

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**

**7593 SENATE LABOR & COMMERCE**

## House Bill 445

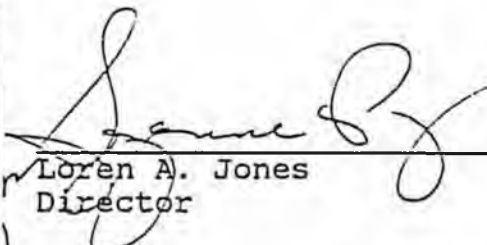
Section 1 amends AS 04.21.025 by requiring each holder of a liquor license and their employees to complete an alcohol server education course approved by the Alcohol Beverage Control Board.

Section 2 requires this training to occur within 30 days of course approval by the Alcohol Beverage Control Board.

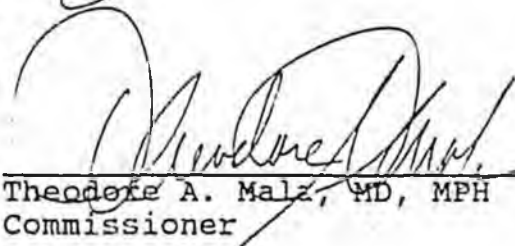
Training of liquor store, bar, and restaurant employees is an excellent approach to broadening the information base regarding the effects of alcohol on a person, and the laws governing the sales of alcoholic beverages. This training is currently mandatory in Anchorage, and would be required throughout the state.

Due to the remoteness of many areas of the state, delivery of these courses may require non-traditional approaches. Interactive video and audio teleconferences are viable options in most locations.

The division, while having no responsibility for the delivery of this training, is supportive of this effort.

  
Loren A. Jones  
Director

2-25-92  
Date

  
Theodore A. Malz, MD, MPH  
Commissioner

2-26-92  
Date

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF REVENUE

550 W. 7TH AVE  
ANCHORAGE, ALASKA 99501-6698

### ALCOHOLIC BEVERAGE CONTROL BOARD

February 26, 1992

The Honorable Dave Choquette  
Alaska House of Representatives  
P. O. Box V  
Juneau, AK 99811

RE: HB 445

Dear Representative Choquette:

This letter intends to express the Alcoholic Beverage Control Board's support for HB 445. As you may know, the board is currently informally requested under Municipality of Anchorage ordinance to approve training programs presented within the municipality.

The board believes that server training stimulates employees' and licensees' ability to responsibly serve the public. If this legislation is enacted into law, the board will begin drafting regulations to fulfill its charge.

If you have any questions, please do not hesitate to call.

Sincerely,



Patrick L. Sharrock  
Director, ABC Board  
(907) 277-8638

PS/cl

92-046



*Alaska Cabaret, Hotel,  
Restaurant & Retailers Association*

*P.O. Box 100870 • Anchorage, Alaska 99510  
401 2<sup>nd</sup> Street • (907) 277-3133 • Fax: (907) 277-3640*

March 5, 1992

Rep. Dave Choquette  
Alaska State Legislature  
P. O. Box V (MS 3100)  
Juneau, AK 99811

Dear Representative Choquette,

At the March 1 quarterly meeting of the CHARR Board of Directors a resolution endorsing and supporting the passage of House Bill 445 was adopted. CHARR has long held the belief that education is the most useful tool in reducing alcohol-related traffic accidents. As evidence of that belief, CHARR was responsible for the introduction of the first nationally recognized server training program in Alaska when we purchased the copyrights to the TAM Program (Techniques of Alcohol Management) in 1984. Since that introduction, over 8,000 persons have been trained in our state.

Although server training has been mandatory in Anchorage since 1986, our TAM program is statewide with participation on a voluntary basis. With certified instructors in Juneau, Fairbanks, and Anchorage, TAM seminars have been conducted in Nome, Sitka, King Salmon, Soldotna, Cordova, and other communities upon request. Just this year, our association hosted the national director of the TAM program who conducted training sessions to recertify our current instructors and to certify new instructors who came to the training from the communities of Kodiak, Haines, and Yakutat. The industry represented by our association has long been committed to server training, demonstrated by the dedication of our time and resources to our Alaska TAM program.

Servers trained in responsible beverage service techniques can only help our businesses and our communities. CHARR endorses this legislation and has asked me to express our appreciation to you for your sponsorship.

Yours truly,

Carol Wilson  
Executive Director



401 K Street Anchorage, Alaska P.O. Box 104839 Anchorage, Alaska 99510  
(907) 272-8133 Fax: (907) 277-8640

February 13, 1992

Representative Dave Choquette  
P. O. Box V (MS 3100)  
Juneau, AK 99811

Dear Representative Choquette,

At our General Membership meeting held last night, the Anchorage Restaurant and Beverage Association voted unanimously to endorse and support House Bill 445, the measure you introduced making alcohol server training mandatory in Alaska.

Long before such training was made obligatory in Anchorage by the Municipal Assembly, ARBA working with the statewide trade association CHARR, introduced the Techniques of Alcohol Management (TAM) program on a voluntary basis for the benefit of our members. To date, over 6,000 persons have attended a TAM Seminar here in Alaska.

We firmly believe that education is the most useful tool in reducing alcohol-related accidents. Education, such as provided by the TAM program, can instill the knowledge, confidence and motivation to prevent illegal beverage alcohol problems. Alcohol server training gives servers and sellers a knowledge and understanding of their key role in reducing alcohol-related accidents and provides them with the tools required to reduce such accidents. Well trained employees are essential to any business, and we believe that society, as well as our industry, can only benefit from training responsible beverage service techniques to all servers.

Our Association strongly endorses House Bill 445 and has asked me to express our sincere appreciation to you.

Yours truly,

Carol Wilson  
Executive Director

SCOTT & WESLEY GERRISH  
MEMORIAL**M A D D**ANCHORAGE, ALASKA  
CHAPTERMAILING ADDRESS:  
733 West 4th Avenue, Box 821  
Anchorage, AK 99501

(907) 258-MADD

BUSINESS ADDRESS  
733 West 4th Avenue, Suite 301  
Anchorage, AK 99501

February 17, 1992

Representative Choquette  
House of Representatives  
P.O. Box V  
Juneau, Alaska 99811

Re: House Bill 445

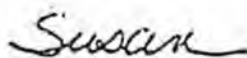
Dear Representative Choquette,

The Anchorage Chapter of MADD is pleased to support HB 445. It is extremely important that all persons involved in selling or serving alcohol have a clear understanding of the following:

1. the effects of alcohol on the body and behavior, particularly driving ability;
2. the effects of alcohol when used in combination with prescription or nonprescription drugs or illegal drugs;
3. methods of recognizing the problem drinker and the use of community treatment programs;
4. laws regarding sale to underage or drunken persons, consumption on and off premises, hours of operation, and penalties for violations of laws relating to alcohol;
5. fetal alcohol syndrome and fetal alcohol effects;
6. drunk driving and civil liability laws;
7. methods of dealing with the problem customer, including ways to cut off service, and means of safely transporting the customer home;
8. advertising and marketing that promote safe and responsible drinking patterns; and
9. valid means of proving the age of the customer.

We understand that this type of information may need to be delivered by some other means than in the traditional classroom setting in many parts of the state. However, there is no reason this information can't be delivered by means of video or even audio tapes with accompanying workbooks. MADD wholeheartedly supports this bill.

Sincerely,



Susan Humphrey-Barnett



Tom Fink,  
Mayor

# Municipality of Anchorage

Municipal Health & Human Services Commission

825 "L" Street

P.O. Box 196650 • Anchorage, Alaska 99519-6650



Telephone:  
(907) 343-4674

February 21, 1992

Representative David Choquette  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Choquette,

The Municipality of Anchorage Health and Human Services Commission has reviewed HB 445, which would require completion of an alcohol server education course as a condition for issuance or renewal of alcohol beverage licenses. The Commission strongly supports passage of HB 445.

The proposed bill will reinforce the local liquor laws by standardizing the alcohol server education curriculum and strengthening the proof of compliance with this training.

The recent death of two Anchorage women in a motor vehicle crash involving alcohol might have been prevented if liquor store employees were better educated with respect to identifying intoxicated persons who should not be served.

The Commission is deeply concerned about the destructive effect of alcohol on our community. If we can provide further support for this bill, please call our staff, Michael Huelsman, at 343-6718.

Sincerely,

Richard Towell, Chair  
Municipal Health and Human Services Commission

cc: Helen D. Beirne, Ph.D., Director  
Municipality of Anchorage  
Department of Health and Human Services

# BRISTOL BAY AREA HEALTH CORPORATION

P.O. BOX 130 • DILLINGHAM, ALASKA 99576

(907) 842-5201 or (907) 842-5202

February 19, 1992

Representative Dave Choquette  
P.O. Box V  
State Capitol  
Juneau, AK 99811

Dear Representative Choquette,

The Bristol Bay Area Health Corporation was given the opportunity to provide input in the draft form of HB 445. In response to your request we would like to be on record in support of this piece of legislation.

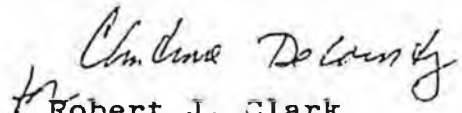
Alcohol abuse has been identified by our regional health corporation as the number one community health concern. HB 445 will have the potential for changing the environment in which people drink. The arduous task of identifying possible solutions in an effort to address this identified health concern are supported wholeheartedly by the Bristol Bay Area Health Corporation.

Please feel free to contact Vivian Echavarria, Health Education Director, who would be available to entertain any questions you may have. Her number is 842-9347.

Thank you for your support.

Sincerely,

BRISTOL BAY AREA HEALTH CORPORATION

  
Robert J. Clark  
Chief Executive Officer

RJC/mm

cc: BBAHC Executive Committee  
Christine DeCourtney, Acting C.O.O.  
Representative George Jacko  
Senator Fred Zharoff  
Vivian Echavarria, Health Education

## Alcohol education

### *Not why, but how?*

Rep. Dave Choquette has introduced a second bill requiring alcohol vendors throughout the state to take an alcohol server education course.

Such a course already is required in Anchorage, and by all accounts is useful. The Alcoholic Beverage Control Board believes the course helps impress upon bartenders and liquor store employees their responsibilities in serving alcohol. The liquor industry says it gives even experienced bartenders useful tips for telling whether a person has already had too much to drink. And it gives them confidence to know someone will back them up if they refuse service.

Would requiring education outside of Anchorage be too much of a burden and expense for the liquor industry? After all, for servers in town it's easy enough to drive to a class. But what about the rural parts of the state?

Sending a book out with a case of beer won't take the place of four or five hours of classroom lecture and discussion. But Alaska is already used to bridging distances with teleconferences and videotape. We say where there's a will to sell alcohol, there's a way to teach people to sell it responsibly.

ALASKA STATE LEGISLATURE  
HOUSE BILL NO. 445

HISTORY IN THE HOUSE

1992  
Read first time and referred to:  
L&C, FIN

2/5

3/2 L&C RPT CS(L&C) New Title  
3 DP ~~0~~ DNP 1 NR ~~0~~ AM  
FN 1 OFN Previous FN

3/11 FIN RPT CS(L&C) New Title  
5 DP ~~0~~ DNP 10 NR ~~0~~ AM  
FN 1 OFN Previous FN

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

3/30 Read second time  
CS(L&C) Adopted

4/1 Amended  
#1

3/30 Advanced

3/30 Read third time; held in 3rd until  
next calendar.

4/1 Return to second for specific amendment

4/1 PASSED EFD Same \_\_\_ or  
Yeas 38 Yeas  
Nays 0 Nays  
Excused 2 Excused  
Absent 0 Absent

Intent adopted

Reconsideration  
Reconsideration not taken up

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

Intent adopted

4/1 Reported correctly engrossed  
Signed by Speaker, to the Senate

[Signature]  
Chief Clerk of the House

HISTORY IN THE SENATE

1992  
Read first time and referred to:  
L&C, JUD, FIN

4/2

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

H B

4 5 4

ALASKA STATE LEGISLATURE  
HOUSE BILL NO. 454

HISTORY IN THE HOUSE

1992  
2/7 Read first time and referred to:  
TRANSP, LEC

2/28  
TRA RPT CS(TRA) New Title  
5 DP  DNP  NR  AM  
FN OFN Previous FN

3/20  
L&C RPT CS(TRA) New Title  
5 DP  DNP  NR  AM  
FN OFN 2 Previous FN

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

3/30 Read second time  
CS(TRA) Adopted

3/30 Amended  
4/1 #1 #7  
#2 #5  
#3

3/30 Advanced

3/30 Read third time  
3/30 Hold in 3rd Rd to 4/1/92 Calendar

4/1 Return to second for specific amendment

4/1 PASSED EFD Same \_\_\_ or  
Yeas 29 Yeas  
Nays 9 Nays  
Excused 2 Excused  
Absent  Absent

Intent adopted

Reconsideration  
Reconsideration not taken up

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

Intent adopted

4/1 Reported correctly engrossed  
Signed by Speaker, to the Senate

*Kurtis Gray*  
Chief Clerk of the House

HISTORY IN THE SENATE

1992  
4/2 Read first time and referred to:  
TRA, Lec

4/15  
TRA RPT(  ) CS 3 DP 1 NR 204 DNP \_\_\_ AM  
New Title  Same Title Previous FN  
FN OFN To LC

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

# FISCAL NOTE

No. 1

Bill Version: CSHB 454 (TRA)

(H) Publish Date: 2-28-92

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: Transfer of ownership of a motor  
vehicle  
Sponsor: Leman  
Requestor: (H) Trans.

Department Affected: Environmental  
Conservation  
BRU: Environmental Quality  
Component: Air Quality Management

COMPONENT SERIAL NO.

1	4	2	8
---	---	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

**ANALYSIS:** (Attach a separate page if necessary.)

Tampering with a vehicle's emission control device is a violation of federal and state law. Such vehicles emit a disproportionate share of air pollutants, adding to air quality problems. This bill will help keep these vehicles out of the chain of commerce.

Prepared by: Janice Adair  
Division: Commissioner's Office

Phone: 465-5050  
Date: 2/19/92

Approved by Commissioner: *Janice Adair*  
Agency: Environmental Conservation

Date: 2/19/92

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

FISCAL NOTE

No. 2  
 Bill Version: CSHB 454 (TRA)  
 (H) Publish Date: 2-28-92

STATE OF ALASKA  
 1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: Public Safety  
 Title: "An Act relating to the transfer of ownership of a motor vehicle" BRU: Motor Vehicles  
 Sponsor: Representative Leman Component: Field Services  
 Requestor: House Transportation COMPONENT SERIAL NO. 

	5	0	2
--	---	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE FUND SOURCE:</b>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Juanita Hensley Phone: 465-4335  
 Division: Motor Vehicles Date: 2/26/92  
 Approved by Commissioner: *Richard L. Burton* Richard L. Burton  
 Agency: Department of Public Safety Date: 2/26/92

*Handwritten:*  
 2/26/92

MUNICIPALITY OF ANCHORAGE  
Memorandum

COPY

Date: February 25, 1992  
To: Larry D. Crawford, Municipal Manager  
From: Helen D. Beirne, Ph.D., Director, Health & Human Services  
Subject: House Bill 454, "An Act relating to the transfer of ownership of a motor vehicle."

DHHS supports the passage of House Bill 454. Representative Lemson's office has contacted the I/M program and requested staff to testify at a teleconference scheduled for 8:30am on Thursday, February 27. Their testimony will reflect the following comments:

The premise behind this bill is to require the seller of a vehicle to disclose to the buyer whether or not the vehicle complies with the emissions requirements. The seller would provide either an I/M certificate of inspection obtained from a certified station or a certificate of noncompliance (probably be a DMV form) to the buyer.

Up to now these transactions occur from a "buyer beware" standpoint using the "as is" disclaimer on the vehicle's bill of sale. This practice releases the seller from any liability and allows many of these non-complying vehicles to be foisted upon unsuspecting buyers, most of which cannot afford the repairs required to bring these vehicles into compliance.

Through complaints received at the I/M office and vehicles tested at the referee facility, we regularly find persons caught in this situation and many choose to pass it on to another unsuspecting buyer.

We believe that enactment of this bill will sharply curtail this problem and encourage the repair or final disposition of the noncomplying vehicles.

cc: Lee Browning, P.E., Manager, Environmental Services

*"Our Payoff is Clean Air"*

COMMITTEE HEARING COMMENTS FROM I/M STAFF  
February 27, 1992

COPY

## House Bill 454

As a matter of practice, major automobile dealerships will accept a used vehicle in on trade in order to close a sale. The dealer will then determine if the trade-in is "re-saleable" on their lot. Generally, it is not profitable for the dealer to keep vehicles that require major repairs to the emissions systems and most often these vehicles are wholesaled out at a vehicle auction. That way they don't have to fix the emission systems or sale the vehicle on their lot.

The wholesale automobile auction is an area where implementation of House Bill 454 can benefit the state. One scenario that we have seen is that these noncomplying vehicles will (1) be purchased at the auction in Anchorage, (2) then be registered to an address outside of the I/M area to avoid the I&M test and the repair of the emission system, and (3) then retail the vehicle in Anchorage with current tags. This results in no effective repair to the vehicle emission system that would help our air quality. The new owner will operate the vehicle for up to a year before he finds out that the vehicle does not pass the I&M test because it needs emission repairs.

This practice is not limited to wholesale vehicle jobbers, but we find that individuals will use the same scenario to pawn off a vehicle that they do not consider worth repair. All too often the vehicle will end up with an unsuspecting buyer that doesn't know that the vehicle won't pass the I&M test and generally can't afford to fix the emissions. Sometimes their only recourse is to drive with expired plates or register to a false address to avoid meeting I&M requirements. Here again we have a vehicle that is continuing to grossly pollute our air.

Because most of these vehicles eventually end up at the Referee Facility we see this cycle repeated over and over. Until the vehicle is either repaired or taken off the road, we have made no improvement to the air quality.

We believe that House Bill 454 will go a long way to help in getting the vehicles fixed and clean up the air that we all have to breath.

*"Our Payoff is Clean Air"*

# 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

March 31, 1992

**SUBJECT:** Definition of "negligently" - (CSHB 454(TRA))

**TO:** Representative Loren Leman

**FROM:** Michael F. Ford *M.F.*  
Legislative Counsel

You have asked what it means to act "negligently." The term generally refers to the failure to use reasonable care. Reasonable care is that amount of care that a reasonably prudent person would use under similar circumstances. A reasonably prudent person is not the exceptionally cautious or skillful individual, but a person of reasonable and ordinary carefulness. See Leigh v. Lundquist, 540 P.2d 492 (Alaska 1975).

However, if a person has superior knowledge, skill, or intelligence the person is required to use reasonable care expected from a person with those superior talents. For example, a person trained as an automobile mechanic, is expected to act with reasonable care consistent with a trained automobile mechanic. Likewise, a person with no special automotive skills is expected to use reasonable care of a person with no special automotive skills. Prosser, Torts, 4th Ed. sec. 32.

Please contact me if you have further questions.

MFF:pl  
92-231.plm



# REPRESENTATIVE LOREN LEMAN West Anchorage

5111 C Street Anchorage, AK 99503 561-7611 During Session P.O. Box V Juneau, AK 99811 465-2095

## M E M O R A N D U M

DATE: April 15, 1992

TO: Senator Drue Pearce  
Chairman, Senate Labor & Commerce Committee

FROM: Representative Loren Leman *Loren*

SUBJECT: Request for Hearing  
CSHB 454 (TRANS): An Act Relating to the Transfer  
of Ownership of a Motor Vehicle

=====

I request that you schedule SCS CSHB 454 (TRANS) for a hearing at your earliest convenience.

Attached are the following:

- o Sponsor Statement
- o Zero fiscal notes from Departments of Environmental Conservation and Public Safety
- o Backup information

The House Transportation and Labor and Commerce Committees each discharged this bill with five "do-pass" recommendations.

The House passed the bill 29 to 9 on April 1.

The Senate Transportation Committee discharged this bill on April 14 with three "do-pass" and one "no-rec".



# REPRESENTATIVE LOREN LEMAN West Anchorage

3111 C Street Anchorage, AK 99503 561-7614 During Session: P.O. Box V Juneau, AK 99811 465-2095

## SPONSOR STATEMENT

DATE: April 15, 1992  
BY: Representative Loren Leman *Loren*  
SUBJECT: SCS CSHB 454 (TRANS): An Act Relating to the  
Transfer of Ownership of a Motor Vehicle

=====

SCS CSHB 454 (TRANS) is designed to provide consumer protection and improve air quality for residents of Anchorage and Fairbanks.

This legislation will void the sale of motor vehicles in certain cases if the vehicle's pollution control system has been tampered with or removed. The language closely follows federal regulations regarding pollution control devices, but improves protection of the consumer.

Additionally, SCS CSHB 454 will assist Anchorage and Fairbanks in meeting the federal Clean Air Act requirements for air quality. When a resident of these cities buys a car from a used car dealer, the dealer will be required to present a certificate of emission compliance or non-compliance.

The presence of emission inspection documents at the time of sale will help consumers living within I/M program areas to make educated decisions regarding the purchase of used vehicles. Used car businesses should be happy to document the proper performance of their autos.

Sale of non-compliance vehicles or "junk" cars for parts or restoration will not be prohibited. No increase in costs is expected for either the Municipality of Anchorage or City of Fairbanks as a result of SCS CSHB 454.

The bill has no impact on residents outside of Anchorage and Fairbanks.

The Division of Motor Vehicles, the Department of Environmental Conservation, and the Fairbanks and Anchorage Vehicle Inspection Programs support this legislation. I urge the passage of this bill.

HB

468

FISCAL NOTE

1

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL Bill Version: HB 468  
(H) Publish Date: 2-26-92

Revision Date: \_\_\_\_\_  
Title: "An Act relating to unfair trade  
practices by construction contractors."  
Sponsor: House Judiciary Committee  
Requestor: House Labor & Commerce

Department Affected: Labor  
BRU: Workers' Compensation  
Component: Workers' Compensation  
COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

REVENUE FUND SOURCE:						
-------------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Linda Rexwinkel, Director Phone: 264-2452  
Division: Workers' Compensation Date: 2/24/92  
Approved by Commissioner: John Abshire, Acting Commissioner  
Agency: Department of Labor Date: 2/24/92

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

COMMITTEE COPY

**BILL NO:** House Bill No. 468

**DATE:** March 2, 1992

**TITLE:** "An Act relating to unfair trade practices by construction contractors."

**CONTACT:** Arbe Williams  
465-2700

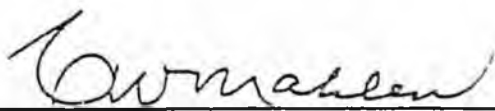
House Bill No. 468 provides that a person who suffers damages as a result of a competitive bid for a construction contract losing to a bid of a person who knowingly violates an employee provision by treating an employee as an independent contractor may bring action for damages or injunctive relief against the person who was awarded the contract. An employee provision as used in this subsection provides for an employer's obligation to pay unemployment insurance contributions, an employer's liability for workers' compensation payments to employees or an employer's obligations under the Federal Insurance Contributions Act.

The bill also provides that the attorney general may bring action in superior court against a person who knowingly violates an employee provision and provides for specific penalties in addition to any other penalty allowed by law.

House Bill No. 468 establishes a civil liability against a contractor or subcontractor who knowingly violates an employee's right to unemployment compensation, workers' compensation coverage or provisions of the Federal Insurance Contributions Act.

The Department of Labor supports this legislation.

APPROVED:

 3/2/92  
\_\_\_\_\_  
C. W. Mahlen, Commissioner  
Department of Labor

**POSITION** ~~APER~~/Department of Labor

## Independent Contractor Status

### Under FICA and FUTA

For federal tax purposes (FICA and FUTA) the determination of whether an individual is an employee or an independent contractor is derived from three tests.

#### Test I--Corporate Officers

For purposes of FICA and FUTA corporate officers are generally considered to be employees of the corporation, even if they are equity holders. There are some exceptions, however. Corporate officers who perform little or no services for the corporation and receive little or no remuneration (either directly or indirectly) may not be considered as employees.

#### Test II--The Common Law Rules For Determining Employee or Independent Contractor Status.

The common law rules of the IRS are used to determine employee or independent contractor status for purposes of FICA and FUTA. Generally, an individual is an employee if the person for whom he or she works has the right to direct and control that individual as to the way the individual works in terms of the final results and the details of when, where and how the work gets done. It should be noted that the employer need not actually exercise control for an employer-employee relationship to exist. The fact that the employer has the right to do so usually results in a determination of employee status. The IRS uses 20 common law factors to determine the extent of control exercised and therefore the status of the worker. Workers are generally considered to be employees if they:

- \*Must comply with the employer's instructions about the work in terms of when, where and how the work is to be performed. These instructions may be oral or in the form of written procedures such as a personnel manual.

- \*Receive training from or at the direction of the employer. Training by the employer or an experienced employee of the employer denotes a certain amount of control. This training can take several forms, including attendance at meetings, use of company policy and procedure manuals, and written correspondence.

- \*Provide services that are integrated into the business. In those cases where the success or continuation of the business is dependent upon the provision of certain kinds of services by an individual then it is assumed that the business owner exerts some control over the provision of these services.

- \*Provide services that are rendered personally. If an individual who is providing a service to a business has the right to hire a substitute without the permission of the business owner, it suggests a lack of control on the part of the owner. A service that must be rendered personally, however, indicates that the business owner has interest in the methods of delivering the

service as well as the end result.

\*Hire, supervise, and pay assistants for the employer. An individual who performs these services for an employer is generally considered to be under the control of the employer, unless this is done under a contract that specifies that the individual is responsible for labor, materials and the end result of the work--not the methods of attainment.

\*Have a continuing working relationship with the employer. The existence of such a relationship over a period of time indicates an employer-employee relationship, even if the work is part-time or seasonal.

\*Must follow set hours of work. An individual who cannot control his own time is almost always an employee--not an independent contractor.

\*Work full-time for an employer. Full-time work by an individual is considered indicative of control by the employer, since the individual is not free to offer his services to other parties. If, for example, an employer requires a certain volume of work that consumes all of the individual's working time, it is generally considered an employer-employee relationship. By contrast, an independent contractor is free to work whenever he chooses for whomever he chooses.

\*Do their work on the employer's premises. This circumstance implies employer control especially if the work could be done off the premises. The use of office space, desk space, office equipment and services provided by the employer generally places the individual under the direction of the employer unless the worker has the option to use other space and facilities. Working off the employer's premises, on the other hand, does not imply independent contractor status if the work must be performed off the premises (construction work, for example).

\*Must do their work in a sequence set by the employer. If the employer determines, or has the right to determine, the order of the work to be performed control may be implied.

\*Must submit regular reports to the employer. Any type of oral or written reports indicates that the worker must account for his actions to the employer and this may imply control and direction.

\*Receive payments of regular amounts at set intervals. Whenever payments to a worker are made on an hourly, weekly or monthly basis it is likely that an employee-employer relationship exists. Independent contractors are usually paid on a job basis or by commission. A guarantee by the employer of a minimum salary may give rise to an employer-employee relationship. The establishment of a drawing account by the employer for the benefit of the worker+ may imply an employment relationship if the worker is allowed to draw from the account at stated intervals and is not required to reimburse for any amount exceeding earnings.

\*Receive payments for business and/or travel expenses. Payment of such expenses is indicative of control by the employer.

\*Rely on the employer to furnish tools and materials. Independent contractors usually supply their own tools and materials. The furnishing of such items by the employer implies control.

\*Lack a major investment in facilities used to perform the service. If the worker has a major investment in the work premises or equipment used to perform the work it is indicative of independent status. Employers routinely supply employees with items such as tools, manuals, instruction books, clothing, etc. and these are not considered facilities.

\*Cannot make a profit or suffer a loss from their services. The possibility that the worker may profit or suffer a loss as a result of services performed is indicative of independent contractor status. An independent contractor has recurring liabilities and obligations and profit or loss is dependent on the relation between his receipts and expenditures.

\*Work for one employer at a time. An individual who works for a number of employers at one time is usually thought to be free from the control of any employer thereby achieving independent status.

\*Do not offer their services to the general public. Offering services to the general public usually connotes independent contractor status, especially if the individual has a place of business, advertises his services, and generally seeks to attract customers.

\*Can be fired by the employer. An individual who can be fired from his or her employment position by the employer is an employee. Independent contractors cannot be fired, except to the extent that they do not adhere to some contractual obligation or specification.

\*May quit work at any time without incurring liability. If a worker has the right to leave the employment at any time without incurring liability, then an employer-employee relationship exists. An independent contractor usually agrees to do a specific job for a specified commission, and if the contractor does not fulfill that obligation he can be held liable.

#### Test III--Statutory Employees

Four occupations that could not meet the employee-status test under the IRS common-law rules have been designated employees by congressional statute (agent-drivers or commission-drivers, full-time life insurance salespeople, homeworkers, and full-time traveling or city salespeople).

In order for an individual to be designated as a Test III statutory he or she must meet the specifications for one of the four designated occupations, as well as the following conditions:

\*The worker must perform substantially all of the work personally;

\*The worker must have no substantial investment in the facilities used to perform the work; and

\*The work must be performed in a continuing relationship.

#### Statutory Nonemployees

In the Revenue Act of 1978 the Congress created a "safe haven" for taxpayers who had previously classified certain workers as independent contractors, but who might not actually meet the IRS test. This safe haven would extended by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). These actions were taken to minimize employers' confusion about employment status while the Congress continued to seek a more definitive method of determining classifications.

Another provision of the TEFRA legislation designated qualified real estate agents and direct sellers as statutory nonemployees, thereby granting self-employed status to these individuals.

277.ATT  
21-JAN-92

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN  
SEAT A

3111 "C" STREET, SUITE 450  
ANCHORAGE, ALASKA 99503  
(907) 561-7629 (FAX) 562-4376

ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR  
NORTHWOOD • SOMIG • ROOSEVELT PARK • SPENARD • THOMPSON • TURNAGAIN • WINDEMERE • WOODLAND PARK



CHAIRMAN  
JUDICIARY COMMITTEE

VICE CHAIRMAN  
REGULATION REVIEW COMMITTEE

MEMBER  
RULES COMMITTEE  
LABOR AND COMMERCE COMMITTEE

## MEMORANDUM

TO: All House Members

FROM: Representative Dave Donley <sup>DB</sup>

RE: Questions and Answers regarding HB468, an act relating to unfair trade practices by construction contractors

DATE: March 11, 1992

### 1. What is the problem HB 468 will redress?

HB 468 tries to address a growing problem in Alaska and in many other states where there is a high probability contractors are misclassifying employees as independent contractors in order to escape payment of unemployment compensation, workers' compensation insurance, and social security taxes. The problem is so pervasive that in 1990 the Internal Revenue Service estimated that 38% of all employers misclassify employees as contractors. With declining revenues it is nearly impossible for Alaska to effectively monitor employee misclassification. In turn, HB 468 provides an additional solution to this problem by allowing industry participants to bring a private cause of action and police misclassification by their peers.

### 2. How does HB468 address the problem?

HB468 provides a private cause of action to contractors, workers, or unions that suffers damages by loss of a bid. In their action the person who suffers damages must show that the winning bidder knowingly misclassified employees as independent contractors. If they meet this burden, the plaintiff may collect damages for the loss they suffered and may enjoin award of the bid to the bidder in



violation of these statutes. The plaintiff may not succeed in this action if, in their bid, they also knowingly misclassified employees as independent contractors.

HB 468 also gives the attorney general authority to bring an action for penalties and for injunctive relief against a person who knowingly violates the employee provisions addressed in this bill.

3. What types of construction contracts does this address?

HB 468 would primarily affect public sector construction projects. This legislation applies to all construction contracts that were let out for competitive bid. For this reason the act would apply to projects put out for bid by the state, its political subdivisions, and public corporations, including the Alaska Railroad. If a construction project in the private sector was let out for competitive bid the legislation would conceivably apply.

4. Is there similar legislation in other states?

Connecticut and Oregon have both enacted legislation similar to HB 468. Illinois and California are addressing similar legislation at this time. In addition, there is a bill in the United States Congress to provide for a private cause of action on federal construction projects.

The real impetus for this legislation in other states is parallel to the reason for this legislation in Alaska. The number of contractors failing to secure workers' compensation, failing to make unemployment contributions, and failing to pay social security taxes is too great, and in the face a grave fiscal constraints, the states do not have the budget to address this problem on their own. For example, Connecticut, the first state to enact legislation on this issue, did so in large part because they lacked the state funds to monitor compliance on their own.

Here in Alaska the fiscal constraints are identical. Just as one example, in FY 92 the Workers' Compensation Division laid off the one investigator they had who pursued companies that failed to obtain workers' compensation coverage. While the Wages and Hours Division of the Department of Labor has taken on some of these responsibilities, the amount of effort they can expend on this issue is minimal at best.

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN  
SEAT A

3111 "C" STREET, SUITE 450  
ANCHORAGE, ALASKA 99503  
(907) 561-7629 (FAX) 562-4376

ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR  
NORTHWOOD • ROMIG • ROOSEVELT PARK • SPENARD • THOMPSON • TURNAGAIN • WINDEMERE • WOODLAND PARK



CHAIRMAN  
JUDICIARY COMMITTEE

VICE CHAIRMAN  
REGULATION REVIEW COMMITTEE

MEMBER  
RULES COMMITTEE  
LABOR AND COMMERCE COMMITTEE

## MEMORANDUM

To: Senator Drue Pearce  
Chair, Labor and Commerce Committee

From: Representative Dave Donley<sup>B</sup>  
Chair, House Judiciary Committee

Re: HB 468, An act relating to unfair trade practices by  
construction contractors

Date: March 30, 1992

MAR 30 1992

I am writing to request that you please schedule for hearing HB 468, an act relating to unfair trade practices by noncomplying contractors. This legislation addresses concerns both contractors and the labor community have about unfair bidding practices of contractors who are attempting to reduce their bids by misclassifying employees as independent contractors. Misclassification allows the bidder to escape payment of FICA taxes, workers' compensation, and unemployment contributions and resultingly reduce their bid.

The bill has two main provisions.

1. It provides a private cause of action to contractors workers, and unions that suffer damages by loss of a bid to sue winning bidders who reduced their bid by knowingly misclassifying employees as independent contractors. One exception to this provision is that a person who brings an action against a winning bidder may not collect damages if the defendant to the case establishes that the plaintiff also knowingly violated employment law by misclassifying an employee as an independent contractor in their bid for the same contract.



2. It gives the attorney general authority to bring an action for civil penalties and injunctive relief against a person who knowingly violates the workers' compensation, unemployment contributions, and FICA withholdings by misclassifying an employee as an independent contractor.

While the State presently has the authority to address this misclassification in the bids it receives, many are concerned that the State is too overburdened to discover every case. For example, the IRS has recently estimated that 38% of employers misclassify workers as contractors. Therefore, HB 468 provides this private cause of action. It is similar to a bill presently introduced at the federal level to address this same concern.

HB 468 has the support of the Labor community and is not opposed by the Associated General Contractors.

DD/jmn

**FISCAL NOTE**

**STATE OF ALASKA**  
**1992 LEGISLATIVE SESSION**

**BILL NO :** CSHB 468 (Jud) am

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to unfair trade  
 practices by construction contractors."  
 Sponsor: House Judiciary Committee  
 Requestor: Senate Labor & Commerce

Department Affected: Labor  
 BRU: Workers' Comp/Employment Security  
 Component: Workers' Compensation/  
 Unemployment Insurance  
 COMPONENT SERIAL NO. 344/329

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

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

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE FUND SOURCE:</b>						
-----------------------------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of cost year impact: None

(Attach a separate page if necessary)

Prepared by: Arbe Williams, Special Assistant Phone: 465-2700  
 Division: Commissioner's Office Date: 4/20/92  
 Approved by Commissioner: C. W. Mahlen  
 Agency: Department of Labor Date: 4/20/92

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

DEPARTMENT OF LABOR

CSHB 468(Jud)am

Enforcement procedures for violating employment security or workers' compensation laws:

The Employment Security Division

audits an employer's records for proper payment of unemployment insurance contributions. Failure to pay the required contributions will result in the assessment of penalties and a lien on the employer's assets.

The Division of Workers' Compensation

responds to a direct complaint that an employer does not have workers' compensation coverage or to information from the Department's Wage and Hour investigations that an employer cannot produce proof of workers' compensation coverage. An investigation is initiated and upon determination that the employer does not have the required coverage, the matter is referred to the Workers' Compensation Board. If the Board determines that the employer is in violation of the requirement for coverage, the Board can issue a stop order prohibiting the employer from hiring employees. The case is referred to the Attorney General's Office for prosecution in the event an employer does not comply with the requirement to provide workers' compensation insurance which can result in the assessment of a \$10,000 fine.

**HB 468 ACTION AGAINST NONCOMPLYING CONTRACTORS**

"An Act relating to unfair trade practices by construction contractors."

SPONSOR(S): JUDICIARY

**HB 468 Bill History**

Jrn-Date	Page	Action
02/12/92	2236	(H) READ THE FIRST TIME - REFERRAL(S)
02/12/92	2236	(H) L&C, JUD
02/26/92	2425	(H) L&C RPT 2DP 2NR
02/26/92	2425	(H) (DP: BRUCKMAN,DONLEY) (NR: IVAN,PARNELL)
02/26/92	2425	(H) -ZERO FISCAL NOTE (LABOR) 2/26/92
03/06/92	2537	(H) JUD RPT CS(JUD) 4DP 2NR
03/06/92	2537	(H) (DP: DONLEY,GRUENBERG,ELLIS,PARNELL)
03/06/92	2537	(H) (NR: HANLEY,MARTIN)
03/06/92	2537	(H) -PREV ZERO FN (LABOR) 2/26/92
03/06/92	2537	(H) REFERRED TO RULES

ALASKA STATE LEGISLATURE  
HOUSE BILL NO. 468

HISTORY IN THE HOUSE

1992  
2/12 Read first time and referred to:  
LEC, JUD.

3/6 JUD RPT CS(JUD) New Title  
4 DP ~~DNP~~ 2 NR ~~AM~~  
FN 1 OFN Previous FN

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

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

3/11 Read second time  
CS( Jud ) Adopted

3/13 Amended  
in 1

3/11 Advanced

3/11 Read third time

3/11 Held in 3rd to next calendar

3/13 Return to second for specific amendment Am 31 - adopted

3/13 PASSED EFD Same \_\_\_ or  
Yeas 30 Yeas  
Nays 3 Nays  
Excused 5 Excused  
Absent 2 Absent

\_\_\_ Intent adopted

3/13 Reconsideration by Lemans  
3/14 Reconsideration not taken up

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

\_\_\_ Intent adopted

3/16 Reported correctly engrossed  
Signed by Speaker, to the Senate  
Justin Green  
Chief Clerk of the House

HISTORY IN THE SENATE

1992  
3/18 Read first time and referred to:  
STA L+C

3/19 add JUD: STA R+C JUD

3/23 STA wanted to R+C JUD

3/23 STA RPT( ) CS DP NR DNP AM  
New Title Same Title Previous FN  
FN OFN wanted to 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



Department of the Treasury  
Internal Revenue Service  
Catalog Number 63126N

Publication 937

## Business Reporting

- Employment Taxes
- Information Returns

For use in preparing  
**1990** Returns

### Contents

Important Changes for 1990.....	1
Who Are Employees?.....	1
Employee or Independent Contractor?.....	3
Family Members.....	6
Employees of Exempt Organizations.....	6
Religious Exemptions.....	6
Income Tax Withholding.....	7
Social Security Taxes.....	11
Paying Social Security and Withheld Income Taxes.....	12
Federal Unemployment Tax.....	14
Example of How To Figure Employment Taxes.....	15
Advance Payment of Earned Income Credit.....	20
Tip Reporting and Allocation Rules.....	21
Information Returns.....	22
Backup Withholding.....	23
Recordkeeping.....	24
Guide to Information Returns for 1990.....	25
Index.....	27

### Important Changes for 1990

**New tax rates and wage maximums for social security taxes.** In 1990, the tax rate for social security taxes is 7.65% for both the employee and the employer (a total of 15.3%) on wages up to \$51,300. The 7.65% tax is a total of 6.2% for social security (old-age, survivors, and disability insurance), and 1.45% for Medicare (hospital insurance).

In 1991, the tax will remain at 7.65% but the maximum wages subject to the social security portion (6.2%) increase to \$53,400, while the maximum wages subject to the Medicare portion (1.45%) increase to \$125,000.

**Group legal service plans.** The cost of group legal service plans is not subject to social security and federal unemployment taxes, or income tax withholding, if the cost is paid before January 1, 1992. See *Withholding and Reporting Payments Other than Wages under Income Tax Withholding*.

**Educational assistance plans.** The cost of educational assistance plans is not subject to social security and federal unemployment taxes, or income tax withholding, if the cost is paid before January 1, 1992. See *Withholding and Reporting Payments Other than Wages under Income Tax Withholding*.

**Farmers and crew leaders must withhold income tax.** For wages paid after 1989, farmers and crew leaders must withhold federal income tax from farm workers who are subject to social security taxes.

**Now federal tax deposit penalties.** After 1989, the penalty for a late tax deposit is based on the length of time the deposit is late. See *Penalties under Deposits*, later.

**New \$100,000 deposit rule.** After July 31, 1990, undeposited taxes that reach \$100,000 or more in any eighth-monthly deposit period must be deposited on the next banking day. However, you are still required to make deposits within 3 banking days when undeposited taxes reach at least \$3,000 at the end of an eighth-monthly deposit period. See *Deposits under Paying Social Security and Withheld Income Taxes*.

**Federal unemployment (FUTA) tax rate.** The gross FUTA tax rate remains at 6.2% through 1991.

### Introduction

This publication is mainly designed for small businesses. This includes self-employed persons such as sole proprietors, independent contractors, and members of a partnership.

**Free publications and forms.** If you need information on a subject not covered in this publication, please check our other free publications. To order publications and forms, call our toll-free telephone number: 1-800-TAX-FORM (1-800-825-3576). You may also write to the IRS Forms Distribution Center for your area as shown in the income tax package.

### Employment Taxes

If you have any employees, you will probably be required to withhold federal income tax from their wages. You may also have to withhold and pay social security (FICA) taxes. If you do not withhold these taxes, or withhold the taxes but do not deposit them, you may be subject to a penalty equal to the amount of the tax. See *Penalties under Deposits*, later.

This publication discusses an employer's responsibility for these taxes. It also discusses income tax withholding on payments other than wages, the federal unemployment (FUTA) tax, the rules for advance payment of the earned income credit, and the rules for tip reporting and allocation. Information useful for 1991 is also included.

If you need information on railroad taxes, see the instructions for Form CT-1, *Employer's Annual Railroad Retirement and Unemployment Repayment Tax Return*, and Form CT-2, *Employee Representative's Quarterly Railroad Tax Return*. Railroad retirement and railroad unemployment repayment taxes are explained in the *Instructions for Form CT-1*.

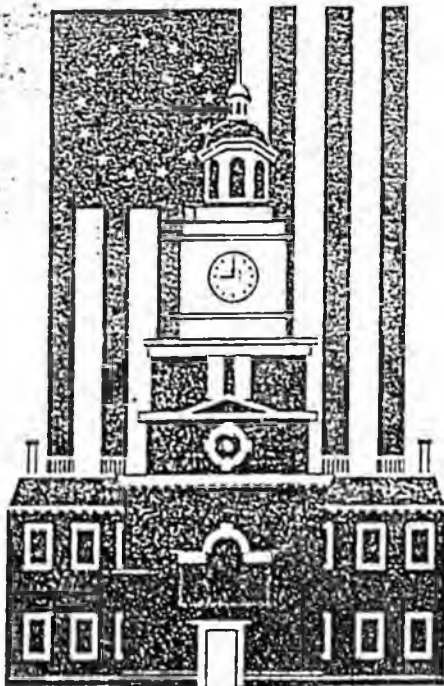
**Note.** After your employees file their 1990 income tax returns, you can help them correct any mistakes they may have made in figuring their income tax withholding for 1990 by making new 1991 Forms W-4 available. You should encourage them to check their income tax withholding situation if they owed a large amount of tax or received a large refund for 1990, and to give you a new Form W-4 for 1991 if necessary. An employee is most likely to have too little tax withheld if both the employee and his or her spouse work. See *Form W-4 Withholding Allowances*, under *Income Tax Withholding*, later.

After you receive completed Forms W-4 from your employees, you can help them determine whether they are having the right amount of income tax withheld in 1991 by giving them Publication 919, *Is My Withholding Correct for 1991?* This publication will help your employees compare the amount of tax they expect to show on their 1991 tax returns with the amount of tax to be withheld from their pay during 1991.

### Who Are Employees?

Before you can know how to treat payments you make for services rendered to you, you must first know the business relationship that exists between you and the person performing those services. The person performing the services may be:

- 1) An independent contractor;
- 2) A common-law employee;
- 3) A statutory employee, or



#### 4) A statutory nonemployee.

This discussion explains these four categories. A later discussion, *Employee or Independent Contractor?*, points out the differences between an independent contractor and an employee and gives examples from various types of occupations.

### Independent Contractors

People such as lawyers, contractors, subcontractors, public stenographers, auctioneers, etc., who follow an independent trade, business, or profession in which they offer their services to the general public, are generally not employees. However, whether such people are employees or independent contractors depends on the facts in each case. The general rule is that an individual is an independent contractor if you, the employer, have the right to control or direct only the result of the work and not the means and methods of accomplishing the result.

You do not have to withhold or pay taxes on payments you make to independent contractors.

### Common-law Employees

Under common-law rules, every individual who performs services subject to the will and control of an employer, as to both *what* must be done and *how* it must be done, is an employee. It does not matter that the employer allows the employee discretion and freedom of action, so long as the employer has the *legal right* to control both the method and the result of the services. For a discussion of the factors that indicate whether sufficient control is present to establish an employer-employee relationship, see *Employee or Independent Contractor?*, later.

Two usual characteristics of an employer-employee relationship are that the employer has the right to discharge the employee and the employer supplies the employee with tools and a place to work.

If you have an employer-employee relationship, it makes no difference how it is described. It does not matter if the employee is called an employee, or a partner, co-adventurer, agent, or independent contractor. It does not matter how the payments are measured, how they are made, or what they are called. Nor does it matter whether the individual is employed full time or part time.

No distinction is made between classes of employees. Superintendents, managers, and other supervisory personnel are all employees. An *officer of a corporation* is generally an employee, but a director is not. An officer who performs no services or only minor services, and neither receives nor is entitled to receive any pay, is not considered an employee.

You may have to withhold and pay taxes on wages you pay to common-law employees.

### Statutory Employees

If an individual who works for you is not an employee under the common-law rules (see *Employee or Independent Contractor?*, later), you do not have to withhold federal income tax from that individual's pay. However, for social security taxes, the term *employee* includes any individual who works for you for pay in one of the following four categories:

- 1) A driver who distributes meat products, vegetable products, fruit products, bakery products, or beverages (other than milk) or picks up and delivers laundry or dry cleaning, if the driver is your agent or is paid on commission.
- 2) A full-time life insurance sales agent whose principal business activity is selling life insurance or annuity contracts, or both, primarily for one life insurance company.
- 3) An individual who works at home on materials or goods which you supply and which must be returned to you or to a person you name, if you also furnish specifications for the work to be done.

4) A full-time traveling or city salesperson who works on your behalf and turns in orders to you from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments. The goods sold must be merchandise for resale or supplies for use in the buyer's business operation. The work performed for you must be the salesperson's principal business activity.

**Social security tax.** For social security tax, individuals within any of these categories are employees if:

- The service contract states or implies that almost all of the services are to be performed personally by them;
- The individual has little or no investment in the equipment and property used to perform the services (other than an investment in transportation facilities); and
- The services are performed on a continuing basis.

**Federal unemployment tax.** For federal unemployment tax, the term *employee* means the same as it does for social security tax, except that it does not include categories (2) and (3), above. Thus, any individual who is an employee under categories (1) or (4) is also an employee for federal unemployment tax purposes.

**Reporting payments to statutory employees.** Furnish a Form W-2 to a statutory employee, and check *Statutory employee* in box 6. Show your payments to the employee as other compensation in box 10. Also, show social security tax withheld in box 11, and social security wages in box 12. The statutory employee can deduct his or her expenses from the payments shown on Form W-2 and, after 1989, will report earnings as a statutory employee on line 1 of Schedule C. (A statutory employee's business expenses are not subject to the reduction by 2% of his or her adjusted gross income that applies to common-law employees.)

### Statutory Nonemployees

Two categories of statutory nonemployees have been established: *direct sellers* and *licensed real estate agents*. They are treated as self-employed for federal income tax and employment tax purposes if:

- 1) Substantially all payments for their services as direct sellers or real estate agents are directly related to sales or other output, rather than to the number of hours worked; and
- 2) Their services are performed under a written contract providing that they will not be treated as employees for federal tax purposes.

**Direct sellers.** Direct sellers are persons:

- 1) Engaged in selling (or soliciting the sale of) consumer products in the home or at a place of business other than in a permanent retail establishment; or
- 2) Engaged in selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis prescribed by regulations, for resale in the home or at a place of business other than in a permanent retail establishment.

Direct selling includes activities of individuals who attempt to increase direct sales activities of their direct sellers and who earn income based on the productivity of their direct sellers. Such activities include providing motivation and encouragement, imparting skills, knowledge, or experience, and recruiting.

For more information on direct sellers, get Publication 911, *Tax Information for Direct Sellers*.

**Licensed real estate agents.** This category includes individuals engaged in appraisal activities for real estate sales if they earn income based on sales or other output.

### General Rules for Withholding

You may find it helpful to remember the following general rules for withholding:

- 1) **Independent contractors.** You do not have to withhold income tax or social security tax from amounts you pay an independent contractor. But, if you pay an independent contractor \$600 or more during the year in the course of your trade or business, you must file a Form 1099-MISC, *Statement for Recipient of Miscellaneous Income*.
- 2) **Common-law employees.** You may have to withhold income tax and social security tax from the wages you pay common-law employees. You may also have to pay federal unemployment tax and your share of social security taxes on these wages.
- 3) **Statutory employees.** You do not withhold income tax from the wages of statutory employees. But you must withhold and pay social security taxes. Unless they are full-time life insurance sales agents or work at home, you must also pay federal unemployment tax on their wages.
- 4) **Statutory nonemployees.** You do not withhold or pay taxes on payments to statutory nonemployees.

**Taxes due if worker not treated as an employee.** If you treat a worker other than as an employee (for example, as an independent contractor) and you have no reasonable basis for doing so, you will have to pay employment taxes for that worker.

**Relief provisions.** If you have a reasonable basis for not treating a worker as an employee, you may be relieved from having to pay employment taxes for that worker. To get this relief, you must file all required federal tax returns, including information returns, on a basis consistent with your treatment of the worker. You (or your predecessor) must not have treated any worker holding a substantially similar position as an employee for any periods beginning after 1977. For further information, see Revenue Procedure 85-18, in Internal Revenue Cumulative Bulletin 1985-1, page 518.

**Technical service specialists.** This relief provision does not apply to a worker who provides services for a client as a technical specialist under an arrangement between a taxpayer, such as a technical services firm, and the client. A technical service specialist is an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work. (A taxpayer who directly contracts with a technical service specialist to provide services for itself rather than for a third party may still be entitled to the relief provision.) This rule does not automatically convert technical service specialists to employees for employment tax purposes. The common-law standards control whether the specialist is treated as an employee or an independent contractor. See *Employee or Independent Contractor?*, below.

**Leased employees.** Under certain circumstances, a corporation furnishing workers to various professional people and firms is the employer of those workers for employment tax purposes. For example, a professional service corporation may provide the services of secretaries, nurses, and other similarly trained workers to its subscribers. The service corporation enters into contracts with the subscribers under which the subscribers specify the services to be provided and the fee to be paid to the service corporation for each individual furnished. The contracts provide that the service corporation has the right to control and direct the worker's services for the subscriber including the right to discharge or reassign the worker. The service corporation hires the workers, pays their wages, provides them with unemployment insurance and other benefits, and

is the employer for employment tax purposes. For information on employee leasing as it relates to pension plan qualification requirements, see *Employee Leasing* in Publication 560, *Self-Employed Retirement Plans*.

**Nonbusiness (personal) services by employees.** Noncash payments by an employer for personal services by employees, not in the course of the employer's business, are not subject to employment taxes.

Cash payments by an employer, however, for personal services by employees not in the course of the employer's business, such as making repairs on the employer's home, are subject to the following rules:

- 1) For income tax withholding and federal unemployment taxes, the payments are taxable if the employee earns \$50 or more in cash in a calendar quarter performing personal services for the employer, and works 24 or more days in that quarter or in the preceding quarter in the employer's business.
- 2) For social security taxes, the payments are taxable if the employee receives \$100 or more in cash in a calendar year from the employer for personal services.

These rules do not apply to corporate employees. They also do not apply to household and farm workers.

**Additional Information.** For more information about what wages are taxable, the treatment of special types of employment, the treatment of special types of payments, and similar subjects, get a free copy of Publication 15 (Circular E), *Employer's Tax Guide*, or Publication 51 (Circular A), *Agricultural Employer's Tax Guide*, from the Internal Revenue Service.

## Employee or Independent Contractor?

An employer must generally withhold income taxes, withhold and pay social security taxes, and pay unemployment taxes on wages paid to an employee. An employer does not generally have to withhold or pay any taxes on payments to independent contractors.

**Common law rules.** To help you determine whether an individual is an employee under the common law rules, 20 factors have been identified that indicate whether sufficient control is present to establish an employer-employee relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed. It does not matter that the employer allows the employee freedom of action, so long as the employer has the right to control both the method and the result of the services. If an employer treats an employee as an independent contractor and the relief provisions discussed earlier do not apply, the person responsible for the collection and payment of withholding taxes may be held personally liable for an amount equal to the employee's income and social security taxes that should have been withheld.

The 20 factors indicating whether an individual is an employee or an independent contractor are:

- 1) **Instructions.** An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.
- 2) **Training.** An employee is trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services.
- 3) **Integration.** An employee's services are integrated into the business operations because

the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.

- 4) **Services rendered personally.** An employee renders services personally. This shows that the employer is interested in the methods as well as the results.
- 5) **Hiring assistants.** An employee works for an employer who hires, supervises, and pays assistants. An independent contractor hires, supervises, and pays assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.
- 6) **Continuing relationship.** An employee has a continuing relationship with an employer. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.
- 7) **Set hours of work.** An employee has set hours of work established by an employer. An independent contractor is the master of his or her own time.
- 8) **Full-time work.** An employee normally works full time for an employer. An independent contractor can work when and for whom he or she chooses.
- 9) **Work done on premises.** An employee works on the premises of an employer, or works on a route or at a location designated by an employer.
- 10) **Order or sequence set.** An employee must perform services in the order or sequence set by an employer. This shows that the employee is subject to direction and control.
- 11) **Reports.** An employee submits reports to an employer. This shows that the employee must account to the employer for his or her actions.
- 12) **Payments.** An employee is paid by the hour, week, or month. An independent contractor is paid by the job or on a straight commission.
- 13) **Expenses.** An employee's business and travel expenses are paid by an employer. This shows that the employee is subject to regulation and control.
- 14) **Tools and materials.** An employee is furnished significant tools, materials, and other equipment by an employer.
- 15) **Investment.** An independent contractor has a significant investment in the facilities he or she uses in performing services for someone else.
- 16) **Profit or loss.** An independent contractor can make a profit or suffer a loss.
- 17) **Works for more than one person or firm.** An independent contractor gives his or her services to two or more unrelated persons or firms at the same time.
- 18) **Offers services to general public.** An independent contractor makes his or her services available to the general public.
- 19) **Right to fire.** An employee can be fired by an employer. An independent contractor cannot be fired so long as he or she produces a result that meets the specifications of the contract.
- 20) **Right to quit.** An employee can quit his or her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.

Form SS-8. In doubtful cases, the facts will determine whether or not there is an actual employer-employee relationship. If you want the IRS to determine whether a worker is an employee, file Form SS-8, *Determination of Employee Work Status for Purposes of Federal*

*Employment Taxes and Income Tax Withholding*, with the District Director.

If you classify an employee as an independent contractor and you had no reasonable basis for doing so, you will have to pay employment taxes for that worker (the relief provisions, discussed earlier, will not apply). Further, if you do not withhold income and social security taxes from his or her wages, you may be held personally liable for a penalty of 100% of the tax if you are the person responsible for the collection and payment of withholding taxes. See *Penalties*, under *Deposits*, later.

The following examples may help you to properly classify your workers:

### Building and Construction Industry

**Example 1.** John Brown has an oral agreement with Ace Building Co. to do carpentry work on any house designated by the Ace Building Co. He supplies his own hand tools. The Ace Building Co. supplies the material for each job. He has to do the work himself and he works on a full-time basis for the company. For some work he is paid on a piecework basis and for some on an hourly basis. He has no assistants, does not have an office, and does not advertise in newspapers or otherwise hold himself out to the public as being in the carpentry business. The Ace Building Co. can discharge him any time before he finishes a job without contractual liability. John is an employee of the Ace Building Co.

**Example 2.** Ron Smith, a mason, has an oral agreement with Jifty, Inc., a contractor, to face a building with brick. Jifty supplies all material for the job. He supplies only his hand tools. He has to do the work himself and is paid on an hourly basis. Jifty employs two other masons on the job, who are supervised by Ron. Detailed supervision over him is neither necessary nor warranted because of his skill in the work. He can quit the job at any time, or Jifty can discharge him at any time. He has no investment or proprietary interest in a business that offers the general public services similar to those he does for Jifty. Ron is an employee of Jifty, Inc.

**Example 3.** Tom Green is a painting subcontractor who has contracted to paint 264 houses. He hired 40 painters to do the work for him, although only about 15 are on the job at any one time. He supplies all the paint, brushes, and ladders. He designates the house to be painted, and either pays the painters per house or by the hour. Detailed instructions about the work are not necessary because of the painters' skill in their trade. He inspects the work and requires them to repaint any unsatisfactory work. The painters cannot engage helpers without his consent. He can discharge them for any reason, and they are free to resign at any time. The painters are under no legal obligation to complete the painting of the houses. They assume no business risks and have no capital investment. None of them has an established business. The painters are employees of Tom Green.

**Example 4.** Jerry Jones has an agreement with Wilma White to supervise the remodeling of her house. She did not advance funds to help him carry on the work. She makes direct payments to the suppliers for all necessary materials. She carries liability and worker's compensation insurance covering Jerry and others he engaged to assist him. She pays them an hourly rate, and exercises almost constant supervision over the work. Jerry is not free to transfer his assistants to other jobs. He may not work on other jobs while working for Wilma. He assumes no responsibility to complete the work and will incur no contractual liability if he fails to do so. He and his assistants perform personal services for hourly wages. They are employees of Wilma White.

**Example 5.** Milton Manning, an experienced tilesetter, orally agreed with a corporation to perform full-time services at construction sites. He

uses his own tools and performs services in the order designated by the corporation and according to its specifications. The corporation supplies all materials, makes frequent inspections of his work, pays him on a piecework basis, and carries worker's compensation insurance on him. He does not have a place of business or hold himself out to perform similar services for others. Either party can end the services at any time. Milton Manning is an employee of the corporation.

**Example 6.** Wallace Black agreed with the Sawdust Co. to supply the construction labor for a group of houses. The company agreed to pay all construction costs. However, he supplies all the tools and equipment. He performs personal services as a carpenter and mechanic for an hourly wage. He also acts as superintendent and foreman, and engages other individuals to assist him. The company has the right to select, approve, or discharge any helper. A company representative makes frequent inspections of the construction site. When a house is finished, Wallace is paid a certain percentage of its costs. He is not responsible for faults, defects of construction, or wasteful operation. At the end of each week, he presents the company with a statement of the amount he has spent, including the payroll. The company gives him a check for that amount from which he pays the assistants, although he is not personally liable for their wages. Wallace Black and his assistants are employees of the Sawdust Co.

**Example 7.** A local plumbers' union and a contractors' association agreed to set up an apprenticeship program. The program is financed by the contractors and is administered by a joint apprenticeship committee. Trainees are enrolled first in a preapprenticeship program, in which they attend vocational school full time 5 days a week for 6 to 8 weeks. During this period, they are paid an hourly rate and are furnished with all materials and supplies used in school.

After completion of the preapprenticeship program, the trainees are assigned to work for local contractors as apprentice plumbers. The apprentices must attend training classes related to the trade one day a week for 2 years. The apprenticeship program pays them for the time spent in attending classes at the same hourly rate they earn working for their contractor-employers.

While in the preapprenticeship program, the trainees are not employees. Their payments from the program are not subject to income tax withholding or social security taxes. The contractors and the administrators of the preapprenticeship program are not liable for federal unemployment tax. However, the apprentices assigned to contractors as apprentice plumbers are considered employees; even when attending classes under the apprenticeship program. Their payments from the program are subject to income tax withholding, social security taxes, and federal unemployment tax.

## Trucking Business

**Example 1.** Drivers for Rover Trucking Co. often engage laborers to unload their trucks with the express consent of the company. The drivers pay the unloaders from funds provided by the company. The unloaders are company employees. This also would be true if the drivers had only the implied consent of the company.

**Example 2.** A company engages Phil Blue to haul products to its customers. The company has legal ownership and control of the trucking equipment. Phil can be required, on an hour's notice, to make deliveries at times and places specified by the company. Refusal can jeopardize his relationship with the company. He has to operate and maintain the equipment and provide the necessary operators and helpers. He is not allowed to use the company's equipment to haul for others. He is paid on a tonnage basis and is not guaranteed a minimum amount of compensation. He has

to pay the operators and helpers out of his tonnage receipts as well as pay for all insurance coverage required by the company. Phil and any operators or helpers engaged to assist him are employees of the company.

## Fishing Industry

**Example 1.** Harry Rose is the captain of one of the Pan Fishing Company's schooners. He engages a crew of 15 to operate the schooner. He offers to pay each crew member on the *lay* (sharing of the profit) basis. He and the crew members (except the engineer, who is paid a straight fee) are jointly liable for any losses resulting from a voyage.

The schooner is an American vessel of more than 10 net tons. He and the Pan Fishing Company entered into a contract of service within the United States.

After the voyage, Captain Rose sells the catch through a fish exchange, which deducts its fees from the proceeds. After deducting certain specified expenses (such as fuel, oil, etc.), he turns one-fourth of the proceeds over to Pan Fishing Co., less 5%, which he keeps as his commission. From the remaining three-fourths, the expenses of food, bait, etc., are deducted. The remainder is then equally divided among the members of the crew, including himself.

The members of a crew engaged under these circumstances are employees of either the captain (if he is not an agent of the vessel owner) or of the vessel owner. Their lays are in the nature of wages, and the agreements under which the crews are engaged in these circumstances are contracts of hire.

In this example, Captain Rose is acting as an agent of Pan Fishing Co. Therefore, the company is the employer. As an employer of a crew working on an American vessel under a contract entered into in the U.S., the company must withhold income tax and social security taxes from the entire crew's wages, including the wages of Captain Rose and the engineer. The company must also pay the employer's portion of social security taxes.

Because the schooner is a vessel of more than 10 net tons with a crew of more than nine members, the company must also pay federal unemployment tax on these wages.

The value of *meals and lodging furnished to the crew* is not subject to income tax withholding, social security taxes, and federal unemployment tax because the company must furnish meals and lodging on board the vessel so that the crew can do their work.

**Federal unemployment tax.** The work of catching fish is exempt from federal unemployment tax *except* for:

- 1) Work related to catching salmon or halibut for commercial purposes; or
- 2) Work performed on a vessel of more than 10 net tons.

However, work falling under items (1) and (2) above is also exempt if the four conditions mentioned, below, under *Certain crew members considered self-employed* are met.

**Certain crew members considered self-employed.** Wages paid to the members of a crew on a fishing boat are not subject to federal income tax withholding, social security taxes, and the federal unemployment tax if all the following conditions are met:

- 1) The members neither get nor are entitled to any money for their work (other than as provided in condition (2), below);
- 2) The members get shares of the catch or of the proceeds from the sale of the catch;
- 3) Each member's share depends on the size of the catch; and
- 4) The operating crew of the boat (or each boat from which a member gets a share for a

fishing operation involving more than one boat) normally numbers less than 10.

Each member of the crew who meets these conditions is considered self-employed. The earnings of these crew members are considered trade or business income and therefore subject to self-employment tax. See Publication 533, *Self-Employment Tax*.

**Example 2.** Mike Jones, an owner of a fishing boat of more than 10 net tons, employs a captain and eight others to work as crew members. The proceeds from the sale of the catch offset boat operating expenses, such as fuel, bait, and ice. The balance is divided 60% among the captain and the crew members and 40% between Mike and the captain. Between voyages the crew members do not receive any additional compensation, but they must do certain work, such as repairing nets, splicing cable, and transporting the catch. However, the mate, the engineer, and the cook receive an additional payment of \$100 each. This payment does not depend on the boat's catch. Since the mate, the engineer, and the cook receive payment other than a share of the catch, they are not considered self-employed. The \$100 payment and their share of the proceeds from the catch are subject to federal income tax withholding, social security taxes, and the federal unemployment tax.

The other six crew members, including the captain, are considered self-employed because they do not receive any additional pay and are members of an operating crew of fewer than 10 members. Mike does not have to withhold federal income tax or social security taxes from their pay. They must pay self-employment tax on their earnings. Also, because the boat has a crew of less than 10 members and meets the four conditions mentioned above under *Certain crew members considered self-employed*, Mike does not have to pay the federal unemployment tax for the other six crew members.

**Example 3.** Assume the same facts as in Example 2, except that, in addition to receiving a share of the catch, the captain and the other crew members are entitled to receive \$3 per hour for repairing nets, constructing new nets, splicing cable, and other incidental work while in port. Since the crew members are entitled to receive payment other than a share of the catch, they are not considered self-employed. The \$3 per hour payment and their share of the proceeds from the catch are subject to federal income tax withholding, social security taxes, and the federal unemployment tax.

**Reporting requirements.** The operator of a boat must file with the IRS a completed Form 1099-MISC, *Statement for Recipients of Miscellaneous Income*, if any of the crew members work as self-employed individuals. It must be filed with the IRS by February 28 of the year following the calendar year in which the crew member was paid. All amounts must be reported. The \$600 or more rule does not apply.

**Statement to crewmen.** Each operator who is required to file Form 1099-MISC must also furnish a statement to each crew member. You may use Copy B of Form 1099-MISC for this purpose. This statement must be furnished to all crew members by January 31 of the year following the calendar year in which the crew member was paid.

**Federal unemployment tax.** Self-employed crew members do not pay federal unemployment tax on their earnings. However, the operator of the boat may be subject to federal unemployment tax on the earnings of crew members who perform services that come under the exceptions stated earlier under *Federal unemployment tax*, and who do not meet the four conditions mentioned above under *Certain crew members considered self-employed*.

HB

480

Co-Chair  
Health, Education and  
Social Services Committee

Resources Committee

Legislative Budget and Audit

Special Committee  
on Oil and Gas

# Alaska State Legislature



Representative Patrick J. Carney

During Session:  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-2186

During Interim:  
P.O. Box 87-1746  
Wasilla, Alaska 99687  
(907) 373-2518

April 21, 1992

## MEMORANDUM

TO: Senator Drue Pearce  
Chair, Senate Labor and Commerce Committee

FROM: Representative Pat Carney *Pat*

RE: CSHB 480 (L & C), Bonding for Hearing Aid Dealers

I would like to request that CSHB 480 (L & C) be scheduled for a hearing in the Senate Labor and Commerce Committee.

I introduced this bill at the request of a constituent who is a hearing aid dealer. Under current statute, each employee of a hearing aid dealer is required to file a \$5,000 surety bond as a condition of licensure. This individual bond does not provide any additional protection to a consumer, since the dealer is responsible for any negligence or breach of contract by his or her employees. CSHB 480 would amend AS 08.55.030(a) to allow a hearing aid dealer the option of filing a \$10,000 company bond to cover all the dealer's employees.

The Division of Occupational Licensing supports this legislation.

Thank you for your consideration of this request.

Co-Chair  
Health, Education and  
Social Services Committee

Resources Committee

Legislative Budget and Audit

Special Committee  
on Oil and Gas

# Alaska State Legislature



Representative Patrick J. Carney

During Session:  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-2186

During Interim:  
P.O. Box 87-1746  
Wasilla, Alaska 99687  
(907) 373-2518

## SPONSOR STATEMENT FOR CSHB 480 (L&C)

### AN ACT RELATING TO THE SECURITY THAT MUST BE PROVIDED BY OR FOR HEARING AID DEALERS

Under current statute, an employee of a hearing aid dealer is required to file a \$5,000 surety bond as a condition of licensure. This requirement can be cumbersome and costly for dealers with more than one or two employees.

CSHB 480 (L&C) would amend AS 08.55.030 to allow the dealer the option of filing a company bond in the amount of \$10,000 to cover all the dealer's employees. Employees of the hearing aid dealer would not be required to file an individual bond.

The bill adds the provision that the applicant may file a certificate of deposit instead of a bond and that the bond or certificate of deposit must be kept in effect for three years after the holder ceases to be a hearing aid dealer or employee.

The bill adds a section providing that the dealer would be held liable in the event of negligence by an employee.

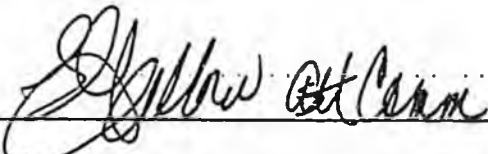
The Department of Commerce and Economic Development supports this legislation and has been actively involved with the drafting of the current committee substitute.

CS HB 480: "An Act relating to the security that must be provided  
by or for hearing aid dealers"

CSHB 480 would remove the requirement for individual employees of a hearing aid dealer to be bonded. It would also increase the amount of bonding for the dealer to increase from \$5,000 to \$10,000 if the dealer has employees.

It also allows for a certificate of deposit in favor of the State to be held in lieu of a surety bond.

The department is supportive of this bill.

  
\_\_\_\_\_  
Glenn A. Olds, Commissioner

Date: 4.27.97

GAO/AB

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

FISCAL NOTE

No. 1  
Bill Version: CSHB 480(HES)  
(H) Publish Date: 3-27-92

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Development  
Title: An Act relating to the bonding of hearing aid dealers. BRU: Occupational Licensing  
Sponsor: Rep. Carney Component: Administration  
Requestor: House HES COMPONENT SERIAL NO. 

0	3	5	6
---	---	---	---

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
---------	-----	-----	-----	-----	-----	-----

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

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)

The bill exempts employees of a hearing aid dealer from the bonding requirement; however, it increases the bond from \$5,000 to \$10,000 for hearing aid dealers with employees. New funds are not required to implement this bill.

Prepared By: Jennifer Strickler Phone: 465-2144  
Division: Occupational Licensing Date: 03/23/92  
Approved by Commissioner: Glenn A. Olds  
Agency: Commerce & Economic Development Date: 3-24-92

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

Rev 10/90 COMMITTEE COPY

FN & Commerce

Page: 1

ALASKA STATE LEGISLATURE  
HOUSE BILL NO. 480

HISTORY IN THE HOUSE

HISTORY IN THE SENATE

1992

2/18 Read first time and referred to:  
HES, L&C

---

3/27 HES RPT CS(HES) New Title  
6 DP 0 DNP 0 NR 0 AM  
FN 1 OFN Previous FN

4/13 L&C RPT CS(L&C)  New Title  
1 DP 0 DNP 3 NR 0 AM  
FN OFN 1 Previous FN

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

4/16 Read second time  
CS(L&C) Adopted

Amended

4/16 Advanced

4/16 Read third time

Return to second for specific amendment

4/16 PASSED EFD Same          or  
Yeas 31 Yeas  
Nays 0 Nays  
Excused 7 Excused  
Absent 2 Absent

         Intent adopted

Reconsideration  
Reconsideration not taken up

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

         Intent adopted

4/16 Reported correctly engrossed  
Signed by Speaker, to the Senate

          
Chief Clerk of the House

1992

4/21 Read first time and referred to:  
HES, L&C

---

4/30 HES 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

H B

4 8 9

**BILL NO:** House Bill No. 489

**DATE:** February 21, 1992

**TITLE:** "An Act relating to the safety requirements for boilers, unfired pressure vessels, and elevators; and providing for an effective date."

**CONTACT:** Arbe Williams  
465-2700

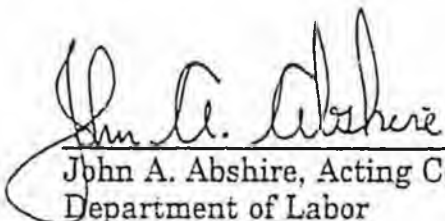
House Bill No. 489, "An Act relating to the safety requirements for boilers, unfired pressure vessels, and elevators; and providing for an effective date." enables better management of inspection schedules for boilers and unfired pressure vessels and implements the most current set of nationally adopted standards for boilers and pressure vessels and for elevators and escalators.

The bill amends the law to require that the Department of Labor is notified of the installation of a boiler or unfired pressure vessel and repeals the requirement that the State inspect boilers and unfired pressure vessels during installation. Currently, there is no assurance that the Department is informed of the installation. In addition, there is a current backlog of approximately 5,000 inspections. These amendments would insure that the Department of Labor is provided with information concerning the installation of boilers or unfired pressure vessels and allow the Department to schedule inspections more efficiently.

House Bill No. 489 also amends AS 18.60.315 to adopt the most current edition of the manual that sets the inspection standard for the State for boiler and pressure vessels and amends AS 18.60.800(a) to adopt the most current edition of the safety code for elevators and escalators. The amendment excludes a new section of the code which provides for the inspection of elevators on offshore drilling rigs and on ships; these inspections are within the jurisdiction of the U.S. Coast Guard.

The bill also removes some specific inspection certificate posting requirements in order to address practical problems that arise in attempting to meet those requirements for a certificate that covers more than one boiler or pressure vessel.

The Department of Labor supports this legislation.

  
\_\_\_\_\_  
John A. Abshire, Acting Commissioner  
Department of Labor

**POSITION PAPER/Department of Labor**

FISCAL NOTE

1  
 Bill Version: HB 489  
 (H) Publish Date: 2-26-92

STATE OF ALASKA  
 1992 LEGISLATIVE SESSION

BILL

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to the safety requirements for boilers, unfired pressure vessels,..."  
 Sponsor: House Labor & Commerce  
 Requestor: House Labor & Commerce

Department Affected: Labor  
 BRU: Labor Standards & Safety  
 Component: Mechanical Inspection  
 COMPONENT SERIAL NO. 346

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Randy Carr, Acting Director Phone: 264-2452  
 Division: Labor Standards & Safety Date: 2/20/92  
 Approved by Commissioner: John Abshire, Acting Commissioner  
 Agency: Department of Labor Date: 2/20/92

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

COMMITTEE COPY

# STATE OF ALASKA

## DEPARTMENT OF LABOR

### OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

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

FAX: (907) 465-2784

April 15, 1992

The Honorable Drue Pearce  
Chair, Labor & Commerce Committee  
Alaska State Senate  
P.O. Box V  
Juneau, AK 99801-1182

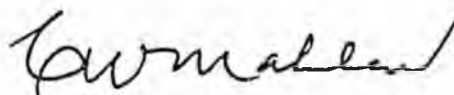
Dear Senator Pearce:

House Bill No. 489, "An Act relating to the safety requirements for boilers, unfired pressure vessels, and elevators; and providing for an effective date" passed the House April 14th, was transmitted to the Senate and has been referred to the Senate Labor & Commerce Committee. I am requesting that you schedule it for a hearing as soon as possible.

The bill was introduced by the House Labor & Commerce Committee at the request of the Department. This legislation will enable better management of inspection schedules for boilers and unfired pressure vessels and will implement the most current set of nationally adopted standards for boilers and pressure vessels and for elevators and escalators.

Thank you for your consideration of my request for a hearing on House Bill No. 489. A sectional analysis, Department Position Paper, fiscal note and a copy of the bill are enclosed for your information. Please do not hesitate to contact my Special Assistant, Arbe Williams, if you would like additional information.

Sincerely,



C. W. Mahlen  
Commissioner

CWM:kh

Enclosures

## Section-by-Section Analysis

### House Bill No. 489 Boiler, Pressure Vessel & Elevator Safety

**House Bill No. 489, "An Act relating to the safety requirements for boilers, unfired pressure vessels, and elevators; and providing for an effective date."** enables better management of inspection schedules for boilers and unfired pressure vessels, and implements the most current set of nationally-adopted standards for boilers and pressure vessels, elevators and escalators.

**Section 1** adds the requirement that the Department of Labor is notified of the installation of a boiler or unfired pressure vessel. Currently, the law requires inspection of each boiler and unfired pressure vessel during installation. However, there is no assurance that the Department is informed of the installation. In addition, there is a current backlog of approximately 5,000 inspections. This amendment would insure that the Department of Labor is provided with information concerning the installation of boilers or unfired pressure vessels and allow the Department to schedule inspections more efficiently.

**Section 2** amends AS 18.60.315 to adopt the most current edition of the manual that sets the inspection standards for boilers and pressure vessels.

**Section 3** removes some specific inspection certificate posting requirements in order to address practical problems that arise in attempting to meet those requirements for a certificate that covers more than one boiler or pressure vessel.

**Section 4** amends AS 18.60.800(a) to adopt the most current edition of the safety code for elevators and escalators. The amendment excludes a new section of the code which provides for the inspection of elevators on offshore drilling rigs and on ships; these inspections are within the jurisdiction of the U.S. Coast Guard.

**Section 5** repeals the requirement that the State inspect boilers and unfired pressure vessels during installation. The current requirement is impractical because the Department of Labor has no requirement for notification of an installation. By repealing this section and enacting Section 1, new installations can be tracked and inspections scheduled in an efficient manner.

**Section 6** provides for an effective date of July 1, 1992.

ALASKA STATE LEGISLATURE  
HOUSE BILL NO. 489

HISTORY IN THE HOUSE

1992  
2/18 Read first time and referred to:  
L & C, FIN

3/11

<u>FIN</u>	RPT	CS( )	New Title
<u>6</u>	DP	<u>0</u> DNP	<u>5</u> NR <u>0</u> AM
	FN	<u>1</u> OFN	Previous FN

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

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

4/14 Read second time  
CS( ) Adopted

Amended

4/14 Advanced

4/14 Read third time

Return to second for specific amendment

4/14

PASSED	EFD Same <input checked="" type="checkbox"/>
Yeas 39	Yeas
Nays 1	Nays
Excused 0	Excused
Absent 0	Absent

Intent adopted

Reconsideration  
Reconsideration not taken up

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

Intent adopted

4/14 Reported correctly engrossed  
Signed by Speaker, to the Senate

*Rustan Coakley*  
Chief Clerk of the House

HISTORY IN THE SENATE

1992  
4/15 Read first time and referred 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

	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

H B

5 0 9

# 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

April 11, 1992

TO: Senator Drew Pearce  
Chair, Senate Labor and Commerce Committee

FROM: Representative Max F. Gruenberg, Jr. *MAX*

RE: HB 509 (L&C), "An Act adopting the Uniform Custodial Trust Act."

I would very much appreciate you would schedule HB 509 (L&C) for a hearing as soon as possible.

Like the Statutory Durable Power of Attorney, which this bill complements, HB 509 will help or seniors manage and protect their property.

HB 509 adopts the Uniform Custodial Trust Act, (UCTA). The primary purpose of the UCTA is to provide a relatively easy and inexpensive mechanism for the elderly to provide for the future management of their assets in the event their incapacity.

The UCTA provides a simplified procedure for a person to establish a trust. The UCTA also allows provision for the transfer of control of the trust in the event of incapacity.

If you have any questions or comments, please contact me, or my legislative assistant, Mark Handley, at 465-4986.

Thank you.

**FISCAL NOTE**

**STATE OF ALASKA  
1992 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act adopting the Uniform BRIJ: Trial Courts  
Custodial Act Components: \_\_\_\_\_  
 Sponsor: Gruenberg  
 Requestor: Labor & Commerce COMPONENT SERIAL NO. 

000	000	000	768
-----	-----	-----	-----

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

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

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

**ANALYSIS: (Attach a separate page if necessary)**

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228  
 Division: Alaska Court System Date: 03/02/92

Approved by: Arthur H. Snowden, II, Administrative Director Date: 03/02/92  
 Agency: Alaska Court System

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

ALASKA STATE LEGISLATURE  
HOUSE BILL NO. 509

HISTORY IN THE HOUSE

1992  
2/18 Read first time and referred to:  
L&C, JUD

---

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

3/20 JUD RPT CS(L&C) New Title  
2 DP DNP 3 NR AM  
FN OFN 1 Previous FN

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

4/8 Read second time  
CS(L&C) Adopted

Amended

4/8 Advanced

4/8 Read third time

Return to second for specific amendment

4/8 PASSED EFD Same \_\_\_ or  
Yeas 36 Yeas  
Nays 0 Nays  
Excused 0 Excused  
Absent 4 Absent

Intent adopted

Reconsideration  
Reconsideration not taken up

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

Intent adopted

4/8 Reported correctly engrossed  
Signed by Speaker, to the Senate

Kurtis Gray  
Chief Clerk of the House

HISTORY IN THE SENATE

1992  
4/10 Read first time and referred to:  
L&C, JUD

---

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

# UNIFORM CUSTODIAL TRUST ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
Hawaii	1989, Act 76	5-8-1989	HRS §§ 554B-1 to 554B-22.
Idaho	1989, c. 230		I.C. §§ 68-1301 to 68-1322.
Minnesota	1990, c. 476	4-19-1990	M.S.A. §§ 529.01 to 529.19.
Missouri	1986, S.B. No. 651		V.A.M.S. §§ 404.400 to 404.650.
Rhode Island	1988, c. 623		Gen. Laws 1956, §§ 18-13-1 to 18-13-22.
Virginia	1990, c. 264		Code 1950, §§ 55-34.1 to 55-34.19.

### Historical Note

The Uniform Custodial Trust Act was approved by the National Conference of Commissioners on Uniform State Laws in 1987. The complete text of the act, the prefatory note and comments are set forth in this supplement.

### PREFATORY NOTE

This Uniform Act provides for the creation of a statutory custodial trust for adults to be governed by the provisions of the Act whenever property is delivered to another "as custodial trustee under the (Enacting state) Uniform Custodial Trust Act." The provisions of this Act are based on trust analogies to concepts developed and used in establishing custodianships for minors under the Uniform Transfers to Minors Act (UTMA). The Custodial Trust Act is designed to provide a statutory standby inter vivos trust for individuals who typically are not very affluent or sophisticated, and possibly represented by attorneys engaged in general rather than specialized estate practice. The most frequent use of this trust would be in response to the commonly occurring need of elderly individuals to provide for the future management of assets in the event of incapacity. The statute will also be available for accomplishing distribution of funds by judgment debtors and others to incapacitated persons for whom a conservator has not been appointed. Since this Act allows any person, competent to transfer property, to create custodial trusts for the benefit of themselves or others, with the beneficial interest in custodial trust property in the beneficiary and not in the custodial trustee, its potential for use is extensive. Although the most frequent use probably will be by elderly persons, it is also available for a parent to establish a custodial trust for an adult child who may be incapacitated; for adult persons in the military, or those leaving the country temporarily, to place their property with another for management without relinquishing beneficial ownership of their property, or for young people who have received property under the Uniform Transfers to Minors Act to continue a custodial trust as adults in order to obtain the benefit and convenience of management services performed by the custodial trustee.

This Act follows the approach taken by the Uniform Transfers to Minors Act and allows any kind of property, real or personal, tangible or intangible, to be made the subject of a transfer to a custodial trustee for the benefit of a beneficiary. However, the most typical transaction envisioned would involve a person who would transfer intangible property, such as securities or bank accounts, to a custodial trustee but with retention by the transferor of direction over the property. Later, this direction could be relinquished, or it could be lost upon incapacity. The objective of the statute is to provide a simple trust that is uncomplicated in its creation, administration, and termination. The potential for tax problems is minimized by permitting the beneficiary in most instances to retain control while the beneficiary has capacity to manage the assets effectively. The statute contains an asset specific transfer provision that it is believed will be simple to use and will gain the acceptance of the securities and financial industry. A simple transfer document, examples of which are set forth in the Act, and a receipt from the custodian, also in the Act, would provide for identification of beneficiaries or distributees upon death of the beneficiary. Protection is extended to third parties dealing with the custodian. Although the Act is patterned on the Uniform Transfers to Minors Act and meshes into the Uniform Probate Code, it is appropriate for enactment as well in states which have not adopted either UTMA or the UPC.

An adult beneficiary, who is not incapacitated, may: (1) terminate the custodial trust on demand (Section 2(e)); (2) receive so much of the income or custodial property as he or she may request from time to time (Section 9(a)); and (3) give the custodial trustee binding instructions for investment or management (Section 7(b)). In the absence of direction by the

beneficiary; the standard of another (Section 7)

A principal beneficiary incapacity the beneficial custodial trustee third person manage the benefit of

Means of custodial trustee (S distribution trustee is custodial trustee

Transaction parties be acting in beneficiary generally the custodian or failed

As a consequence are most desirable created residence custodial trustee

Hawaii. Which of the major provisions the official text in substitution, omitted clearly indicated

- Section:
- 1. Definitions
- 2. Custodial Trust
- 3. Custodial Trust
- 4. Form and F
- 5. Transfer to Facility
- 6. Multiple B Survivors
- 7. General Du
- 8. General Po
- 9. Use of Cust
- 10. Determinat
- 11. Exemption
- 12. Liability to

### § 11 Defin

As used i (1) "Ad

beneficiary, who is not incapacitated, the custodial trustee manages the property subject to the standard of care that would be observed by a prudent person dealing with the property of another and is not limited by other statutory restrictions on investments by fiduciaries. (Section 7).

A principal feature of the Custodial Trust under this Act is designed to protect the beneficiary and his or her dependents against the perils of the beneficiary's possible future incapacity without the necessity of a conservatorship. Under Section 10, the incapacity of the beneficiary does not terminate (1) the custodial trust, (2) the designation of a successor custodial trustee, (3) any power or authority of the custodial trustee, or (4) the immunities of third persons relying on actions of the custodial trustee. The custodial trustee continues to manage the property as a discretionary trust under the prudent person standard for the benefit of the incapacitated beneficiary.

Means of monitoring and enforcing the custodial trust include provisions requiring the custodial trustee to keep the beneficiary informed, requiring accounting by the custodial trustee (Section 15), providing for removal of the custodial trustee (Section 13), and the distribution of the assets on termination of the custodial trust (Section 17). The custodial trustee is protected in Section 16 by the statutes of limitation on proceedings against the custodial trustee.

Transactions with the custodial trustee should be executed readily and quickly by third parties because their rights and protections are determined by the Act and a third party acting in good faith has no need to determine the custodial trustee's authority to bind the beneficiary with respect to property and investment matters. (Section 11). The Act generally limits the claims of third parties to recourse against the custodial property, with the beneficiary insulated against personal liability unless he or she is personally at fault and the custodial trustee is similarly insulated unless the custodial trustee is personally at fault or failed to disclose the custodial capacity when entering into a contract (Section 12).

As a consequence of the mobility of our population, particularly the mature persons who are most likely to utilize this Act, uniformity of the laws governing custodial trusts is highly desirable, and the Act is designed to avoid conflict of laws problems. A custodial trust created under this Act remains subject to this Act despite a subsequent change in the residence of the transferor, the beneficiary, or the custodial trustee or the removal of the custodial trust property from the state of original location. (Section 19).

General Statutory Notes

Hawaii. While the Hawaii act is a substantial adoption of the major provisions of the uniform act, it departs from the official text in such manner that the various instances of substitution, omission, and additional matter cannot be clearly indicated by statutory notes.

Missouri. While the Missouri act is a substantial adoption of the major provisions of the Uniform Act, it departs from the official text in such manner that the various instances of substitution, omission, and additional matter cannot be clearly indicated by statutory notes.

UNIFORM CUSTODIAL TRUST ACT

Section

- 1. Definitions.
- 2. Custodial Trust; General.
- 3. Custodial Trustee for Future Payment or Transfer.
- 4. Form and Effect of Receipt and Acceptance by Custodial Trustee, Jurisdiction.
- 5. Transfer to Custodial Trustee by Fiduciary or Obligor; Facility of Payment.
- 6. Multiple Beneficiaries; Separate Custodial Trusts; Survivorship.
- 7. General Duties of Custodial Trustee.
- 8. General Powers of Custodial Trustee.
- 9. Use of Custodial Trust Property.
- 10. Determination of Incapacity; Effect.
- 11. Exemption of Third Person From Liability.
- 12. Liability to Third Person.

Section

- 13. Declination, Resignation, Incapacity, Death, or Removal of Custodial Trustee, Designation of Successor Custodial Trustee.
- 14. Expenses, Compensation, and Bond of Custodial Trustee.
- 15. Reporting and Accounting by Custodial Trustee; Determination of Liability of Custodial Trustee.
- 16. Limitations of Action Against Custodial Trustee.
- 17. Distribution on Termination.
- 18. Methods and Forms for Creating Custodial Trusts.
- 19. Applicable Law.
- 20. Uniformity of Application and Construction.
- 21. Short Title.
- 22. Severability.
- 23. Effective Date.

§ 1. Definitions.

As used in this [Act]:

- (1) "Adult" means an individual who is at least 18 years of age.

(2) "Beneficiary" means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under this [Act].

(3) "Conservator" means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions.

(4) "Court" means the [\_\_\_\_\_] court of this State.

(5) "Custodial trust property" means an interest in property transferred to or held under a declaration of trust by a custodial trustee under this [Act] and the income from and proceeds of that interest.

(6) "Custodial trustee" means a person designated as trustee of a custodial trust under this [Act] or a substitute or successor to the person designated.

(7) "Guardian" means a person appointed or qualified by a court as a guardian of an individual, including a limited guardian, but not a person who is only a guardian ad litem.

(8) "Incapacitated" means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority, or other disabling cause.

(9) "Legal representative" means a personal representative or conservator.

(10) "Member of the beneficiary's family" means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

(12) "Personal representative" means an executor, administrator, or special administrator of a decedent's estate, a person legally authorized to perform substantially the same functions, or a successor to any of them.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "Transferor" means a person who creates a custodial trust by transfer or declaration.

(15) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

#### COMMENT

(1) "Adult" is a person 18 years of age for the purpose of custodial trusts. The result of this is that a person 18 years of age will be eligible to be a custodial trustee under this Act, although he or she may not be eligible under UTMA since minor custodianships under UTMA may run to age 21 and the minor could in some cases be older than the custodian. As the Comments under Section 1 of UTMA explain, the age of 21 was retained under that Act because the Internal Revenue Code continues to permit a "minority trust" under Section 2053(c), to continue in effect until age 21 and because it was believed that most transferors creating trusts or custodianships for minors would prefer to retain the property under management for the benefit of the young person as long as possible. The difference has little or no practical consequence and serves the purpose of each Act.

(3) "Conservator" is defined broadly to permit identification of a person functioning as a conservator.

(4) "Court" means \_\_\_\_\_ court. Here the likelihood is that most states would utilize the

same court, e.g., the probate court, that deals with conservators and estates.

(5 and 6) The terms "custodial trust property" and "custodial trustee," are used throughout to identify clearly the statutory trust property and trustee under this Act. The statutory trust concept is used throughout the Act.

(7) A definition of guardian has been included and is based on the Uniform Probate Code Section 5-103(6).

(8) A definition of incapacitated has been included, for the purpose of this Act, because incapacity of the beneficiary converts the trust from a revocable trust to a discretionary trust. The definition is taken from the Uniform Probate Code Section 5-401(c) relating to the person who is unable to manage property. Compare Uniform Probate Code Section 5-103(7). Note that Section 10(a)(ii) permits a transferor to direct that the trust shall be administered as one for an incapacitated person. Section 10 deals specifically with the determination of incapacity.

(10) T  
fined to  
seek j  
tions 13  
(11) T  
the Unif

Variations  
"Missos  
tion" for "  
Adds de  
power of a

New D  
Amendmen  
(1989).

American  
Nat  
Encyclop  
Defi

§ 2. C

(a) A  
propert  
execute  
transfe  
the [En

(b) A  
evidenc  
in any  
other th  
as custo  
tion or  
trust in

(c) Th  
is in th

(d) E  
trust.

(e) T  
ciary, I  
signed  
termina

(f) A  
propert

(g) T  
trustee

(h) T  
whose  
other l

The beneficiary's family is broadly defined to identify persons who may have standing to seek judicial intervention or accounting (Sec. 13 and 15).

(12) Personal representative is broadly defined and the definition reflects that in the Uniform Probate Code Section 1-201(30).

(11) The definition of a person is taken from Uniform Probate Code Section 1-201(29).

Action in Adopting Jurisdictions

Variations from Official Text:

Minnesota. In subsec. (8), substitutes "mental retardation" for "mental deficiency".

Adds definition as follows: "'Holder of the beneficiary's power of attorney' means a person who is a holder of the

beneficiary's unrevoked power of attorney if the document creating the power of attorney grants powers similar or identical to those defined as 'beneficiary transactions' in section 523.24, subdivision 7."

Virginia. In par. (7), substitutes "a person" for "an individual".

Law Review Commentaries

New Durable Power Law and Custodial Trust Act Amendments. Leo E. Eickhoff, Jr. 45 J. of Mo Bar 329 (1989).

Library References

American Digest System

Nature and essentials of trusts in general, see Trusts §1.

Encyclopedias

Definitions of terms in connection with trusts in general, see C.J.S. Trusts §§ 1 to 7.

§ 2. Custodial Trust; General.

(a) A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration or by other instrument of transfer, executed in any lawful manner, naming as beneficiary, an individual who may be the transferor, in which the transferee is designated, in substance, as custodial trustee under the [Enacting state] Uniform Custodial Trust Act.

(b) A person may create a custodial trust of property by a written declaration, evidenced by registration of the property or by other instrument of declaration executed in any lawful manner, describing the property and naming as beneficiary an individual other than the declarant, in which the declarant as titleholder is designated, in substance, as custodial trustee under the [Enacting state] Uniform Custodial Trust Act. A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under this [Act].

(c) Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

(d) Except as provided in subsection (e), a transferor may not terminate a custodial trust.

(e) The beneficiary, if not incapacitated, or the conservator of an incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary or conservator declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary.

(f) Any person may augment existing custodial trust property by the addition of other property pursuant to this [Act].

(g) The transferor may designate, or authorize the designation of, a successor custodial trustee in the trust instrument.

(h) This [Act] does not displace or restrict other means of creating trusts. A trust whose terms do not conform to this [Act] may be enforceable according to its terms under other law.

Section 2 is the principal provision authorizing the creation of a custodial trust and utilizes the concept of incorporation by reference when the transferee or titleholder of property is designated as custodial trustee under the Act. Section 2 sets forth the general effect of such a transfer. Section 18 provides forms which satisfy the requirements of this section and identifies customary methods of transferring assets to create a custodial trust.

Section 2(a) provides that a trust may be created by transfer to another for the benefit of the transferor or another. This is expected to be the most common way in which a custodial trust would be created. However, a custodial trust may also be created by declaration of trust by the owner of property to hold it for the benefit of another as is provided in Section 2(b). A declaration in trust by the owner of property for the sole benefit of the owner is not contemplated by this Act because such an attempt may be considered ineffective as a trust due to the total identity of the trustee and beneficiary. However, the doctrine of merger would not preclude an effective transfer under this Act for the benefit of the transferor and one or more other beneficiaries. See Section 6.

A custodial trust could be created by the exercise of a valid power of attorney or power of appointment given by the owner of property as one of the transfers "consistent with law."

These alternatives permit the major uses of the custodial trust to be accomplished expeditiously. For example, an older person, wishing to be relieved of management of property may transfer property to another for benefit of the transferor or of the transferor's spouse or child. The declaration may be used to establish a trust of which the owner is trustee to continue management of the property for benefit of another, such as a spouse or child. The trust may include a provision for distribution of assets remaining at the beneficiary's death directly to a named distributee.

This Act does not preclude the creation of trusts under other existing law, statutory or nonstatutory; but is designed to facilitate the creation of simple trusts incorporating the provisions of this Act. The written transfer or declaration "consistent with law" requires that the formalities of the transfer of particular property necessary under other law will be observed, e.g., if land is involved, the requirements of a proper deed and recording must be satisfied.

Section 2(c) provides for the retention of the beneficial interest in the custodial trust property in the beneficiary and, of course, not in the custodial trustee. The extensive control and benefit in the beneficiary who is not incapacitated maintains the simplicity of the trust and avoids tax complexity. The custodial trustee is given the title to the property and authority to act with regard to the property only as is authorized by the statute. The custodial trustee's powers are enumerated in Section 8.

Section 2(e) gives the adult beneficiary, who is not incapacitated, the power to terminate the custodial trust at any time during his or her lifetime. This power of termination exists in any beneficiary who is not incapacitated whether the beneficiary was or was not the transferor. A beneficiary may be determined to be incapacitated or the transferor may designate that the trust is to be administered as a trust for an incapacitated beneficiary under Section 10, in which event the beneficiary does not have the power to terminate. However, the designation of incapacity by the transferor can be modified by the trustee or the court by reason of changed circumstances pursuant to Section 10. The Act precludes termination by exercise of a durable power of attorney if the beneficiary is incompetent (Section 7(f)). If the donor prefers not to permit the beneficiary the power to terminate or to designate the beneficiary as incapacitated under Section 10, an individually drafted trust outside the scope of this Act would seem appropriate.

Upon termination of a custodial trust, the custodial trust property must be distributed as provided in Section 17.

A transfer under this Act is irrevocable except to the extent the beneficiary may terminate it. Hence, a transfer to a trustee for benefit of a person other than the transferor is not revocable by the transferor. If a power of revocation were retained by the transferor, that would be a trust outside the scope of this Act and enforceable under general law pursuant to subsection 2(h).

This Act does not provide for protection of the custodial trust assets from the claims of creditors of the beneficiary, whether those are general or governmental creditors. Other laws of the state remain unaffected. In this regard, unusual problems of handicapped persons and the coordination of resources and state or federal services call for special provision and planning outside the scope of this Act.

Action in Adopting Jurisdictions

Variations from Official Text:

Minnesota. In subsec. (c), substitute "holder of the beneficiary's power of attorney" for "conservator of an incapacitated beneficiary" in the first instance and for "conservator" in the second instance.

Virginia. In subsec. (a), insert "if the property is of a type subject to registration," following "registration".

In subsec. (b), insert "In addition," at the beginning thereof, and insert "if the property is of a type subject to registration," following "registration of the property".

Combin  
ed D] wh  
ed, may  
custodial tr  
ing the ter  
beneficiary

American

Appo  
Modi  
Natu  
Nece  
Reco  
Revc  
Tran  
Writ

Encyclope

Addi  
Esse  
Reco  
Revc  
Righ

Title  
Tran

§ 3- C

(a) A  
transfe  
future  
custodi  
Custodi

(b) P  
the prc  
custodi

(c) A  
multipl  
ment, c  
effectiv  
issuer,

This s  
to be a  
benefici  
upon the  
fer. To  
during t  
sors or  
designat  
dial tru  
an instr  
dependi  
transfe

Combines subsecs. (d) and (e) in one subsection [designated (D)] which reads: "D. The beneficiary, if not incapacitated, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary declaring the termination. The conservator of an incapacitated beneficiary may similarly terminate the custodial trust in

this manner but only if granted the power by the circuit court that appointed him in a proceeding in which the custodial trustee is made a party. If not previously terminated, the custodial trust terminates on the death of the beneficiary. A transferor may not terminate a custodial trust except as provided in this subsection."

### Library References

#### American Digest System

- Appointment of new trustee, see Trusts Ⓔ169 (1 to 3).
- Modification of trust, see Trusts Ⓔ58.
- Nature of estate in trust, see Trusts Ⓔ129.
- Necessity and sufficiency of delivery of property, see Trusts Ⓔ37½.
- Recording and registration of instrument creating trust, see Trusts Ⓔ23.
- Revocation and termination of trusts, see Trusts Ⓔ59(1 to 4), 61(1 to 4).
- Transfer of legal title to property as creating trust, see Trusts Ⓔ31.
- Written instruments declaring trusts, see Trusts Ⓔ19 to 23.

#### Encyclopedias

- Adding to trust property, see C.J.S. Trusts § 87.
- Essentials of declaration of trust in general, see C.J.S. Trusts §§ 42 to 45.
- Recording or registration of instrument creating trust, see C.J.S. Trusts § 41.
- Revocation and termination of trusts, see C.J.S. Trusts §§ 88 to 90, 92 to 95.
- Right of creator of trust to provide for substitute or successor trustees, see C.J.S. Trusts §§ 212, 213.
- Title of trustee and beneficiary, see C.J.S. Trusts § 175.
- Transfer of title or interest and delivery of trust property, see C.J.S. Trusts §§ 63, 64.

### § 3. Custodial Trustee for Future Payment or Transfer.

(a) A person having the right to designate the recipient of property payable or transferable upon a future event may create a custodial trust upon the occurrence of the future event by designating in writing the recipient, followed in substance by: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act."

(b) Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the first designated custodial trustee is unable or unwilling to serve.

(c) A designation under this section may be made in a will, a trust, a deed, a multiple-party account, an insurance policy, an instrument exercising a power of appointment, or a writing designating a beneficiary of contractual rights. Otherwise, to be effective, the designation must be registered with or delivered to the fiduciary, payor, issuer, or obligor of the future right.

### COMMENT.

This section permits a future custodial trustee to be designated to receive property for the beneficiary of a custodial trust to be effective upon the occurrence of a future event or transfer. To accommodate changes in circumstances during the passage of time, one or more successors or substitute custodial trustees can also be designated. The designation of the future custodial trustee and the beneficiary can be made in an instrument which is revocable or irrevocable depending upon the nature of the transaction or transfer. Any person designated as a future

custodial trustee may decline to serve before the transfer occurs or may resign under Section 13 after the transfer.

The source of this section is Section 3 of UTMA.

The enacting state's rule against perpetuities may limit or affect the creation of a custodial trust upon the occurrence of a future event, but because the use of a custodial trust usually contemplates dispositions for the benefit of living persons, perpetuity problems should rarely arise.

## Library References

## American Digest System

- Testamentary trusts, see Wills ¶669 to 675.
- Trust by deposit of money in bank, see Trusts ¶34(1 to 4).
- Trust in life insurance payable to another, see Trusts ¶37.
- Trusts taking effect in future, see Trusts ¶14.

## Encyclopedias

- Certainty as to subject matter of trust, see C.J.S. § 45.
- Execution of power by appointment in trust, see C.J.S. Powers § 15.
- Testamentary trusts, see C.J.S. Wills, §§ 1004 to 1016.
- Time of vesting, see C.J.S. Trusts § 29.
- Trust of money deposited in financial institution, see C.J.S. Trusts § 54.
- Trust of proceeds of life insurance, see C.J.S. Trusts § 56.

## § 4. Form and Effect of Receipt and Acceptance by Custodial Trustee, Jurisdiction.

(a) Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under this [Act] upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

(b) The custodial trustee's acceptance may be evidenced by a writing stating in substance:

## CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

I, \_\_\_\_\_ (name of custodial trustee) acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the [Enacting state] Uniform Custodial Trust Act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is, or becomes incapacitated. The custodial trust property consists of \_\_\_\_\_

Dated: \_\_\_\_\_

(Signature of Custodial Trustee)

(c) Upon accepting custodial trust property, a person designated as custodial trustee under this [Act] is subject to personal jurisdiction of the court with respect to any matter relating to the custodial trust.

## COMMENT

Although a custodial trust is created by a transfer that satisfies Section 2 of the Act, the responsibility and obligations upon the trustee do not arise until the trustee has accepted the transfer. This detailed section is included to call the attention of the parties to the effective receipt and acceptance by the custodial trustee. Once a custodial trustee accepts the transfer of the custodial trust property, the custodial trustee assumes the obligation of a custodial trustee under this Act. The acceptance can be expressed or implied, but it is recommended that the written acceptance provided for in Section 4(b) be utilized. By the acceptance the custodial trustee submits to the personal jurisdiction of the courts of the enacting state for the purpose of the custodial trust, despite subsequent relocation of the parties or of the custodial trust property. The principal sources of these provisions are Sections 8 and 9 of UTMA and the analogous provisions under the Uniform Probate Code, Sections 3-602, 5-208, 5-307, 7-103.

## Library References

## American Digest System

- Acceptance by trustee, see Trusts ¶38.

## Encyclopedias

- Acceptance and disclaimer by trustee, see C.J.S. Trusts § 60.

§ 5. Transfer to Custodial Trustee by Fiduciary or Obligor; Facility of Payment.

(a) Unless otherwise directed by an instrument designating a custodial trustee pursuant to Section 3, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds [\$20,000], the transfer is not effective unless authorized by the court.

(b) A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.

COMMENT

This section is in the nature of a facility-of-payment provision that permits persons owing money to an incapacitated individual to discharge a fixed obligation by a payment to a custodial trustee under this Act. The section does not authorize the custodial trustee to settle claims for disputed amounts but only to acknowledge an effective receipt of property paid or

delivered. It is based primarily on Sections 6 and 7 of UTMA and includes the protections of Section 8 of UTMA as well. It permits a custodial trust to be established as a substitute for a conservatorship to receive payments due an incapacitated individual. Also, see Section 11, which protects transferors and other third parties dealing with the custodial trustee.

Action in Adopting Jurisdictions

Variations from Official Text:  
Minnesota. Omits this section.

Virginia. In subsec. (a), substitutes "\$10,000" for "\$20,000".

Library References

American Digest System

Delivery of money or other personal property as creating trust, see Trusts ¶33.  
Agreements to hold or convey to use of another as trusts, see Trusts ¶35(1).

Encyclopedias

Delivery or possession of personal property, see C.J.S. Trusts § 55.  
Creation of trust by agreement of person acquiring title to hold or convey to use of another, see C.J.S. Trusts § 51.

§ 6. Multiple Beneficiaries; Separate Custodial Trusts; Survivorship.

(a) Beneficial interests in a custodial trust created for multiple beneficiaries are deemed to be separate custodial trusts of equal undivided interests for each beneficiary. Except in a transfer or declaration for use and benefit of husband and wife, for whom survivorship is presumed, a right of survivorship does not exist unless the instrument creating the custodial trust specifically provides for survivorship [or survivorship is required as to community or marital property].

(b) Custodial trust property held under this [Act] by the same custodial trustee for the use and benefit of the same beneficiary may be administered as a single custodial trust.

(c) A custodial trustee of custodial trust property held for more than one beneficiary shall separately account to each beneficiary pursuant to Sections 7 and 15 for the administration of the custodial trust.

COMMENT

This Act, unlike UTMA, does not preclude a custodial trust for more than one beneficiary. Adult persons creating custodial trusts are likely to set up custodial trusts in various forms, e.g., parents may wish to set up a custodial trust for their children or for themselves, then for a spouse, etc. However, the interests of each

beneficiary are separate and the custodial trustee is obligated under subsection (c) to account separately to each beneficiary for administration of the beneficiary's interest in the custodial trust.

Subsection (b) allows a custodial trustee who is administering multiple custodial trusts for the

same beneficiary to administer the custodial trusts as a single custodial trust. For example, if multiple trusts are created for an incapacitated beneficiary, the custodial trustee can administer them as a single custodial trust.

Action in Adopting Jurisdictions

Variations from Official Text: In subsec. (b), substitutes "single custodial account" for "single custodial trust".  
Rhode Island. In subsec. (1), at end thereof, omits bracketed language. Virginia. In subsec. (a), omits "community or".

Library References

American Digest System

Extent of estate or interest of beneficiary of trust, see Trusts ¶139, 140.

Encyclopedias

Construction of trust for several beneficiaries, see C.J.S. Trusts § 186.

§ 7. General Duties of Custodial Trustee.

(a) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

(b) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. If a custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of a special skill or expertise, the custodial trustee shall use that skill or expertise.

(c) Subject to subsection (b), a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(d) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act."

(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

(f) The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

COMMENT

Subsection (b) restates and confirms the control by the beneficiary who is not incapacitated. However, the trustee has a reasonable obligation to act when the beneficiary has not directed him. Under Sections 9 and 10, when a beneficiary becomes incapacitated, the custodial trust becomes a discretionary trust and the trustee is subject to the control of the statute and not the beneficiary's direction. The custodial trustee is subject to the usual trustee's standard as taken from Section 7-302 of the Uniform Probate Code. The statute also imposes a slightly higher standard on professional fiduciaries acting under the statute. Otherwise, much of this section is taken from Section 12 of UTMA. Whenever recordable assets, such as land, are in the custodial trust, the trustee would be expected to record title to the asset. The section is entitled "general duties" because there are additional

spec  
as S  
  
Vari  
Mi  
tion: 5  
person  
by any  
omits  
  
Amer  
  
Encyc  
I  
I  
I  
§ 8.  
(a)  
custo  
prop  
capa  
(b)  
Sect  
  
Th  
UTM  
over  
dent  
in th  
tion  
  
Variat  
Virg  
not be  
  
Amer  
ve by  
2001  
Encyc  
2011  
2012  
§ 9.  
(a)  
and  
incap  
(b)  
of th  
bene  
benef  
ciary

specific duties identified in other sections such as Section 9.

### Action in Adopting Jurisdictions

#### Variations from Official Text:

**Minnesota.** In subsec. (b), substitutes "set forth in section 501B.10" for "that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries"; and omits last sentence.

Omits subsec. (f).

**Virginia.** In subsec. (a), substitutes "such person's own property" for "property of another".

### Library References

#### American Digest System

Management and disposal of trust property, see Trusts ¶171 to 269.

#### Encyclopedias

Duties of trustee, generally, see C.J.S. Trusts § 247.

Duties of trustee as to protection and preservation of property, see C.J.S. Trusts § 270.

Investments of trust funds by trustee, see C.J.S. Trusts §§ 320 to 337.

## § 8. General Powers of Custodial Trustee.

(a) A custodial trustee, acting in a fiduciary capacity, has all the rights and powers over custodial trust property which an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

(b) This section does not relieve a custodial trustee from liability for a violation of Section 7.

### COMMENT

This section is taken from Section 13 of UTMA. It grants the trustee very broad powers over the property, subject, however, to the Prudent Person Rule and to the obligations set out in the Act. An alternative approach to subsection (a) that might be taken by an enacting state

is to refer to the existing statutes granting powers to a trustee, such as the Uniform Trustee's Powers Act. For example: [(a) A custodial trustee has the powers of a trustee under the Uniform Trustee's Powers Act.]

### Action in Adopting Jurisdictions

#### Variations from Official Text:

**Virginia.** In subsec. (a), inserts "which shall include but not be limited to those powers set forth in § 64.1-57 as of

the date the custodian acts" following "individually owned property".

### Library References

#### American Digest System

Authority of trustee in management of trust property in general, see Trusts ¶171.

#### Encyclopedias

Management of trust property, see C.J.S. Trusts §§ 296 to 376.

## § 9. Use of Custodial Trust Property.

(a) A custodial trustee shall pay to the beneficiary or expend for the beneficiary's use and benefit so much or all of the custodial trust property as the beneficiary while not incapacitated may direct from time to time.

(b) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of the beneficiary and individuals who were supported by the beneficiary when the beneficiary became incapacitated, or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, when, and to the extent that the

custodial trustee determines suitable and proper, without court order and without regard to other support, income, or property of the beneficiary.

(c) A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts under which either the custodial trustee or the beneficiary may withdraw funds from, or draw checks against, the accounts. Funds withdrawn from, or checks written against, the account by the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

COMMENT

This section provides that the custodial trustee is obligated to follow the directions of the beneficiary who is not incapacitated in paying over or expending custodial trust property. If the beneficiary is incapacitated, this section imposes duties on the custodial trustee to apply funds for the beneficiary similar to those imposed on custodians for minors under Section 14 of UTMA. In addition, however, subsection (b) authorizes a custodial trustee to pay over or expend custodial trust property for the use and benefit of the incapacitated beneficiary's dependents who were supported by the beneficiary at the time the beneficiary became incapacitated or for whom there is a legal obligation to support.

The use-and-benefits standard for the expenditure of custodial property is intended to avoid any implication that the custodial trust property can be used only for the required support of the incapacitated beneficiary.

Subsection (c) allows a custodial trustee to maintain a bank account, of an amount reasonable under the circumstances, with the beneficiary whereby both the beneficiary and the custodial trustee may write checks on the account. This may be used as one method of making money available for the beneficiary's personal needs. Many incapacitated persons, unable to manage business affairs, are still competent to pay personal expenses. This type of arrangement would be important to them. A custodial trustee should maintain, of course, a separate bank account for use in managing the custodial trust property and investments.

An alternative approach might be taken to this section that refers to the distributive powers of a conservator under the laws of the enacting state, in the event that state should prefer that incorporation by reference. For example: [The custodial trustee has the distributive powers of a conservator under the Uniform Probate Code.]

Library References

American Digest System

Expenditure of principal, see Trusts ¶276.

Payment of income or proceeds of property, see Trusts ¶280, 282.

Encyclopedias

Payment of income or proceeds of property, see C.J.S. Trusts §§ 351, 353.

Right to receive and expenditure of principal, see C.J.S. Trusts § 349.

§ 10. Determination of Incapacity; Effect

(a) The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if (i) the custodial trust was created under Section 5, (ii) the transferor has so directed in the instrument creating the custodial trust, or (iii) the custodial trustee has determined that the beneficiary is incapacitated.

(b) A custodial trustee may determine that the beneficiary is incapacitated in reliance upon (i) previous direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney, (ii) the certificate of the beneficiary's physician, or (iii) other persuasive evidence.

(c) If a custodial trustee for an incapacitated beneficiary reasonably concludes that the beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

(d) On petition of the beneficiary, the custodial trustee, or other person interested in the custodial trust property or the welfare of the beneficiary, the court shall determine whether the beneficiary is incapacitated.

(e)  
custo  
admir  
an inc  
(f)  
design  
or (iv

This  
the Ac  
determ  
the tr  
contro  
for th  
custod  
ciary i  
is base  
physic  
benefi  
author  
durabi  
ficiary  
though  
effecti  
of the  
attorn  
or oth  
author  
benefi  
ested  
as to  
purpo  
custoc

Variati  
Minr

Ameri  
D

Encyc!  
D

§ 11.  
A t  
other  
capac  
persc

(  
(2  
cus  
(  
to  
pu:  
(  
tru

(e) Absent determination of incapacity of the beneficiary under subsection (b) or (d), a custodial trustee who has reason to believe that the beneficiary is incapacitated shall administer the custodial trust in accordance with the provisions of this [Act] applicable to an incapacitated beneficiary.

(f) Incapacity of a beneficiary does not terminate (i) the custodial trust, (ii) any designation of a successor custodial trustee, (iii) rights or powers of the custodial trustee, or (iv) any immunities of third persons acting on instructions of the custodial trustee.

**COMMENT**

This is one of the more important sections of the Act under which the custodial trustee may determine that the beneficiary is incapacitated so the trust will change from one subject to the control of the beneficiary to a discretionary trust for the beneficiary. Subsection (b) allows the custodial trustee to determine that the beneficiary is incapacitated provided the determination is based upon the certificate of the beneficiary's physician, the prior direction or authority of the beneficiary, or other reasonable evidence. That authority could be evidenced, for example, by a durable power of attorney executed by the beneficiary prior to becoming incapacitated even though that power of attorney is not otherwise effective to control management or termination of the custodial trust. Such a durable power of attorney could be given to a child, spouse, friend, or other trusted individual. In addition, specific authority is provided in subsection (d) for the beneficiary, the custodial trustee, or other interested person to seek a declaration from the court as to the capacity of the beneficiary for the purposes of this Act. This is important to the custodial trustee, as his duties and responsibili-

ties change on the event of the beneficiary's incapacity.

This section is not a proceeding for the appointment of a conservator, and it is not contemplated that such a declaration would lead to court appointment of a conservator or guardian unless other factors would warrant such appointment. The existence of a comprehensive and well-managed custodial trust would be one factor that would tend to avoid the necessity for the appointment of a conservator or guardian of the estate.

This section also does not provide a proceeding to attack the legal competence of a transferor in setting up a trust under Section 2. Rather, Section 10 relates to a management matter in a validly established custodial trust.

Subsection (f) provides that the incapacity of the beneficiary does not terminate the custodial trust. If the beneficiary becomes incapacitated, the authority of the custodial trustee continues and the custodial trustee must follow the statutory provisions of the Act relating to managing custodial trusts for incapacitated individuals.

**Action in Adopting Jurisdictions**

**Variations from Official Text:**

Minnesota. In subsec. (a), omits clause (i).

In subsec. (c), substitutes "must administer" for "may administer".

**Library References**

**American Digest System**

Determination as to mental disorder in general, see Mental Health ¶6 to 18.

**Encyclopedias**

Determination as to mental disorder in general, see C.J.S. Insane Persons §§ 8 to 34.

**§ 11. Exemption of Third Person From Liability.**

A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to make a transfer as, or purporting to act in the capacity of, a custodial trustee. In the absence of knowledge to the contrary, the third person is not responsible for determining:

- (1) the validity of the purported custodial trustee's designation;
- (2) the propriety of, or the authority under this [Act] for, any action of the purported custodial trustee;
- (3) the validity or propriety of an instrument executed or instruction given pursuant to this [Act] either by the person purporting to make a transfer or declaration or by the purported custodial trustee; or
- (4) the propriety of the application of property vested in the purported custodial trustee.

COMMENT

This section is based upon Section 16 of the UTMA and protects third persons who deal in good faith with the custodial trustee.

Enc

Library References

American Digest System

Limitations of authority imposed in creation of trust, see Trusts ¶172.  
Rights and title of purchaser from trustee, see Trusts ¶203.

§ 1.

Encyclopedias

Duty of trustee's mortgagee to ascertain whether mortgage by trustee is in violation of trust, see C.J.S. Trusts § 317.  
Lender not required to see to application of money lent, see C.J.S. Trusts § 279.  
Notice to persons dealing with trustee of extent and limitation of his powers, see C.J.S. Trusts § 246.

(a) trus tran. has cust who Sec desi

§ 12. Liability to Third Person.

(a) A claim based on a contract entered into by a custodial trustee acting in a fiduciary capacity, an obligation arising from the ownership or control of custodial trust property, or a tort committed in the course of administering the custodial trust, may be asserted by a third person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

(b) deli the ring prop ider

(b) A custodial trustee is not personally liable to a third person:

(1) on a contract properly entered into in a fiduciary capacity unless the custodial trustee fails to reveal that capacity or to identify the custodial trust in the contract; or

(2) for an obligation arising from control of custodial trust property or for a tort committed in the course of the administration of the custodial trust unless the custodial trustee is personally at fault.

(c) becc trus inca tate of t ee. resi

(c) A beneficiary is not personally liable to a third person for an obligation arising from beneficial ownership of custodial trust property or for a tort committed in the course of administration of the custodial trust unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

(d) tran men the peti

(d) Subsections (b) and (c) do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary to the extent the person sued is protected as the insured by liability insurance.

(e) dece trus trus trus

COMMENT

This section is patterned after Section 17 of the UTMA and that section in turn was based upon Sections 5-428 and 7-306 of the Uniform Probate Code limiting the liability of conservators and trustees. See also Restatement of Trusts, 2d, Sections 265 and 277. The effect of this section is to limit the claims of third parties to recourse against custodial trust property as both the custodial trustee and the beneficiary are protected from personal liability absent personal fault on their part. This section does not alter the obligations between the custodial trustee and the beneficiary arising out of the adminis-

tration of the estate and the accounting for that administration.

There may be cases in which a custodial trustee or beneficiary may have a right to possession of custodial trust property and may insure against liability arising out of possession or control of the property as a named insured, e.g., under homeowner's or automobile liability insurance. In such a case, the beneficiary should be permitted as a party defendant under subsection (d) but only to the extent of the protection of the liability insurance.

(f) fami trus cour trus perfo

Library References

American Digest System

Contracts made in management of trust, see Trusts ¶209 to 213.  
Liability of trustee and trust estate for torts, see Trusts ¶235.  
Rights of action against trustees, see Trusts ¶250.

The Secti chang singl todia ficiar resig bene one

Contracts made by trustee, see C.J.S. Trusts §§ 275 to 280.

Liability of trustee and trust estate for torts, see C.J.S. Trusts § 252.

Right of action of third person against trust or trustee, see C.J.S. Trusts § 361.

§ 13. Declination, Resignation, Incapacity, Death, or Removal of Custodial Trustee, Designation of Successor Custodial Trustee.

(a) Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor, or the transferor's legal representative. If an event giving rise to a transfer has not occurred, the substitute custodial trustee designated under Section 3 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to Section 3. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

(h) A custodial trustee who has accepted the custodial trust property may resign by (i) delivering written notice to a successor custodial trustee, if any, the beneficiary and, if the beneficiary is incapacitated, to the beneficiary's conservator, if any, and (ii) transferring or registering, or recording an appropriate instrument relating to, the custodial trust property, in the name of, and delivering the records to, the successor custodial trustee identified under subsection (c).

(c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under Section 2(g) or 3 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated, or fails to act within 90 days after the ineligibility, resignation, death, or incapacity of the custodial trustee, the beneficiary's conservator becomes successor custodial trustee. If the beneficiary does not have a conservator or the conservator fails to act, the resigning custodial trustee may designate a successor custodial trustee.

(d) If a successor custodial trustee is not designated pursuant to subsection (c), the transferor, the legal representative of the transferor or of the custodial trustee, an adult member of the beneficiary's family, the guardian of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court to designate a successor custodial trustee.

(e) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. The successor custodial trustee may enforce the obligation to deliver custodial trust property and records and becomes responsible for each item as received.

(f) A beneficiary, the beneficiary's conservator, an adult member of the beneficiary's family, a guardian of the person of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties, or for other appropriate relief.

COMMENT

This section follows many of the provisions of Section 18 of UTMA with some substantive changes. It is designed to accommodate in a single section the circumstances in which a custodial trustee would be replaced by another custodial trustee. Under subsection (b), if the beneficiary is incapacitated, a custodial trustee who resigns must give written notice to both the beneficiary and the beneficiary's conservator if one exists. Under subsection (c), a beneficiary

who is not incapacitated may designate, without limitation, a successor custodial trustee. If, however, the beneficiary fails to act or is incapacitated, the procedure to be followed is very similar to that found in UTMA except that the nonincapacitated beneficiary has 90 days to act and if the beneficiary has no conservator or if the conservator declines to act, the custodial trustee may eventually designate a successor custodial trustee.

Under subsection (f), the beneficiary, whether or not incapacitated, can petition the court to remove the custodial trustee for cause and to designate a successor trustee, or the court may require the custodial trustee to give bond or other appropriate relief.

This section, unlike Section 18 of UTMA, does not give the custodial trustee the general power to designate a successor custodial trustee but rather limits that power to the situation in which the procedure for designating successor custodial trustees by others has been exhausted.

Action in Adopting Jurisdictions

Variations from Official Text

Minnesota. In subsec. (c), inserts "or the holder of the beneficiary's power of attorney," following "incapacitated," in the second sentence and omits the last two sentences.

In subsec. (d), substitutes "the conservator of the beneficiary" for "the guardian of the beneficiary" and adds "in accordance with the procedures set forth in sections 501B.16

to 501B.25" following "designate a successor custodial trustee".

Virginia. In subsec. (c), first sentence reads: "If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated in accordance with the trust instrument or in accordance with § 55-34.3 becomes custodial trustee."

Library References

American Digest System

Acceptance by trustee, see Trusts ¶38.

Appointment and succession of new trustee, see Trusts ¶169(1 to 3).

Death and survivorship of trustees, see Trusts ¶168.

Disqualification, resignation and discharge, and removal of trustees, see Trusts ¶162 to 167.

Encyclopedias

Acceptance or disclaimer of trust by trustee, see C.J.S. Trusts § 60.

Appointment of trustees and successor trustees, see C.J.S. Trusts §§ 211 to 220.

Devolution of office on appointment of new trustee, see C.J.S. Trusts § 236.

Removal of trustees, see C.J.S. Trusts §§ 230 to 235.

Resignation and discharge of trustees, see C.J.S. Trusts §§ 225 to 229.

Who may petition court to require bond of trustee, see C.J.S. Trusts § 224.

§ 14. Expenses, Compensation, and Bond of Custodial Trustee.

Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary, or by court order, a custodial trustee:

(1) is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services;

(2) has a noncumulative election, to be made no later than six months after the end of each calendar year, to charge a reasonable compensation for fiduciary services performed during that year; and

(3) need not furnish a bond or other security for the faithful performance of fiduciary duties.

COMMENT

This section follows the pattern of Section 15 of the UTMA except it does subject the arrangements for payment of expenses, compensation, and bond to provisions in the custodial trust instrument or agreement of the beneficiary or court order.

As in UTMA, the provisions with regard to compensation are designed to avoid imputed

compensation to the custodian who waives compensation and also to avoid the accumulation of claims for compensation until the termination of the custodial trust. Although the ability to control these matters by the trust instrument or agreement of the beneficiary seems to be implied, as was assumed in UTMA, it is here expressly stated because of the possibility of informal arrangements with persons as trustees.

Library References

American Digest System

Bond of trustee, see Trusts ¶161.

Compensation of trustee, see Trusts ¶314 to 321.

Expenditures of trustee, see Trusts ¶224 to 227.

Reimbursement and indemnity of trustee, see Trusts ¶236.

C.  
Enc.  
§ 1.  
(a)  
a w  
writ  
(ii)  
repr  
terr  
to t  
inte:  
cust  
(b)  
bene  
inte:  
the  
(c)  
prec  
(d)  
may  
to a  
petit  
(e)  
deliv  
the  
(f)  
acco  
cust  
reas  
the c  
  
Thi  
inform  
trust  
the ac  
benefi  
tive.  
act-in  
the tr  
excha  
admin.  
year.  
of info  
benefi  
use a  
This i  
sary i  
involv  
mum

## Encyclopedias

Bond of trustee, see C.J.S. Trusts § 224.

Compensation of trustee, see C.J.S. §§ 395 to 408.

Creation and discharge of claims against estate and reimbursement, see C.J.S. Trusts §§ 275 to 285.

### § 15. Reporting and Accounting by Custodial Trustee; Determination of Liability of Custodial Trustee.

(a) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property and shall thereafter provide a written statement of the administration of the custodial trust property (i) once each year, (ii) upon request at reasonable times by the beneficiary or the beneficiary's legal representative, (iii) upon resignation or removal of the custodial trustee, and (iv) upon termination of the custodial trust. The statements must be provided to the beneficiary or to the beneficiary's legal representative, if any. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trust property is to be delivered.

(b) A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

(c) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.

(d) In an action or proceeding under this [Act] or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

(e) If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

(f) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

### COMMENT

This section requires that the custodial trustee inform the beneficiary of the initiation of the trust and provide reasonably current reports of the administration of the custodial trust to the beneficiary or the beneficiary's legal representative. Even though some custodial trustees may act informally, it seems appropriate that both the trustee and the beneficiary be expected to exchange complete information concerning the administration of the trust at least once each year. In some cases, more frequent exchanges of information between the custodial trustee and beneficiary would be expected, e.g., when they use a bank account to which both have access. This is particularly true with regard to necessary information for tax reporting by the parties involved. This section assumes the usual minimum components of an account, i.e., assets and

values at the beginning of the accounting period, receipts, and disbursements during the accounting period and assets and their values on hand or available for distribution at the close of the accounting period.

Subsection (a) identifies the necessary reports and accountings for the parties, and subsection (b) identifies a broad group of persons who may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative. Much of the section is drawn from Section 19 of the UTMA modified to fit the custodial trust. Subsection (f) recognizes the inherent power of the court to instruct trustees and review their actions. This paragraph is patterned after Uniform Probate Code Section 7-205.

Action in Adopting Jurisdictions

Variations from Official Text: Minnesota. Adds a subsec. (g) which reads: "(g) All proceedings described in this section shall be conducted in accordance with the procedures set forth in sections 501B.16 to 501B.25."

Library References

American Digest System

- Accounting of trustee, see Trusts ¶289 to 313, 322 to 333.
Actions for enforcement of trust, see Trusts ¶359 to 377.
Court supervision of execution of trust and instructions to trustee, see Trusts ¶271½.
Trustee as representative of beneficiary, see Trusts ¶173.

Encyclopedias

- Accounting and settlement of trust, see C.J.S. Trusts §§ 377 to 394.
Enforcement of trust, see C.J.S. Trusts §§ 421 to 474.
Court supervision of execution of trust and instructions to trustee, see C.J.S. Trusts § 261.
Duty of trustee to give information as to management of trust on request of beneficiaries or their representatives; see C.J.S. Trusts § 247.

§ 16. Limitations of Action Against Custodial Trustee.

(a) Except as provided in subsection (c), unless previously barred by adjudication, consent, or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered, or the legal representative of an incapacitated or deceased beneficiary or payee:

- (1) who has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within two years after receipt of the final account or statement; or
(2) who has not received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within three years after the termination of the custodial trust.

(b) Except as provided in subsection (c), a claim for relief to recover from a custodial trustee for fraud, misrepresentation, or concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust, is barred unless an action or proceeding to assert the claim is commenced within five years after the termination of the custodial trust.

(c) A claim for relief is not barred by this section if the claimant:

- (1) is a minor, until the earlier of two years after the claimant becomes an adult or dies;
(2) is an incapacitated adult, until the earliest of two years after (i) the appointment of a conservator, (ii) the removal of the incapacity, or (iii) the death of the claimant; or
(3) was an adult, now deceased, who was not incapacitated, until two years after the claimant's death.

COMMENT

In an effort to provide as comprehensive a statute as possible to inform the parties of substantially all of their obligations and rights, statutes of limitation are provided in this section. The limitations provided in this section are derived from the Uniform Probate Code, Sections 1-106 and 7-307, and from the Missouri Custodial Act.

The nature of the limitations imposed by the section are illustrated by the situation in which a custodial trustee is removed, resigns, or dies. If the former custodial trustee accounts as re-

quired under Section 13 on removal or resignation, or the deceased custodial trustee's personal representative accounts, the two-year limitation of subsection (a)(1) applies. Should the former custodial trustee or the personal representative fail to account, then, subsection (a)(2) would apply to limit the time in which a proceeding to assert the claim could be commenced. This time would begin to run on the date the trust terminated. Of course, if the claim is one for fraud or concealment, the longer time limitation of subsection (b) would apply. In any event, should the beneficiary become incapacitated or die be-

CU

fore the

Ame

Enc:

§ 1

(a) une:

b

(b) tated bene

(c) disci natio

The dial term provi with an ir tions tion the d dial t and, paym death pass

The bene butic be ir distr rection

fore the applicable time limitation had expired, the tolling provision of subsection (c) could postpone the time bar until two years after removal of the disability or death.

Library References

American Digest System

- Limitations of actions against trustees, see Trusts ¶256.
- Limitations of actions to enforce trust, see Trusts ¶365(1).

Encyclopedias

- Limitations of actions against trustees as to management of trust, see C.J.S. Trusts § 365.
- Limitation of actions to compel accounting, see C.J.S. Trusts § 387.
- Limitation of actions to enforce trust, see C.J.S. Trusts § 456.

§ 17. Distribution on Termination.

(a) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

- (1) to the beneficiary, if not incapacitated or deceased;
- (2) to the conservator or other recipient designated by the court for an incapacitated beneficiary; or
- (3) upon the beneficiary's death, in the following order:
  - (i) as last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;
  - (ii) to the survivor of multiple beneficiaries if survivorship is provided for pursuant to Section 6;
  - (iii) as designated in the instrument creating the custodial trust; or
  - (iv) to the estate of the deceased beneficiary.

(b) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(c) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

COMMENT

This section controls distribution of the custodial trust property when the custodial trust is terminated under Section 2(e). It is designed to provide for efficient and certain distribution without judicial proceedings. Subsection (a)(3) is an important provision for avoiding complications on distribution and provides that distribution may be controlled first, by the direction of the deceased beneficiary or second, by the custodial trust instrument (see Sections 2, 6 and 18) and, only if no effective prior designation for the payment or distribution of the property on the death of the beneficiary has been made, shall it pass through the beneficiary's estate.

The direction to the custodial trustee by the beneficiary, who is not incapacitated, for distribution on termination of the custodial trust may be in any written form clearly identifying the distributee. For example, the following direction would be adequate under the statute:

I, \_\_\_\_\_ (name of beneficiary) hereby direct \_\_\_\_\_ (name of trustee) as custodial trustee, to transfer and pay the unexpended balance of the custodial trust property of which I am beneficiary to \_\_\_\_\_ as distributee on the termination of the trust at my death. In the event of the prior death of \_\_\_\_\_ above named as distributee, I designate \_\_\_\_\_ as distributee of the custodial trust property...

Receipt Acknowledged	Signed
_____ (signature)	_____ (signature)
Custodial Trustee	Beneficiary
Date _____	Date _____

Action in Adopting Jurisdictions

Variations from Official Text:

Minnesota. Subsec. (a) reads:

"(a) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

"(1) to the beneficiary, if not incapacitated or deceased;

"(2) to the holder of the beneficiary's power of attorney;

"(3) to the conservator or other recipient designated by the court for an incapacitated beneficiary; or

"(4) upon the beneficiary's death, in the following order:

"(i) to the survivor of multiple beneficiaries if survivorship is provided for pursuant to section 6;

"(ii) as designated in the instrument creating the custodial trust; or

"(iii) to the estate of the deceased beneficiary."

Library References

American Digest System

Distribution of trust property, see Trusts ¶273 to 286.

Termination of trust, see Trusts ¶61.

Encyclopedias

Payment and distribution of property or fund, see C.J.S. Trusts §§ 343 to 355.

Termination of trusts, see C.J.S. Trusts §§ 92 to 96.

§ 18. Methods and Forms for Creating Custodial Trusts.

(a) If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of Section 2 are satisfied by:

(1) the execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

TRANSFER UNDER THE [ENACTING STATE] UNIFORM CUSTODIAL TRUST ACT.

I, \_\_\_\_\_ (name of transferor or name and representative capacity if a fiduciary), transfer to \_\_\_\_\_ (name of trustee other than transferor), as custodial trustee for \_\_\_\_\_ (name of beneficiary) as beneficiary and \_\_\_\_\_ as distributee on termination of the trust in absence of direction by the beneficiary under the [Enacting state] Uniform Custodial Trust Act, the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: \_\_\_\_\_

(Signature); or

(2) the execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

DECLARATION OF TRUST UNDER THE [ENACTING STATE] UNIFORM CUSTODIAL TRUST ACT

I, \_\_\_\_\_ (name of owner of property), declare that henceforth I hold as custodial trustee for \_\_\_\_\_ (name of beneficiary other than transferor) as beneficiary and \_\_\_\_\_ as distributee on termination of the trust in absence of direction by the beneficiary under the [Enacting state] Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: \_\_\_\_\_

(Signature)

(b) Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including any of the following:

(1) registration of a security in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

unc  
the  
ins  
(  
fin:  
acc  
tra  
cus  
Cu.  
(  
cor.  
tra  
in  
[En  
(  
tru  
"as  
Un  
(  
a t  
the  
des  
the  
(  
unc  
cor  
tha  
sub  
sta  
(  
pro  
trar  
cus  
Cu:  
(  
wh:  
t  
" "  
l  
b  
A  
(  
oth  
(nar  
  
This  
UTMA  
forma  
satisf  
thoug  
ferrin  
not in  
prope.

(2) delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in subsection (a)(1);

(3) payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(4) registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(5) delivery of a written assignment to an adult other than the transferor or to a trust company whose name in the assignment is designated in substance by the words: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(6) irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power, or the donee who holds the power if the beneficiary is other than the donee, whose name in the appointment is designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(7) delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, whose name in the notification or assignment is designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(8) execution, delivery, and recordation of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act";

(9) issuance of a certificate of title by an agency of a state or of the United States which evidences title to tangible personal property:

(i) issued in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act"; or

(ii) delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act"; or

(10) execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the [Enacting state] Uniform Custodial Trust Act."

#### COMMENT

This section largely follows Section 9 of UTMA. It provides instructional detail for forms and methods of transferring assets that satisfy the requirements of the statute. Although many of the customary methods of transferring assets are identified, these methods are not intended to be exclusive since any type of property that can be transferred by any legal

means is intended to be within the scope of the statute, provided the requirements of Section 2 are met. The method of transfer or conveyance appropriate to the asset should be used, e.g., if land is involved, a deed or conveyance that satisfies the local requirements would be appropriate. In the effort to make the statute as self-contained and as fully explanatory as possible, these

provisions for implementation are included in the statute rather than being appended or inserted in the Comments.

### Action in Adopting Jurisdictions

#### Variations from Official Text:

Virginia. In subsec. (a), adds a provision which reads: "Either form may be modified by the owner to include, for

example, a designation of an alternate or successor trustee or the recipient of the custodial property upon termination of the trust."

### Library References

#### American Digest System

Transactions creating or operating as trusts, see Trusts ¶30½ to 37.

Written instruments creating or declaring trusts, see Trusts ¶19 to 29.

#### Encyclopedias

Agreements, covenants, and transactions creating or operating as trusts, see C.J.S. Trusts §§ 50 to 59.

Declaration of trust, see C.J.S. Trusts §§ 42 to 49.

### § 19. Applicable Law.

(a) This [Act] applies to a transfer or declaration creating a custodial trust that refers to this [Act] if, at the time of the transfer or declaration, the transferor, beneficiary, or custodial trustee is a resident of or has its principal place of business in this State or custodial trust property is located in this State. The custodial trust remains subject to this [Act] despite a later change in residence or principal place of business of the transferor, beneficiary, or custodial trustee, or removal of the custodial trust property from this State.

(b) A transfer made pursuant to an act of another state substantially similar to this [Act] is governed by the law of that state and may be enforced in this State.

### COMMENT

This section is designed to avoid confusion in the event a party or assets are removed from the state.

### § 20. Uniformity of Application and Construction.

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

### Library References

#### Encyclopedias

Similar interpretation of uniform laws adopted in different states, see C.J.S. Statutes § 371.

### § 21. Short Title.

This [Act] may be cited as the "[Name of Enacting State] Uniform Custodial Trust Act."

### § 22. Severability.

If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

### Library References

#### American Digest System

Effect of partial invalidity of statutes, see Statutes ¶64(1).

Encyclopedias

Statutory declaration as to effect of partial invalidity, see C.J.S. Statutes § 94.

§ 23. Effective Date.

This [Act] takes effect \_\_\_\_\_

H B

5 1 4

# ALASKA STATE LEGISLATURE

3111 C STREET, SUITE 508  
ANCHORAGE AK 99503  
(907) 561-2039

STATE CAPITOL  
JUNEAU AK 99801-1182  
(907) 465-3875/4894



VICE CHAIR  
HEALTH, EDUCATION  
& SOCIAL SERVICES

COMMUNITY AND  
REGIONAL AFFAIRS

INTERNATIONAL TRADE  
AND TOURISM

CHAIR  
CHILDREN'S CAUCUS

**REPRESENTATIVE BETTYE DAVIS**  
DISTRICT 14 SEAT B • EAST ANCHORAGE • MULDOON

## M E M O R A N D U M

TO: SENATOR DRUE PEARCE, CHAIR  
SENATE LABOR & COMMERCE COMMITTEE

FROM: REPRESENTATIVE BETTYE DAVIS *BD*

RE: CSHB 514

DATE: MAY 1, 1992

\*\*\*\*\*

I respectfully request that CSHB 514, "an act relating to the Board of Medicine and the Impaired Medical Practitioner Program," be scheduled for hearing before the Senate Labor & Commerce Committee, at your earliest convenience. I have attached, for your review, a copy of CSHB 514, and a sponsor statement.

Your prompt response is appreciated. If you have any questions, please feel free to contact me, or Caren Robinson of my staff, at X3975.



# ALASKA STATE LEGISLATURE

3111 C STREET, SUITE 508  
ANCHORAGE AK 99503  
(907) 561-2039

STATE CAPITOL  
JUNEAU AK 99801-1182  
(907) 465-3875/4894



VICE CHAIR  
HEALTH, EDUCATION  
& SOCIAL SERVICES

COMMUNITY AND  
REGIONAL AFFAIRS

INTERNATIONAL TRADE  
AND TOURISM

CHAIR  
CHILDREN'S CAUCUS

**REPRESENTATIVE BETTYE DAVIS**  
DISTRICT 14 SEAT B • EAST ANCHORAGE • MULDOON

## S P O N S O R   S T A T E M E N T

I appreciate the committee members hearing HB 514.

HB 514 strengthens the State Board of Medicine and medical practitioner program by requiring investigation of physicians who are mentally ill or cognitively impaired.

Section 1 of HB 514 immunizes anyone making a good faith report about a medical practitioner licensed under AS 08.64. This provision only applies to persons making reports about medical practitioners licensed under AS 08.64 and does not relate to other licensed professionals under AS 08.

This legislation fills an important gap, and, if enacted, will allow the State Medical Board to more effectively police their own and keep unfit practitioners from jeopardizing the health of Alaskans.

I would appreciate your support for HB 514.

HB 514: "Impaired Medical Practitioner Program"

This bill extends protection from a lawsuit being brought against a contractor or their agent for reporting or participating in administrative or judicial proceedings.

It also adds mentally ill or cognitively impaired practitioners to the list of practitioners who may be identified, confronted, evaluated, and treated under the impaired medical practitioner program.

The department does not object to these changes and, thus, does not oppose this bill.



Glenn A. Olds, Commissioner

Date: 4.21.92

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

FISCAL NOTE

No. 1  
Bill Version: HB 514  
(H) Publish Date: 4/22/92  
Commerce & Economic Development

Revision Date: \_\_\_\_\_ Department Affected: \_\_\_\_\_  
Title: An Act relating to the Board of Medicine and BRU: Occupational Licensing  
the impaired medical practitioner program. Component: Administration  
Sponsor: Reps. B. Davis, Bruckman  
Requestor: Rep. Lincoln COMPONENT SERIAL NO. 

0	3	5	6
---	---	---	---

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
---------	-----	-----	-----	-----	-----	-----

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

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)

The bill make amendments to the medical licensing statutes regarding limited liability coverage and duties of the board to establish an impaired professionals program that will include mentally ill or cognitively impaired medical professionals. New funds are not required to implement the changes made in the bill.

Prepared By: Jennifer Strickler Phone: 465-2144  
Division: Occupational Licensing Date: 04/17/92  
Approved by Commissioner: Glenn A. Olds  
Agency: Department of Commerce & Economic Development Date: 4.21.92

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

**LASKA STATE MEDICAL ASSOCIATION**

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2862

April 23, 1992

**TO:** Judiciary Committee  
Alaska House of Representatives

**FM:** Alaska State Medical Association *RS*

**SUBJ:** House Bill 514

The Alaska State Medical Association (ASMA) strongly supports the passage of House Bill 514.

This bill would fill a gap in the duties of the State Medical Board. The bill requires that the medical board investigate physicians who are mentally ill or cognitively impaired. The State Board and the ASMA Impaired Physician Committee have become increasingly effective in dealing and/or disciplining physicians who abuse alcohol and other drugs. Indeed, the current program has become a model for others.

Currently, there exists a gap in the law concerning intervention in less than clear cut cases of mental illness or cognitive impairment, such as early Alzheimer's disease or mental impairment due to drugs even though drug abuse cannot be proven in a court of law. You cannot separate substance abuse and emotional and mental illness. All impairments are identified with a behavioral problem. Only until you identify the problem can you truly assess what the impairment might be.

This bill would make it easier to report impaired physicians and would give clear authority and liability protection for those committee's with contractual agreements.

We have provided the leadership on this issue over the past five years and have a good record in policing our own.

In the interest of public health for all Alaskans, we encourage your support in speedy passage of this bill.

ALASKA STATE LEGISLATURE  
HOUSE BILL NO. 514

HISTORY IN THE HOUSE

1992  
2/18 Read first time and referred to:  
HES, JUD

4/22 HES RPT CS( ) New Title  
7 DP ~~D~~ DNP ~~D~~ NR ~~D~~ AM  
FN 1 OFN Previous FN

4/29 JUD RPT CS(JUD)  New Title  
1 DP ~~D~~ DNP ~~D~~ NR ~~D~~ AM  
FN OFN 1 Previous FN

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

4/30 Read second time  
CS(JUD) Adopted

Amended

4/30 Advanced

4/30 Read third time

Return to second for specific amendment

4/30 PASSED EFD Same \_\_\_ or  
Yeas 38 Yeas  
Nays 0 Nays  
Excused 0 Excused  
Absent 2 Absent

Intent adopted

Reconsideration  
Reconsideration not taken up

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

Intent adopted

4/30 Reported correctly engrossed  
Signed by Speaker, to the Senate

Kenneth Gray  
Chief Clerk of the House

HISTORY IN THE SENATE

1992  
5/1 Read first time and referred to:  
L&C, HES

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