally upheld the laws against a variety of attacks. A 1933 Florida case noted that anti-nepotism acts have either been definitively sustained as constitutional or have been enforced without serious controversy as to their validity. State ex rel. Robinson v. Keefe, 149 So. 638 (Fla. 1933). There is virtually no recent authority on this issue, indicating, as the Florida court noted, that the constitutional issue is well-settled.[1/]

You also noted that the nepotism laws discriminate against married people as opposed to cohabiting couples, since spouses are covered but live-in lovers are not. The same discrimination exists with regard to the tax laws: married two-income couples generally pay higher taxes than cohabiting two-income couples. However, the courts have uniformly rejected constitutional challenges raising this claim of discrimination. Johnson v. United States, 422 F.Supp. 958 (N.D.Ind. 1976), affirmed, 550 F.2d 1239 (7th Cir. 1977), cert. denied, 434 U.S. 1012 (1978); Mapes v. United States, 576 F.2d 896 (Ct.Cl.), cert. denied, 439 U.S. 1046 (1978); Druker v. Commissioner of Internal Revenue, 697 F.2d 46 (2d Cir.), cert. denied, 461 U.S. 957 (1982).

[1/] In Lee v. Blount, 345 F.Supp. 585 (N.D.Cal. 1972), the plaintiff raised an unsuccessful constitutional challenge to the application of the federal nepotism law to an uncle-nephew relationship, but did not challenge the constitutionality of the law on its face.

I think that the Alaska courts would reach the same conclusion with regard to a nepotism claim. As I mentioned yesterday, the Alaska equal protection clause, like the federal clause, does not require perfection in classifications. Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (Alaska 1980). Thus I do not believe that the courts would invalidate the nepotism laws, even though some instances of the laws working in an apparently unfair manner can be showed.

If I may be of further assistance, please advise.

JBG:gc
91-213.glc

Alaska State Legislature

During Session
P.O. Box V
Juneau, Alaska 99811
(907) 465-2828

During Interim
3111 C Street, Suite 510
Anchorage, Alaska 99503
(907) 561-2040

Senator Virginia Collins

March 14, 1991

MEMORANDUM

TO: Senator Rick Halford, Chair
Senate Judiciary Committee

FROM: Senator Virginia Collins, Chair
Special Committee on Ethics Reform

SUBJECT: Committee Hearing for SB 185 - Legislative Ethics

I respectfully request that you schedule SB 185 for a committee hearing at your earliest opportunity. We need to expedite the public hearing process if we plan to pass an ethics reform bill this session. It would be nice to pass our bill across to the House.

SB 185 is a good compromise between HB 4 and the old Josephson bill. The Special Committee on Ethics Reform started with the bill that the Select Committee on Ethics passed out of their committee last year. SB 185 includes some of the COGEL model bill's suggestion on ethics reform as well as some items from the Common Cause model bill.

Attached is a copy of the fiscal note and a sectional analysis we received from legal services.

Thank you for your consideration of this request.

Attachments Rick's got my copy of Sec Analysis.

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

MAR 1 0 1991

MEMORANDUM March 11, 1991

SUBJECT: Sectional analysis of legislative ethics bill (SB 185)

TO: Senator Virginia Collins
Chair, Senate Special Committee on Ethics Reform

FROM: John B. Gaguine
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 adds several prohibitions to the current list of prohibited conduct by a lobbyist. It would prohibit a lobbyist from serving as a campaign treasurer or deputy campaign treasurer for a legislative candidate, from offering gifts (except for food or beverages), loans, and campaign contributions to persons covered by the ethics act during session, and from making a gift or campaign contribution in violation of the ethics act.

Section 2 prohibits a former legislator from lobbying the legislature for one year after the former legislator leaves office.

Section 3 amends and expands the findings and purposes section of the Legislative Ethics Act, AS 24.60

Section 4 extends the coverage of the Legislative Ethics Act to all employees Range 15 and above (instead of current Range 18) and to the public members of the Select Committee on Legislative Ethics.

Section 5 essentially gathers in one place all of the prohibitions that are currently spread throughout AS 24.60, and adds a couple of new prohibitions, relating to use of state property and funds for political purposes and to taking action that could

substantially affect a person with whom the action-taker is negotiating employment. It retains the provision in current law that an action does not constitute a conflict of interest unless the impact on the legislator or legislative employee is substantial; e.g., a legislator does not need to worry if he or she owns a couple of shares of Exxon.

Section 6 prohibits a legislator from soliciting or accepting campaign contributions during a session and from accepting money from an event during a session that is designed to raise money for candidates (such as a political party fundraiser).

Section 7 provides that disclosures of close economic associations must be reasonably specific; it would no longer suffice to just state that a close economic association exists, and provide no details.

Sections 8-11 rework the gift provisions of the ethics law. Section 7 raises the allowable limit from $50 to $100, and essentially provides that gifts worth less than $100 are conclusively presumed to be proper. However, the section also prohibits the acceptance of any gift, except for the ones listed in AS 24.60.080(c), from a lobbyist or employer of a lobbyist during a legislative session. Section 8 broadens AS 24.60.-080(c), the exception to the gift prohibition, to include gifts not connected to the recipient's legislative status; this change codifies an ethics committee advisory opinion. Section 9 requires the disclosure of gifts now allowed by Section 8. And Section 10 deals with gifts from foreign governments; it allows their receipt, but only on behalf of the legislature.

Section 12 prohibits honoraria; this section too codifies an ethics committee advisory opinion. The payment of actual travel expenses is allowed. There is an exception where the honorarium is not related to the recipient's legislative status, so that, for instance, a legislator who is a professor of biology could accept an honorarium for speaking at a biology symposium. The section also specifically authorizes teaching for compensation at a state-funded school or university.

Section 13 slightly modifies the nepotism prohibition, to allow a legislator's relatives who may be employed in the other house during session to begin employment one week before session and to keep working for one week after session.

Section 14 places a flat ban on representing clients for compensation before an agency, board, or commission (but not a court) of the state. It also makes clear that appearing before an officer or employee of an agency, board, or commission is prohibited. The section would replace existing law allowing such representation, as long as it is disclosed.

Section 15 states, in order to avoid any possible problems, that the Select Committee on Legislative Ethics is a permanent interim committee.

Section 16 changes the terms of public members of the committee from two years (the duration of one legislature) to three, in order to provide greater stability in the committee's membership.

Section 17 reduces the number of both total members and legislative members necessary to make a quorum of the committee.

Section 18 provides that open meetings and public procurement provisions do not apply when their application would be inconsistent with the confidentiality provisions of AS 24.60. (The procurement provisions are included because the committee may need to hire investigators to investigate complaints which are not public during the investigation.)

Section 19 changes the statute relating to advisory opinions to give the committee, when the opinion requestor consents, more time to respond to the request. During the interim it is often difficult to assemble a quorum to act on a request.

Section 20 totally overhauls the committee's complaint procedures. Under current law the procedures are totally closed to the public virtually from beginning to end, including the hearing on a complaint. As overhauled, the procedures would be closed to the public during the initial and investigation stages, but would be open if the investigation disclosed probable cause to proceed. This change would bring AS 24.60 into line with the vast majority of ethics statutes in the United States.

Section 21 would establish the Select Committee on Legislative Ethics as the body adjudicating equal employment opportunity grievances by legislative employees.

Section 22 adds a new provision that a person who was covered by the legislative ethics act (legislators and most aides and legislative employees) may not, for one year after leaving service, represent a client for compensation in any forum on a matter that the person personally and substantially participated in while a legislator or legislative employee.

Section 23 states that persons covered by AS 24.60 are not covered by the total ban in AS 39.50.090(c) (part of the 1974 conflict-of-interest initiative) on representing clients for compensation before state agencies, boards, and commissions. This statute is inconsistent with current AS 24.60.100, and our office has expressed its opinion that AS 24.60.100 was intended to supersede AS 39.50.090(c) with regard to legislators and legislative employees. Note, though, that AS 24.60.100 as amended by this bill would have the same effect as AS 39.50.090(c).

Section 24 repeals two statutes (AS 24.60.060 and 24.60.120) that were incorporated into new AS 24.60.030, and AS 24.60.080(b), that was incorporated into AS 24.60.-080(a).

Section 25 provides that the three current members of the ethics committee just confirmed would serve one, two, and three year terms, with the term length to be determined by lot. The purpose of this is to stagger the three-year terms for public members, so that each year one, and only one, new member would be appointed.

JBG:mi
91-050.mai

4-11-91

SB185 ETHICS -

Sec (4) a (4) Should be "salary" for

Sec (5) add a rule of necessity where all legislators have the same conflict

Sec 8 -

Sec 13 - Constitutional Pro Problem - Discrimination Because your dad is in legislature.

Rick requests opinion. Particularly where relative works for legislature before dad is elected.

What about couple living together.

Sec 14 Very Strict.

Sec 20 - Adams wants APOC Bound by Same Confidentiality as Ethics Committee. p 11 line 18

See Sec 2 AS 24.60

Ask

Adams will have amendments - Secs 1 & 20 -

Ethics –

Draft of 5/2-91 is adopted as working Draft.

Next April 30, 1991 Memo re Adam Proposals –
#1 OK it is in 5/2 draft.

#2 Adam #2 is not in draft.
Adam moved p 9 line 25 his amendment
#2 – not initiated by the committee –

(add this –)

Amd #3 is in Draft –

Amend #5 – Not in Draft.
Adam 5 is Moved – Defeated –

Amend #6 – Moved – Not in Draft –
Defeated –

Amend #7 in Draft.

New Adam Amendment –
failed –

7-LS0799\D
Gaguine
5/2/91

CS FOR SENATE BILL NO. 185 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE SPECIAL COMMITTEE ON ETHICS REFORM

A BILL

FOR AN ACT ENTITLED

"An Act relating to conduct of legislators, legislative employees, former legislators, former legislative employees, and lobbyists, and to the Select Committee on Legislative Ethics."

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

* **Section 1.** AS 24.45.121(a) is amended to read:

(a) A lobbyist may not

(1) engage in any activity as a lobbyist before registering under AS 24.45.041;

(2) do anything with the intent of placing a public official under personal obligation to the lobbyist or to the lobbyist's employer;

(3) intentionally deceive or attempt to deceive any public official with regard to any material fact pertinent to pending or proposed legislative or administrative action;

(4) cause or influence the introduction of a legislative measure solely for the purpose of thereafter being employed to secure its passage or its defeat;

(5) cause a communication to be sent to a public official in the name of any fictitious person or in the name of any real person, except with the consent of that person;

(6) accept or agree to accept any payment in any way contingent upon the defeat, enactment or outcome of any proposed legislative or administrative action;

(7) serve as a member of a state board, or commission, if the lobbyist's employer may receive direct economic benefit from a decision of that board or commission;

(8) serve as a campaign manager or director, serve as a campaign treasurer or deputy campaign treasurer on a finance or fundraising committee, host a fundraising event, or otherwise actively engage in the fundraising activity of a legislative campaign if the lobbyist has registered during the calendar year; this paragraph does not apply to a representational lobbyist as defined in the regulations of the Alaska Public Offices Commission, and does not prohibit a lobbyist from making personal contributions to or personally advocating on behalf of a candidate;

(9) offer, solicit, initiate, facilitate, or provide to or on behalf of a person covered by AS 24.60, during a legislative session,

(A) a gift, other than food or beverage for immediate consumption;

(B) a loan, other than a loan made in the ordinary course of business by a person authorized to transact business in this state at terms and interest rates generally available to a member of the public; or

(C) a campaign contribution;

(10) make or offer a gift or a campaign contribution whose acceptance by the person to whom it is offered would violate AS 24.60.

* Sec. 2. AS 24.45.121 is amended by adding a new subsection to read:

(c) A former member of the legislature may not engage in activity as a lobbyist before the legislature for a period of one year after the former member has left the legislature.

* Sec. 3. AS 24.60.010 is repealed and reenacted to read:

Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that

(1) high moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state;

(2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest;

(3) the public's commitment to a part-time citizen legislature requires legislators be drawn from all parts of society and the best way to attract competent people is to acknowledge that they provide their time and energy to the state, often at substantial personal and financial sacrifice;

(4) a part-time citizen legislature implies that legislators are expected and permitted to earn outside income and that the rules governing legislators' conduct during and after leaving public service must be clear, fair, and as complete as possible; the rules, however, should not impose unreasonable or unnecessary burdens that will discourage citizens from entering or staying in government service;

(5) in order for the rules governing conduct to be respected both during and after leaving public service, the code must be administered fairly without bias or favoritism;

(6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment;

(7) compliance with a code of ethics is an individual responsibility; thus all who serve the legislature have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates;

(8) the purpose of this chapter is to establish standards of conduct for state legislators and legislative employees and to establish the Select Committee on Legislative Ethics to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter.

* **Sec. 4.** AS 24.60.020(a) is amended to read:

(a) Except as otherwise provided in this subsection, this chapter applies to a member of the legislature, [AND] to a person employed by the legislative branch of government**. and to public members of the Select Committee on Legislative Ethics**. This chapter does not apply to

(1) a former member of the legislature or to a person formerly employed by the legislative branch of government unless the provision specifically states that it [SO] applies;

(2) a person elected to the legislature who at the time of election is not a member of the legislature;

(3) a person employed by the legislative branch of government whose position is established below Range 15 [18] of the state salary schedule established in AS 39.27.011(a).

* Sec. 5. AS 24.60.030 is repealed and reenacted to read:

Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A person to whom this chapter applies may not have a conflict of interest. A person has a conflict of interest when the person

(1) uses public office for private advancement or gain;

(2) takes or withholds official action or exerts official influence that could substantially benefit or harm a financial or political matter in which the person has a direct or indirect private interest;

(3) solicits or accepts a benefit beyond that which may accrue uniformly to members of the profession, occupation, or group to which the person belongs, or to the public at large;

(4) wilfully discloses, or knowingly uses, for personal gain or the gain of another, information that by law is not available to the public and that the person acquired in the course of official duties; a person who violates this paragraph may be subject to prosecution under AS 11.56.860;

(5) uses state funds or state property, except property under lease from the state, for private advancement or gain;

(6) knowingly uses or authorizes the use of the facilities of a public office, including office space, stationery, postage, office machines and equipment, vehicles, and official publications, or knowingly uses or authorizes the use of state-paid employees, with the intent to affect a candidate or campaign for elective office; or

(7) takes or withholds official action or exerts official influence that could substantially benefit or harm the financial interest of another person with whom the person to whom this chapter applies is negotiating for employment.

(b) Notwithstanding (a) of this section, a person covered by this chapter does not have a conflict of interest if, as to a specific matter, there is no substantial impropriety or appearance of impropriety because

(1) the person's interest is relatively insignificant; or

(2) the person's authority is relatively far removed from an official action that could reasonably be affected by the potential conflict of interest, provided that no attempt has

been made to remove the appearance of impropriety by delegating responsibility for official action.

(c) This section does not prohibit customary constituent contacts by a legislator, including newsletters and other constituent correspondence that express the legislator's opinions or views on issues before the legislature, or that describe the legislator's votes, legislative proposals, or other legislative actions.

* Sec. 6. AS 24.60 is amended by adding a new section to read:

Sec. 24.60.035. PROHIBITED FUND RAISING. (a) A member of the legislature may not

(1) solicit or accept a contribution during a legislative session; or

(2) accept money from an event held during a legislative session if a substantial purpose of the event is either to raise money on behalf of the member for campaign purposes or to raise money for state legislative political purposes.

(b) In this section, "contribution" has the meaning given in AS 15.13.130.

* Sec. 7. AS 24.60.070 is amended by adding a new subsection to read:

(b) A disclosure under this section must be sufficiently detailed that a reader of the disclosure can ascertain the nature of the association.

* Sec. 8. AS 24.60.080(a) is amended to read:

(a) A person to whom this chapter applies may not solicit, accept, or receive, directly or indirectly, a gift **worth $100 or more** [IN ANY AMOUNT], whether in the form of money, services, a loan, travel, entertainment, hospitality, promise, or other form, **or gifts from the same person worth less than $100 that in a calendar year aggregate to $100 or more in value, and may not solicit, accept, or receive a gift with any monetary value from a lobbyist, the client of a lobbyist, or a person acting on behalf of a lobbyist or the employer of a lobbyist during a legislative session** [UNDER CIRCUMSTANCES IN WHICH IT COULD REASONABLY BE INFERRED THAT THE GIFT IS INTENDED TO INFLUENCE THE PERFORMANCE OF OFFICIAL DUTIES, ACTIONS, OR JUDGMENT].

* Sec. 9. AS 24.60.080(c) is amended to read:

(c) Notwithstanding (a) [(b)] of this section, it is not a violation of this section for a person to whom this chapter applies to accept

(1) hospitality, other than hospitality described in (4) of this subsection

(A) with incidental transportation at the residence of a person; or

(B) at a social event or meal;

(2) discounts that are available generally to the public or to a large class of persons to which the person belongs;

(3) food or foodstuffs indigenous to the state that are shared generally as a cultural or social norm;

(4) travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern;

(5) gifts from the family of the person; or

(6) gifts that are not connected with the recipient's legislative status.

* **Sec. 10.** AS 24.60.080(d) is amended to read:

(d) A person to whom this chapter applies who accepts a gift under (c)(4) or (6) of this section [OF TRAVEL AND HOSPITALITY PRIMARILY FOR THE PURPOSE OF OBTAINING INFORMATION ON MATTERS OF LEGISLATIVE CONCERN] shall disclose the gift if it has a value of $100 or more. The disclosure must include the name and occupation of the person making the gift and the approximate value of the gift. Each gift required to be disclosed under this subsection shall be disclosed within 30 days of the receipt of the gift in the journal of the appropriate body or, if the legislature is not in session, to the committee. The committee shall maintain a public record of the disclosure it receives and shall forward the disclosure to the appropriate house for inclusion in the journal by the fifth day of the next regular session.

* **Sec. 11.** AS 24.60.080 is amended by adding a new subsection to read:

(f) Notwithstanding (a) of this section, a person to whom this chapter applies may accept a gift of property worth $100 or more, other than money, from a foreign government or from an official of a foreign government if the person accepts the gift on behalf of the legislature. The person shall, within 60 days of receiving the gift, deliver the gift to the legislative council, which shall determine the appropriate disposition of the gift.

* **Sec. 12.** AS 24.60 is amended by adding a new section to read:

Sec. 24.60.085. HONORARIA PROHIBITED. (a) A person to whom this chapter applies may not accept a payment of money or anything of value for an appearance or speech by the person, except that the person may accept payment of actual and necessary travel expenses

incurred by the person in making the appearance or speech.

(b) Notwithstanding (a) of this section, a person to whom this chapter applies may accept a payment for an appearance or speech if the appearance or speech is not connected with the person's legislative status, and for teaching at a state-funded school or university, provided that influence was not used to obtain the position.

* **Sec. 13.** AS 24.60.090(a) is amended to read:

(a) **An** [A SPOUSE OR AN] individual [OTHER THAN A SPOUSE] who is related to a member of the legislature may not be employed in the house in which the legislator is a member, by an agency of the legislature established under AS 24.20, or in either house during the interim between sessions. An individual who is related to an employee of the legislature may not be employed in a position over which the employee has supervisory authority. In this subsection, "an individual who is related to" means a child, stepchild, husband, wife, mother, father, sister, or brother**, and "interim between sessions" means the period beginning on the eighth day after the legislature adjourns from a regular session, and ending eight days before the date that the legislature shall convene under AS 24.05.090**.

* **Sec. 14.** AS 24.60.100 is amended to read:

Sec. 24.60.100. REPRESENTATION **PROHIBITED**. A person to whom this chapter applies **may not represent** [WHO REPRESENTS] another person for compensation before an agency, board, or commission of the state**, or before an officer or employee of the agency, board, or commission of the state** [SHALL DISCLOSE THE NAME OF THE PERSON REPRESENTED, THE SUBJECT MATTER OF THE REPRESENTATION, AND THE BODY BEFORE WHICH THE REPRESENTATION IS TO TAKE PLACE IN THE JOURNAL OF THE APPROPRIATE BODY OR IF THE LEGISLATURE IS NOT IN SESSION TO THE COMMITTEE. THE COMMITTEE SHALL MAINTAIN A PUBLIC RECORD OF THE DISCLOSURE AND FORWARD THE DISCLOSURE TO THE RESPECTIVE HOUSE FOR INCLUSION IN THE JOURNAL BY THE FIFTH DAY OF THE SESSION].

* **Sec. 15.** AS 24.60.130(a) is amended to read:

(a) There is established **as a permanent interim committee** within the legislative branch of state government the Select Committee on Legislative Ethics.

* **Sec. 16.** AS 24.60.130(g) is amended to read:

(g) Each **legislative** member serves for the duration of the legislature during which the

member is appointed. **Each public member serves for a three-year term.**

* **Sec. 17.** AS 24.60.130(i) is amended to read:

(i) A quorum of a committee established under this section consists of a majority of the members of the committee **and must include at least two legislative members and two public members**. A quorum of a subcommittee established under this section consists of a majority of the members of the subcommittee **and must include at least one legislative member and two public members**. [NOTWITHSTANDING THE PROVISIONS OF THIS SUBSECTION, A COMMITTEE DOES NOT HAVE A QUORUM UNLESS THREE LEGISLATIVE MEMBERS ARE PRESENT AND A SUBCOMMITTEE DOES NOT HAVE A QUORUM UNLESS TWO LEGISLATIVE MEMBERS ARE PRESENT.]

* **Sec. 18.** AS 24.60.130 is amended by adding new subsections to read:

(j) The committee is not subject to AS 44.62.310 - 44.62.312, to the procurement provisions adopted by the legislative council under AS 36.30.020, and to the Uniform Rules of the Alaska State Legislature to the extent that those provisions would prevent the committee from complying with the confidentiality provisions of this chapter. The committee may adopt rules to implement this subsection.

(k) A member of the committee or of the committee staff may obtain access to closed committee files containing information that is confidential under AS 24.60.160 or 24.60.170 only if the full committee determines, by a majority vote, that the member has a need to obtain access to the closed files.

* **Sec. 19.** AS 24.60.160 is amended to read:

Sec. 24.60.160. ADVISORY OPINIONS. The committee shall issue an advisory opinion within 30 days on the request of a person to whom the chapter applies or a person elected to the legislature who at the time of election is not a member of the legislature as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. The 30-day period for issuing an opinion may be extended by the committee [FOR NOT MORE THAN AN ADDITIONAL 10 DAYS] if the person requesting the opinion consents. The opinion issued is binding on the committee in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion. Except as provided in this chapter an advisory opinion is confidential but shall [MAY] be made public if a written request by the person who requested the opinion is filed with

the committee.

* Sec. 20. AS 24.60.170 is repealed and reenacted to read:

Sec. 24.60.170. PROCEEDINGS BEFORE THE COMMITTEE. (a) The committee shall consider a complaint alleging a violation of this chapter if the alleged violation occurred within five years of the date that the complaint is filed with the committee and, when the subject of the complaint is a former member of the legislature, the complaint is filed within one year of the subject's departure from the legislature. The committee may not consider a complaint filed against a person employed by the legislative branch of government after the person has terminated legislative service. The committee may also initiate complaints on its own motion, subject to the same time limitations. The time limitations of this subsection do not bar proceedings against a person who intentionally prevents discovery of a violation of this chapter.

(b) A complaint may be initiated by any person. The complaint must be in writing and signed under oath by the person making the complaint. The committee shall upon request provide a form for a complaint to a person wishing to file a complaint. The committee shall immediately provide a copy of the complaint to the person who is the subject of the complaint.

(c) When the committee receives a complaint under (a) of this section, it shall determine whether the allegations of the complaint, if true, constitute a violation of this chapter. If the committee determines that the allegations, if proven, would not give rise to a violation, or if the committee's lack of jurisdiction is apparent on the face of the complaint, the committee shall dismiss the complaint, and shall notify the complainant and the subject of the complaint of the dismissal.

(d) If the committee determines that some or all of the allegations of a complaint, if proven, would constitute a violation of this chapter, or if the committee has initiated a complaint, the committee shall investigate the complaint, on a confidential basis. Before beginning an investigation of a complaint not initiated by the committee, the committee shall adopt a resolution defining the scope of the investigation. A copy of this resolution shall be provided to the complainant and to the subject of the complaint. As part of its investigation, the committee shall afford the subject of the complaint an opportunity to explain the conduct alleged to be a violation of this chapter.

(e) If during the investigation under (d) of this section, the committee discovers facts that justify an expansion of the investigation and the possibility of additional charges beyond those

OK add #3

contained in the complaint, the resolution described in (d) of this section shall be amended accordingly and a copy of the amended resolution shall be provided to the subject of the complaint.

(f) If the committee determines after investigation that there is not probable cause to believe that the subject of the complaint has violated this chapter, the committee shall dismiss the complaint. The committee may also dismiss portions of a complaint if it finds no probable cause to believe that the subject of the complaint has violated this chapter as alleged in those portions. The committee shall issue a decision explaining its dismissal. A copy of the dismissal order and decision shall be sent to the complainant and to the subject of the complaint. Notwithstanding (n) of this section, a dismissal order and decision is open to inspection and copying by the public.

(g) If the committee investigation determines that a probable violation of this chapter exists that may be corrected by action of the subject of the complaint and that does not warrant sanctions other than correction, the committee may issue an opinion recommending corrective action. This opinion shall be provided to the complainant and to the subject of the complaint, and is open to inspection by the public. The subject of the complaint may comply with the opinion or may request a hearing before the committee under (j) of this section. After the hearing the committee may amend or affirm the opinion.

(h) If the subject of a complaint fails to comply with an opinion issued under (g) of this section, or if the committee determines after investigation that there is probable cause to believe that the subject of the complaint has committed a violation of this chapter that may require sanctions instead of or in addition to corrective action, the committee shall formally charge the person. The charge shall be served on the person charged, in a manner consistent with the service of summons under the rules of civil procedure, and a copy of the charge shall be sent to the complainant. The person charged may file a responsive pleading to the committee admitting or denying some or all of the allegations of the charge.

(i) A person charged under (b) of this section may engage in discovery in a manner consistent with the Alaska Rules of Civil Procedure. The committee may impose reasonable restrictions on the time for this discovery and on the materials that may be discovered.

(j) If the committee has issued a formal charge under (h) of this section, and if the person charged has not admitted the allegations of the charge, the committee shall schedule a hearing

on the charge. The hearing shall be scheduled for a date more than 20 days after service of the charge on the person charged, unless the person agrees to an earlier hearing date. At the hearing, the person charged shall have the right to appear personally before the committee, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to cross-examine witnesses. A witness shall testify under oath. The committee is not bound by the rules of evidence but the committee's findings must be based upon clear and convincing evidence. Testimony taken at the hearing shall be recorded and evidence shall be maintained.

(k) Following the hearing, the committee shall issue a decision stating whether or not the subject of the complaint violated this chapter, and explaining the reasons for the determination. The committee's decision may also indicate whether the subject cooperated with the committee in its proceedings. If the committee finds a violation, or lack of cooperation by the subject, the decision shall recommend what sanctions, if any, the committee believes are appropriate. If there has not been a hearing because the person charged admitted to the allegations of the charge, the committee shall issue a decision outlining the facts of the violation and containing a sanctions recommendation.

(l) If the committee issues a decision finding that a member of the legislature has violated a provision of this chapter or that the member has failed to cooperate with the committee, it shall refer the decision to the presiding officer of the house of the legislature to which the member belongs. The legislature shall act on the decision as it considers appropriate.

(m) If the committee issues a decision finding that an employee of the legislative branch of government has violated a provision of this chapter, or that the employee has failed to cooperate with the committee, it shall refer the decision to the chair of the legislative council. The legislative council shall act on the decision as it considers appropriate.

(n) Proceedings of the committee relating to complaints before it are confidential until the committee determines that there is probable cause to believe that a violation of this chapter has occurred. The complaint and all documents produced or disclosed as a result of the committee investigation are confidential and not subject to inspection by the public. If in the course of an investigation or probable cause determination the committee finds evidence of probable criminal activity, the committee shall transmit a statement and factual findings limited to that activity to the appropriate law enforcement agency. If the committee finds evidence of

a probable violation of AS 15.13, the committee shall transmit a statement to that effect and factual findings limited to the probable violation to the Alaska Public Offices Commission. All meetings of the committee before the determination of probable cause are closed to the public. The confidentiality provisions of this subsection may be waived by the subject of the complaint.

(o) All documents issued by the committee after a determination of probable cause to believe that the subject of a complaint has violated this chapter, including an opinion recommending corrective action under (g) of this section and a formal charge under (h) of this section, are subject to public inspection. All hearings of the committee under (j) of this section are open to the public, and all documents presented at a hearing, and all motions filed in connection with the hearing, are subject to inspection by the public. Deliberations of the committee following a hearing, deliberations on motions filed by the subject of a charge under (h) of this section, and deliberations concerning appropriate sanctions are confidential.

(p) The committee shall dismiss a complaint against a person employed by the legislative branch of government if the person terminates legislative service. The committee may in its discretion dismiss a complaint against a former member of the legislature whether the complaint was filed before or after the former member departed from the legislature.

(q) A committee member or member of the committee staff who divulges information concerning a proceeding, except as permitted by this chapter, is guilty of a class A misdemeanor.

* **Sec. 21.** AS 24.60 is amended by adding a new section to read:

Sec. 24.60.175. EMPLOYMENT DISCRIMINATION GRIEVANCES. (a) A person employed or formerly employed by the legislative branch of government may file a grievance with the committee alleging a violation of AS 18.80.220 by the person's employer or former employer. The committee shall adopt procedures concerning the filing, the investigation, the mediation, and the hearing of grievances under this subsection. In adopting procedures, the committee shall consider regulations of the office of equal employment opportunity adopted under AS 44.19.443 and shall protect the confidentiality of grievances.

(b) In accordance with the procedures established under (a) of this section the committee may

(1) provide for mediation of a grievance;

(2) dismiss a grievance without prejudice; or

(3) after a hearing, make appropriate recommendations concerning a grievance

to the president of the senate, the speaker of the house, or the head of the legislative agency where the grievant is or was employed.

(c) This section does not diminish rights under other state or federal law relating to employment discrimination.

(d) In this section, "committee" means the legislative members of the house subcommittee when the grievant is or was employed by a member or a committee of the house, the legislative members of the senate subcommittee when the grievant is or was employed by a member or a committee of the senate, and the legislative members of the full committee when the grievant is or was an employee of an agency of the legislature.

* **Sec. 22.** AS 24.60 is amended by adding a new section to read:

ARTICLE 2. RESTRICTIONS ON FORMER LEGISLATORS AND LEGISLATIVE EMPLOYEES.

Sec. 24.60.200. RESTRICTIONS ON FORMER LEGISLATORS AND LEGISLATIVE EMPLOYEES. (a) A person to whom this chapter applied may not, for a period of one year after this chapter ceased to apply to the person, represent another person for compensation before a court, agency, board, or commission of the state with regard to a matter in which the person participated personally and substantially while this chapter applied to the person.

(b) A person who violates this section may be enjoined from continuing to violate it, and is subject to a civil penalty of up to $5,000.

* **Sec. 23.** AS 39.50.090(c) is amended to read:

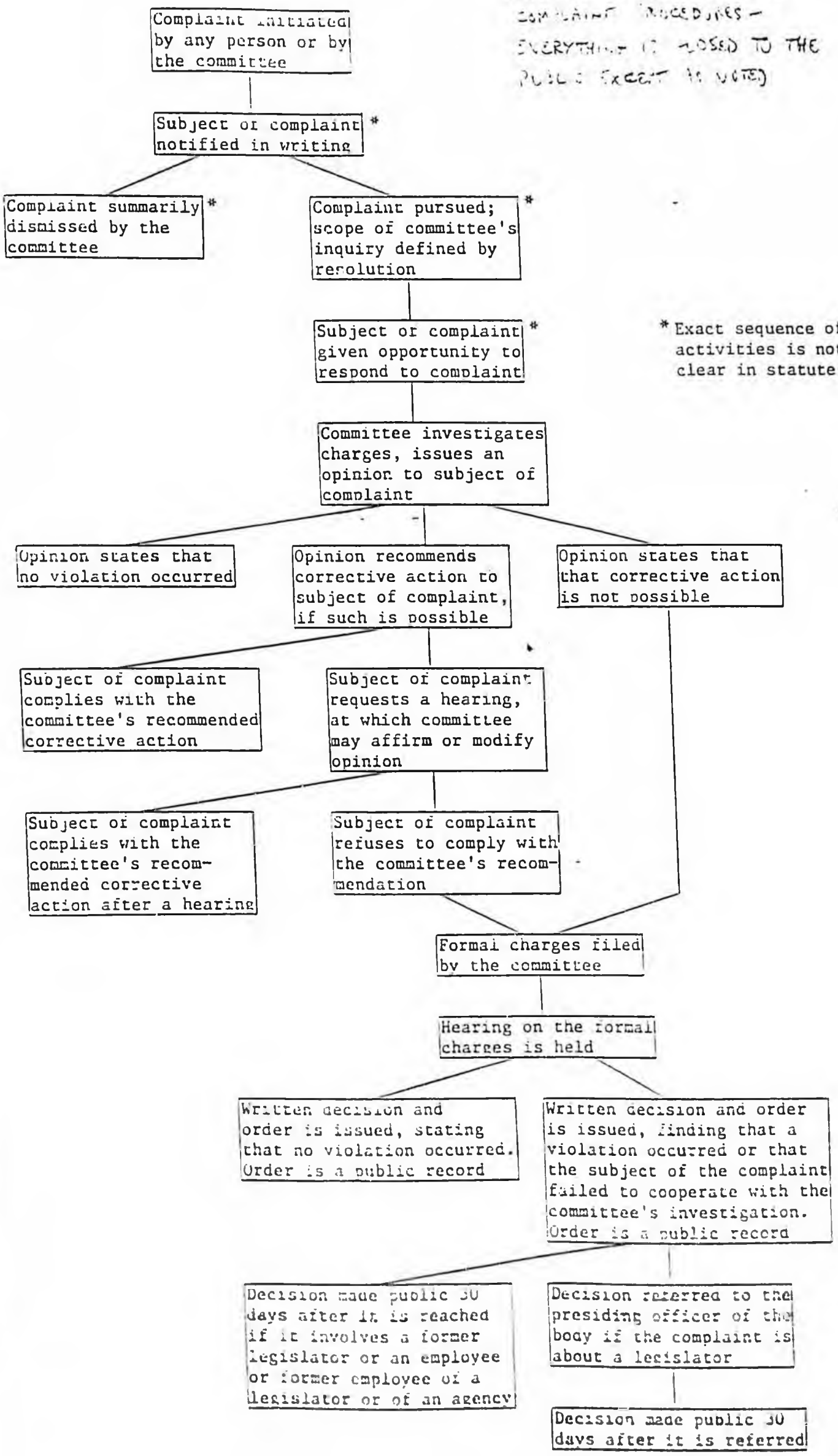
(c) A public official may not represent a client before a state agency for a fee. However, this prohibition does not apply to a **person to whom AS 24.60 applies, to a** municipal officer, or **to the chair** [CHAIRMAN] or **a** member of a state commission or board except with regard to representation before that commission or board; this exception from the general prohibition does not apply to one whose service on the commission or board constitutes the person as a full-time state employee under this title.

* **Sec. 24.** AS 24.60.060, 24.60.080(b), and 24.60.120 are repealed.

* **Sec. 25.** TRANSITIONAL PROVISIONS RELATING TO PUBLIC MEMBERS OF SELECT COMMITTEE ON LEGISLATIVE ETHICS. Notwithstanding AS 24.61.130(g), as amended by sec. 16 of this Act, one of the public members of the Select Committee on Legislative Ethics shall serve until the commencement of the 1992 regular session of the Alaska State Legislature; one of the public

members shall serve until the commencement of the 1993 regular session; and the remaining public member shall serve until the commencement of the 1994 regular session. The length of each public member's term under this section shall be determined by lot.

CURRENT ETHICS COMMITTEE COMPLAINT PROCEDURES — EVERYTHING IS CLOSED TO THE PUBLIC EXCEPT AS NOTED



* Exact sequence of these activities is not made clear in statute

ETHICS COMMITTEE COMPLAINT PROCESS - AS PROPOSED FOR MODIFICATION BY ETHICS COMMITTEE IN [illegible] AFTER FINDING OF PROBABLE CAUSE, EVERYTHING IS PUBLIC EXCEPT AS NOTED

COMPLAINT FILED OR INITIATED BY COMMITTEE (CONFIDENTIAL); SENT TO SUBJECT OF COMPLAINT

↓

INITIAL CONSIDERATION → COMPLAINT DISMISSED IF NOT PROCEDURALLY CORRECT, OR IF COMPLAINT ON ITS FACE DOES NOT ALLEGE VIOLATION OF ETHICS LAW, OR IF LACK OF JURISDICTION (E.G. STATUTE OF LIMITATIONS) IS APPARENT; COMMITTEE MAY ISSUE CONFIDENTIAL STATEMENT, SENT TO COMPLAINANT & SUBJECT

↓

ALLEGATIONS OF COMPLAINT, IF TRUE, WOULD CONSTITUTE ETHICS LAW VIOLATION; COMMITTEE ADOPTS CONFIDENTIAL RESOLUTION ON SCOPE OF INVESTIGATION, SENT TO COMPLAINANT & SUBJECT

↓

INVESTIGATION → COMPLAINT DISMISSED IF INVESTIGATION DOES NOT ESTABLISH PROBABLE CAUSE TO BELIEVE THAT SUBJECT VIOLATED ETHICS LAW; COMMITTEE MAY ISSUE CONFIDENTIAL STATEMENT EXPLAINING DISMISSAL, SENT TO COMPLAINANT & SUBJECT

↓

INVESTIGATION ESTABLISHES PROBABLE CAUSE TO BELIEVE VIOLATION EXISTS → IF VIOLATION MINOR, COMMITTEE ISSUES PUBLIC OPINION FINDING PROBABLE CAUSE & RECOMMENDING CORRECTIVE ACTION; IF SUBJECT COMPLIES, PROCEEDINGS END

↓

IF PROBABLE VIOLATION MAY WARRANT SANCTIONS, OR IF SUBJECT DOES NOT UNDERTAKE RECOMMENDED CORRECTIVE ACTION

↓

FORMAL CHARGE ISSUED; PUBLIC DOCUMENT SENT TO COMPLAINANT & SUBJECT

↓

SUBJECT ADMITS ALLEGATIONS OF CHARGE

↓

MEETING OF COMMITTEE TO DETERMINE SANCTIONS (CONFIDENTIAL)

SUBJECT DENIES SOME OR ALL ALLEGATIONS OF CHARGE

↓

PUBLIC HEARING (DELIBERATIONS CONFIDENTIAL) → IF ALLEGATIONS NOT PROVEN, COMPLAINT DISMISSED; COMMITTEE MAY ISSUE PUBLIC DECISION EXPLAINING DISMISSAL

ALLEGATIONS PROVEN

↓

FINAL DISPOSITION; IF SANCTIONS FOUND WARRANTED, RECOMMENDATIONS SENT TO SENATE PRESIDENT, HOUSE SPEAKER OR LAA EXEC. DIRECTOR. RECOMMENDATIONS ARE PUBLIC.

NOTE: IF COMPLAINT IS AGAINST LEGISLATIVE EMPLOYEE, AND EMPLOYEE QUITS, COMPLAINT IS DISMISSED AT ANY STAGE. IF COMPLAINT IS AGAINST FORMER LEGISLATOR, OR IS AGAINST LEGISLATOR WHO QUITS OR WHOSE TERM EXPIRES (AND IS NOT RE-ELECTED), COMMITTEE MAY AT ITS DISCRETION DISMISS COMPLAINT.

§ 101. Restrictions on appointment of relatives; nepotism.

Sometimes, constitutional provisions[27] or statutes[28] are aimed against nepotism in the appointment of public officers. They prohibit the appointment of persons who are related, within a prescribed degree, to the appointing officer or his associates in office,[29] and provide checks against appointments of this character, such as making it a penal offense to appoint relatives in violation of the prohibition,[30] or to pay the salary or compensation of the appointed relative.[31] Moreover, it is sometimes provided that the officer making an appointment in violation of the prohibition must forfeit his office.[32] Antinepotism provisions are sometimes by their express terms made applicable to counties, districts, cities, or other political subdivisions of the state.[33] It is not permissible under nepotism acts for certain members of a board, acting without the concurrence of a third member, to appoint to office a person related within the prohibited degree to such third member.[34]

§ 102. —Validity.

The courts have generally recognized or assumed that legislation may be legitimately aimed at discouraging, minimizing, or eliminating the practice of nepotism in the public service, as a proper exercise of the police power.[35] Thus, challenges to the validity of such laws have usually focused on the particular manner in which their objective was sought to be achieved, or on a particular effect. Such challenges have been predicated upon federal and state constitutional guaranties of due process,[36] including contentions that constitutional or statutory provisions are impermissibly vague,[37] and equal protection,[38] as well as upon other grounds, including other state constitutional and statutory provisions,[39] the Ninth Amendment right to privacy,[40] and the privi-

27. State ex rel. McKittrick v Whittle, 333 Mo 705, 63 SW2d 100, 88 ALR 1099.

28. Barton v Alexander, 27 Idaho 286, 148 P 471.

29. State ex rel. McKittrick v Whittle, 333 Mo 705, 63 SW2d 100, 88 ALR 1099.

30. Barton v Alexander, 27 Idaho 286, 148 P 471.

31. § 482.

Annotation: 11 ALR4th 826.

32. Barton v Alexander, 27 Idaho 286, 148 P 471.

33. State ex rel. McKittrick v Whittle, 333 Mo 705, 63 SW2d 100, 88 ALR 1099.

34. Barton v Alexander, 27 Idaho 286, 148 P 471.

35. Backman v Bateman, 1 Utah 2d 153, 263 P2d 561.

Annotation: 11 ALR4th 826, 838, § 3[b].

36. Lewis v Spencer (CA5 Tex) 468 F2d 553, conformed to (SD Tex) 369 F Supp 1219, aff'd (CA5 Tex) 490 F2d 93; Rosenstock v Scaringe (3d Dept) 54 App Div 2d 779, 387 NYS2d 716, aff'd 40 NY2d 563, 388 NYS2d 876, 357 NE2d 347; State ex rel. Hamby v Cummings, 166 Tenn 460, 63 SW2d 515; Backman v Bateman, 1 Utah 2d 153, 263 P2d 561.

Annotation: 11 ALR4th 826, 836 § 3.

37. Espinoza v Thoma (CA8 Neb) 580 F2d 346, 17 BNA FEP Cas 1362, 17 CCH EPD ¶ 8500; Bailey v Turner, 108 Kan 856, 197 P 214; State ex rel. Roberts v Buckley (Mo) 533 SW2d 551.

Annotation: 11 ALR4th 826, 838, § 4.

38. Espinoza v Thoma (CA8 Neb) 580 F2d 346, 17 BNA FEP Cas 1362, 17 CCH EPD ¶ 8500; Keckeisen v Independent School Dist. (CA8 Minn) 509 F2d 1062, cert den 423 US 833, 46 L Ed 2d 51, 96 S Ct 57; Bradford v Hammond, 179 Ga 40, 175 SE 18; Winrick v Warren, 99 Mich App 770, 299 NW2d 27; Rosenstock v Scaringe (3d Dept) 54 App Div 2d 779, 387 NYS2d 716, aff'd 10 NY2d 563, 388 NYS2d 876, 357 NE2d 347; Opinion to House of Representatives, 80 RI 281, 96 A2d 623.

Annotation: 11 ALR4th 826, 840 § 5.

39. French v Board of Education, 54 Cal App 2d 148, 128 P2d 722; Bradford v Hammond, 179 Ga 40, 175 SE 18; Whateley v Leonia Bd. of Education, 141 NJ Super 476, 358 A2d 826, 12 CCH EPD ¶ 11029.

Annotation: 11 ALR4th 826, 843 § 6.

One court has held that if a nepotism law were construed so as to make an official guilty of a misdemeanor for acts done prior to the date of the enactment of the law, even though such acts were not crimes at the time they were

leges and immunities clause of the Federal Constitution.[41]

While in most cases, the courts have upheld the validity of laws regulating nepotism in the public service, invalidity has been found where the law had the effect of depriving of employment a person who had been lawfully appointed prior to the occurrence of an alleged nepotism violation,[42] where the law was considered to be a bill of attainder,[43] where it went further than was deemed reasonably necessary to accomplish its purpose,[44] and where it constituted special[45] or class legislation.[46]

Where a law had the effect of penalizing persons who were first employed prior to its enactment,[47] or prior to appointment or election of a relative whose appointment was alleged to have triggered a nepotism violation,[48] notwithstanding that the first appointed relative had no control over the violation, due process problems have been recognized, though some courts have declined or failed to hold that such effect rendered a policy prohibiting nepotism invalid or unenforceable,[49] while in other cases, the courts have construed particular nepotism provisions so as not to apply to such situations.[50]

§ 103. —Construction.

A task often confronted by courts has been that of identifying the classes of relatives to which a law aimed at nepotism in the public service applies. Typically, such an issue is presented when the law prohibits an official from employing a relative within a certain numerical degree, by consanguinity or affinity, but fails to indicate how such degree is to be computed. Many courts have elected to use the so-called "civil-law" method, whereby, in general, one counts, beginning with one of the relatives, one degree for each level of the genealogical chart up to the common ancestor, and then one degree for each level downward until the other relative is reached.[51] Statutes may, of course,

done, the law would be absolutely void for attempting to make an act a crime when it was not a crime at the time the act was performed, in violation of a prohibition against ex post factor laws contained in both the state and federal constitution. Barton v Alexander, 27 Idaho 286, 148 P 471.

40. Keckeisen v Independent School Dist. (CA8 Minn) 509 F2d 1052, cert den 423 US 833, 46 L Ed 2d 51, 96 S Ct 57.

Annotation: 11 ALR4th 826, 843 § 6[a].

41. Opinion to House of Representatives, 80 RI 281, 96 A2d 623.

Annotation: 11 ALR4th 826, 845 § 6[b].

42. Backman v Bateman, 1 Utah 2d 153, 263 P2d 561.

Annotation: 11 ALR4th 826, 837 § 3[b].

43. Opinion to House of Representatives, 80 RI 281, 92 A2d 623.

Annotation: 11 ALR4th 826, 845 § 6[b].

44. Bretz v Center Line, 88 Mich App 451, 276 NW2d 617.

Annotation: 11 ALR4th 826, 842 § 5[b].

45. Bradford v Hammond, 179 Ga 40, 175 SE 18.

Annotation: 11 ALR4th 826, 845 § 6[b].

46. Opinion to House of Representatives, 80 RI 281, 96 A2d 623.

Annotation: 11 ALR4th 826, 842 § 5[b].

47. Backman v Bateman, 1 Utah 2d 153, 263 P2d 561.

Annotation: 11 ALR4th 826, 837 § 3[b].

48. Hinek v Bowman Public School Dist. (ND) 232 NW2d 72.

Annotation: 11 ALR4th 826, 837 § 3[b].

49. Lewis v Spencer (CA5 Tex) 468 F2d 553, conformed to (SD Tex) 369 F Supp 1219, aff'd (CA5 Tex) 490 F2d 93.

Annotation: 11 ALR4th 826, 836 § 3[a].

50. State ex rel. Stephens v Fletchall (Mo) 412 SW2d 423; New Mexico State Bd. of Education v Board of Education, 95 NM 588, 624 P2d 530; Hinek v Bowman Public School Dist. (ND) 232 NW2d 72.

Annotation: 11 ALR4th 826, 853 § 10[b].

51. Opinion of Justices, 291 Ala 581, 285 So 2d 87; Barton v Alexander, 27 Idaho 286, 148 P 471; Bailey v Turner, 108 Kan 856, 197 P 214.

Annotation: 11 ALR4th 826, 856 § 12.

specifically provide for computation by the civil law method.[52] Under the so-called "canon" or "common-law" method, which sometimes has been used, the computation begins with the common ancestor, counting one step for each level down the genealogical chart until reaching the relative who is the most remote from the common ancestor.[53] Although such definitions would technically fail to encompass as a relative one's spouse, in cases in which the issue has arisen, the spouse has been considered a relative within the nearest degree.[54] Moreover, interpretation of a "no-spouse" policy as including unmarried cohabitors living in an "espoused relationship" has been approved.[55] And where a nepotism law failed to specify any prohibited degree of relationship, the common-law rule pertaining to recusal of jurors, prohibiting relationships within the ninth degree according to the "civil-law" method, has been applied.[56]

It should be noted that courts in many cases have applied a nepotism law to an appointee or employee who had been first employed prior to any alleged act of nepotism.[57] However, an employee may not be terminated pursuant to a nepotism statute upon the election of her father to the local supervising board where the terms of the statute relate only to the initial hiring of such employees.[58]

Although it has been held that an anti-nepotism statute is penal in character and therefore to be strictly construed,[59] this common-law rule of construction has not been followed where the anti-nepotism statute itself makes the rule expressly inapplicable.[60]

52. Where a statute provides for computation by the civil law method, it has been held that two men who lacked a common ancestor but who married sisters were brothers-in-law who were related to each other in the second degree. State ex rel. Summer v Denton (Miss) 382 So 2d 461, 11 ALR4th 813.

53. Holt v Watson, 71 Ark 87, 71 SW 262.

Annotation: 11 ALR4th 826, 856 § 12.

54. State ex rel. Norman v Ellis, 325 Mo 154, 28 SW2d 363; State ex rel. Hoagland v School Dist., 116 Mont 294, 151 P2d 168.

Annotation: 11 ALR4th 826, 859 § 13[a].

However, where a state nepotism law prohibited a school board member from participating in contract decisions pertaining to persons to whom such member was related as father or brother, mother or sister, a court has held that it did not apply to spouses; reasoning from the rule that the expression of one thing implies the exclusion of another, the court rejected the argument that the rationale of the nepotism law required extension of its restrictions to the husband and wife relationship, remarking that the legislature did not so provide; the court said that it was not its province to legislate but only to interpret and apply the provisions of a law, and that where the language of such provision was clear and free from ambiguity, there was nothing to interpret or construe. Board of Education v Boal, 104 Ohio St 482, 135 NE 540.

55. Espinoza v Thoma (CA8 Neb) 580 F2d 346, 17 BNA FEP Cas 1362, 17 CCH EPD ¶ 8500.

Annotation: 11 ALR4th 826, 860 § 13[b].

56. Bailey v Turner, 108 Kan 856, 197 P 214.

Annotation: 11 ALR4th 826, 856 § 12.

57. Keckeisen v Independent School Dist. (CA8 Minn) 509 F2d 1062, cert den 423 US 833, 46 L Ed 2d 51, 96 S Ct 57; Lewis v Spencer (CA5 Tex) 468 F2d 553, conformed to (SD Tex) 369 F Supp 1219, affd (CA5 Tex) 490 F2d 93; Corbin v Special School Dist., 250 Ark 357, 465 SW2d 342; Bailey v Turner, 108 Kan 856, 197 P 214.

Annotation: 11 ALR4th 826, 850 § 10[a].

A tenured schoolteacher was properly denied re-employment under a nepotism statute providing that "no local school board shall employ or approve the employment of any person" within a prohibited degree of consanguinity or relationship to a local school board member, following the election of the teacher's father to the school board where the statute was not ambiguous, did not refer to re-employment as an exception, did not exempt tenured personnel from its provision and there was no evidence to indicate a legislative intent that the legislature had meant to so restrict the application of the statute. Board of Education v Bryant (App) 95 NM 620, 624 P2d 1017.

58. New Mexico State Bd. of Education v Board of Education, 95 NM 588, 624 P2d 530.

Annotation: 11 ALR4th 826, 853 § 10[b].

59. Baillie v Medley (Fla App D3) 262 So 2d 693, cause dismd (Fla) 279 So 2d 881.

60. State ex rel. Kurth v Grinde, 96 Mont 608, 32 P2d 15.

§ 104. —Effect.

Courts have on various occasions considered whether, where a public official did not act alone in appointing a relative to a public position and the law did not specifically indicate the effect of such joint action, the official's participation in employing or appointing his relative was sufficient to be a violation of the law. Such cases have been decided both with respect to a particular provision and with respect to a particular set of facts, with some cases holding that the official's participation was sufficient to establish a violation,[61] and other cases holding it was not.[62] In cases involving the effect of laws prohibiting nepotism, courts have determined that an appointing official was[63] or was not[64] required to be removed from office, or was[65] or was not[66] burdened with other sanctions. In such cases, courts have determined that an appointee or employee was[67] or was not[68] entitled to assume or to be reinstated to his position, or was[69] or was not[70] allowed to recover compensation. The results reached by the courts have depended upon such considerations as their

61. State ex rel. Graham v Hurley (Mo) 540 SW2d 20; State ex rel. Roberts v Buckley (Mo) 533 SW2d 551; State ex rel. McKittrick v Whittle, 333 Mo 705, 63 SW2d 100, 88 ALR 1099; State v Raedeker, 158 Okla 248, 13 P2d 148.

Annotation: 11 ALR4th 826, 860, 864 §§ 14[a], 15[a].

62. State ex rel. McKittrick v Becker, 336 Mo 815, 81 SW2d 948; State ex rel. Kurth v Grinde, 96 Mont 608, 32 P2d 15; Board of Education v Boal, 104 Ohio St 482, 135 NE 540; State ex rel. Hale v O'Meara (Tex Civ App) 74 SW2d 146.

Annotation: 11 ALR4th 826, 864, 867, 875 §§ 14[b], 16[a], 17[a].

63. Commonwealth ex rel. Stephens v Stephenson (Ky App) 574 SW2d 328; State ex rel. Roberts v Buckley (Mo) 533 SW2d 551; White v Gainer, 112 W Va 221, 164 SE 247.

Annotation: 11 ALR4th 826, 860 § 14[a].

Judge who voted for appointment of his son-in-law as director of county court's ambulance service was liable to ouster for having violated constitutional provision prohibiting nepotism even though his vote was not crucial in outcome. State ex rel. Graham v Hurley (Mo) 540 SW2d 20.

64. State ex rel. Hale v O'Meara (Tex Civ App) 74 SW2d 146.

Annotation: 11 ALR4th 826, 864 § 14[b].

Where worker had been employed in public service as bulldozer operator long prior to his brother's assumption of office of judge, nepotism law did not apply. State ex rel. Stephens v Fletchall (Mo) 412 SW2d 423.

65. State ex rel. Summer v Denton (Miss) 382 So 2d 461, 11 ALR4th 813; State v Raedeker, 158 Okla 248, 13 P2d 148.

Annotation: 11 ALR4th 826, 864 § 15[a].

66. Ex parte Rogers, 56 Idaho 521, 57 P2d 342; State ex rel. Summer v Denton (Miss) 382 So 2d 461, 11 ALR4th 813; Wayne County v Steele, 121 Neb 438, 237 NW 288; State v Raedeker, 158 Okla 248, 13 P2d 148.

Annotation: 11 ALR4th 826, 865 § 15[b].

67. Neal v Bethea, 158 Ark 403, 250 SW 336; State ex rel. Robinson v Keefe, 111 Fla 701, 149 So 638; State ex rel. McKittrick v Becker, 336 Mo 815, 81 SW2d 948; State ex rel. Kurth v Grinde, 96 Mont 608, 32 P2d 15; Hinek v Bowman Public School Dist. (ND) 232 NW2d 72.

Annotation: 11 ALR4th 826, 867 § 16[a].

68. Keckeisen v Independent School Dist. (CA8 Minn) 509 F2d 1062, cert den 423 US 833, 46 L Ed 2d 51, 96 S Ct 57; Lewis v Spencer (CA5 Tex) 468 F2d 553, conformed to (SD Tex) 369 F Supp 1219, affd (CA5 Tex) 490 F2d 93; Corbin v Special School Dist., 250 Ark 357, 465 SW2d 342; French v Board of Education, 54 Cal App 2d 148, 128 P2d 722; Whateley v Leonia Bd. of Education, 141 NJ Super 476, 358 A2d 826, 12 CCH EPD ¶ 11029; Rosenstock v Scaringe (3d Dept) 54 App Div 2d 779, 387 NYS2d 716, affd 40 NY2d 563, 388 NYS2d 876, 357 NE2d 347.

Annotation: 11 ALR4th 826, 870 § 16[b].

69. Garrison v Sumners, 24 Ala App 281, 134 So 672; Graham County v Buhl, 76 Ariz 275, 263 P2d 537; Brewer v Howell, 227 Ark 517, 299 SW2d 851; Board of Education v Boal, 104 Ohio St 482, 135 NE 540; State ex rel. Hamby v Cummings, 166 Tenn 460, 63 SW2d 515.

Annotation: 11 ALR4th 826, 875 § 17[a].

70. Corbin v Special School Dist., 250 Ark 357, 465 SW2d 342; Bailey v Turner, 108 Kan 856, 197 P 214; State ex rel. Hoagland v School Dist., 116 Mont 294, 151 P2d 168; Fairless v Cameron County Water Imp. Dist. (Tex Civ App) 25 SW2d 651.

Annotation: 11 ALR4th 826, 878 § 17[b].

determination whether the applicable nepotism law was constitutional,[71] whether its prohibitory provisions were applicable to the particular appointing official[72] or appointee[73] or employee[74] involved, as well as whether the circumstances of the case, including, for example, the extent of participation of the appointing official in the act of nepotism,[75] did[76] or did not[77] establish a violation of the applicable nepotism law.

In a number of other cases, courts have refused, when confronted with an appointment or employment violating a nepotism law, to declare invalid the official acts of the appointee,[78] or to preclude an employee from maintaining a common-law action against his employer for damages for personal injury.[79]

§ 105. Appointments made beyond term of appointer; prospective appointments.

A public officer or board holding over under a constitutional or statutory provision empowering public officers to hold, or discharge the duties of, the office until a successor has been elected and appointed and qualified, may validly make an appointment that will immediately take effect, notwithstanding that the appointing officer or board's own term of office has expired.[80] It has been held or recognized that a public officer, or public body, having a power of appointment may validly make a prospective appointment to fill a vacancy sure to occur in a public office where the appointing officer, or the board as then constituted, is empowered to fill the vacancy when it actually occurs, in

71. State ex rel. Hamby v Cummings, 166 Tenn 460, 63 SW2d 515.

Annotation: 11 ALR4th 826, 875 § 17[a].

A state constitutional provision that any public officer or employee who named or appointed to public office or employment any relative within fourth degree whether by blood or by marriage should forfeit his office was not impermissibly vague. State ex rel. Roberts v Buckley (Mo) 533 SW2d 551.

A city charter provision that no two or more persons who were related within second degree of consanguinity or affinity should be employed within same department of city was held not to violate state and federal constitutional guaranties of equal protection. Winrick v Warren, 99 Mich App 770, 299 NW2d 27.

72. Ex parte Rogers, 56 Idaho 521, 57 P2d 342.

Annotation: 11 ALR4th 826, 865 § 15[b].

73. Bailey v Turner, 108 Kan 856, 197 P 214; Perry Township School Dist. v Martin, 43 Pa Co 434.

Annotation: 11 ALR4th 826, 867, 878 §§ 16[a], 17[b].

State antinepotism law which by its terms was applicable to any "city official or his appointee," was not applicable to town officials or their appointees. Baillie v Medley (Fla App D3) 262 So 2d 693, cause dismd (Fla) 279 So 2d 881.

74. State ex rel. Robinson v Keefe, 111 Fla 701, 149 So 638; Hilbert v Conlon, 40 Pa Co 281.

Annotation: 11 ALR4th 826, 867 § 16[a].

75. State ex rel. Roberts v Buckley (Mo) 533 SW2d 551; State ex rel. McKittrick v Whittle, 333 Mo 705, 63 SW2d 100, 88 ALR 1099.

Annotation: 11 ALR4th 826, 860, § 14[a].

76. Keckeisen v Independent School Dist. (CA8 Minn) 509 F2d 1062, cert den 423 US 833, 46 L Ed 2d 51, 96 S Ct 57; Brewer v Howell, 227 Ark 517, 299 SW2d 851; Commonwealth ex rel. Stephens v Stephenson (Ky App) 574 SW2d 328; State ex rel. Graham v Hurley (Mo) 540 SW2d 20; White v Gainer, 112 W Va 221, 164 SE 247.

Annotation: 11 ALR4th 826, 860, 870 §§ 14[a], 16[b].

77. State ex rel. Stephens v Fletchall (Mo) 412 SW2d 423; State ex rel. Kurth v Grinde, 96 Mont 608, 32 P2d 15; Hinek v Bowman Public School Dist. (ND) 232 NW2d 72; State ex rel. Hale v O'Meara (Tex Civ App) 74 SW2d 146.

Annotation: 11 ALR4th 826, 864, 867 §§ 14[b], 16[a].

78. Jackson v Maypearl Independent School Dist. (Tex Civ App Waco) 392 SW2d 892.

Annotation: 11 ALR4th 826, 879 § 18.

79. Hallett v Stephens, 125 Okla 157, 256 P 921.

Annotation: 11 ALR4th 826, 879 § 18.

80. Tappy v State (Fla) 82 So 2d 161.

Annotation: 75 ALR2d 1277, 1280 § 2[a].

SB

187

Delivered To Senate Secretary

SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE

BILL NUMBER: SB187 REAL ESTATE DISCLOSURE
ABBREVIATED TITLE:

SPONSER: Sen L & C ORIGINAL RECEIVED: 4-11-91
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: DCCLic DATE: Will 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: B. L & C NOTICE OF HEARINGS GIVEN: 4-18-91
COMMITTEES OF REFERRAL: FIRST: L&C SECOND: JUD THIRD: _____

COMMITTEE ACTION

Legislative Draftsman Lenn Bannister

DATE:

April 23, 91 Heard - Be Amendment to replace "AIDS" with "Diseases prohibited by Fair Housing Act" adopted in principal. Realtors & Kristen to look at Death language & evaluate with under Alaska law.
May 7 CS Jud moved to Jud Rec
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

PERSONS TO BE NOTIFIED OF HEARING

1. SPONSOR
2. AGENCY
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

SENATE BILL 187
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

LETTER OF INTENT OF SENATE JUDICIARY COMMITTEE

It is the intent of this committee, by prohibiting liability for disclosures which would be contrary to the Federal Fair Housing Act of 1968 as amended, to protect real property owners and their agents from lawsuits regarding a failure to disclose the handicapped condition of any present or former owner or occupant of the real property.

It is this committee's intent to include in the meaning of "handicapped" those persons infected with or who have died from Human T-Lymphotropic Virus Type III - Lymphadenopathy Virus or Acquired Immune Deficiency Syndrome ["AIDS"]. This interpretation is consistent with federal law and is based in part on a recommendation of the General Counsel for the United States Department of Housing and Urban Development.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 187

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

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

BRU: Occupational Licensing

Component: Administration

Sponsor: Senate Labor & Commerce

Requestor: Senate Labor & Commerce

COMPONENT SERIAL NO. 0 3 5 6

Expenditures/Revenues: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

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

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

Division: Occupational Licensing Date: 3/22/91

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

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

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

Alaska State Legislature

WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3844

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99504
(907) 561-2018

SENATE LABOR AND COMMERCE COMMITTEE

TO: Senator Halford

FROM: Senator Drue Pearce

DATE: April 11, 1991

RE: Scheduling hearing of Psychologically Impacted Properties Bill (SB-187) in Senate Judiciary.

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

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

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

Senate Bill 187 will make the following three facts "immaterial".

1) The fact that a death occurred on the property more than three years from the date the buyer offers to buy or rent the property.

2) The manner in which the death occurred.

3) The fact that a former occupant had AIDs or an AIDs related virus.

Would you please schedule this bill for a hearing as soon a possible.

SB 187 -

Fed law precludes mention of provision occupant loosing AFDS. Fair Housing Act of 1988 -
Adams - See 804 F 2
? Add Hospitalization B ?

What about death before 3 years -
Ans - 3 years is arbitrary. Unreasonable to research beg longer period.

HUD Gen Counsel thinks Aids Discrimination is prohibited by Fair Housing.

Dr ——— Dir of Div of Public Health -

Rodey suggests - Block liability for complying with "Fair Housing Act" Dr ——— agree with this.

Did like to research the "Death" part as well.

Rodey - Mtn - Use "Fed Housing Act" language -

Sen Franks - Moves to Drop 3 year provision -

Wants w Rodey - on CL re Death - See Calif Case - See Alaska Cases -

Exemption from liability of seller
Purpose to protect seller

Ken Erickson
Sen. Pearce's office

7-LS0705\D

SENATE BILL NO. 187

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced: 3/11/91
Referred: L&C and Judiciary

A BILL

FOR AN ACT ENTITLED

"An Act relating to the disclosure of certain facts in real property transactions."

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

* Section 1. AS 09.45 is amended by adding a new section to article 9 to read:

Sec. 09.45.797. DISCLOSURE OF CERTAIN FACTS. (a) An owner of an interest in real property, the owner's agent, and the agent of the transferee of the interest are not liable to the transferee for the owner or agent's failure to disclose to the transferee that

(1) a person died upon the real property or that the person died in a particular manner, if the death occurred more than three years before the date the transferee offers to purchase, lease, or rent the interest in real property; or

~~(2) an occupant of the real property was or is infected with or died from human T-lymphotropic virus-type III-lymphadenopathy-virus or acquired immune deficiency syndrome.~~

(b) In this section, "transferee" includes a purchaser, lessee, and easement holder.

* Sec. 2. This Act does not apply to a failure to disclose information regarding an interest in real property unless the failure to disclose occurs on or after the effective date of this Act.

New Text Underlined [DELETED TEXT BRACKETED]

REALTOR®

Southeast Board of REALTORS®

P.O. Box 32646
Juneau, Alaska 99803-2646

April 29, 1991

Senator Rick Halford, Chairman
Senate Judiciary Committee
Alaska State Legislature

Dear Senator Halford,

On behalf of the ALASKA ASSOCIATION of REALTORS, this letter will serve as notice that our association does not object to the removal of subsection (1), lines 7,8, & 9 of Senate Bill No. 187.

Best regards,

Konrad B. Reinke

Konrad B. Reinke, President
Southeast Board of REALTORS

Conrad Reinke

ASHBURN AND MASON
LAWYERS
A PROFESSIONAL CORPORATION
1130 WEST SIXTH AVENUE, SUITE 100
ANCHORAGE, ALASKA 99501

MARK E. ASHBURN
LEWIS F. GORDON
JULIAN L. MASON III
JOHN C. McCARRON
DONALD W. McCLINTOCK III
A. WILLIAM SAUPE
KIRSTEN TINGLUM

TELEPHONE
(907) 276-4331

TELECOPIER
(907) 277-8235

Hand Deliver

January 30, 1990

Ms. Dea Turner
Alaska Association of Realtors
741 Sesame Street, Suite 100
Anchorage, Alaska 99503

Dear Dea:

Re: Proposed Legislation Regarding
Psychologically-Impacted Properties
Our File No. 90-7152.003

The following are three different drafts of proposed legislation regarding psychologically-impacted properties. I found three logical places for its insertion into the existing statutes: in the Real Estate Brokers and Salesmen Chapter (A.S. 08.88); in the Miscellaneous Chapter o the Code of Civil Procedure A.S. 09.65); and in the Real Property Chapter of the Code of Civil Procedure (A.S. 09.45). I doubt that insertion in all three places is necessary. I drafted each one a bit differently, to illustrate to you the various possibilities. The versions are generally interchangeable. I have highlighted "disposable portions." In no version did I include language that I consider to be unwise or overly ambiguous.

An Act Relating To Businesses and Professions --
Real Estate Brokers and Salesmen

IT IS ENACTED that:

Section 1, Title 8, Chapter 88 is amended to include Section .992:

.992 Duty to Disclose Certain Facts Regarding Real Property.

(a) Nothing in this chapter should be construed to impose a duty upon a real estate broker, agent, or salesperson to investigate or disclose the existence of the following facts or suspicions;

(1) that an occupant of real property is or was infected with Human Immunodeficiency Virus or diagnosed with Acquired Immune Deficiency Syndrome ("AIDS"), [or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted by occupying a building or dwelling]; or

(2) [that the real property was the site of a felony or suicide];

(b) no cause of action shall arise against the owner of real property or his or her agent for failure to disclose the facts or suspicions described in this section.

*** *** ***

IT IS ENACTED that:

Section 1, Title 9, Chapter 45, Article 9 is amended to include Section .796:

.796 Civil Liability for Failure to Disclose Certain Facts in Real Property Transactions.

(a) No cause of action shall arise against an owner of real property or the agent of such owner, or any agent for the transferee of real property, for the failure to disclose in any real property transaction the fact or suspicion that the property;

(1) was or is occupied by a person infected with [Human Immunodeficiency Virus or diagnosed with Acquired Immune Deficiency Syndrome ("AIDS")] [or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted by occupying a building or dwelling presently or previously occupied by an infected person], provided that;

(2) [an owner and his or her agent shall answer truthfully to the best of his or her knowledge any questions concerning the provisions of this section.]

*** *** ***

IT IS ENACTED that:

Section 1, Title 9, Chapter 65 is amended to include Section .112:

.112 Civil Liability for Failure to Disclose Certain Facts in a Real Property Transaction.

(a) No cause of action arises against an owner of real property or his or her agent, or any agent of a transferee of real property, for the failure to disclose to the transferee the occurrence of a person's death upon the real property or the manner of death [where the death occurred more than three years prior to the date the transferee offers to purchase, lease, or rent the real property]; or

(b) that an occupant of the property was or is affected with, or died from, Human T-lymphotropic Virus Type III-Lymphadenopathy Virus or Acquired Immune Deficiency Syndrome ("AIDS");

(c) as used in this section, "transferee" includes a purchaser, lessee, renter, or easement holder of or on real property;

(d) [nothing in this section shall be construed to immunize an owner or his or her agent from making an intentional misrepresentation in response to a direct inquiry from a transferee or prospective transferee of real property, concerning the conditions or events, facts or suspicions described in this section.]

I will be happy to discuss with you these alternatives at your earliest convenience.

Sincerely,

Kirsten Tinglum

jpv

Proposed

SENATE OF MARYLAND

11r0727 No. 131 N1
SB 668/90 - JPR

By: Senator Dorman
Introduced and read first time: January 9, 1991
Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Real Estate Brokers - Disclosures - History of Property

FOR the purpose of specifying that, for purposes relating to disciplinary actions against licensed real estate brokers, licensed real estate salespersons and applicants of certain licenses, certain facts are not material facts relating to property for sale or lease; providing immunity for a licensed real estate broker or licensed real estate salesperson and an owner or seller of real property for failure to disclose a fact that an owner or occupant of property is, was, or is suspected to be infected with a certain virus, diagnosed with a certain disease, or that certain acts occurred on the property; and generally relating to the disclosure of material facts relating to property for sale or lease.

BY adding to
Article - Business Occupations and Professions
Section 16-322.1
Annotated Code of Maryland
(1989 Volume and 1990 Supplement)

BY adding to
Article - Real Property
Section 2-120
Annotated Code of Maryland
(1988 Replacement Volume and 1990 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY C MARYLAND, That the Laws of Maryland read as follows:

Article - Business Occupations and Professions

16-322.1.

(A) FOR PURPOSES OF § 16-322(A) OF THIS SUBTITLE, IT IS NOT MATERIAL FACT RELATING TO PROPERTY OFFERED FOR SALE OR LEA THAT:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

(I) AN OWNER OR OCCUPANT OF THE PROPERTY IS, WAS, OR IS SUSPECTED TO BE:

(I) INFECTED WITH HUMAN IMMUNODEFICIENCY VIRUS; OR

(II) DIAGNOSED WITH ACQUIRED IMMUNODEFICIENCY SYNDROME; OR

(2) A HOMICIDE, SUICIDE, NATURAL DEATH, OR FELONY OCCURRED ON THE PROPERTY.

(B) (1) IT IS NOT GROUNDS FOR A DISCIPLINARY ACTION AGAINST A LICENSEE UNDER THIS SUBTITLE, THAT A LICENSEE DID NOT DISCLOSE TO A PROSPECTIVE PURCHASER OR LESSEE, A FACT CONTAINED IN SUBSECTION (A) OF THIS SECTION.

(2) A LICENSEE MAY NOT BE HELD PERSONALLY LIABLE FOR FAILURE TO DISCLOSE A FACT CONTAINED IN SUBSECTION (A) OF THIS SECTION.

Article - Real Property

2-120.

(A) UNDER THIS TITLE, IT IS NOT A MATERIAL FACT OR A LATENT DEFECT RELATING TO PROPERTY OFFERED FOR SALE OR LEASE THAT:

(1) AN OWNER OR OCCUPANT OF THE PROPERTY IS, WAS, OR IS SUSPECTED TO BE:

(I) INFECTED WITH HUMAN IMMUNODEFICIENCY VIRUS; OR

(II) DIAGNOSED WITH ACQUIRED IMMUNODEFICIENCY SYNDROME; OR

(2) A HOMICIDE, SUICIDE, NATURAL DEATH, OR FELONY OCCURRED ON THE PROPERTY.

(B) AN OWNER OR SELLER OF REAL PROPERTY OR THE OWNER'S OR SELLER'S AGENT SHALL BE IMMUNE FROM CIVIL LIABILITY OR CRIMINAL PENALTY FOR FAILURE TO DISCLOSE A FACT CONTAINED IN SUBSECTION (A) OF THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1991.

Vermont

S/P

BILL AS INTRODUCED
1991 (00518)

H.51
Page 1

H.51

Introduced by Representative O'Brien of Stowe

Referred to Committee on

Date:

Subject: Professions and occupations; real estate; disclosure

Statement of purpose: This bill proposes that real estate brokers and salespersons and sellers shall not be responsible for disclosing the fact that property has been occupied by a person with a disease which is unlikely to be transmitted through occupancy of the dwelling or that the property was the site of a felony or a suicide.

AN ACT RELATING TO DISCLOSURE OF INFORMATION IN A REAL ESTATE TRANSACTION

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 26 V.S.A. § 2302 is added to read:

§ 2302. FACTS NOT MATERIAL TO A REAL ESTATE TRANSACTION

(a) The following facts are not material to a real estate transaction, and failure to disclose such facts shall not be a violation of this chapter:

(1) The property is or was inhabited by a person infected with human immunodeficiency virus or diagnosed as having acquired immune deficiency syndrome, or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place.

(2) The property was the site of a felony or a suicide.

(b) No cause of action shall arise against an owner of real estate or his or her agent for the failure to disclose to the transferee the facts referred to in subsection (a) of this section.

MAR 1 8 199

REALTOR-®

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

March 13, 1991

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

Re: S.B. 187

Dear Senator Pearce:

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

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

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

Sincerely,

Dea Turner ap

Dea Turner
Executive Vice President

REALTOR®

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

DATE: March 18, 1991

TO. Senator Drue Pearce

FROM: Dea Turner
Executive Vice President

SUBJECT: S.B. 187

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

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

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

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

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

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

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

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

PSYCHOLOGICALLY IMPACTED PROPERTY

ISSUE

Disclosure of psychological impacts (stigmas) remains an important issue for real estate practitioners. The issue involves disclosure of facts about the owner or occupant of the property and not facts solely associated with the real estate itself.

The AIDS Crisis has been the driving force behind this complex issue causing the real estate practitioner to be placed in the difficult position between a seller's privacy and civil rights under Fair Housing, and the buyer's desire to know about an owner or occupant of the property being sold. In addition to AIDS, psychological impacts include: murder, suicide, criminal activity such as drug trafficking or prostitution which have, or are alleged to have, occurred on the property.

BACKGROUND

Much of the concern with the question of disclosure of psychologically impacted property began with a California court case that did not involve AIDS, but a home which was the site of a multiple murder. Reed v. King, 145 Cal. App. 3rd 261, 193 Cal Rptr. 130 (1983) involved a sale of a residence in which a woman and her four children had been murdered 10 years prior to the sale. Neither the seller nor his agent informed the buyer that the murders had taken place. Both the seller and agent represented that the house was in good condition and fit for an elderly lady living alone. After the buyer moved in, she was informed by the neighbors that no one had been interested in purchasing the property because of the stigma resulting from the murders. The buyer sued alleging the property was worthless because of the murders. The trial court dismissed the case. But on appeal, the court held that a vendor of real property has a duty to disclose to the buyer facts materially affecting the value of the property which the facts are known only to the vendor and are not readily detectable by the buyer.

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

NATIONAL ASSOCIATION OF REALTORS® POLICY

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

NATIONAL ASSOCIATION OF REALTORS® ACTIVITY

In addition to the policy statement, the NATIONAL ASSOCIATION OF REALTORS® has provided each state REALTOR® Association with the following model legislative language on Psychologically Impacted Property. The following language is proposed to be drafted into bill form appropriate to the legislative style of the state to amend the real estate license law.

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

(1) Section _____: The fact or suspicion that a property might be or is psychologically impacted, such impact being the result of facts or suspicions, including but not limited to :

(a) that an occupant of real property is, or was at any time suspected to be, infected or

has been infected with Human Immuno-deficiency Virus or diagnosed with Acquired Immune Deficiency Syndrome, or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place; or,

(b) that the property was, or was at any time suspected to have been, the site of a homicide, or other felony or a suicide;

is not a material fact that must be disclosed in a real estate transaction.

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

FEDERAL UPDATE

The Federal Fair Housing Act of 1968 amendments, effective March 12, 1989, include the handicapped, including persons with AIDS, as a new protected class. This means that real estate agents and brokers are prohibited from discriminating against this class of individual in the sale or rental of real property. Although the legislation does not directly address the issue of whether a real estate licensee can, without being specifically questioned by a potential buyer, disclose that an occupant of a property for sale had or was suspected to have AIDS, such a disclosure could be considered a discriminatory action which is clearly prohibited by the Federal Fair Housing Act. However, neither the Act nor the regulations issued by the Department of Housing and Urban Development (HUD), make clear a licensee's course of action if directly asked by a potential buyer whether the property has been the home of an AIDS victim.

NAR's Office of the General Counsel requested clarification of the regulations; however, the resulting correspondence has failed to specify when disclosure of a psychological impacts would be considered discriminatory.

CURRENT ACTIVITY ANALYSIS

14 States have passed legislation based on the NAR Model or relating to the issue of stigmatized property.

Florida, Hawaii, Illinois and Texas have enacted AIDS-only legislation; and California, Connecticut, Georgia, Nevada, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina and Utah have enacted legislation dealing with disclosure of all psychological impacts. The New Jersey real estate commission has also issued an advisory opinion on this issue.

Legislation on psychologically-impacted property disclosure is being considered in Alaska, Maryland, New Mexico and Vermont.

In late 1990, the Georgia Attorney General issued an opinion on the question of disclosure of stigmas associated with the sale of real property and the Georgia Legislature is considering legislation codifying his opinion. The Attorney General, in a response to a request from the Georgia Real Estate Commission, stated that "[s]ince the Fair Housing Act applies to persons with AIDS as handicapped individuals, a broker cannot disclose that the occupant of a dwelling has AIDS without running afoul of the Fair Housing Act."

In correspondence with NAR on this issue, HUD has suggested that disclosing that an owner or occupant has AIDS may violate the Fair Housing Act in some situations, but they have failed to delineate what circumstances would constitute a violation. As a result, NAR's Office of the General Counsel has suggested that Georgia's Attorney General's opinion would be in doubt in federal court because HUD has not gone as far in determining discrimination against persons with AIDS in real estate transactions. Therefore, while removing the section in Georgia's law that require a seller or a seller's agent to respond truthfully does not violate federal law, stating that such disclosure is a violation of the FHA is not supported by HUD's public statements.

A Quarterly Publication of the Office of the General Counsel

For The Record . . .

REALTOR®

Vol. 1 Fall 1990

HUD Says AIDS Disclosure Can Violate Title VIII

by Robert D. Butters, Deputy General Counsel

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

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

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

In This Issue:

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

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

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

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

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

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

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

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

Attention EOs!

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

AIDS Legislation

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

STATE RECAP

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

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

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

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

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

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

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

Director's Report

Between a Rock and a Hard Place

by Mary Bettis, The Bettis Co.

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

REALTORS FIND THEMSELVES BETWEEN A ROCK . . .

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

. . . AND A HARD PLACE

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

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

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

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

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

IS DISCLOSURE REQUIRED . . .?

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

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

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

OR IS DISCLOSURE PROHIBITED . . .?

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

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

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

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

NATIONAL ASSOCIATION OF REALTORS® POLICY

Psychologically Impacted Properties

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

NATIONAL ASSOCIATION OF REALTORS® ACTIVITY

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

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

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

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

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

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

SB

191

SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE

BILL NUMBER: SB 191
ABBREVIATED TITLE: Relating To Homestead Entry

SPONSER: Elaine Duncan etc ORIGINAL RECEIVED: March 13, 91
WRITTEN REQUEST TO SCHEDULE REC'D: Elaine FROM: March 21, 1991
SPONSER'S STATEMENT REC'D: _____ FROM: _____
SECTIONAL ANALYSIS RQST'D: _____ FROM: _____
SECTIONAL ANALYSIS RECEIVED: _____
FISCAL NOTE (ORIGINAL)
RQST'D OF: Elaine - Mary McDowell REC'D FROM: DNR DATE: 28 March 91
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: Mar 28, 91 NOTICE OF HEARINGS GIVEN: _____
COMMITTEES OF REFERRAL: FIRST: _____ SECOND: _____ THIRD: _____

COMMITTEE ACTION

DATE:
4-4-91 Heard - Need to Amend Sec 10 - Done - Passed with Pm to
New Sec 10. Memo to LAA 4-5-91 for CS final.
To Senate Sec. April 15, 1991

PERSONS TO BE NOTIFIED OF HEARING Dropped

1. SPONSOR Elaine
2. AGENCY
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

3-21-91 Mary McDowell will get fiscal note.
4916-

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 191

Revision Date: 19-Mar-91 Department Affected: Natural Resources

Title: Homestead Entry Program BRU: Land & Water

Components: Land & Water

Sponsor: Senator Ellason

Requestor: Senate Judiciary COMPONENT SERIAL NO. 431

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	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Gary Gustafson Phone: 762-2672

Division: Land & Water Date: 19-Mar-91

Approved by Commissioner: Harold Heinze Date: 19-Mar-91

Agency: Department of Natural Resources

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

REV 10/90

ALASKA STATE LEGISLATURE SENATE

SENATOR RICHARD I. ELIASON

PRESIDENT OF THE SENATE
LABOR & COMMERCE COMMITTEE
RESOURCES COMMITTEE
RULES COMMITTEE
CHAIRMAN, SPECIAL COMMITTEE ON DOMESTIC & INTERNATIONAL COMMERCIAL FISHERIES

P.O. BOX 143
SITKA, ALASKA 99835

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4916

FAX (907) 465-4928

M E M O R A N D U M

TO: Senator Rick Halford, Chairman
Senate Judiciary Committee

FROM: Senator Dick Eliason

DATE: March 18, 1991

RE: Scheduling of SB 191

I would like to request that SB 191 be scheduled for a hearing in your Judiciary Committee. The bill is aimed at correcting a few problems in the state's homesite program, primarily "house-keeping-type" problems that have arisen over things which were simply not anticipated when the program was established.

Some information regarding the bill is attached. If you need further information, please contact Mary McDowell of my staff.

Thank you.

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: Draft CSSB 191 (Judiciary)

TO: Senator Rick Halford, Chair
Senate Judiciary Committee
ATTN: Doug Baily

FROM: Jack Chenoweth
Legislative Counsel

I have prepared section 10 of the draft committee substitute in line with your instructions, but I take this opportunity to invite the committee to give further consideration to the effect of its decision.

It should be obvious that the Act applies to events that occur after the effective date of the Act. We don't usually draft and then, in a separate section, say that. Having said it in this bill, you invite litigants challenging this legislation (or other legislation that lacks this kind of statement) to question the validity of the Act. Also, your choice of language seems to raise a question as to whether or not other bill sections not mentioned in section 10 apply to new homesite patents and permits.

If the committee insists on abandoning the language of section 10 of the original and substituting something in line with your instruction, we would be more comfortable with:

> * Sec. 10. APPLICABILITY. This Act applies to homesite entry patents and permits issued on or after the effective date of this Act, and the following provisions of this Act apply retroactively to homesite entry patents and permits that are in effect on the effective date of this Act:
>
> ((setting out the list))

Thank you.

JC:gc
91-188.glc

Enclosure

SECTION 10 The provisions of Sections 1,2,3,5,7, of this Act apply to all homesite ~~entry patents and permits~~ that are in effect as of the effective date of this Act, as well as to homesite entry permits and patents issued after the effective date of this Act.

This new Sec 10 is adopted

Pass with Indiv. Recs.

Final Version

WORK DRAFT WORK DRAFT WORK DRAFT

7-LS0818\D
Chenoweth
3/1/91

SENATE BILL NO. SB 191

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR ELIASON, Duncan, Menard

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

"An Act relating to the homesite entry program; and providing for an effective date."

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

*** Section 1.** AS 38.08.040(c) is amended to read:

(c) The permit may not be assigned, conveyed, or in any manner transferred except by testate or intestate succession, to a spouse during marriage, by order of a court as part of a divorce **or dissolution of marriage** settlement, or to either a member of the immediate family or a grantee of the applicant in the case of an extreme emergency or illness that disables the applicant. An attempt to assign, convey, [OR IN ANY MANNER] transfer, **or acquire a** [THE] permit except as permitted by this subsection **or by (e) of this section** is void and constitutes a substantial breach of the permit.

*** Sec. 2.** AS 38.08.040(d) is amended to read:

(d) An applicant may apply for more than one available homesite. **Except as provided in (e) of this section,**

(1) a [A] person holding a homesite patent may not apply for a homesite entry

[New Text Underlined] [DELETED TEXT BRACKETED]

permit;

(2) [,] a person may not simultaneously hold more than one homesite entry permit; [,] and

(3) a person who is a member of the homesite entry permit holder's household may not be issued a homesite entry permit while a member of the homesite entry permit holder's household.

* **Sec. 3.** AS 38.08.040 is amended by adding a new subsection to read:

(e) The limitations against applying for or holding a homesite patent or homesite entry permit set out in (c) and (d) of this section do not apply to a homesite patent or homesite entry permit

(1) transferred by testate or intestate succession; or

(2) transferred with the approval of the director in the case of an extreme emergency involving a person applying for or holding a patent or permit or in the case of an illness that disables the person.

* **Sec. 4.** AS 38.08.060(a) is amended to read:

(a) A person who enters upon homesite entry land under a permit issued by the director shall be issued a patent to the land conveying an unencumbered title if that person

(1) occupies the land for a cumulative total of 35 months within the seven-year period following issuance of the homesite entry permit;

(2) erects a habitable, permanent, single-family dwelling on the homesite, **that** [WHICH] meets all applicable state and local regulations, within five years of the date of issuance of the homesite entry permit; for the purposes of this paragraph, **a** mobile **home is** [HOMES ARE] not considered to be **a** permanent **dwelling** [DWELLINGS] unless **it is** [THEY ARE] placed on **and permanently attached to** a permanent foundation;

(3) reimburses the state for the survey and platting undertaken in accordance with this chapter; the director shall provide by regulation for installment payments of this requirement.

* **Sec. 5.** AS 38.08.060(c) is amended to read:

(c) **Except as provided in (f) and (g) of this section, a** [A] person

(1) may not be issued more than one patent during a lifetime;

(2) [, NOR MAY ANY PERSON] who is a member of a patent holder's household **may not** be issued a **permit** [PATENT] while a member of the patent holder's

household.

* **Sec. 6.** AS 38.08.060(d) is amended to read:

(d) If a dwelling is found to have been substantially completed under **AS 38.08.100(1)** [AS 38.08.100], patent shall be issued upon completion of the dwelling **if that completion meets the requirements of AS 38.08.100(2)**, notwithstanding (a)(2) of this section.

* **Sec. 7.** AS 38.08.060 is amended by adding new subsections to read:

(f) Notwithstanding (c) of this section, an applicant who inherits the homesite entry permit of another applicant may

(1) qualify under this section for each homesite entry;

(2) use the efforts of the deceased applicant to qualify for the patent to the inherited entry; and

(3) be issued a patent under this section.

(g) The limitations against applying for or holding a homesite patent or homesite entry permit set out in this section do not apply to a homesite patent or permit

(1) transferred by testate or intestate succession; or

(2) transferred with the approval of the director in the case of an extreme emergency involving a person holding a patent or permit or in the case of an illness that disables the person.

* **Sec. 8.** AS 38.08.100 is amended to read:

Sec. 38.08.100. **REVOCATION OF ENTRY PERMIT** [SUBSTANTIAL COMPLETION OF DWELLING]. **The director may revoke a homesite** [AN] entry permit [MAY NOT BE REVOKED] for failure to

(1) erect a dwelling in the time required under AS 38.08.060(a)(2) **unless** [IF] the director finds that erection of the dwelling has been substantially completed and progress toward completion is being made at the expiration of the time required**; or**

(2) convert a substantially completed dwelling for which an exception has been made under (1) of this section into a habitable permanent dwelling within one year after the deadline set out in AS 38.08.060(a)(2).

* **Sec. 9.** Section 87, ch. 152, SLA 1984 is amended to read:

Sec. 87. For homesite entry permits issued by the commissioner of natural resources under AS 38.08.040 before July 1, 1983, the director

(1) may

(A) grant the person [MAY BE GRANTED] 10 years to accumulate the 35 months of residence required under AS 38.08.060(a)(1);

(B) grant the person [AND MAY BE GRANTED] eight years to erect a habitable, permanent, single family dwelling on the homesite as required under AS 38.08.060(a)(2);

(2) shall revoke a homestead entry permit for failure

(A) to erect a dwelling in the time required by (1)(B) of this section unless the director finds that erection of the dwelling has been substantially completed and progress toward completion is being made at the expiration of the time required;

(B) to convert a substantially completed dwelling for which an exception has been made under (1) of this section into a habitable permanent dwelling within one year after the deadline set out in (A) of this paragraph.

*** Sec. 10.** The provisions of this Act apply to all homesite entry patents and permits that are in effect as of the effective date of this Act.

*** Sec. 11.** This Act takes effect July 1, 1991.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

April 3, 1991

The Honorable Rick Halford, Chair
Senate Judiciary Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Halford:

Subject: SB 191, which corrects inequities and administrative problems in the department's homesite entry land disposal program.

Position: The Department of Natural Resources supports this bill.

Background: The state's homesite program allows state residents of at least 18 years of age to apply for a permit to occupy and improve a homesite parcel in order to qualify for patent to the land. Only one homesite parcel is allowed per person and per household. To receive patent to the land, the applicant must erect a permanent, habitable dwelling within five years of receiving the permit and live on the land for 35 months within a seven year period. Five percent of the fair market value of the land may be paid to the state as a substitute for the 35 month living requirement.

In administering the department's homesite entry land disposal program, a number of inequities and administrative problems have come to light, including: inheritance of permits, transfer of permits, more than one permit per household because of divorce and remarriage, the deadline for building a structure on the homesite, and when deadline extensions may be granted. This bill would address these inequities and problems.

Please let me know if you have questions about this matter.

Sincerely,

Harold C. Heinze

Harold C. Heinze
Commissioner

enclosures

cc: Senator Elias
Senator Duncan
Senator Menard
Committee Members
Bruce Kendall, Legislative Liaison, Office of the Governor

10-J9.LH

SB 191 Analysis

Section 1: Allows a permit to be transferred as part of the dissolution of a marriage; also allows a permit to be inherited.

Section 2: Allows a person to hold a permit to more than one homesite because of an inheritance, or because of a disabling injury to the original permit holder.

Section 3: New language needed to implement Sections 1 and 2.

Section 4: Amends the existing building requirement to ensure that dwellings are permanently attached to a permanent foundation. Mobile homes have, in the past, been placed on foundations to meet building requirements, and then removed once the department completed its inspection. Under this new language, mobile homes would still be allowed, but they would need to be permanently attached to a permanent foundation.

Section 5: Allows permit holders who marry after receiving their permits to both obtain title to homesteads. Currently, only one patent per household is allowed.

Section 6: Allows an applicant to obtain title to a homesite if the building requirements, as clarified by this bill, are met.

Section 7: Allows the applicant to obtain title to more than one homesite by inheritance and use the efforts of the deceased applicant to qualify for the homesite, or receive title if the permit was obtained from a disabled permit holder. (This is similar to Sections 1 and 2, but relates to obtaining title to the land. Sections 1 and 2 relate to holding the permit.)

Section 8: Amends the current law to allow an applicant an additional year to complete a dwelling if the director finds that a dwelling has been substantially completed within 5 years, but is not yet habitable. This would make the homesite program consistent with the homestead program (AS 38.09.040(a)(3)).

Section 9: Provides the same building requirement opportunities to applicants who received their entry permits prior to July 1, 1983 as is currently provided to applicants.

Section 10: Makes the provisions of this bill apply to anyone who currently holds a homesite entry permit.

Section 11: Adds an effective date of July 1, 1991 for the bill.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 191

Revision Date: 19-Mar-91
Department Affected: Natural Resources
Title: Homestead Entry Program
BRU: Land & Water
Components: Land & Water
Sponsor: Senator Eliason
Requestor: Senate Judiciary
COMPONENT SERIAL NO. 431

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	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Gary Gustafson
Phone: 762-2672
Division: Land & Water
Date: 19-Mar-91

Approved by Commissioner: Harold Heinze
Date: 19-Mar-91
Agency: Department of Natural Resources

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

REV 10/90

Sectional analysis of proposed homesite legislation

The changes proposed in this legislation are omnibus in nature. The are aimed to fix inequities in who may obtain permits and patents. The legislation also fixes several problems in how the program is administered. The following is a sectional analysis of this legislation.

Section 1. Allows permits to be transferred as the result of a dissolution of marriage and for a permit to be inherited.

Section 2. Allows a person to hold a hold a permit to more than one homesite in the case of inheritance, or disabling injury to the original permit holder.

Section 3. New language that implements Section 1 and 2.

Section 4. Amends the building requirement to ensure that dwellings and permanently attached to a permanent foundation. There have been numerous occasions where people placed a mobile home on a foundation then would easily remove the mobile home after the site was inspected. The use of mobile homes would still be permitted but they would have to be permanently attached to a foundation. The intent is that the permit holder actually use the site as a homesite.

Section 5. Allows permit holders who later marry to both obtain title to their homesites. The present law says only one patent per household. However, the permit for both permit holders were legally obtained before they married.

Section 6. Allows applicants to obtain title to their homesite if they meet building requirements. The building requirements are described in Section 8 of this legislation.

Section 7. This is new language that allows an applicant to obtain title to more than one homesite if obtained by inheritance, use the efforts by the deceased applicant to qualify, and obtain title if the permit was obtained from a disabled permit holder. This is essentially the same language as Section 1 and 2 but this deals with obtaining title while Section 1 and 2 deal with holding a permit. This change makes the homesite program consistent with the homestead program (AS 38.09.030(c)).

Section 8. This amends the current law to allow an applicant an additional year to complete a dwelling if the director finds that a dwelling has been substantially completed, but not yet habitable, within 5 years. This change would make the homesite program consistent with the homestead program (AS 38.09.040(a)(3)).

Section 9. Provides the same building requirment opportunity to applicants who received their entry permits previous to July 1, 1983. The building requirement was changed from 8 years to 5 years at that time.