

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7581 SENATE LABOR & COMMERCE

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ALASKA STATE LEGISLATURE
HOUSE BILL NO. 18

HISTORY IN THE HOUSE

1991
1/21 Read first time and referred to:
HES Jud Fin

2/20 HES RPT CS(HES) New Title
4 DP DNP NR AM
 FN OFN Previous FN

3/13 Jud RPT CS(Jud) New Title
5 DP DNP NR AM
 FN OFN Previous FN

4/17 Fin RPT CS(Fin) New Title
9 DP DNP 2 NR AM
 FN OFN Previous FN

4/19 returned to Rules
4/17 Read second time
CS(Fin) Adopted

Amended

4/17 file to Advance -
Advanced

4/19 Read third time

1992
2/19 Read third time again
2/19 Return to second for specific amendment
2/19

3/13 HES RPT CS(Ld HES) New Title
4 DP DNP 1 NR AM
1 FN OFN Previous FN

4/16 RLS RPT CS(RLS) New Title
2 DP DNP 5 NR AM
 FN OFN 1 Previous FN

Read second time
CS() Adopted

Amended

Advanced

4/28 Read third time

4/28 Return to second ~~for specific amendment~~
to adopt 2nd RLS CS
and Court RLS

4/28 PASSED EFD Same
Yeas 36 Yeas
Nays 8 Nays
Excused 1 Excused
Absent 3 Absent

HISTORY IN THE SENATE

1992
4/28 Read first time and referred to:
Jud Fin

RPT() CS DP NR DNP AM
New Title Same Title Previous FN
FN OFN To

RPT() CS DP NR DNP AM
New Title Same Title Previous FN
FN OFN To

RPT() CS DP NR DNP AM
New Title Same Title Previous FN
FN OFN To

Rules Calendar() CS AM Other
New Title Same Title Previous FN
FN OFN

Read second time

CS Adopted () New Title
Amended Advanced

Read third time

Letter of Intent adopted
Return to second for specific amendment

PASSED EFD Same or
Yeas Year
Nays Nays
Excused Excused
Absent Absent

Reconsideration
Reconsideration not taken up

PASSED EFD Same or
Yeas Year
Nays Nays
Excused Excused
Absent Absent

Reported correctly engrossed
Signed by President, to the House

Secretary of the Senate

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

No. 3
Version: 2dCSHB 18(2dHES)
Publish Date: 3-13-92

Revision Date: _____ Department Affected: Commerce & Economic Development
Title: An Act relating to professional licensing and amending Alaska Rule of Evidence 504(a)(3);... BRU: Occupational Licensing
Sponsor: Reps. Gruenberg, et al Component: Administration
Requestor: House HES COMPONENT SERIAL NO.

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

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	3.8	3.8	3.8	3.8	3.8	3.8
TRAVEL	9.8	9.8	7.4	7.4	7.4	7.4
CONTRACTUAL	10.9	10.9	10.9	10.9	10.9	10.9
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	25.5	25.5	23.1	23.1	23.1	23.1

CAPITAL						
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REVENUE	51.0		46.2		46.2	
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER - GF/PR	25.5	25.5	23.1	23.1	23.1	23.1
TOTAL	25.5	25.5	23.1	23.1	23.1	23.1

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

2d CSHB 18(2d HES) establishes a five-member Board of Marital and Family Therapy for one year to establish examination, training and education requirements for entry into the profession, and to license qualified individuals. The bill also extends the Board of Psychology and Psychological Associates for one year and amends AS 08.86.162.

Prepared By: Jennifer Strickler Phone: 465-2144

Division: Occupational Licensing Date: 03/11/92

Approved by Commissioner: Glenn A. Olds

Agency: Commerce & Economic Development Date: 2-11-92

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

CONTINUATIO.. OF FISCAL NOTE ANALYSIS - d CSHB 18(2d HES)

This fiscal note represents the cost of licensing marital and family therapists with a five-member board, and based on an estimated 40 practitioners who would seek and qualify for licensure. Program costs are based on the number of licensees and statutory requirements in the bill. The following is an explanation of program-related costs:

PERSONAL SERVICES \$ 3.8

To provide administrative staff support.

TRAVEL \$ 9.8

In FY 93, this funding will provide two face-to-face meetings, one in Anchorage and one in Juneau, assuming two members are from the Anchorage area, two from Juneau, one from Fairbanks; and three division staff (Director, Licensing Examiner, and Regulations Specialist) to attend each meeting. This funding will also provide for administration of licensing examinations in various locations.

(This cost is lower than the amount shown on previous fiscal notes as a result of changes in State per diem policies, mainly that travellers are now entitled only to a prorated per diem on the first and last day of travel.)

Because of the newness of the licensing program, the FY 94 funding continues to provide for two board meetings if needed and travel to administer licensing examinations.

In FY 95 forward, the licensing program will have been in operation for two years, and therefore, require fewer meetings to conduct its business. The number of board meetings is reduced to one meeting each year. This funding will also provide travel to administer the licensing examination in various locations. (\$7.4)

CONTRACTUAL \$ 10.9

This funding provides for printing, advertising, postage and communication costs.

SUPPLIES \$ 1.0

Funding will provide standard office supplies.

Grand Total: \$ 25.5

REVENUE

no. 3
2d CS4B 18 (2d HES)

Since the estimated number of practitioners are small (40 individuals), licensing fees will be high if this program is expected to entirely fund its activities with general fund/program receipts. The division will work with supporters of the program to ensure licensing fees support entire costs of this program. Licenses are issued for a two-year period and therefore, revenues are shown every other year. Because of the staggered renewal cycle of all licensing programs, costs incurred in a non-renewal year will be covered by occupations renewing in that year. Likewise, revenues generated by this program during a renewal year will do the same for other licensing programs not renewing that year. The main objective is to ensure that fees collected from this program is sufficient to cover the average program costs.

AS 08.01.063(c), Fees established by regulation provide that the "department may establish a fee that is less than the cost of the activity for which the fee is charged if the department determines that it is not reasonable to impose the full cost of the activity on the applicant or licensee."

WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 28, 1992

Paul Fuhs
Legislative Liaison
Office of the Governor
Juneau, AK 99801-0001

Dear Paul,

This morning the Governor's Task Force on Boards and Commissions voted to recommend the establishment of a separate board for marital and family therapists.

The board must pay all of its expenses, including the overhead costs of services provided by the Division of Occupational Licensing. The sunset clause on the board should be either three or four years, in order to coincide with the sunset year of the Board of Psychologist and Psychological Associate Examiners and the Board of Clinical Social Work Examiners, should the legislature choose to combine these boards in the future.

Sincerely,



Tuckerman Babcock
Chair
Governor's Task Force on
Boards and Commissions

State of Alaska

House Majority Leader

COMMITTEES

HOUSE JUDICIARY

HOUSE RULES

HOUSE STATE AFFAIRS

SPECIAL COMMITTEE

MILITARY AND VET. AFFAIRS

LEGISLATIVE COUNCIL



Representative Max F. Gruenberg, Jr.

District 11

Spenard, Upper Midtown Anchorage

P.O. Box V
JUNEAU, AK 99811
(907) 465-3718
465-4968/4986
(SESSION)

3111 C STREET, SUITE 440
ANCHORAGE, AK 99503
(907) 561-7621

M E M O R A N D U M

DATE: April 30, 1992

TO: Members of the Senate Labor and Commerce Committee

FROM: Representative Max Gruenberg, *MM*

RE: Support for 2d CSHB 18 (Rules), "The of Licensing of Marital and Family Therapists Bill."

I would very much appreciate your support for 2d CSHB 18 (Rules), "The Licensing of Marital and Family Therapists Bill".

2d CSHB 18 (Rules) will protect the public by providing standards and regulation for those who wish to become licensed marital and family therapy practitioners in this state.

The Marital and Family provisions in this new draft of HB 18 are exactly the same as the version of SB 40 which passed the legislature and was vetoed last year, except that under this bill the Board of Marital and Family Therapists has been given a one year sunset date.

The House Hess Committee amended the bill to extend the Board of Psychologists for one year. The title of the bill has been broadened, and the House Rules added a provision to delete an impractical requirement in the acupuncturist licence renewal statutes.

The primary purpose for moving this new draft is to provide a vehicle for marital and family therapists to become licensed regardless of what is finally worked out regarding the extension or merger of other behavioral science boards.

If you have any questions, please call me or my Legislative Assistant, Mark Handley, at 465-4968.

Thank you very much.

HB18.SUP\MTH

SPONSOR PACKED

State of Alaska

House Majority Leader

COMMITTEES

HOUSE JUDICIARY

HOUSE RULES

HOUSE STATE AFFAIRS

SPECIAL COMMITTEE

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M E M O R A N D U M

TO: Representative Max Gruenberg

FROM: Mark Handley *MCH*

DATE: April 24, 1992

RE: Sectional Analysis of CSHB 18 (Rules), "An Act relating to professional licensing and amending Alaska Rule of Evidence 504(a)(3); and providing for an effective date."

Following is a sectional analysis of 2d CSHB 18 (Rules):

Sec. 1. Amends the acupuncturist renewal of licence statues to delete the requirement that applicants be certified by the National Council for Certification of Acupuncturists.

Sec. 2. Article 1 establishes the Board of Marital and Family Therapy and sets out its powers and duties.

Article 2 describes the various types of licenses that can be issued by the board and sets out the requirements that must be met for each type of license.

Article 3 contains general provisions relating to fees, confidentiality of communications, and imposition of disciplinary sanctions. It also provides that, unless a person is licensed by the board, the person may not hold himself or herself out to be a licensed marital and family therapist. The bill does not require a person to be licensed in order to practice in the profession.

Sec. 3. Adds the Board of Marital and Family Therapists to the list of boards in AS 08.01.010, which controls the applicability of the central licensing chapter.

Sec. 4. Adds licensed marital and family therapists to the listing in AS 8.02.010, which provides for professional designation requirements.

Sec. 5. Extends the Board of Psychologists until June 30 1993.

Sec. 6. Adds the Board of Marital and Family Therapists to the list of boards in AS 08.03.010, sunseting it in 1993.

Sec. 7. Increases the graduate credit hour equivalency requirement for psychological associates from 24 to 48 hours.

Sec. 8. Adds the Board of Marital and Family Therapists to the list of agencies governed by the Administrative Procedure Act.

Sec. 9. Adds licensed marital and family therapists to the list of persons required to report suspected child abuse.

Sec. 10. Adds licensed marital and family therapists to the list of persons required to report suspected elder abuse.

Sec. 11. Adds licensed marital and family therapists to the list of persons required to report suspected abuse of a disabled adult.

Sec. 12. Adds communications between a patient and a marital and family therapist to the privileged communications excluded under Evidence rule 504(a)(3).

Sec. 13. Provides for initial appointees to the Board of Marital and Family Therapists.

Sec. 14. The Board of Marital and Family Therapists "Grandfather" provision.

Sec. 15. Exempts this bill from the requirements of a statute relating to legislation regarding occupational boards.

Sec. 16. Provides for an immediate effective date for the sections of the bill that relate to the Board of Psychologists.

HB18SEC.LEG\MTH

HB 18: Proposed Amendment to AS 08.06.040

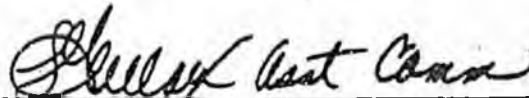
This amendment eliminates the requirement for an acupuncturist to maintain certification as a diplomate of the National Council for the Certification of Acupuncturists before renewal of their license.

Several licensees have stated difficulty in communicating with this organization. Also, they feel that they should have freedom of choice as to which trade association they join. Licensees feel it would be better for the department to develop criteria for continuing education, if it is deemed necessary.

With the short time remaining before renewal (September 30, 1992), it is doubtful the requirements can be met. This would place an undue burden on licensees who have invested time and money into establishing a practice, received initial licensure, but would not be allowed to continue practicing.

The department has also experienced difficulty in having the National Council clarify its requirements.

The department supports this amendment.



Glenn A. Olds, Commissioner

Date:

6.10.92

HB 18

DRAFT

**HOUSE RULES COMMITTEE
APRIL 15, 1992**

Number 2808

Rep. Gruenberg explained that the members had the second HESS CS before them, in which the title was broadened to allow other professions to be included, that it is an act relating to professional licensing. He further explained that he was approached by MS. ANN BOUDREAUX, on behalf of the acupuncturists who had a technical problem with one statute having to do with renewal of license. He pointed out that the amendment eliminates the requirement for an acupuncturist to maintain certification as a diplomat of the national Council for the Certification of Acupuncturists before renewal of their license. After lengthy discussion, Rep. Gruenberg moved the amendment. With no objection, it became the Rules Committee Substitute.

counting or auditing; a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the issuer is a certified public accountant or auditor, or from the language of the report itself; "report" includes any form of language that disclaims an opinion when the form of the language is conventionally understood to imply a positive assurance as to the reliability of the financial statements referred to or special competence on the part of the person or firm issuing the language; and "report" includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence; "report" does not include compilation of financial statement language that does not express or imply assurance or special knowledge or competence. (§ 21 ch 187 SLA 1960; am §§ 13, 14 ch 82 SLA 1980; am § 4 ch 59 SLA 1982; am § 7 ch 14 SLA 1987; am § 18 ch 62 SLA 1991)

Effect of amendments. — The 1987 amendment substituted "In this chapter" for "As used in AS 08.04.010 — 08.04.690" in the introductory language and added paragraph (4).

The 1991 amendment, effective September 16, 1991, added paragraphs (5) and (6).

Sec. 08.04.690. Short title. This chapter may be cited as the Accountancy Act. (§ 1 ch 167 SLA 1960; am § 5 ch 127 SLA 1974; am § 26 ch 147 SLA 1976)

Chapter 06. Acupuncture.

Section	Section
10. Practice of acupuncture without license prohibited	70. Grounds for imposition of disciplinary sanctions
20. Application for license	80. Exemption
30. License to practice acupuncture	90. Penalty
40. Renewal of license	100. Regulations
50. Disclosure	190. Definitions
60. Restrictions on practice of acupuncture	

Cross references. — For legislative purpose in enacting this chapter, see § 1, ch. 6, SLA 1990.

Collateral references. — Acupuncture as illegal practice of medicine. 72 ALR3d 1257.

Sec. 08.06.010. Practice of acupuncture without license prohibited. A person may not practice acupuncture without a license. (§ 2 ch 6 SLA 1990)

Sec. 08.03.020. Application for license. A person desiring to practice acupuncture shall apply in writing to the department. (§ 2 ch 6 SLA 1990)

Sec. 08.06.030. License to practice acupuncture. (a) A person is qualified to receive a license to practice acupuncture if the person

- (1) is of good moral character;
- (2) is at least 21 years of age;
- (3) either

(A) has completed a course of study consistent with the core curriculum and guidelines of the National Council of Acupuncture Schools and Colleges at a school of acupuncture approved by the department; or

(B) is licensed to practice acupuncture in another jurisdiction that has acupuncture licensing requirements equivalent to those of this state;

(4) is qualified for certification by the National Council for the Certification of Acupuncturists as a diplomate in acupuncture;

(5) does not have a disciplinary proceeding or unresolved complaint pending at the time of application; and

(6) has not had a license to practice acupuncture suspended or revoked in this state or in another jurisdiction.

(b) The department shall issue a license to practice acupuncture to each person who is qualified and who pays the appropriate fee.

(c) Each person licensed to practice acupuncture under this chapter shall display the license in a conspicuous place where the licensee practices. (§ 2 ch 6 SLA 1990)

Sec. 08.06.040. Renewal of license. The department may not renew a license under this chapter unless the applicant

(1) demonstrates continued competence as an acupuncturist in a manner established by the department in regulations; and

(2) submits proof that the applicant maintains certification by the National Council for the Certification of Acupuncturists as a diplomate of acupuncture. (§ 2 ch 6 SLA 1990)

Sec. 08.06.050. Disclosure. (a) A person who practices acupuncture shall disclose that the person's training and practice are in acupuncture

(1) to each patient; and

(2) on all material used in the practice of acupuncture and made available to patients or to the public.

(b) A person who practices acupuncture without being covered by malpractice insurance shall disclose to each patient that the person does not have the insurance. (§ 2 ch 6 SLA 1990)

Sec. 08.06.060. Restrictions on practice of acupuncture. A person who practices acupuncture may not

- (1) give, prescribe, or recommend in the practice a
 - (A) prescription drug;
 - (B) controlled substance;
 - (C) poison;
- (2) engage in surgery; or
- (3) use the word "physician" in the person's title unless the person is also licensed as a physician. (§ 2 ch 6 SLA 1990)

Sec. 08.06.070. Grounds for imposition of disciplinary sanctions. After a hearing, the department may impose a disciplinary sanction on a person licensed under this chapter when the department finds that the licensee

- (1) secured a license through deceit, fraud, or intentional misrepresentation;
- (2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities;
- (3) advertised professional services in a false or misleading manner;
- (4) has been convicted of a felony or other crime that affects the licensee's ability to continue to practice competently and safely;
- (5) intentionally or negligently engaged in patient care, or permitted the performance of patient care by persons under the licensee's supervision, that does not conform to minimum professional standards regardless of whether actual injury to the patient occurred;
- (6) failed to comply with this chapter, with a regulation adopted under this chapter, or with an order of the department;
- (7) continued to practice after becoming unfit due to
 - (A) professional incompetence;
 - (B) failure to keep informed of current professional practices;
 - (C) addiction to or severe dependency on alcohol or other drugs that impairs the ability to practice safely;
 - (D) physical or mental disability; or
- (8) engaged in lewd or immoral conduct in connection with the delivery of professional service to patients. (§ 2 ch 6 SLA 1990)

Sec. 08.06.080. Exemption. This chapter does not apply to a person who practices acupuncture under AS 08.36 or AS 08.64. (§ 2 ch 6 SLA 1990)

Sec. 08.06.090. Penalty. A person who violates this chapter or a regulation adopted under this chapter is guilty of a class B misdemeanor. (§ 2 ch 6 SLA 1990)

Sec. 08.06.100. Regulations. The department may adopt regulations to implement this chapter, including regulations establishing

- (1) standards for the practice of acupuncture;
- (2) standards for continuing education and training;
- (3) a code of ethics for the practice of acupuncture. (§ 2 ch 6 SLA 1990)

Sec. 08.06.190. Definitions. In this chapter

(1) "acupuncture" means a form of healing developed from traditional Chinese medical concepts that uses the stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions;

(2) "department" means the Department of Commerce and Economic Development;

(3) "practice of acupuncture" means the insertion of sterile acupuncture needles and the application of moxibustion to specific areas of the human body based upon acupuncture diagnosis; the practice of acupuncture includes adjunctive therapies involving mechanical, thermal, electrical, and electromagnetic treatment and the recommendation of dietary guidelines and therapeutic exercise. (§ 2 ch 6 SLA 1990)

Chapter 08. Attorneys.

Article

1. The Alaska Bar Association (§§ 08.08.010, 08.08.020)
2. The Board of Governors and Officers (§§ 08.08.030 — 08.08.100)
3. Admission to Alaska Bar (§§ 08.08.136 — 08.08.207)
4. Unlawful Acts (§§ 08.08.210, 08.08.230)
5. General Provisions (§ 08.08.250)

Cross references. — For additional provisions relating to the practice of law in Alaska, see the Alaska Bar Rules, the Bylaws of the Alaska Bar Association, and the Code of Professional Responsibility in the Alaska Rules of Court.

NOTES TO DECISIONS

Power of state. — A state has a substantial interest in regulating the practice of law within its boundaries, and a state has broad power to establish standards for the licensing of legal practitioners. In re Urie, 617 P.2d 505 (Alaska 1980).

Collateral references. — 7 Am. Jur. 2d, Attorneys at Law, §§ 1, 2, 7. without charges against particular members. 60 ALR 860.

7 C.J.S., Attorney and Client, §§ 3, 11, 12, 19. Court's power to promulgate rules providing for integration of state bar. 114 ALR 163; 151 ALR 617.

Court's power to conduct general investigation of practices of members of bar. Compulsory membership in state bar. 114 ALR 165; 151 ALR 617.

HB 18 MARRIAGE & FAMILY THERAPISTS

"An Act regulating the practice of marital and family therapy; and amending Alaska Rule of Evidence 504(a)(3)."

SPONSOR(S): REPRESENTATIVE(S) GRUENBERG, M.A.Miller, Carney, B.Davis

HB 18 Bill History

Jrn-Date	Page	Action
01/11/91	0020	(H) PREFILE RELEASED
01/21/91	0020	(H) READ THE FIRST TIME - REFERRAL(S)
01/21/91	0020	(H) HES, JUDICIARY, FINANCE
02/19/91	0261	(H) COSPONSOR(S): M.A.MILLER
02/20/91	0272	(H) HES RPT CS(HES) NEW TITLE 4DP
02/20/91	0272	(H) (DP:CARNEY,LINCOLN,M.A.MILLER,HANLEY)
02/20/91	0272	(H) -FISCAL NOTE (DCED) 2/20/91
03/13/91	0457	(H) JUD RPT CS(JUD) NEW TITLE 5DP
03/13/91	0457	(H) (DP:DONLEY,GRUENBERG,MARTIN,HANLEY, ..PARNELL)
03/13/91	0457	(H) -PREV FN (DCED) 2/20/91
04/17/91	0828	(H) FIN RPT CS(FIN) NEW TITLE 9DP 2NR
04/13/91	0829	(H) (DP:MACLEAN,NAVARRE,BOYER,KOPONEN, ..JACKO,R.PHILLIPS,LARSON,ULMER,BROWN)
04/13/91	0829	(H) (NR:SHARP,BARNES)
04/17/91	0829	(H) -PREV FN (DCED) 2/20/91
04/17/91	0000	(H) RULES TO CALENDAR 4/17/91
04/17/91	0840	(H) READ THE SECOND TIME
04/17/91	0840	(H) FIN CS ADOPTED UNAN CONSENT
04/17/91	0840	(H) AMENDMENT 1 BY BARNES
04/17/91	0841	(H) AM NO 1 FAILED Y16 N20 A4
04/17/91	0841	(H) ADVANCED TO THIRD RDG FLD Y26 N13 A1
04/17/91	0842	(H) ADVANCE TO THIRD READING 4/19 CALENDAR
04/19/91	0877	(H) READ THE THIRD TIME CSHB 18(FIN)
04/19/91	0877	(H) RETURN TO RLS COMMITTEE
04/19/91	0881	(H) COSPONSOR(S): B.DAVIS
02/19/92	0000	(H) RULES TO CALENDAR 2/19/92
02/19/92	2343	(H) READ THE THIRD TIME CSHB 18(FIN)
02/19/92	2343	(H) FISCAL NOTE SUBMITTED BY H.RLS CMTE
02/19/92	2343	(H) -FISCAL NOTE (DCED) 2/19/92
02/19/92	2343	(H) RETURN TO SECOND FOR AM 1 UNAN CONSENT
02/19/92	2343	(H) AM 1 BY GRUENBERG
02/19/92	2346	(H) MOTION: RETURN TO RULES
02/19/92	2346	(H) ..MOTION WITHDRAWN
02/19/92	2346	(H) RETURN TO HES COMMITTEE
03/13/92	2610	(H) HES RPT 2D CS(2D HES) NEW TITLE 4DP 1NR
03/13/92	2611	(H) (DP: LINCOLN,M.A.MILLER,B.DAVIS,C.DAVIS)
03/13/92	2611	(H) (NR: HANLEY)

03/13/92 2611 (H) -FISCAL NOTE (DCED) 3/13/92
04/16/92 3122 (H) RLS RPT 2D CS(RLS) NEW TITLE 2DP 5NR
04/16/92 3122 (H) (DP: GRUENBERG,ELLIS) (NR: DONLEY,
04/16/92 3122 (H) ..GRUSSENDORF,MARTIN,DAVIDSON,TAYLOR)
04/16/92 3122 (H) -PREV FN (DCED) 3/13/92
04/16/92 3122 (H) REFERRED TO RULES

HB 18 - HOUSE HES Committee Minutes February 7, 1991

The House Committee on Health, Education and Social Services (HESS) was called to order by Co-Chair Georgianna Lincoln at 8:36 a.m. on February 7, 1991. All members were present. Chair Lincoln announced that the meeting was on teleconference with Anchorage and Kotzebue. She informed members they would first consider HB 18. Representative Max Gruenberg, prime sponsor of HB 18, was asked to address the committee.

Number 068

REPRESENTATIVE MAX GRUENBERG announced that HB 18 will license, for the first time, marriage and family therapists. He referred to an article in an Anchorage newspaper about an east Anchorage couple where a man shot his wife, then himself. Maybe if there had been some intervention for the Anchorage couple and some good licensed marital and family therapy, the incident could have been avoided. Rep. Gruenberg stated that 23 states now have licensed marriage and family therapists, a separate field of study that deserves licensing. HB 18 establishes for marital and family therapist minimal educational and practical requirements, including passing a written examination and being of good morale character.

Rep. Gruenberg pointed out the provision in HB 18, Section 10, for people presently practicing to remain in the field. Rep. Gruenberg mentioned a small fiscal note of around \$14,000 which assumes that initially there will be 40 licensed people paying \$300 per year. As more people get licensed, the fiscal note will get smaller and eventually diminish to the point of being a revenue raiser for the state of Alaska.

Rep. Gruenberg suggested that three minor amendments to HB 18 be considered by the committee. Amendment one deals with the continuing problem on what is cause for board removal. Amendment two was suggested by the Department of Commerce and Economic Development, Division of Occupational Licensing so that a license "shall be renewed biennially by the applicant on a date set by the department and approved by the board." Amendment three deals with not allowing people to say they are licensed when in fact they were not.

Number 172

Rep. Hanley asked Rep. Gruenberg if the licensing fee was \$150 per year or the \$300 mentioned in his testimony.

Rep. Gruenberg clarified that the old fiscal notes did say \$150 per person per year. New fiscal notes were presented with a recalculation of \$300 per person per renewal year.

Number 195

Rep. Hanley stated that he understood that one of the reasons for HB 18 was to provide quality control and make sure that the people who were licensed have adequate backgrounds. He then asked if it were true if the licensing would also allow them to qualify for certain payments under medical programs.

Rep. Gruenberg stated that HB 18 does not provide for medical program payment qualifiers, but would consider them as friendly amendments if they did not jeopardize HB 18. He pointed out that there were two things to which Representative Hanley was referring. The first one was eligibility for medicaid programs and the other was private health insurance.

Number 222

Rep. Mary Miller referred to HB 18, Section 10 (a), and asked if it still applied to people with advanced degrees who counsel individuals as opposed to groups.

Rep. Gruenberg answered in the affirmative.

Number 256

Rep. Hanley questioned whether a person with a masters or doctorate in another mental health field would qualify.

Rep. Gruenberg stated that those psychologists that had been practicing in marital and mental therapy for the last two years would qualify. Only those who had not been practicing marital and mental therapy would need to meet the requirements specified at the top of page 3.

Number 288

Rep. Hanley asked if the classes noted on the top of page 3 were intended to be graduate courses.

Rep. Gruenberg did not know if there were any courses specified that could be fulfilled in undergraduate courses. He suggested that this was a technical question which should be addressed to one of the marriage and mental therapists that will be testifying today.

Number 302

Chair Lincoln expressed concern that HB 18 would not in any way deter from the family and individual counseling practiced in the rural areas by unlicensed counselors in the villages.

Rep. Gruenberg answered that HB 18 would not interfere with counseling by unlicensed counselors in the rural areas. He did state that unlicensed counselors would not be able to claim being licensed.

Number 329

ALLEN PRICE, Pastoral Counselor with Samaritan Counseling Center, via teleconference from Anchorage, spoke in favor of HB 18 and recommended that page 6 define that the mental health field included clinical social workers, masters level counselors, clinical psychologist, psychological associates, psychiatrists, psychiatric nurses and pastoral psychotherapists.

Rep. Miller asked Mr. Price to cite the line and number on page 6 of HB 18 where he would like the changes in wording.

Mr. Price replied, page 7, Section 1, after (6), add a (7) and state "mental health field includes clinical social workers, masters level counselors, clinical psychologist, psychological associates, psychiatrists, psychiatric nurses and pastoral psychotherapists."

Rep. Miller stated that she would support Mr. Price's request as being an essential part of HB 18.

Number 361

Rep. Gruenberg asked Mr. Price what kind of training a pastoral counselor must have. Mr. Price answered that his particular training included four years of undergraduate work, a three year course in human development, and a two year post graduate course in pastoral psychotherapy.

Rep. Gruenberg remarked that it sounded like Mr. Price was well qualified and asked if his amount of training would be the case for all pastoral counselors.

Mr. Price replied that few clergy in congregations would have the same amount of training. Those pastoral psychotherapists with graduate degrees would have a portion of the training he described.

Rep. Miller clarified that she thought it essential to include a number (7) defining which members of the mental health field would be included and that the required training for marital and family therapists apply to those listed in the definition.

Number 400

Chair Lincoln suggested that HB 18 go to subcommittee due to the number of amendments and the lack of time remaining for those who wish to testify. There were no objections.

Number 409

MERCY DENNIS, a marriage and family therapist, via teleconference from Anchorage and stated that she was a marriage and family therapist and a member of the American Association of Marriage and Family Therapy and the Alaskan Association of Marriage and Family Therapy. She commented that marriage and family therapy was a specialized field of study with specific education and training. Ms. Dennis made it clear that others in the mental health field with training in marriage and family therapy should qualify to become licensed under HB 18. She suggested that the definition of "other" be left to the Board's discretion.

Number 442

BARBARA GABIER, Licensing Supervisor for the Division of Occupational Licensing, stated that the Department of Commerce and Economic Development did not oppose HB 18. She expressed two concerns: 40 license fees supporting a five member license board; and the renewal clause on page 3 where it indicated that the renewal period would be two years from date of issue. The Department of Commerce and Economic Development recommended the renewal period be two years from the date set by the department.

Rep. Hanley noted that the Board funding for personnel services was only \$3,600 and expressed a concern over increasing the number of Boards. He asked if the Division of Occupational Licensing did the actual testing for the Board.

Ms. Gabier said that there would be a national test used and that the funding for personal services was only a portion of the examiner's time, since the examiner would be working with other licenses at the same time.

Number 460

KIM BUSCH, Acting Director with the Division of Medical Assistance, stated that services by an unlicensed marriage and family therapist would not be eligible for payment out of the Medicaid program due to a change in regulations currently set forth and in the process of being adopted by the Department of Health and Social Services (H&SS). The passing of HB 18 and licensing of marriage and family therapists would allow H&SS to pay the therapist under the Medicaid program.

Rep. Hanley asked if therapist services were currently paid under Medicaid.

Ms. Busch answered yes to some extent within clinic practice under the supervision of a physician but not directly reimbursed.

Number 476

Rep. Gruenberg said that there were some marriage and family therapists who practiced in clinics under the supervision and direction of a psychiatrist. House Bill 18 should allow all licensed therapists eligibility in the Medicaid program whether they practice alone or with other therapists.

Ms. Busch clarified that in order for all licensed therapists to be eligible in the Medicaid program, there would have to be technical changes to the Medicaid statutes.

Number 501

DIXIE HOOD, a marriage and family therapist with the Juneau Wellness Center, deemed the passing of HB 18 as a first step in the protection of Alaska consumers in establishing standards for mental health services. She felt that the amendments brought up in committee would strengthen HB 18 in terms of consumer choice and insurance reimbursement.

Number 533

JANE DYSON, a therapist in private practice, via teleconference from Anchorage, spoke in favor of HB 18 as well as the statement by Ms. Dennis regarding the word "other," which would allow HB 18 to be broad enough to incorporate those courses offered to people who were specializing in different areas.

Number 542

With all testimony heard, Chair Lincoln asked for questions from the committee.

Number 544

Rep. C. Davis asked Rep. Gruenberg if a couple of qualified members could be added to an existing board instead of appointing a whole new board.

Rep. Gruenberg said that creating a behavioral board which covered all fields was considered, but suggested that any changes with the board structure be held off until later so that legislation of HB 18 not be delayed.

Number 562

Rep. B. Davis asked Rep. Gruenberg if he intended to submit the other amendment that would allow licensed therapist eligibility for insurance and Medicaid payments.

Rep. Gruenberg suggested that the subcommittee look at that problem, see what people in the profession want to do, and if adding the new amendment would cause problems for HB 18. He was willing to prepare the amendment for the committee if they felt it was important, but did not want to add any more amendments than necessary for fear of killing HB 18 with kindness.

Rep. B. Davis asserted her belief that if marriage and family therapists were going to be licensed, they might as well be eligible for payment as individuals as well as in groups.

Number 574

Chair Lincoln announced that HB 18 would be held in subcommittee to work with the sponsor, Rep. Gruenberg. Appointed to the subcommittee were Rep. M. Miller as Chair and Rep. Hanley.

House Bill 18 was rescheduled for February 19, 1991. There were no objections.

HB 18 - HOUSE HES Committee Minutes

February 19, 1991

Chair Lincoln stated there was a quorum. She then informed members they would first consider HB 18, which had previously been assigned to a subcommittee.

Number 038

Representative Mary Miller, as chair of the HB 18 subcommittee, reported to the HESS Committee on the four amendments incorporated in the proposed House HESS CS for HB 18 which were as follows:

- 1) Page 1, line 2, and page 9, line 21: Effective date has been deleted from the title and the bill because it was unnecessary.
- 2) Page 2, line 1: The word "only" was added to clarify that board members can be removed only for good cause.
- 3) Page 3, lines 25-27: Paragraph (d) was amended to provide that all licenses would be renewed at a date set by regulation instead of each license being renewed every two years from the date of issuance. This change, made at the request of the department, removed the need to track dates of issuance and simplified the license renewal process.
- 4) Page 7, line 30: Section 5 of the original bill was deleted. That section added marital and family therapists to the Medical Insurance Corporation of Alaska (MICA). MICA had been sold so that section was no longer operative.

Rep. Miller further noted that lines 21-22 on page 3 of CSHB 18 had also been added and recommended that the following sentence be included, "As provided in this subsection, 'mental health field' includes psychiatry, psychology, clinical social work, and pastoral counseling."

Number 130

Chair Lincoln requested a motion to adopt CSHB 18(HES) for discussion purposes. The motion was made by Representative Carney with no objections. The motion was carried. REPRESENTATIVE MAX GRUENBERG, prime sponsor of HB 18, expressed his concern for the amendment on page 3, lines 21-22 of CSHB 18(HES) and affirmed that he did not support such an amendment. Rep. Gruenberg stated that he did not know where the amendment came from and respectfully requested its deletion from CSHB 18(HES).

Number 150

Rep. Miller commented that the subcommittee had decided that the qualifications for license to practice on page 2, line 21, Sec. 08.63.100, was sufficient.

Chair Lincoln asked if Rep. Miller was supportive of the language on page 3, lines 21-22.

Rep. Miller declined her support of such language.

Number 185

Chair Lincoln declared with full consent of the chair of the subcommittee and sponsor of HB 18 that page 3, lines 21-22, be stricken.

Chair Lincoln requested a motion to pass CSHB 18(HES) with attached fiscal note.

Number 220

Representative Mark Hanley expressed his concern regarding the addition of more fiscal notes to the budget and asked Rep. Gruenberg if a three member board that included two professional license members and one public member had been considered.

Rep. Gruenberg answered that having two public members on the board was important for the public's protection and it was dangerous on a policy basis to go below a five member board. The fiscal note will decrease as the number of licenses increase.

Rep. Hanley stated his desire to combine boards in the future.

Rep. Miller commented that the subcommittee had decided that the five member board was appropriate.

Rep. Gruenberg added that in an attempt to bring the fiscal note under control without reducing the number of members on the board, he had doubled the licensing fees from \$150 per year to \$300 per year with the support of the members of the profession.

Chair Lincoln shared that 17 public opinion messages and several letters had been received that were all in favor of HB 18.

Number 286

Rep. Carney made the motion that by unanimous consent HB 18 as amended, with attached fiscal note, be moved from committee with individual recommendation.

It was moved and seconded, and Chair Lincoln declared that HB 18 would be moved out of the HESS Committee.

Number 297

HB 18 - HOUSE JUD Committee Minutes March 11, 1991

CSHB 18 (HES): "An Act regulating the practice of marital and family therapy; amending Alaska Rule of Evidence 504(a)(3); and providing for an effective date."

REPRESENTATIVE GRUENBERG, speaking as prime sponsor of CSHB 18(HES), noted that the committee had before them a blank draft committee substitute which included the proposed amendments.

Representative Gruenberg stated that CSHB 18(HES) would require that all marital and family therapists be licensed by the state. He said currently there was no licensing requirement for those professionals.

Representative Gruenberg noted that a board would be established consisting of three licensed therapists and two members of the public.

Representative Gruenberg explained that in order to obtain a license the applicant had to be of good moral character, as defined by CSHB 18(HES), and hold a masters or doctorate degree in marriage and family therapy or in another mental health field that was equivalent. The applicant would also be required to have certain postdoctoral training and to have passed an oral or written examination.

Representative Gruenberg stated that there was a provision in CSHB 18(HES) which provides for therapists currently practicing to continue to practice while in the process of obtaining the license. He further stated that CSHB 18(HES) had been carefully crafted by psychologists, social workers and other people in the field to see that it met the requirements that members of the field wanted to see.

Representative Gruenberg noted that the amendments before the committee added to CSHB 18(HES) would make licensed therapists aware of AS 47.17.020, which outlines requirements for reporting child abuse. He further stated that the licensees must obtain training related to domestic violence.

SHERRIE GOLL, representing the Association of Marriage and Family Therapist, read a statement from Dixie Hood, a practicing marriage and family therapist. (please refer to attachment)

Number 266

Representative Parnell asked what the effect would be on pastors or priests who provide counseling.

Ms. Goll explained that there was nothing in CSHB 18(HES) that would change pastoral counseling. She said if CSHB 18 (HES) is passed, pastoral counselors would not be able to call themselves marriage and family therapists, but would be able to continue to counsel. She

noted that some pastoral counselors do have the same educational background and if they qualified, they could become licensed.

ANN BOUDREAUX, Director of Occupational Licensing in the Division of Commerce & Economic Development, agreed that pastoral counselors would not be affected.

Representative Parnell wondered if the legislation was in sync with federal legislation.

Representative Gruenberg responded that there was no federal legislation that addressed the issue, but the legislation did address the requirements needed for the therapist to receive payment from Medicaid.

KIM BUSCH, Acting Director of the Division of Medical Assistance, Department of Health and Social Services, testified that there were no requirements under federal law for reimbursement through Medicaid except the therapist must meet state licensing requirements. She noted that CSHB 18(HES) did not allow licensed marriage and family therapists to be directly reimbursed from Medicaid unless the therapist was working in a clinic. Representative Gruenberg noted that the profession was willing to tax itself \$300.00 a year in order to be licensed. He noted that the two amendments were added at the request of the Council on Domestic Violence. He further stated that CSHB 18(HES) did not cover therapists who were not practicing at a clinic; i.e., the Langdon Clinic in Anchorage.

Representative Gruenberg said for a therapist not practicing at a clinic to be covered, a separate bill would be necessary.

Representative Gruenberg explained that the Alaska Rule of Evidence 504(a) was directly amended because it was felt that a marital or family therapist was every bit as much a psychotherapist as a psychiatrist or psychologist.

Representative Parnell suggested that on page 6, line 14 and line 16, of CSHB 18(HES), the word "in" be changed to "by".

Representative Gruenberg made a motion to adopt Representative Parnell's proposed amendment to CSHB 18(HES). No objections being heard, the motion carried.

Representative Gruenberg made a motion to amend CSHB 18(HES), page 2, following line 10, by inserting a new paragraph to read: (6) ensure that licensees are aware of the requirements of AS 47.17.020;. No objections being heard, the motion carried.

Representative Gruenberg made a motion to amend CSHB 18(HES), page 3, line 14: Delete ["AND"]; and on page 3, following line 14, insert a new subparagraph to read: "(D) has received training related to domestic violence; and." No objections being heard, the motion carried.

Representative Gruenberg made a motion to move CSHB 16 as amended with individual recommendations. No objections being heard, the motion was carried.

The meeting was adjourned at 3:30 p.m.

(TAPE JUD 91-25, SIDE B, Number 235)

HB 18 - HOUSE FIN Committee Minutes

April 15, 1991

HB 18 An Act regulating the practice of marital and family therapy; amending Alaska Rule of Evidence 504(a)(3); and providing for an effective date.

CS HB 18(FIN) was reported out of Committee with a "do pass" recommendation and a \$35 thousand dollar fiscal note by the Department of Commerce and Economic Development, dated February 6, 1991.

**HB 18 - HOUSE FIN Committee Minutes
April 15, 1991**

HOUSE BILL 18

"An Act regulating the practice of marital and family therapy; amending Alaska Rule of Evidence 504(a)(3); and providing for an effective date."

REPRESENTATIVE MAX GRUENBERG, as prime sponsor of House Bill 18, gave an overview of the proposed draft CS dated April 15, 1991, which contained a few minor amendments (Attachment 1). He explained that this bill would regulate the practice of marriage and family therapy. Presently, these therapists are regulated in a number of states, but not in Alaska. The legislation has widespread support, he concluded.

Representative Mark Boyer MOVED to adopt the draft CS. There being NO OBJECTION, the CS was ADOPTED.

REPRESENTATIVE MARY MILLER spoke in support of the bill. She explained that she worked closely with Representative Gruenberg and his office on the legislation.

Representative Ron Larson MOVED to report CS HB 18(FIN) out of Committee with individual recommendations. There being NO OBJECTION, CS HB 18(FIN) was reported out of Committee with a "do pass" recommendation and a \$35 thousand dollar fiscal note by the Department of Commerce and Economic Development, dated February 6, 1991.

**HB 18 - HOUSE HES Committee Minutes
March 10, 1992**

Number 481

Chair Lincoln announced that the committee would hear HB 18, relating to marriage and family therapists.

REP. MAX GRUENBERG, Prime Sponsor of HB 18, offered the committee the following amendment:

Page 1, line 2: following "504(a)(3)" insert "and providing for an effective date";

Page 8, following line 5: insert a new bill section to read:

"*Sec. 4. AS 08.03.010(c)(10) is amended to read: (10) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010) - June 30, 1993 [1991];"

Renumber the following bill sections accordingly.

Page 8, following line 7: Insert a new bill section to read: "**Sec. 6. AS 08.86.162 is amended to read:

Sec. 08.86.162. ASSOCIATES: QUALIFICATION FOR EXAMINATION. a PERSON IS ENTITLED TO TAKE A PSYCHOLOGICAL ASSOCIATE EXAMINATION IF THE BOARD FINDS THAT THE PERSON:

(1) has not engaged in dishonorable conduct related to the practice of counseling or psychometry;

(2) holds a master's degree with primary emphasis on psychology from an academic institution whose program of graduate study for a master's degree in psychology meets the criteria established by the board by regulation, with the equivalent of at least 48[24] semester credit hours of graduate course work directly related to a specialized area of psychology in which licensure is requested, including a practicum;

(3) has at least three years' supervised experience after obtaining a masters degree; in this paragraph, "supervised experience" means the equivalent of at least one hour a week of personal interview with a supervisor whose educational qualifications are consistent with the level of activity being supervised;

(4) has the recommendation of an immediate supervisor if a licensed psychologist, or two licensed psychologists who hold doctoral degrees; and

(5) has not within the preceding six months failed an examination given by the board."

Renumber the following bill sections accordingly.

Page 11, following line 12:

"* Sec. 14. AS 44.66.050(e) does not apply to this Act.

* Sec. 15. Sections 4, 6, and 14 of this Act take effect immediately under AS 01.10.070(c)."

Rep. Gruenberg summarized the changes made by the amendments:

1) broadened title; 2) effective date; and,

3) the specific number of hours required and the provision for reporting elder and spousal abuse.

Rep. C. Davis moved for adoption of CSHB 18 (2d HES) with the incorporated amendments offered by the prime sponsor. There was no objection, it was so ordered.

Number 600

SHARON MACKLIN, representing the Alaska Psychological Association (APA), stated the APA is very supportive of licensing marriage and family therapists, adding that licensing of professionals is imperative for the safety of the general public.

Ms. Macklin went on to say the APA had concerns with broadening the title of HB 18, which could be used as a vehicle to combine boards and commissions. The APA has examined potential effects of combining and is concerned with evaluation of credentials and testing and disciplinary procedures.

Ms. Macklin said the APA supports the amendments proposed by Rep. Gruenberg because the new provisions will provide a vehicle for extension.

Rep. Hanley questioned if the fees paid to the Boards of Psychologists and Psychological examiners covered their expenses.

Ms. Macklin answered it was her understanding expenses were not being entirely covered by fees. However, the APA has encouraged increased fees to cover the expenses more fully.

Rep. Hanley asked the status of the bill dealing with the extension.

Ms. Macklin stated that HB 163 is in its one year wind-down period and is currently in the Senate Labor and Commerce Committee.

Rep. C. Davis asked if fees could be brought in-line to cover the costs of HB 18.

Rep. Gruenberg stated his intent that the fees cover the costs. He added that he would support the amendment to extend with the caveat that if, at some point in the process, the amendment becomes a danger to the bill, it will be dropped.

TAPE 85, SIDE B

Number 000

SHERRIE GOLL, representing the Association of Marital and Family Therapists, noted that the House had passed the companion bill for HB 18 last year and it was vetoed because the administration did not want to create a new board.

Ms. Goll added that the chairman of the Senate Labor and Commerce Committee was trying to incorporate the positions of the administration and the legislature.

Rep. Hanley, referring to the fiscal note, stated that license fees are bi-annual, therefore a shortfall in revenue would take place every other year.

Rep. B. Davis moved that the committee adopt amendment #1.

Rep. Hanley objected for purposes of discussion. He noted the amendment added an effective date, and if the other body removed the provision adding the Board of Psychologist and Psychological Associate Examiners, they would have to provide a new effective date to meet the qualifications of the expanded title. He then removed his objection.

There were no further objections to the amendment, it was so ordered.

Rep. Gruenberg referenced AS 44.66.050(e) which states sunset provisions cannot be combined for boards. He stated the legislature can, in HB 18, simply override the statute for this particular bill because of the combined approach.

Number 230

CAROLYN SMITH, testifying on behalf of the Alaska Nurses Association via teleconference from Anchorage, stated the Association was opposed to HB 18 because of the amendment to the title, not due to content. The Association supported the formation of the board to regulate the practice of Marriage and Family Therapists. The Association was concerned the change in title could allow HB 18 to begin implementing the "Preliminary Recommendations of the Governor's Task Force on Boards and Commissions."

Ms. Smith concluded by voicing the Association's opposition of possibly setting a precedent to begin combining various boards.

Rep. B. Davis moved that CSHB 18 (2d HES) be passed from committee as amended with individual recommendations and accompanying fiscal note.

Rep. Hanley asked if an additional fiscal would be attached to cover the added provisions made by the adopted amendments.

Rep. Gruenberg suggested the committee include the Department of Commerce fiscal note, component serial number 0356.

There was no objection. It was so ordered.

HB 18 - HOUSE HES Committee Minutes March 12, 1992

The Chair reported that a fiscal note was being distributed for HB 18, which passed out of committee on March 11, 1992. She explained that passage of the second committee substitute matched SB 40, which was vetoed because the fiscal note of February 18 was not written to the amendment. Because the bill does not go to Finance, the Department of Commerce had been requested to prepare a new fiscal note, and it was thus provided. There being no objection, it was ordered that the Department of Commerce fiscal note (3/11/92) would travel with the bill.

The Chair announced that the committee would travel to Lemon Creek Correctional Center on Monday, March 16, 1992, from 8:00 to 10:30 a.m.

The meeting adjourned at 10:09 a.m.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

No. 3
Bill Version: 2dCSHB 18(2dHES)
Publish Date: 3-13-92

Revision Date: _____ Department Affected: Commerce & Economic Development
Title: An Act relating to professional licensing and BRU: Occupational Licensing
amending Alaska Rule of Evidence 504(a)(3);... Component: Administration
Sponsor: Reps. Gruenberg, et al
Requestor: House HES COMPONENT SERIAL NO.

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

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	3.8	3.8	3.8	3.8	3.8	3.8
TRAVEL	9.8	9.8	7.4	7.4	7.4	7.4
CONTRACTUAL	10.9	10.9	10.9	10.9	10.9	10.9
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	25.5	25.5	23.1	23.1	23.1	23.1

CAPITAL						
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REVENUE	51.0		46.2		46.2	
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER - GF/PR	25.5	25.5	23.1	23.1	23.1	23.1
TOTAL	25.5	25.5	23.1	23.1	23.1	23.1

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimated of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

2d CSHB 18(2d HES) establishes a five-member Board of Marital and Family Therapy for one year to establish examination, training and education requirements for entry into the profession, and to license qualified individuals. The bill also extends the Board of Psychology and Psychological Associates for one year and amends AS 08.86.162.

Prepared By: Jennifer Strickler Phone: 465-2144
Division: Occupational Licensing Date: 03/11/92

Reviewed by Commissioner: Glenn A. Olds
Agency: Commerce & Economic Development Date: 3-11-92

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

This fiscal note represents the cost of licensing marital and family therapists with a five-member board, and based on an estimated 40 practitioners who would seek and qualify for licensure. Program costs are based on the number of licensees and statutory requirements in the bill. The following is an explanation of program-related costs:

PERSONAL SERVICES \$ 3.8

To provide administrative staff support.

TRAVEL \$ 9.8

In FY 93, this funding will provide two face-to-face meetings, one in Anchorage and one in Juneau, assuming two members are from the Anchorage area, two from Juneau, one from Fairbanks; and three division staff (Director, Licensing Examiner, and Regulations Specialist) to attend each meeting. This funding will also provide for administration of licensing examinations in various locations.

(This cost is lower than the amount shown on previous fiscal notes as a result of changes in State per diem policies, mainly that travellers are now entitled only to a prorated per diem on the first and last day of travel.)

Because of the newness of the licensing program, the FY 94 funding continues to provide for two board meetings if needed and travel to administer licensing examinations.

In FY 95 forward, the licensing program will have been in operation for two years, and therefore, require fewer meetings to conduct its business. The number of board meetings is reduced to one meeting each year. This funding will also provide travel to administer the licensing examination in various locations. (\$7.4)

CONTRACTUAL \$ 10.9

This funding provides for printing, advertising, postage and communication costs.

SUPPLIES \$ 1.0

Funding will provide standard office supplies.

Grand Total: \$ 25.5

REVENUE

No. 3
2d CSHB 18 (2d HES)

Since the estimated number of practitioners are small (40 individuals), licensing fees will be high if this program is expected to entirely fund its activities with general fund/program receipts. The division will work with supporters of the program to ensure licensing fees support entire costs of this program. Licenses are issued for a two-year period and therefore, revenues are shown every other year. Because of the staggered renewal cycle of all licensing programs, costs incurred in a non-renewal year will be covered by occupations renewing in that year. Likewise, revenues generated by this program during a renewal year will do the same for other licensing programs not renewing that year. The main objective is to ensure that fees collected from this program is sufficient to cover the average program costs.

AS 08.01.065(c), Fees established by regulation provide that the "department may establish a fee that is less than the cost of the activity for which the fee is charged if the department determines that it is not reasonable to impose the full cost of the activity on the applicant or licensee."

ALASKA STATE LEGISLATURE
HOUSE BILL NO. 18

HISTORY IN THE HOUSE

1991
1/21 Read first time and referred to:
HES Jud Fin

2/20 HES RPT CS(HES) New Title
4 DP DNP NR AM
 FN OFN Previous FN

3/13 Jud RPT CS(Jud) New Title
5 DP DNP NR AM
FN OFN Previous FN

4/17 Fin RPT CS(Fin) New Title
9 DP DNP 2 NR AM
FN OFN Previous FN

4/19 returned to Rules
4/17 Read second time
CS(Fin) Adopted

Amended

4/17 file to Advance -
Advanced

4/19 Read third time

1992
2/19 Read third time again
3/19 Referred to HES w/amendments
3/19 Return to second for specific amendment

3/13 HES RPT CS(Led HES) New Title
4 DP DNP 1 NR AM
1 FN OFN Previous FN

4/16 RLS RPT CS(RLS) New Title
2 DP DNP 5 NR AM
FN OFN 1 Previous FN

Read second time
CS() Adopted

Amended

Advanced

4/28 Read third time

4/28 Return to second ~~for specific amendment~~
to adopt 2nd RLS CS
and Court RLS

4/28 PASSED EFD Same
Yeas 36 Yeas
Nays 0 Nays
Excused 1 Excused
Absent 3 Absent

HISTORY IN THE SENATE

1992
4/30 Read first time and referred to:
LEG FIN

RPT() CS DP NR DNP AM
New Title Same Title Previous FN
FN OFN To

RPT() CS DP NR DNP AM
New Title Same Title Previous FN
FN OFN To

RPT() CS DP NR DNP AM
New Title Same Title Previous FN
FN OFN To

Rules Calendar() CS AM Other
New Title Same Title Previous FN
FN OFN

Read second time

CS Adopted () New Title
Amended Advanced

Read third time

Letter of Intent adopted
Return to second for specific amendment

PASSED EFD Same or
Yeas Yeas
Nays Nays
Excused Excused
Absent Absent

Reconsideration
Reconsideration not taken up

PASSED EFD Same or
Yeas Yeas
Nays Nays
Excused Excused
Absent Absent

Reported correctly engrossed
Signed by President, to the House

Secretary of the Senate

AMENDMENT TO HB 18

PURPOSE: EXTEND BOARD OF CLINICAL SOCIAL WORK EXAMINERS

The Board of Clinical Social Work Examiners will sunset June 30, 1992, unless there is action by the Legislature to extend it. The Clinical Social Workers were prepared to support a consolidated board and worked closely with the Senate Labor and Commerce Committee staff, while that was a viable option. No bill has been introduced to extend the Board, although the Task Force on Boards and Commissions has concluded that the Clinical Social Work Board pays its own way, and, in fact, generated more income than operating the Board cost.

CSHB 18 has a title broad enough to encompass extending the Board of Clinical Social Work Examiners. Such action by the Legislature this year would allow the Board to continue its work in an orderly way without beginning the phase down year. It could be extended by amending CSHB 18 to add a new section concerning the Clinical Social Work Examiners Board and adding that section to the immediate effective date section.

ADD A NEW SECTION TO CSHB 18:

* Section . AS 08.03.010(c)(8) is amended to read:

(c)(8) Board of Clinical Social Worker Examiners (AS 08.95.010) - June 30, 1995 [1992];

AMEND THE IMMEDIATE EFFECTIVE DATE SECTION:

* Section . Sections 5, 7, 15, and ___ of this Act take effect immediately under AS 01.10.070(c).

To Bill Niles
FX 463-5352
From: Myra Munson
FX 586-5883
PA 586-5880

A M E N D M E N T

OFFERED IN THE SENATE

TO: 2d CSHB 18(RULES)

Page 1, following line 11:

Insert a new bill section to read:

"* Sec. 2. AS 08.48 is amended by adding a new section to read:

Sec. 08.48.295. CIVIL PENALTY FOR UNREGISTERED OR UNAUTHORIZED PRACTICE. (a) In addition to any other provision of law, if a person practices or offers to practice architecture, engineering, or land surveying in the state without being registered or authorized to practice in accordance with the provisions of this chapter, the board may enter an order levying a civil penalty.

(b) A civil penalty levied under this section may not exceed \$5,000 for each offense. In levying a civil penalty, the board shall set the amount of the penalty imposed under this section after taking into account appropriate factors, including the seriousness of the violation, the economic benefit resulting from the violation, the history of violations, and other matters the board considers appropriate.

(c) Before issuing an order under this section, the board shall provide the person written notice and the opportunity to request, within 30 days of issuance of notice by the board, a hearing on the record.

(d) In connection with proceedings under (a) and (b) of this section, the board may issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence, and may request the attorney general to bring an action to enforce a subpoena.

(e) A person aggrieved by the levy of a civil penalty under this section may file an appeal with the superior court for judicial review of the penalty under AS 44.62.560.

(f) If a person fails to pay a civil penalty within 30 days after entry of an order under (a) of this section, or if the order is stayed pending an appeal, within 10 days after the court enters a final judgment in favor of the board of an order appealed under (e) of this section, the board shall notify the attorney general. The attorney general may commence a civil action to

recover the amount of the penalty.

(g) An action to enforce an order under this section may be combined with an action for an injunction under AS 08.48.131."

Renumber the following bill sections accordingly.

Page 11, line 19:

Delete "sec. 2"

Insert "sec. 3"

Page 11, line 20:

Delete "sec. 12"

Insert "sec. 13"

Page 11, line 23:

Delete "sec. 2"

Insert "sec. 3"

Page 11, line 25:

Delete "sec. 2"

Insert "sec. 3"

Page 11, line 29:

Delete "sec. 2"

Insert "sec. 3"

Page 12, line 6:

Delete "sec. 2"

Insert "sec. 3"

Page 12, line 12:

Delete "5, 7, and 15"

Insert "6, 8, and 16"

HB

31

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR COLLINS

TO: SCS CSHB 31(HES)

Page 2, lines 16 - 17 after "recognized by the":

Insert "board; in recognizing a college of pharmacy under this paragraph the board may accept the recognition of a college of pharmacy provided by the"

Page 2, line 31:

Delete "American Council on Pharmaceutical Education"

Insert "board"

Page 3, line 1, following "junior.":

Insert "In recognizing a college of pharmacy under this subsection, the board may accept the recognition of a college of pharmacy provided by the American Council on Pharmaceutical Education."

ALASKA STATE LEGISLATURE
HOUSE BILL NO. 31

HISTORY IN THE HOUSE

HISTORY IN THE SENATE

1991

1/21 Read first time and referred to:
L & C, HESS

5/3 L&C RPT CS() New Title
1 DP DNP 4 NR AM
FN OFN Previous FN

5/13 HES RPT CS() New Title
4 DP DNP 2 NR AM
FN OFN Previous FN

1992

1/24 RLS RPT CS(RLS) New Title
7 DP DNP NR AM
FN 1 OFN Previous FN

1/27 Read second time
CS(RLS) Adopted

Amended

1/27 Advanced

1/27 Read third time

Return to second for specific amendment

1/27 PASSED EFD Same or
Yeas 30 Yeas
Nays 0 Nays
Excused 2 Excused
Absent 0 Absent

Intent adopted

1/27 Reconsideration by Hanley
1/29 Reconsideration not taken up

PASSED ON RECON. EFD Same or
Yeas Yeas
Nays Nays
Excused Excused
Absent Absent

Intent adopted

1/29 Reported correctly engrossed
Signed by Speaker, to the Senate

Kurt Gray
Chief Clerk of the House

1992

1/31 Read first time and referred to:
HES, L & C

3/17 RPT() CS 3 DP NR DNP AM
New Title Same Title Previous FN
FN OFN To *L & C*

RPT() CS DP NR DNP AM
New Title Same Title Previous FN
FN OFN To

RPT() CS DP NR DNP AM
New Title Same Title Previous FN
FN OFN To

Rules Calendar() CS AM Other
New Title Same Title Previous FN
FN OFN

Read second time

CS Adopted () New Title
Amended Advanced

Read third time

Letter of Intent adopted
Return to second for specific amendment

PASSED EFD Same or
Yeas Yeas
Nays Nays
Excused Excused
Absent Absent

Reconsideration
Reconsideration not taken up

PASSED EFD Same or
Yeas Yeas
Nays Nays
Excused Excused
Absent Absent

Reported correctly engrossed
Signed by President, to the House

Secretary of the Senate

HB 31

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

No. 2
Bill Version: CSHB 31(RLS)
(H) Publish Date: 1/24/92
Commerce & Economic Development

Revision Date: 01/22/92 Department Affected: Commerce & Economic Development

Title: An Act relating to applicants for pharmacist licenses. BRU: Occupational Licensing

Component: Administration

Sponsor: Rep. Koppoien

Requestor: House Rules COMPONENT SERIAL NO.

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

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

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

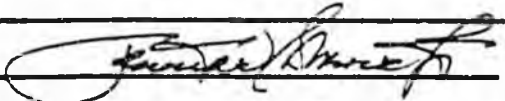
GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)
 HB 31 amends pharmacy education requirements for licensure to allow foreign pharmacy graduates an opportunity to become licensed. New funds are not required to implement this bill.

Prepared By: Jennifer Strickler  Phone: 465-2144

Division: Occupational Licensing Date: 01/22/92

Approved by Commissioner: Gleason A. ...

Agency: Department of Commerce & Econo Changes in 585 HB 31 HES Date: 1-22-92

Distribution (by preparer): Legislative Fin Cl 1/24/92 W. Fouse B. & Impacted Agency(ies).

STATE OF ALASKA

FISCAL NOTE

No. 2 AB 31
 Bill Version: CSHB 31(RLS)
 (H) Publish Date: 1/24/92

1992 LEGISLATIVE SESSION

Revision Date: 01/22/92 Department Affected: Commerce & Economic Development
 Title: An Act relating to applicants for pharmacist licenses. BRU: Occupational Licensing
 Component: Administration
 Sponsor: Rep. Koponen
 Requestor: House Rules COMPONENT SERIAL NO.

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

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

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

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

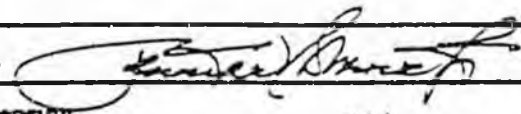
POSITIONS:

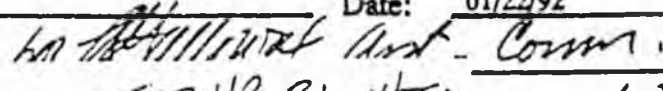
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

HB 31 amends pharmacy education requirements for licensure to allow foreign pharmacy graduates an opportunity to become licensed. New funds are not required to implement this bill.

Prepared By: Jennifer Strickler  Phone: 465-2144
 Division: Occupational Licensing Date: 01/22/92

Approved by Commissioner: Cleon A. Oida  Date: 1.22.92

Agency: Department of Commerce & Econo Changes in CSHB 31 (HES) Date: 1.22.92
 Distribution (by preparer): Legislative Fin have no fiscal impact. This
 Rev 10/90 CI fiscal note is appropriate. B. & Impacted Agency(ies).

Alaska State Legislature

Alaska State Capitol
Juneau, AK 99801-1182
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Juneau, Alaska 99801
(907) 465-4992

Representative Niilo Koponen

House District 21

119 N. Cushman, Suite 207
Fairbanks, Alaska 99701
(907) 456-8172

SPONSOR STATEMENT

House Bill 31

"An Act relating to applicants for pharmacist licenses"

Foreign-educated doctors, nurses, chiropractors, physical therapists, optometrists and veterinarians may practice in Alaska, provided they successfully complete Alaskan licensing examinations and fulfill all pertinent qualifications. Standard equivalency examinations insure that credentials earned outside of the United States meet American standards of academic and clinical competence.

HB 31 extends the same opportunity to pharmacists trained at non-U.S. institutions. The state would benefit from expanding the universe of trained professionals available to serve the public. At present, Alaskans may qualify for state loans to study pharmacy at non-U.S. institutions, but they may not be licensed when they return to the state. Continued exclusion of these Alaskans from practice is inconsistent with treatment of other health professionals and extends no apparent advantage to other state residents.

Section 2 of the bill is essentially a sunset. Changes made by Section 1 allow licensure of foreign-educated pharmacists. When it takes effect in July 1994, Section 2 returns the statute's licensing requirements to the qualifications presently in place.

The greater principle of licensing competent professionals in Alaska is made clear -- and urgent -- in one specific case. A constituent of mine, educated at the Sorbonne in Paris, cannot work as a pharmacist in Alaska. She and her husband, a highly-valued member of the UAF mathematics faculty, may leave the state if she is unable to secure a professional pharmacist position in Alaska. It would be an unnecessary loss to our citizens if we lost these Alaskans to the Lower 48.

I urge your affirmative vote on HB 31.

Alaska State Capitol
Juneau, AK 99801-1182
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Juneau, Alaska 99801
(907) 465-4992

Alaska State Legislature
Representative Niilo Koponen
House District 21

119 N. Cushman, Suite 207
Fairbanks, Alaska 99701
(907) 456-8172

SECTIONAL ANALYSIS

CS FOR HOUSE BILL NO. 31 (RULES)

"An Act relating to applicants for pharmacist licenses;
and providing for an effective date."

Section 1. Replaces the American Association of Colleges of Pharmacy (AAP), a service organization for U.S. pharmacy schools, with the American Council on Pharmaceutical Education (ACPE), which accredits all U.S. schools of pharmacy, as the agency responsible for recognizing institutions from which Alaska-licensed pharmacists graduate. Allows Alaska licensing of graduates of non-U.S. institutions after applicants pass the Foreign Pharmacy Graduate Equivalency Examination, a standard test employed by a majority of other states.

Section 2. Effectively sunsets licensing of foreign-educated pharmacists; replaces Section 1 with the previous statutory language after July 1, 1994.

Section 3. Changes accreditation authority for Alaskan pregraduate intern pharmacists from AAP to ACPE.

Section 4. Repeals obsolete definition of "recognized college of pharmacy," since it is redefined in Section 1.

Section 5. Provides an effective date for the Section 2 sunset.

PHARMACIST LICENSING FACTS

The American Council on Pharmaceutical Education (ACPE, established 1932) is the national agency for accreditation of professional degree programs in pharmacy and for approval of providers of continuing pharmaceutical education.

The ACPE presently recognizes 74 accredited professional programs in 43 states, plus the District of Columbia and Puerto Rico.

30 other states, the District of Columbia and Puerto Rico allow foreign-educated pharmacists to sit for state licensing exams if they pass the Foreign Pharmacy Graduate Equivalency Examination administered by the Foreign Pharmacy Graduate Examination Committee (FPGEC).

The FPGEC certificate is awarded only to four-year graduates with Bachelor of Science degrees scoring 550 or higher on the Test of English as a Foreign Language.

Some foreign graduates are allowed to enter accredited U.S. schools of pharmacy as advanced students. After graduation, they qualify to take state examinations.

New York and California allow some candidates to take the state examination after their credentials have been evaluated and approved by the state licensing board.

ALASKA FACTS

All pharmacists must be licensed in Alaska. Operators of pharmacy businesses must also have a license to dispense drugs and controlled substances. Applicants must be graduates of a college of pharmacy and complete at least 1,500 hours as an intern.

Application fee: \$30.00
Examination fee: \$150.00
License fee: \$180.00
Biennial renewal: \$180.00

ALASKA EMPLOYMENT

(Statistics from the Alaska Department of Labor)

Employment in 1989: 188; in 1990: 193; in 1994: 209 (predicted)

Average Annual Job Openings, 1989-1994

Due to Growth: 4; Due to Separations: 5; Total: 9

Current license holders: 489

HB31 Miscellaneous Notes

Alaska licenses the following professionals who were educated at non-U.S. institutions:

Physicians
Nurses
Optometrists
Chiropractors
Physical Therapists
Veterinarians

On 4/25/91, the chairman of the Board of Pharmacy told me (RGC) that he had five vacancies for pharmacists in his company (Carr's) alone.

This is not a one-constituent bill. One constituent brought to light the broader issue -- a statewide shortage of pharmacists, and an inability for Alaskans educated at non-U.S. institutions to work in Alaska.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 31

Revision Date: 4/14/92

Department Affected: Commerce & Econ. Dev.

Title: An Act relating to applicants for
pharmacists

BRU: Occupational Licensing

Component: _____

Sponsor: Rep. Koponen

Requestor: House Rules

COMPONENT SERIAL NO.

0	3	5	6
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	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
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REVENUE FUND RESOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS (Attach a separate page if necessary.)

HB 31 amends pharmacy education requirements for licensure to allow foreign pharmacy graduates an opportunity to become licensed. New funds are not required to implement this bill.

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

Division: Occupational Licensing Date: 4/14/92

Approved by Commissioner: Glenn A. Olds *[Signature]*

Agency: Department of Commerce & Economic Development Date: 4.14.92

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

Page 1 of 1

SS/dg11893D/041592a

(Rev. 12/91)

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SENATE COMMITTEE REPORT

DATE: 5/16/91

FURTHER: Judiciary
Finance

DATE TURNED INTO OFFICE: _____

L&C Committee considered CS SSB 33 (JUDICIARY) am

"An Act relating to penalties for violation of workplace safety laws; and assessing costs for an employer's failure to appear at certain hearings of the OSHA Review Board."

and recommended:

- replace with S CS CS SSB 33 (L&C) same title
- or adopt _____ CS _____ new title
- attached amendment(s) technical
- _____ letter of intent adopted title change (HB only)

- do pass
- do not pass
- no recommendation
- individual recommendations

further referral to _____

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

fiscal note(s) Labor - 1/10/92

zero fiscal note(s) _____

appropriation-no fiscal note

APPROVES PREVIOUS:
Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

Governor's bill w/fiscal note

SIGNING DO/PASS:

Rick Halford
Chris McEllis
Shirley Craft

OTHER RECOMMENDATIONS:

Lawrence - 10/1/91
Chair: Signature and Recommendation

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DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

February 4, 1992

SUBJECT: Changes in Committee Substitute
(SCS CSSSHB 33(L & C))

TO: Senator Drue Pearce
ATTN: Bill Miles

FROM: Terri Lauterbach 
Legislative Counsel

Enclosed is your committee substitute for the OSHA bill.

In addition to the substantive changes you requested, we have made a technical correction in the bill. Sections 1 and 2 of the House version were not in numerical order. In your committee substitute, the order has been fixed so that the amendments to AS 18.60.085 (section 1) correctly precede the addition of the new subsection to AS 18.60.093 (sec. 2). This change does not affect the substance of the bill.

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

TML:gc
92-098.glc

Enclosure

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO : CSSSHB 33(Jud) am

Revision Date: _____
 Title: " An Act relating to penalties for
violation of workplace safety laws..."
 Sponsor: Representative Koponen, et.al.
 Requestor: _____

Department Affected: Labor
 BRU: Labor Standards & Safety
 Component: _____
Occupational Safety & Health
 COMPONENT SERIAL NO. 970

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	15.0	15.0				
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	15.0	15.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE	229.0	172.0	86.0	22.0	6.0	0.0
FUND SOURCE:	GF #1004	GF #1004	GF #1004	GF #1004	GF #1004	

FUNDING: (Thousands of Dollars)

GENERAL FUND	15.0	15.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	15.0	15.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

See attached

Prepared by: Richard Arab, Deputy Director

Phone: 465-4855

Division: Labor Standards & Safety

Date: 1/10/92

Approved by Commissioner: John A. Abshire, Acting Commissioner

Agency: Department of Labor

Date: 1/10/92

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

Fiscal Note Analysis for:

"An Act relating to penalties for violation of workplace safety laws..."

This bill would increase the amount of the penalties charged for the violation of workplace safety laws. Because of the increase in penalties, we expect an increase in the number of contested violations and in the number of requests for informal conferences. We estimate an additional \$15,000 of legal support for the OSH review board would be needed in FY 93 and FY 94. These costs should decrease after the first two years if the bill achieves its goal of providing more incentive for employers to voluntarily correct hazards so that we find fewer serious violations. Therefore, we would have no additional costs beyond 1994.

Revenues

The department assessed a total of approximately \$ 292,000 in penalties in FY 91 with a collection rate of approximately 80%. Since Federal OSHA started to assess higher penalties starting in March, 1991, their average penalty amount has increased by approximately 95%. Assuming that Alaska will have the same experience as OSHA, we estimate that approximately \$ 280,000 in additional penalties would be assessed in FY 93. Assuming our 80% collection rate, revenue would increase by approximately \$ 224,000.

After the first year, we anticipate revenue would decrease as employers voluntarily correct hazards and fewer violations are detected. Thus, after five year with the new penalties we project, the deterrent affect of the higher rates would bring revenues back to what they currently are.

The reason that federal OSHA penalties have not increased seven fold is that they have adopted a penalty adjustment policy that significantly lowers penalties based on factors such as severity of the violation; good faith of the employer in correcting the violation; the employer's past history of violations; and the size of the employer's work force. If HB 33 is enacted the Department will adopt the same adjustment policy. The following is an explanation of the adjustment method:

* The penalty is adjusted based on the severity of the injury that could occur and the probability of that injury occurring. OSHA has developed a formula that will reduce the \$7,000 maximum to a high of \$5,000 and a low of \$1,500.

* The adjusted penalty based on severity and probability will then be adjusted further based on size of employer, good faith and history. The maximum reduction of 95% can be provided through these factors.

For example, an employer with 50 employees is cited for a serious violation because heavy engine and automotive parts were stored and stacked in an unstable manner. The following penalty adjustment would occur:

* The violation is of medium severity as the injury, a blow to the body or head from a falling part, may result in hospitalization but the injury would result in only a limited period of disability. The probability of the injury is low because only two employees must enter the warehouse where these automotive parts are stored for approximately one hour a day. The \$7,000 penalty would be reduced to \$2,000 based on the severity/probability determination. The \$2,000 would then be reduced by 25% because the employer exhibited good faith and corrected the violation immediately. It would be further reduced by 40 percent because the employer only has 50 employees and it would be reduced by a further 10 percent because the employer had no history of violations with the department. Thus the final assessed penalty would be \$ 500.

It should be noted that the states of Washington, Oregon, California, Utah, North Carolina, Maryland, Indiana, Tennessee, and Nevada have passed legislation to increase occupational safety and health penalties to come into compliance with the OSHA higher penalties and the other states with occupational safety and health state jurisdiction have legislation pending to conform with the higher penalty rates.

The Bill would also permit the collection of expenses incurred when employers fail to appear at an OSH Review Board Hearing. The average daily cost for the OSH Review Board to hold hearings is \$1,000. If it must cancel five days of hearings because employers do not appear at hearings, the Board could ask for \$5,000 in reimbursable expenses from employers. Once employers understand that they may be liable for such costs, the number of cancellations should decrease and therefore, it is expected after the second year, no significant revenue will be raised under this provision.

Bill No: Sponsor Substitute for
House Bill No. 33

Date: February 19, 1991

Title: "An Act relating to penalties
for violations of workplace
safety laws; and assessing
costs for an employer's failure
to appear at certain hearings
of the OSH Review Board."

Contact: Richard Arab
465-4856

SS HB 33 proposes to increase the penalties the Department of Labor may assess for violations of Alaska's occupational safety and health law and regulations.

The Federal OSHA program requires state programs to provide for standards and enforcement of standards which are at least as effective as federal OSHA's standards and enforcement. The provisions of SS HB 33 would bring state penalties into compliance.

Specifically the provisions of this bill relating to penalties will:

- (1) Increase the maximum penalty for willful or repeat violations from \$10,000 to \$70,000, and require that a minimum penalty of \$5,000 be imposed for these violations;
- (2) Increase the maximum penalty for serious violations or non-serious violations from \$1,000 to \$7,000;
- (3) Increase the daily penalty for not correcting a violation from \$1,000 to \$7,000;
- (4) Increase the maximum penalty for a willful or repeat violation which results in the death of a worker from \$10,000 to \$70,000; and increase from \$20,000 to \$140,000 the maximum penalty for a second conviction of a willful or repeat violation causing death;
- (5) Increase from \$10,000 to \$70,000 the maximum penalty for falsifying or otherwise misrepresenting occupational safety and health records and documents; and
- (6) Increase the maximum penalty for a violation of occupational safety and health posting requirements from \$1,000 to \$7,000.

POSITION PAPER/Department of Labor

Position Paper Continued

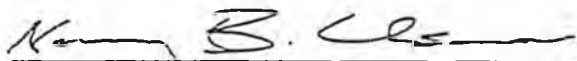
SS HB 33

February 19, 1991

This bill also proposes that employers who fail to appear without good cause at an OSH Review Board hearing may be ordered by the Board to pay all reasonable expenses incurred by the Board at the hearing. In this regard, a hearing before the Board is scheduled at an employer's specific request. Accordingly, it is appropriate and reasonable for the employer to appear at such a hearing.

The Department supports this bill not only because it brings the state program into conformity with federal requirements, but also because a higher level of penalties is needed to serve as a deterrent to workplace safety and health hazards that cause worker injuries. Alaska's penalties have not changed since enactment of the occupational safety and health law in 1973.

APPROVED:



Nancy Bear Usera, Commissioner

Department of Labor

SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 33 (L&C)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES KOPONEN, Brown, Donley, Moyer

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to penalties for violation of workplace safety laws; and assessing costs
 2 for an employer's failure to appear at certain hearings of the OSHA Review Board."

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

4 * Section 1. AS 18.60.085 is amended to read:

5 Sec. 18.60.085. PROHIBITION OF UNAUTHORIZED NOTICE OF INSPECTION. A
 6 person may not give [AN] unauthorized notice of a department safety or health inspection
 7 [MAY NOT BE GIVEN]. A person who gives unauthorized notice of a safety or health
 8 inspection, upon conviction, is punishable by a fine of not more than \$7,000 [\$1,000], or by
 9 imprisonment for not more than 180 days, or by both.

10 * Sec. 2. AS 18.60.093 is amended by adding a new subsection to read:

11 (f) If an employer fails without good cause to appear at a hearing held under this section
 12 after receiving proper notice of the hearing, the OSHA Review Board may order the employer
 13 to pay all reasonable expenses incurred by the board for the hearing, including the board's actual
 14 travel expenses and per diem.

1 * Sec. 3. AS 18.60.095(a) is amended to read:

2 (a) An employer who wilfully or repeatedly violates a provision of AS 18.60.010 -
3 18.60.105 that is applicable to the employer or a standard or regulation adopted under
4 AS 18.60.010 - 18.60.105 may be assessed by the commissioner a civil penalty of not more than
5 \$70,000 [\$10,000] for each violation. Except when a settlement is negotiated, the
6 commissioner shall assess a minimum penalty of \$5,000 for a violation under this subsection
7 that was committed wilfully.

8 * Sec. 4. AS 18.60.095(b) is amended to read:

9 (b) An employer who receives a citation for a serious violation of a provision of
10 AS 18.60.010 - 18.60.105 that is applicable to the employer or of a standard or regulation
11 adopted under AS 18.60.010 - 18.60.105 shall be assessed by the commissioner a civil penalty
12 of up to \$7,000 [\$1,000] for each violation. For purposes of this subsection, a serious violation
13 is considered to exist if the violation creates in the place of employment a substantial probability
14 of death or serious physical harm. However, a serious violation is not considered to exist if the
15 employer did not, and could not with the exercise of reasonable diligence, know of the presence
16 of the violation.

17 * Sec. 5. AS 18.60.095(c) is amended to read:

18 (c) An employer who receives a citation for a violation of a provision of AS 18.60.010 -
19 18.60.105 that is applicable to the employer or a standard or regulation adopted under
20 AS 18.60.010 - 18.60.105, and the violation is specifically determined not to be of a serious
21 nature, may be assessed by the commissioner a civil penalty of up to \$7,000 [\$1,000] for each
22 violation.

23 * Sec. 6. AS 18.60.095(d) is amended to read:

24 (d) An employer who fails to correct a violation within the period permitted for its
25 correction for which a citation has been issued may be assessed by the commissioner a civil
26 penalty of not more than \$7,000 [\$1,000] for each day during which the failure to correct the
27 violation continues.

28 * Sec. 7. AS 18.60.095(f) is amended to read:

29 (f) A person who knowingly makes a false statement, representation, or certification with
30 the intent to mislead in an application, record, report, plan or other document filed or required
31 to be maintained under AS 18.60.010 - 18.60.105 is guilty of unsworn falsification [, UPON

1 CONVICTION, IS PUNISHABLE BY A FINE OF NOT MORE THAN \$10,000, OR BY
2 IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY BOTH].

3 * Sec. 8. AS 18.60.095(g) is amended to read:

4 (g) An employer who violates the posting requirements of this chapter shall be assessed
5 by the commissioner a civil penalty of up to \$7,000 [\$1,000] for each violation.

6 * Sec. 9. AS 18.60.085, as amended by sec. 1 of this Act, and AS 18.60.095, as amended by secs.
7 3 - 8 of this Act, apply to violations that occur on or after the effective date of this Act.

Bill No: CS for Sponsor Substitute
for House Bill No 33
(Judiciary) am

Date: February 3, 1992

Title: "An Act Relating to Penalties for Violations of Workplace Safety Laws; and Assessing Costs for an Employer's Failure to Appear at Certain Hearings of the OSHA Review Board."

Contact: Arbe Williams 465-2700

CSSS HB33 (JUD) am proposes to increase the penalties the Department of Labor may assess for violations of Alaska's occupational safety and health law and regulations.

The Federal OSHA program requires state programs to provide for standards and enforcement of standards which are at least as effective as federal OSHA's standards and enforcement. Alaska Statutes, Section 18.60.030(b), also requires the department to establish and enforce standards that are as effective as those promulgated by federal OSHA. Accordingly, the penalty increases set out in Sections 2,3,4,5,6, and 8 of the bill reflect federal increases and must be enacted to insure State compliance with federal and state statutes.

The department requests that Section 9, line 6 of page 2, be deleted in order to reinstate AS 18.60.095(e) as it is currently set out in statutes. AS 18.60.095(e) establishes the criminal penalties for an employer who willfully or repeatedly violations a provision of the Alaska Occupational Safety and Health law and the violation causes death to an employee. Upon conviction, the employer is punishable by a fine or not more than \$10,000 and/or by imprisonment for not more than six months. The penalty was not increased at the federal level, consequently, AS 18.60.095(e) does not need to be amended, however, federal OSHA has strongly recommended that the criminal provision be reinstated in the state OSH Act.

Specifically, the provisions of this bill relating to penalties will:

- (1) Increase the maximum penalty for willful or repeat violations from \$10,000 to \$70,000, and require that a minimum penalty of \$5,000 be imposed for these violations;
- (2) Increase the maximum penalty for serious violations or non-serious violations from \$1,000 to \$7,000;
- (3) Increase the maximum daily penalty for not correcting a violation from \$1,000 to \$7,000;
- (4) Classify a violation of the prohibition of a person knowingly making a false statement, representation or certification as an "unsworn falsification" rather than a violation that is punishable by a fine of not more than \$10,000 or by imprisonment for not more than six month, or by both; and

POSITION PAPER/ Department of Labor

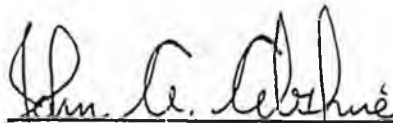
Position Paper Continued
CSSS HB 33 (JUD) am
February 3, 1992

- (5) Increase the maximum penalty for a violation of occupational safety and health posting requirements from \$1,000 to \$7,000.

This bill also proposes that employers who fail to appear without good cause at an OSH Review Board hearing may be ordered by the Board to pay all reasonable expenses incurred by the Board at the hearing. In this regard a hearing before the Board is scheduled at an employer's specific request. Accordingly, it is appropriate and reasonable for the employer to appear at such a hearing.

The Department supports this bill, with the deletion of Section 9 of CSSSHB (Jud)am, to bring the state program into conformity with federal requirements.

APPROVED



John A. Abshire, Acting Commissioner
Department of Labor

Alaska State Legislature
Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
(907) 465-4992

House District 21

119 N. Cushman, Suite 207
Fairbanks, Alaska 99701
(907) 456-8172

POSITION PAPER
HB 33

Both Minor and Gross violations of Alaska's Occupational Safety and Health Statutes remained at the same \$10,000 or lower level since passage of the original legislation in 1973.

In November of 1990 Congress passed legislation requiring the federal Occupational Safety and Health Administration to increase penalties for OSHA violations. Under the State occupational safety and health plan, Alaska is required to raise their standards to comply with the new federal OSHA penalties. If we fail to do so, Alaska could lose its enforcement power to the Federal Agency.

The amendments provide for a maximum of \$70,000 for willful and repeated violations, a minimum of \$5,000 for each willful violation, and a maximum of \$7,000 for serious, violations. This is a substantial increase from earlier penalties and more than doubled the increase in penalties that I originally wanted to raise in this legislation.

Congress believes that this increased maximum penalty will encourage businesses to conform to workplace safety laws and regulations. As businesses adjust to a tight economic environment, it is important that worker health and safety not be sacrificed. Maintaining a safe workplace is less costly than facing the potential of high penalties and paying the costs of accidents and injuries. HB 33 will bring Alaska into conformity with Federal law.

According to the latest statistics, Alaska occupational safety and health injury and illness incidence rate is 43% higher than that of the nation and is now the second highest in the nation.

It is my sincere hope that this legislation will result in fewer injuries, fewer fines and lower workers' compensation insurance costs. The continually rising number of injuries and fatalities to Alaskan workers testifies to the ineffectiveness of our present statutes. So long as it is cheaper to pay the fine than to correct a dangerous situation we cannot expect improvement in the workplace.

U.S. Department of Labor Program Highlights

Fact Sheet No. OSHA 91-36

NEW OSHA CIVIL PENALTIES POLICY

A seven-fold increase in the maximum limits for OSHA civil monetary penalties was stipulated in the Budget Reconciliation Act passed by the 101st Congress.

The maximum allowable penalty is now \$70,000 for each willful or repeated violation; and \$7,000 for each serious or other-than-serious violation as well as \$7,000 for each violation of the posting requirements and \$7,000 for each day beyond a stated abatement date for failure to correct a violation.

The amounts are ceilings—not floors. However, in order to ensure that the most flagrant violators are in fact fined at an effective level, a minimum penalty of \$5,000 for a willful violation of the OSH Act was adopted.

The new penalty policy will be applicable to all citations issued as a result of inspections initiated after March 1, 1991, for violations occurring after Nov. 5, 1990—the effective date of the Budget Reconciliation Act.

The new policy also applies to those states with OSHA-approved state occupational safety and health programs, under the congressional direction that these State plans must be "as least as effective" as the national plan. The participating states are being given a reasonable period to implement the new penalty structure which takes into account the states' legislative calendars.

The basic penalty process will not change—it still follows the criteria set forth in the Occupational Safety and Health Act, which is to determine penalties based on the gravity of the violation and the size, good faith and history of the employer. Gravity determines the base amount; the other factors determine appropriate reductions.

As in the past, all penalty amounts are proposed penalties issued with the citation. The employer may contest the penalty amount as well as the citation within the statutory 15-day contest period. Thereafter,

the penalty may be adjudicated by the independent Occupational Safety and Health Review Commission, or OSHA may negotiate with the employer to settle for a reduced penalty amount if this will lead to speedy abatement of the hazard.

Here is how the new system for proposing penalties will operate.

ADJUSTMENT FACTORS:

The size adjustment factor is as follows: For an employer with only one to 25 workers, the penalty will be reduced 60 percent; 26 to 100 workers, the reduction will be 40 percent; 101 to 250 workers, a 20 percent reduction; and more than 250 workers, there will be no reduction in the penalty.

There may be up to an additional 25 percent reduction for evidence that the employer is making a good faith effort to provide good workplace safety and health, and an additional 10 percent reduction if the employer has not been cited by OSHA for any serious, willful or repeat violations in the past three years.

In order to qualify for the full 25 percent 'good faith' reduction, an employer must have a written and implemented safety and health program such as given in OSHA's voluntary 'Safety and Health Management Guidelines' (Federal Register, Vol. 54, No. 16, Jan. 26, 1989, pp. 3904-3916) and that includes programs required under the OSHA standards, such as Hazard Communication, Lockout/Tagout or safety and health programs for construction required in 1926.20.

SERIOUS VIOLATIONS:

The typical range of proposed penalties for serious violations, before adjustment factors are applied, will be \$1,500 to \$5,000, although the Regional Administrator may propose up to \$7,000 for a serious violation when warranted.

A serious violation is defined as one in which there is substantial probability that death or serious physical harm could result, and the employer knew or should have known of the hazard.

Serious violations will be categorized in terms of severity—high, medium or low—and the probability of an injury or illness occurring—greater or lesser.

Base penalties for serious violations will be assessed as follows:

<u>Severity</u>	<u>Probability</u>	<u>Penalty</u>
High	Greater	\$5,000
Medium	Greater	\$3,500
Low	Greater	\$2,500
High	Lesser	\$2,500
Medium	Lesser	\$2,000
Low	Lesser	\$1,500

Penalties for serious violations that are classified as high in both severity and greater in probability will only be adjusted for size and history.

OTHER-THAN-SERIOUS VIOLATIONS:

If an employer is cited for an other-than-serious violation which has a low probability of resulting in an injury or illness, there will be no proposed penalty. However, the violation must still be corrected. If the other-than-serious violation has a greater probability of resulting in an injury or illness, then a base penalty of \$1,000 will be used, to which appropriate adjustment factors will be applied.

The OSHA Regional Administrator may use a base penalty of up to \$7,000 if circumstances warrant.

REGULATORY VIOLATIONS:

Regulatory violations involve violations of posting, injury and illness reporting and recordkeeping requirements, and not telling employees about advance notice of an inspection. OSHA will be applying adjustments only for the size and history of the establishment.

Here are the base penalties, before adjustments, to be proposed for posting requirement violations: OSHA notice, \$1,000; annual summary, \$1,000; and failure to post citations, \$3,000.

Base reporting and recordkeeping penalties are as follows: Failure to maintain OSHA 200 and OSHA 101 forms, \$1,000; failure to report a fatality or catastrophe within 48 hours, \$5,000 (with a provision that the OSHA Regional Administrator could adjust that up to \$7,000, in exceptional circumstances); denying access to records, \$1,000; and not telling employees about advance notice of an inspection, \$2,000.

WILLFUL VIOLATIONS:

In the case of willful serious violations, the initial

proposed penalty has to be between \$5,000 and \$70,000. OSHA calculates the penalty for the underlying serious violation, adjusts it for size and history and multiplies it by 7. The multiplier of 7 can be adjusted upward or down at the OSHA Regional Administrator's discretion, if circumstances warrant. The minimum willful serious penalty is \$5,000.

Willful violations are those committed with an intentional disregard of, or plain indifference to, the requirements of the OSH Act and regulations.

REPEAT VIOLATIONS:

A repeat violation is a violation of any standard, regulation, rule or order where, upon reinspection, a substantially similar violation is found.

Repeat violations will only be adjusted for size, and the adjusted penalties will then be multiplied by 2, 5, or 10. The multiplier for small employers—250 employees or fewer—is 2 for the first instance of a repeat violation, and 5 for the second repeat. However, the OSHA Regional Administrator has the authority to use a multiplication factor of up to 10 on a case involving a repeat violation by a small employer to achieve the necessary deterrent effect.

The multiplier for large employers—250 or more employees—is 5 for the first instance of a repeat violation, and 10 for the second repeat.

If the initial violation was other-than-serious, without a penalty being assessed, then the penalty will be \$200 for the first repetition of that violation, \$500 for the second repeat, and \$1,000 for the third repeat.

FAILURE TO ABATE:

Failure to correct a prior violation within the prescribed abatement period could result in a penalty for each day the violation continues beyond the abatement date.

In these failure to abate cases the daily penalty will be equal to the amount of the initial penalty (up to \$7,000) with an adjustment for size only.

This failure to abate penalty may be assessed for a maximum of 30 days by the OSHA Area office. In cases of partial abatement of the violation, the OSHA Regional Administrator has authority to reduce the penalty by 25 percent to 75 percent.

If the failure to abate is more than 30 days, it may be referred to the OSHA national office in Washington where a determination may be made to assess a daily penalty beyond the initial 30 days.

Alaska State Legislature
Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
(907) 465-4992

House District 21

119 N. Cushman, Suite 207
Fairbanks, Alaska 99701
(907) 456-8172

February 11, 1992

Dear Colleagues:

Alaska has the second highest occupational injury rate in the nation. In just one year we have jumped from an occupational safety, health injury and illness incidence rate of 31% to 43% higher than that of the national average. This is not a record of which we can be proud.

In November of 1990, Congress passed legislation requiring the Federal Occupational Safety and Health Administration to increase penalties for OSHA violations. Alaska is now required to update its statutes .

Sponsor Substitute for HB 33 will raise our current penalties to Federal OSHA mandated levels.

It is my sincere hope that this legislation will result in both fewer injuries and fewer fines. The rising number of injuries and fatalities to Alaskan workers testifies to the insufficiency of our present statutes. So long as it is cheaper to pay the fine than to correct a dangerous situation we cannot expect improvement.

Workers and the public are entitled to a safe worksite. There is no reason why an employer cannot meet the standards established by federal and state statutes. In fact, a number of Alaskan businesses have safety records much better than those Outside. Others do not, and as a result of their poor safety record, drastically increase Workers Compensation costs for every other business. This bill would encourage greater attention to safety.

I invite your co-sponsorship of this bill. Please let me or Shari Paul of my staff know of your interest.



Niilo Koponen

News

United States
Department
of Labor

Office of Information

Washington, D.C. 20210

NB4 ✓

Director	
Sp Asst	
So Asst	
Info Off	
Adm Asst	
Int Bus	
ESD	
LS&S	
W/C	
CC: <i>Rep. Koyonen</i>	
CC:	



Occupational Safety and Health Administration

USDL: 91-28

CONTACT: Frank Kane
OFFICE: (202) 523-8151
AFTER HOURS: (703) 360-7080

FOR RELEASE: 1:00 PM EST
Thursday, Jan. 24, 1991

OSHA ANNOUNCES PROCEDURES FOR IMPLEMENTING NEW SYSTEM OF CIVIL PENALTIES

Procedures for implementing its new system of civil monetary penalties for violations of occupational safety and health law and regulations were announced today by the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor.

Congress enacted a seven-fold increase in the maximum limits for such penalties in the Omnibus Budget Reconciliation Act of 1990. The maximum allowable civil penalty now is \$70,000 for each willful or repeated violation; and \$7,000 for each serious or other-than-serious violation as well as \$7,000 for each violation of the posting requirements and \$7,000 for each day beyond a stated abatement date for failure to correct a violation.

Assistant Secretary of Labor Gerard F. Scannell, who heads OSHA, said, "I want to emphasize that these amounts are ceilings--not floors. We will not automatically assess penalties that are seven times what they were previously, although there will be some increases."

He added that OSHA's basic approach will remain the same---striving for voluntary compliance by America's employers with occupational safety and health requirements.

The new civil penalty policy will be applicable to citations issued as the result of inspections initiated after March 1, 1991, for violations occurring after Nov. 5, 1990---the effective date of the Budget Reconciliation Act.

The procedures for implementing the new penalty policy are contained in a new chapter for OSHA's Field Operations Manual which is being distributed to all the agency's regional and area offices.

-more-

As in the past, when calculating penalties, OSHA will take into account these factors: the gravity of the violation; the size of the employer as determined by the number of employees; the employer's good faith as principally demonstrated by efforts to implement a sound, effective workplace safety and health program such as given in the voluntary "Safety and Health Management Guidelines" issued by OSHA in January, 1989; and the employer's past history of compliance with the Occupational Safety and Health Act and OSHA regulations.

"The largest monetary penalties will be reserved for those employers who demonstrate the least concern with their workers' safety and health and who expose those workers to the most serious hazards," Scannell said.

This is in line with Congress's aim in establishing larger maximum penalties as a deterrent to employers who might otherwise decide to ignore workplace safety and health requirements.

To ensure that the most flagrant violators are in fact fined at an effective level, a minimum penalty of \$5,000 for a willful violation of the OSH Act was adopted by Congress. Specific language in the legislative history of the Budget Reconciliation Act, however, gives OSHA the discretion to adjust this amount during a settlement process.

The new penalty system also will apply to those states with OSHA-approved state occupational safety and health programs, under the Congressional direction that these state plans must be "as least as effective" as the national plan. The participating states are being given a reasonable time to implement the new penalty structure which takes into account the states' legislative calendars.

###

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

May 8, 1991

P.O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700

FAX: (907) 465-2784

The Honorable Niilo Koponen
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Koponen:

This is to reaffirm the Department of Labor's strong support for CSSS HB 33 (Jud), which increases the penalties for occupational safety and health violations.

As you know, the federal Occupational Safety and Health Administration's civil penalties were increased in late 1990, and Alaska is required to bring its penalties into line with them. Accordingly, passage of the civil penalty provisions in House Bill 33 (Sections 3, 4, 5, 6, and 9) is needed to assure that our state-operated safety and health program is not jeopardized.

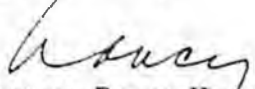
Although the criminal penalty provisions in the bill (Sections 2, 7, and 8) are not required to conform to federal law, they, too, are intended to serve as a deterrent to workplace safety and health hazards. Alaska's civil and criminal penalties have not changed since enactment of the occupational safety and health law in 1973.

Section 1 of the bill provides that employers who fail to appear without good cause at an OSH Review Board hearing may be ordered by the Board to pay all reasonable expenses incurred by the Board. Since a hearing before the Board is scheduled at an employer's specific request, it is appropriate for the employer to appear at the hearing.

I urge your continued effort to secure passage of House Bill 33 this year.

Thank you.

(Sincerely,


Nancy Bear Usera
Commissioner

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO : CSSSHB 33(Jud) am

Revision Date: _____
Title: " An Act relating to penalties for violation of workplace safety laws..."
Sponsor: Representative Koponen, et.al.
Requestor: _____

Department Affected: Labor
BRU: Labor Standards & Safety
Component: Occupational Safety & Health
COMPONENT SERIAL NO. 970

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	15.0	15.0				
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	15.0	15.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE	229.0	172.0	86.0	22.0	6.0	0.0
FUND SOURCE:	GF #1004	GF #1004	GF #1004	GF #1004	GF #1004	

FUNDING: (Thousands of Dollars)

GENERAL FUND	15.0	15.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	15.0	15.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

See attached

Prepared by: Richard Arab, Deputy Director

Division: Labor Standards & Safety

Phone : 465-4855

Date : 1/10/92

Approved by Commissioner: John Abshire, Acting Commissioner

Agency: Department of Labor

Date: 1/10/92

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

Fiscal Note Analysis for:

"An Act relating to penalties for violation of workplace safety laws..."

This bill would increase the amount of the penalties charged for the violation of workplace safety laws. Because of the increase in penalties, we expect an increase in the number of contested violations and in the number of requests for informal conferences. We estimate an additional \$15,000 of legal support for the OSH review board would be needed in FY 93 and FY 94. These costs should decrease after the first two years if the bill achieves its goal of providing more incentive for employers to voluntarily correct hazards so that we find fewer serious violations. Therefore, we would have no additional costs beyond 1994.

Revenues

The department assessed a total of approximately \$ 292,000 in penalties in FY 91 with a collection rate of approximately 80%. Since Federal OSHA started to assess higher penalties starting in March, 1991, their average penalty amount has increased by approximately 95%. Assuming that Alaska will have the same experience as OSHA, we estimate that approximately \$ 280,000 in additional penalties would be assessed in FY 93. Assuming our 80% collection rate, revenue would increase by approximately \$ 224,000.

After the first year, we anticipate revenue would decrease as employers voluntarily correct hazards and fewer violations are detected. Thus, after five year with the new penalties we project, the deterrent affect of the higher rates would bring revenues back to what they currently are.

The reason that federal OSHA penalties have not increased seven fold is that they have adopted a penalty adjustment policy that significantly lowers penalties based on factors such as severity of the violation; good faith of the employer in correcting the violation; the employer's past history of violations; and the size of the employer's work force. If HB 33 is enacted the Department will adopt the same adjustment policy. The following is an explanation of the adjustment method:

* The penalty is adjusted based on the severity of the injury that could occur and the probability of that injury occurring. OSHA has developed a formula that will reduce the \$7,000 maximum to a high of \$5,000 and a low of \$1,500.

* The adjusted penalty based on severity and probability will then be adjusted further based on size of employer, good faith and history. The maximum reduction of 95% can be provided through these factors.

For example, an employer with 50 employees is cited for a serious violation because heavy engine and automotive parts were stored and stacked in an unstable manner. The following penalty adjustment would occur:

* The violation is of medium severity as the injury, a blow to the body or head from a falling part, may result in hospitalization but the injury would result in only a limited period of disability. The probability of the injury is low because only two employees must enter the warehouse where these automotive parts are stored for approximately one hour a day. The \$7,000 penalty would be reduced to \$2,000 based on the severity/probability determination. The \$2,000 would then be reduced by 25% because the employer exhibited good faith and corrected the violation immediately. It would be further reduced by 40 percent because the employer only has 50 employees and it would be reduced by a further 10 percent because the employer had no history of violations with the department. Thus the final assessed penalty would be \$ 500.

It should be noted that the states of Washington, Oregon, California, Utah, North Carolina, Maryland, Indiana, Tennessee, and Nevada have passed legislation to increase occupational safety and health penalties to come into compliance with the OSHA higher penalties and the other states with occupational safety and health state jurisdiction have legislation pending to conform with the higher penalty rates.

The Bill would also permit the collection of expenses incurred when employers fail to appear at an OSH Review Board Hearing. The average daily cost for the OSH Review Board to hold hearings is \$1,000. If it must cancel five days of hearings because employers do not appear at hearings, the Board could ask for \$5,000 in reimbursable expenses from employers. Once employers understand that they may be liable for such costs, the number of cancellations should decrease and therefore, it is expected after the second year, no significant revenue will be raised under this provision.

DEPARTMENT OF LABOR
RESPONSE TO QUESTIONS RELATED TO
SPONSOR SUBSTITUTE FOR HOUSE BILL NO.33
HOUSE LABOR AND COMMERCE COMMITTEE

1. What are the funding sources for the Alaska Occupational Safety and Health Program?

The Alaska Occupational Safety and Health program is funded by three sources of monies: a federal grant that provides 50 percent matching funds for enforcement and training activities; a federal contract that provides 90 percent matching funds for private consultation activities; and state general fund monies for a portion of enforcement and consultation activities and for worker certification programs.

In Fiscal year 1991, the Alaska Occupational Safety and Health budget is as follows:

Federal 23(g) grant: \$1,138,500 which requires \$1,138,500 in state matching monies. Federal 7(c)(1) contract: \$308,100 which requires \$32,900 in state matching monies. State General fund monies:\$705,800. Total: Federal funds \$1,446,600 and state monies \$1,877,200. Total budget: \$3,323,800.

In Fiscal Year 1992, the Alaska Occupational Safety and Health budget is requesting the following:

Federal 23(g) grant: \$ 1,159,300; federal 7(c)(1), \$336,600; (total federal monies \$1,495,900) and state matching and general funds \$1,910,500. Total request: \$ 3,406,400.

2. What would be the social impact of transferring the state's occupational safety and health jurisdiction back to the federal Occupational Safety and Health Administration?

The major social impact will be less protection for Alaska workers from occupational safety and health hazards. The State has a staff of 16 enforcement compliance officers and nine safety and health consultants. Federal OSHA's staffing benchmark for Alaska is for 9 enforcement compliance officers. Federal OSHA does not offer any consultative and training services and therefore, the consultative and training services currently available to employers would be greatly diminished. Also Federal OSHA does not have jurisdiction over State and local government employment and therefore, approximately 50,000 Alaskan workers (almost 20 percent of the Alaskan workforce) would be without any occupational safety and health protection.

There will also be less sensitivity to occupational safety and health issues that are unique to Alaska's work sites. For example, the Alaska Occupational Safety and Health agency has worked closely with the logging industry to develop safety and health standards that address the hazards of working in the rugged terrain of Southeast Alaska and is providing safety training programs specifically geared to the needs of the Alaskan

logging industry. A program run from Washington D.C. would be unlikely to provide such assistance as they must cover industry on a nationwide basis and would not fit their programs to meet the different needs of each State.

3. What type of administrative procedures will be used by the Alaska Occupational Safety and Health Program to adjust penalties?

The Department of Labor uses an administrative procedure to adjust penalties of violations so that there is a sliding scale depending on the gravity of the violation, the size of the employer's business, the good faith of the employer in correcting violations, and the history of the employer's previous violations.

If SSHB 33 is enacted, the Department would use the same or similar procedures that federal OSHA uses to adjust penalties. The following are examples of how the penalties would be adjusted:

Example # 1: An employer with five employees is cited for a serious violation for allowing employees to be exposed to an unguarded chain and sprocket. As this violation would be considered to result in a low probability of death or broken bones, the agency would start by cutting the maximum \$7,000 penalty by 50%. This would result in an unadjusted penalty of \$3,500. The agency would then adjust this penalty further by providing a reduction of 60 percent for the size of the employer; a reduction of 25 percent for good faith if the employer corrects the hazard immediately; and a reduction of 10 percent if the employer has not been previously cited for a serious, willful or repeated violation. The "unadjusted" penalty of \$3,500 would, therefore, be lowered by 95% to a final penalty of \$175.

Example # 2: Employees are working in a 10 feet deep trench, laying a sewer line. The trench is unshored and there is no sloping. As this hazard will result in a high probability of death due to suffocation, asphyxiation, or broken bones should a cave-in occur, the Department would not provide any reduction for the gravity of the violation and would start with a \$7,000 unadjusted penalty. The employer employs 50 employees. The Department would provide a 40 percent reduction for size of the employer but would not provide any reduction for good faith or for history because the employer had been cited for several other violations on an inspection six months prior to this inspection. The "unadjusted" penalty of \$7,000 would, therefore, be lowered by 40% to a final penalty of \$4,200.

The above are two examples of the penalty calculation procedures that would be used for "serious" violations. If the department found a willful violation that caused the death of one or more employees, no penalty reduction would be provided and a penalty of \$70,000 would be assessed.

DIVISION OF LEGAL SERVICES

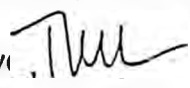
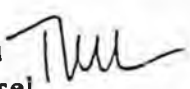
LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

March 1, 1991

SUBJECT: Workplace Safety Laws (CSSSHB 33())
TO: Representative Davi 
FROM: Terri Lauterbach 
Legislative Counsel

Enclosed is a draft CS for SSHB 33. It incorporates a couple of changes suggested by Laurie Otto and fixes some errors we have discovered in previous versions of the bill. The changes, when compared to the CS passed out by the Labor & Commerce Committee, are as follows:

- (1) This draft uses specific dollar maximums in each penalty subsection rather than relying on a reference to maximums under federal OSHA laws. The federal maximums were not changed for 20 years before the change in 1990, so it does not appear that the burden of changing the state law whenever the federal law changes is a great one. In contrast, there may be significant disadvantages to such a tie-in: possibly improper delegation of legislative power, lack of notice to potential violators, and lack of access to federal laws by rural judges.
- (2) Section 2 has been added to raise a penalty overlooked in previous versions of the bill.
- (3) Toward the beginning of section 7, the phrase "with criminal negligence" has been added so that there is at least a minimal mens rea required for the criminal sanctions that may be imposed under this subsection. The Alaska Supreme Court has repeatedly expressed its aversion to the imposition of criminal sanctions for violations that may have been inadvertent or committed with simple negligence. Reynolds v. State, 655 P.2d 1313, (Alaska App. 1982); Speidel v. State, 460 P.2d 77 (Alaska 1969); Alex v. State, 484 P.2d 677 (Alaska 1971). While there may be some slight room for strict liability in this area, a legally "safer" course of action would be to add the mens rea standard of criminal negligence (gross negligence).

Representative Dave Donley

March 1, 1991

Page 2

(3) Toward the middle of section 7, "second conviction" has been changed to "subsequent conviction" so that third, fourth, fifth, etc. convictions are clearly covered by the increased penalty.

(4) At the end of section 7, a new sentence has been added to clarify that there could be a prosecution under the criminal laws of the state for a violation involving death. Otherwise, the argument could be made that prosecution under this OSHA law is the only prosecution allowed in the case of a death.

(5) A new section 10 has been added to clarify the applicability of the new penalty provisions.

(6) Most of the new material in AS 18.65.095(h) that was added in the Labor and Commerce CS is unnecessary in this draft because of the change explained in (1) above. Other aspects of (h) were errors because they improperly "confused" civil and criminal penalties. Therefore, this new draft makes no amendments to AS 18.65.095(h). The only change salvaged from (h) in the other CS is the "\$5,000 minimum" language that appears in its proper place at the end of sec. 3 of this new draft.

I wish to raise one other point. For your information, the recent federal law that raised OSHA penalties did not raise the maximum fine amounts for criminal violations. (These are the violations covered by secs. 2,7, and 8 of the new draft.) There is no reason I can think of for why the state could not raise these penalties on its own. I just wanted you to be aware that these particular increases are not required for compliance with federal law.

I hope you find this memo helpful in explaining the attached CS. If you have further questions, please let me know.

TML:lmb
91-064.lmb

Enclosure

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LABOR
OFFICE OF THE COMMISSIONER

P.O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700
FAX: (907) 465-2784

February 7, 1991

The Honorable Niilo Koponen
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Koponen:

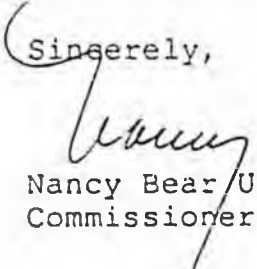
This is to follow up on our conversation concerning amendments to House Bill No. 33 to align Alaska's occupational safety and health penalty structure with that mandated by the U.S. Department of Labor.

Briefly, in 1990 Congress passed legislation requiring the federal Occupational Safety and Health Administration to increase penalties for OSHA violations. As you know, under our State occupational safety and health plan, Alaska is required to prescribe standards and enforcement of standards which are at least as effective as those provided by federal OSHA.

Consequently, it would seem prudent to go ahead and bring the penalties in your bill in line with the federal standard now, as opposed to having to make a two-step approach. To that end, enclosed is a listing of the specific amendments needed, along with some background information on the federal requirements.

Thank you for your help; and if you have any questions or need additional information; please let me know.

Sincerely,


Nancy Bear Usera
Commissioner

NBU:kh

Enclosure

1
2417

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



JAN 23 1991

MEMORANDUM FOR: STATE DESIGNEES

FROM: GERARD F. SCANNELL
Assistant Secretary

SUBJECT: Statutory Increase in Penalty Levels

A handwritten signature in cursive script, reading "G. Scannell", is written over the typed name "GERARD F. SCANNELL".

As you are aware, the Omnibus Budget Reconciliation Act of 1990, that was effective on November 5, amended section 17 of the Occupational Safety and Health Act to provide for increased penalty levels for violations of the Act. The excerpt of the Conference Report on the Budget Act which discusses penalties was sent to you on October 31. The amendments provide for a maximum of \$70,000 for willful and repeat violations, a minimum of \$5,000 for each willful violation, and a maximum of \$7,000 for serious, other than serious, failure to abate, and posting violations.

The Congress (as evidenced by the Conference Report) believes that the increased maximum penalty authority will serve as an important deterrent and will encourage employers to comply with safety and health regulations before they are inspected. Employers should realize that maintaining a safe and healthful workplace is less costly than facing the potential of high penalties, in addition to the major cost of accidents and injuries.

Since the \$5,000 floor for willful penalties is within currently authorized limits, in the interest of national consistency, the States are encouraged to implement it administratively, concurrently with Federal OSHA's implementation. (The Conference Report makes clear that negotiated settlement of willful violations may result in a lower penalty.) OSHA has developed procedures for implementing the new penalty calculations, in consultation with State plan representatives, and will begin proposing penalties at the new levels on all inspections beginning on or after March 1, 1991 for violations which occurred on or after November 5, 1990. (A copy of the final directive is attached, for your information.)

As you are aware, State plan approval criteria in section 18 of the Act and 29 CFR 1902 require the States to provide for standards and enforcement of standards which are at least as effective as OSHA's standards and enforcement. Further, OSHA regulations at 29 CFR 1953.20 and 1953.23 provide that when there is a change in the Federal program (examples given include

revisions, enforcement policies or procedures, and legislative or regulatory changes) the States are required to implement corresponding changes within six months of the Federal change. The time limit may be extended if the Assistant Secretary determines that a State has made a timely and specific showing that good cause exists to extend the time limitation for that State.

We recognize that this is a significant change in the OSHA program for both the Federal and State programs; and that State legislative action is necessary to effect a comparable change. States, in order to be considered at least as effective as the Federal program, must have statutory penalty authority for their private sector programs that at least reflects the new Federal maximums. We urge all States to try to effect this statutory change within the required six months and are available to provide any assistance you may need. However, we also recognize that because of differing State legislative schedules, etc., some States may be unable to accomplish such a change within six months. OSHA will work with each State on an individual basis to effect the required increases as soon as practicable. You also should be aware that State implementation of the new penalty authority, once enacted, need not be identical to Federal procedures, though State performance will be evaluated by OSHA to assure equivalent effectiveness.

Please notify your respective Regional Administrator as soon as possible, if you foresee any problems in accomplishing this legislative change.

Attachment

cc: Regional Administrators

Department of Labor
Proposed Amendments to House Bill 33

1. Amend line 13 on page 1 to read:

than \$70.000 [\$10,000] for each violation. A minimum penalty of \$5.000 must be assessed under this section.
2. Page 2, line 4:

Change \$3.000 to \$7.000
3. Page 2, line 13:

Change \$3.000 to \$7.000
4. Page 2, line 18:

Change \$3.000 to \$7.000
5. Page 2, line 24:

Change \$30.000 to \$70.000
6. Page 2, line 26:

Change \$60.000 to \$140.000
7. Page 2, line 31:

Change \$30.000 to \$70.000
8. Page 3, line 4:

Change \$3.000 to \$7.000

Crosstabulation: AREA

E

YEAR->	Count	84	85	86	87	Row Total
AREA						
10	Aleutians	247	337	382	410	1376 3.2
20	Anchorage	4917	5020	3932	3606	17475 40.9
50	Bethel	118	86	92	90	386 .9
60	Bristol Bay	46	62	63	58	229 .5
70	Dillingham	119	119	112	104	454 1.1
90	Fairbanks	1162	1173	932	900	4167 9.7
100	Haines	28	20	15	23	86 .2
110	Juneau	417	419	282	335	1453 3.4
122	Kenai	590	721	623	682	2616 6.1
130	Ketchikan	401	385	406	462	1654 3.9
140	Northwest Arctic	44	33	28	32	137 .3
150	Kodiak	245	223	263	342	1073 2.5
170	Mac-Su	516	464	357	294	1631 3.8
180	Nome	87	85	75	70	317 .7
185	North Slope	1231	1247	872	631	3981 9.3
201	Pr of Wales	192	229	249	319	989 2.3
Column Total		11398	11747	9945	9661	42751
(Continued)		26.7	27.5	23.3	22.6	100.0

Crosstabulation: AREA

YEAR->	Count	84	85	86	87	Row Total
AREA						
Sitka	220	180	188	232	231	831 1.9
Skagway	231	131	206	269	319	925 2.2
S E Fairbanks	240	60	45	62	32	199 .5
Valdez-Cordova	261	204	199	203	269	875 2.0
Wade Hampton	270	39	33	30	41	143 .3
Wrang-Ptrsbrg	280	164	270	300	253	987 2.3
Yukon-Koyuk	290	168	145	121	119	553 1.3
Milti-Area	996		6	4	2	12 .0
Out of State	998		29	38	25	92 .2
Unknown	999	92	3	3	12	110 .3
Column Total		11398	11747	9945	9661	42751
		26.7	27.5	23.3	22.6	100.0

Number of Missing Observations = 0

Crosstabulation: NATURE2

B

YEAR->	Count	84	85	86	87	Row Total
NATURE2						
10	Amputation / Enu	44	31	28	35	138 .3
11	Asphyxia, Strang	7	3	4	5	19 .0
12	Burn (Heat)	214	248	192	191	845 2.0
13	Burn (Chemical)	60	79	47	66	252 .6
14	Concussion	49	78	98	121	346 .8
15	Infective / Para	11	20	17	11	59 .1
16	Contusion, Crush	1303	1513	1145	1024	4985 11.7
17	Cut, Laceration,	1137	1142	909	1041	4229 9.9
18	Dermatitis	41	42	47	42	172 .4
19	Dislocation	170	188	241	196	795 1.9
20	Electric Shock	7	15	8	8	38 .1
21	Fracture	1014	1053	847	792	3706 8.7
22	Exposure to Low	33	25	17	13	88 .2
23	Hearing Loss / I	3	7	4	11	25 .1
24	Environmental He		2	2	1	5 .0
25	Hernia, Rupture	173	164	130	132	599 1.4
Column	Total	11398	11747	9945	9661	42751
(Continued)	Total	26.7	27.5	23.7	22.6	100.0

Crosstabulation: NATURE2

E

YEAR->	Count	84	85	86	87	Row Total
NATURE2						
26	Inflammation	169	108	136	187	600 1.4
27	Poisoning	109	114	107	78	408 1.0
28	Pneumoconiosis	2	2	3		7 .0
29	Radiation Effect	37	34	23	16	110 .3
30	Scratches, Abras	359	318	306	322	1305 3.1
31	Sprains, Strains	5507	5725	4970	4859	21061 49.3
32	Hemorrhoids	11	10	3	2	26 .1
33	Hepatitis	4	6	1	5	16 .0
40	Multiple Injurie	541	503	223	118	1385 3.2
50	Changes in Atmos	7	2	4	1	14 .0
51	Cerebrovascular	5	7	12	10	34 .1
52	Complications -	1		1	1	3 .0
53	Eye Diseases	37	20	22	12	91 .2
54	Mental Disorders	17	17	36	30	100 .2
55	Neoplasm			2	3	5 .0
56	Nervous System	55	87	105	93	340 .8
Column Total		11398	11747	9945	9661	42751
(Continued)	Total	26.7	27.5	23.3	22.6	100.0

Crosstabulation: NATURE2

YEAR->	Count	84	85	86	87	Row Total
NATURE2						
57 Respiratory Syst		14	23	23	25	85 .2
58 Symptoms & Ill-D		21	20	29	19	89 .2
90 No Injury or Ill		1	1	1	1	4 .0
95 Damage to Prosth		3	1	4	2	10 .0
99 Other Dis/Inj Ne		232	139	198	188	757 1.8
Column Total		11398	11747	9945	9661	42751
		26.7	27.5	23.3	22.6	100.0

Number of Missing Observations = 0

May 6, 1991

The Honorable Niilo Koponen
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 33 (Penalties for viol. of workplace safety laws)

Dear Representative Koponen:

This letter is to indicate our support for CS HB33 (Jud), "An Act relating to penalties for violation of workplace safety laws," and particularly for section 7 of the bill, which amends the criminal penalties that may be imposed for wilful or repeated violations that cause an employee's death.

If the defendant is an individual, the bill makes the criminal penalties as great as the civil penalties. This only makes sense; a criminal offense must have consequences at least as serious as a civil violation.

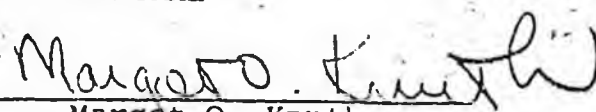
If the defendant is an organization, the bill makes available the criminal penalties already set out for organizations in AS 12.55. AS 12.55.035(c), relating to fines, was amended by the legislature last year to give sentencing judges greater discretion in setting fines for organizations. That amendment can be made effective only if it applies in cases such as these.

Once again, we support this bill and thank you for the opportunity to comment on it. If there are any questions that we may be able to answer, please do not hesitate to call upon us.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By:


Margot O. Knuth
Assistant Attorney General

MOK:mm-046

ANCHORAGE OFFICE

THE ENSERCH CENTER
550 WEST SEVENTH AVENUE SUITE 1200
ANCHORAGE, ALASKA 99501
PHONE: (907) 277-6693
FACSIMILE: (907) 279-1959

*ROBERT B. BAKER
LEROY J. BARKER
*LG BERRY
HAROLD E. SNOW, JR.
SUSAN M. WEST
*JULIA B. BOCKMON
*JOSEPH D. DARNELL
GREGORY G. SILVEY
CHARLES T. HUGUELET

WASHINGTON, D.C. AND VIRGINIA OFFICE

ARLINGTON COURTHOUSE PLAZA II
2300 CLARENDON BOULEVARD, SUITE 1010
ARLINGTON, VIRGINIA 22201
PHONE: (703) 527-4414
FACSIMILE: (703) 527-0421

*MICHAEL T. THOMAS
*STEVEN W. SILVER
*CARI W. WINNER
*BRADLEY D. GILMAN

ROBERTSON, MONAGLE & EASTAUGH

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
JUNEAU, ALASKA 99902

JUNEAU OFFICE

COURT PLAZA BUILDING, SUITE 800
240 MAIN STREET
P.O. BOX 21211
JUNEAU, ALASKA 99802
PHONE: (907) 580-3340
FACSIMILE: (907) 586-6310

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WASHINGTON, D.C. AND ALASKA

ALL OTHERS ADMITTED
IN ALASKA

M E M O R A N D U M

TO: Charles Cole
Attorney General

FROM: Jim Clark

DATE: May 9, 1991

RE: House Bill 33

Section 3 and Section 7 of House Bill 33 would change the standard for employer civil and criminal conduct respectively from "willful" violations to "knowing" violations. Proponents argue that there is no difference between the words "willful" and "knowing," stating that the latter word is used in the bill because it is defined in Alaska statutes while the former word is not defined.

While it is true that the word "knowingly" is defined in Alaska law and the word "willfully" is not defined, the two words do not connote the same standard. A willful violation requires a higher standard of proof:

"Knowingly," as used in Section 1001, requires only that the defendant acted "with knowledge." United States v. Mekjian, 5 Cir. 1975, 505 F.2d 1320, 1324; McBride v. United States, 5 Cir. 1324, 225 F.2d 249. "Willfully" means the defendant acted "deliberately and with knowledge." United States v. Mekjian, *supra*; United States v. Parton, 5 Cir. 1972, 462 F.2d 430, McBride v. United States, *supra*.

United States v. Smith, 523 F.2d 771, at 773, 774 (5th Cir. 1975).

Charles Cole
May 9, 1991
Page 2

"Knowingly" and "willfully" are different concepts of mens rea. In "knowingly," the essential element is one of knowledge; in "willfully," there is the additional requirement of acting with deliberation. United States v. Mekjian, 505 F.2d 1320 (5th Cir. 1974). As a general rule an act is done willfully if it is done voluntarily and intentionally and with the specific intent to do something that the law forbids. Devitt & Blackmore, supra § 14.06. To establish specific intent, the prosecution must prove the defendant knowingly did an act which law forbids, purposely intending to violate the law.

(emphasis added) Record Revolution No. 6, Inc. v. City of Parma, Ohio, 492 F. Supp. 1157, at 1175 n.10. (N.D. Ohio 1980).

Since "willfully" connotes purpose and intent, the correct substitution for it among those words which are defined in the Alaska criminal code is "intentionally," not "knowingly."

(1) A person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

AS 11.81.900(a)(1). Substituting the defined word "intentionally" for the undefined word "willfully," instead of substituting the defined word "knowingly" for the undefined word "willfully" (as is done in HB 33) makes sense when one considers how "intentionally" and "knowingly" are used in the law:

Modern penal codes have consistently followed the lead of the Model Penal Code by utilizing only four culpable mental states and by defining them in a substantially similar way.

The basic distinction between a person who acts "purposely" ("intentionally") and one who acts "knowingly" is that the former actor desires to engage in a given conduct (which happens to amount to a crime), or desires by his conduct to cause a prohibited harmful result, while the latter actor is merely aware that he is engaging in a given conduct (which happens to amount to a crime), or is aware again and is practically certain that his

Charles Cole
May 9, 1991
Page 3

conduct will cause a prohibited, harmful
result.

(emphasis added) State v. Pinero, 778 P.2d 704, at 713 n.7 (HA
1989).

In short, if the word "willfully" is to be substituted
for a defined word in the Alaska Statutes without changing its
essential meaning, then the word "willfully" should be changed to
"intentionally"; it should not be changed to "knowingly," which
requires a lesser standard of intent and, therefore, a lesser
standard of proof.

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

May 10, 1991

The Honorable Niilo Koponen
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: CSSSHB 33 (Violation of workplace safety laws)

Dear Representative Koponen:

As you recall, on May 6, 1991, we wrote a letter to you about the above-referenced bill, "An Act relating to penalties for violation of workplace safety laws." This is to clarify that at that time we understood from your staff that the amendments in sections 3, 7 and 8, changing the necessary culpable mental state to "knowingly" were expected to be deleted. Please be advised that the Department of Law supports this deletion.

If there are any questions that we may be able to answer, please do not hesitate to call upon us.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Margot O. Knuth
Margot O. Knuth
Assistant Attorney General