

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7933 HOUSE LABOR & COMMERCE

1993

COMMENT

Section 202 ~~makes of the 1976 Act made substantial changes in Section 24 of the prior uniform law 1916 Act. Further changes in this section are made by the 1985 Act. Paragraph (b) lists the basic events—the addition or withdrawal of partners or capital or capital obligations a general partner—that are so central to the function of the certificate of limited partnership that they require prompt amendment. With the elimination of the requirement that the certificate of limited partnership include the names of all limited partners and the amount and character of all capital contributions, the requirement of the 1916 and 1976 Acts that the certificate be amended upon the admission or withdrawal of limited partners or on any change in the partnership capital must also be eliminated. This change should greatly reduce the frequency and complexity of amendments to the certificate of limited partnership. Paragraph (c) makes it clear, as it was not clear under subdivision (2)(g) of former Section 24(2)(g) of the 1916 Act, that the certificate of limited partnership is intended to be an accurate description of the facts to which it relates at all times and does not speak merely as of the date it is executed.~~

Paragraph (e) provides a "safe harbor" against claims of creditors or others who assert that they have been misled by the failure to amend the certificate of limited partnership to reflect changes in any of the important facts referred to in paragraph (b); if the certificate of limited partnership is amended within 30 days of the occurrence of the event, no creditor or other person can recover for damages sustained during the interim. Additional protection is afforded by the provisions of Section 304. ~~The elimination of the requirement that the certificate of limited partnership identify all limited partners and their respective capital contributions may have rendered paragraph (e) an obsolete and unnecessary vestige. The principal, if not the sole, purpose of paragraph (e) in the 1976 Act was to protect limited partners newly admitted to a partnership from being held liable as general partners when an amendment to the certificate identifying them as limited partners and describing their contributions was not filed contemporaneously with their admission to the partnership. Such liability cannot arise under the 1985 Act because such information is not required to be stated in the certificate. Nevertheless, the 1985 Act retains paragraph (e) because it is protective of partners, shielding them from liability to the extent its provisions apply, and does not create or impose any liability.~~

~~Paragraph (f) is added in the 1985 Act to provide explicit statutory recognition of the common practice of restating an amended certificate of limited partnership. While a limited partnership seeking to amend its certificate of limited partnership may do so by recording a restated certificate which incorporates the amendment, that is by no means the only purpose or function of a restated certificate, which may be filed for the sole purpose of restating in a single integrated instrument all the provisions of a limited partnership's certificate of limited partnership which are then in effect.~~

§ 203. Cancellation of Certificate

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

- (1) the name of the limited partnership;
- (2) the date of filing of its certificate of limited partnership;
- (3) the reason for filing the certificate of cancellation;
- (4) the effective date (which shall be a date certain) of cancellation if it is not to be effective upon the filing of the certificate; and
- (5) any other information the general partners filing the certificate determine.

COMMENT

Section 203 changes Section 24 of the ~~prior uniform law 1916 Act~~ by making it clear that the certificate of cancellation should be filed upon the commencement of winding up of the limited partnership. Section 24 provided for cancellation "when the partnership is dissolved".

§ 204. Execution of Certificates

(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) an original certificate of limited partnership must be signed by all general partners named therein;

(2) a certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner or whose contribution is described as having been increased; and

(3) a certificate of cancellation must be signed by all general partners;

(b) Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission, ~~or increased contribution,~~ of a general partner must specifically describe the admission ~~or increase~~.

(c) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

COMMENT

Section 204 collects in one place the formal requirements for the execution of certificates which were set forth in Sections 2 and 25 of the ~~prior uniform law 1916 Act~~. Those sections required that each certificate be signed by all partners, and there developed an unnecessarily cumbersome practice of having each limited partner sign powers of attorney to authorize the general partners to execute certificates of amendment on their behalf. The 1976 Act, while simplifying the execution requirements, nevertheless required that an original certificate of limited partnership be signed by all partners and a certificate of amendment by all new partners being admitted to the limited partnership. However the certificate of limited partnership is no longer required to include the name or capital contribution of any limited partner. Therefore, while the 1985 Act still requires all general partners to sign the original certificate of limited partnership, no limited partner is required to sign any certificate. Section 204 insures that each partner must sign a certificate when he becomes a partner or when the certificates reflect any increase in his obligation to make contributions. Certificates of amendment are required to be signed by only one general partner, and all general partners must sign certificates of cancellation. Section 204 prohibits blanket powers of attorney for the execution of certificates in many cases, since those conditions under which a partner is required to sign have been narrowed to circumstances of special importance to that partner. The former requirement in the 1916 Act that all certificates be sworn was deleted in the 1976 and 1985 Acts as potentially an unfair trap for the unwary (see, e.g., *Wisniewski v. Johnson*, 223 Va. 141, 286 S.E.2d 223 (1982)); in its place, paragraph (c) now provides, as a matter of law, that the execution of a certificate by a general partner subjects him to the penalties of perjury for inaccuracies in the certificate. ~~has been confined to statements by the general partners, recognizing that the limited partner's role is a limited one.~~

§ 205. ~~Amendment or Cancellation~~ Execution by Judicial Act

If a person required by Section 204 to execute a ~~any~~ certificate of amendment or cancellation fails or refuses to do so, any other partner, ~~and any assignee of a partnership interest,~~ person who is adversely affected by the failure or refusal, may petition the [designate the appropriate court] to direct the ~~amendment or cancellation~~ execution of the certificate. If the court finds that ~~the amendment or cancellation is proper~~ it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary of State to record an appropriate certificate of ~~amendment or cancellation~~.

COMMENT

Section 205 of the 1976 Act changed subdivisions (3) and (4) of Section 25 of the ~~1916 Act prior uniform law~~ by confining the persons who have standing to seek judicial intervention to partners and to those assignees who were ~~are~~ adversely affected by the failure or refusal of the appropriate persons to file a certificate of amendment or cancellation. Section 205 of the 1985 Act reverses that

restriction, and provides that any person adversely affected by a failure or refusal to file any certificate (not only a certificate of cancellation or amendment) has standing to seek judicial intervention.

§ 206. Filing in Office of Secretary of State

(a) Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) shall be delivered to the Secretary of State. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his [or her] authority as a prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law he [or she] shall:

(1) endorse on each duplicate original the word "Filed" and the day, month, and year of the filing thereof;

(2) file one duplicate original in his [or her] office; and

(3) return the other duplicate original to the person who filed it or his [or her] representative.

(b) Upon the filing of a certificate of amendment (or judicial decree of amendment) in the office of the Secretary of State, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is cancelled.

COMMENT

Section 206 ~~is new~~ first appeared in the 1976 Act. In addition to providing mechanics for the central filing system, the second sentence of this section does away with the requirement, formerly imposed by some local filing officers, that persons who have executed certificates under a power of attorney exhibit executed copies of the power of attorney itself. Paragraph (b) changes subdivision (5) of Section 25 of the ~~prior uniform law~~ 1916 Act by providing that certificates of cancellation are effective upon their effective date under Section 203.

§ 207. Liability for False Statement in Certificate

If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) any person who executes the certificate, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

(2) any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under Section 205.

COMMENT

Section 207 changes Section 6 of the ~~prior uniform law~~ 1916 Act by providing explicitly for the liability of persons who sign a certificate as agent under a power of attorney and by confining the obligation to amend a certificate of limited partnership in light of future events to general partners.

§ 208. Scope of Notice

The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice that the partnership is a limited partnership and the persons designated therein as limited general partners are limited general partners, but it is not notice of any other fact.

COMMENT

Section 208 ~~is now~~ first appeared in the 1976 Act, and referred to the certificate's providing constructive notice of the status as limited partners of those so identified therein. The 1985 Act's deletion of any requirement that the certificate name limited partners requires that Section 208 be modified accordingly.

By stating that the filing of a certificate of limited partnership only results in notice of the general limited liability of the general limited partners, § 208 obviates the concern that third parties may be held to have notice of special provisions set forth in the certificate. While this section is designed to preserve by implication the limited liability of limited partners, the ~~notion~~ implicit protection provided is not intended to change any liability of a limited partner which may be created by his action or inaction under the law of estoppel, agency, fraud or the like.

§ 209. Delivery of Certificates to Limited Partners

Upon the return by the Secretary of State pursuant to Section 206 of a certificate marked "Filed," the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

COMMENT

This section ~~is now~~, first appeared in the 1976 Act.

ARTICLE 3

LIMITED PARTNERS

§ 301. Admission of Additional Limited Partners

(a) A person becomes a limited partner:

(1) at the time the limited partnership is formed; or

(2) at any later time specified in the records of the limited partnership for becoming a limited partner.

(a)(b) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

(1) in the case of a person acquiring a partnership interest directly from the limited partner or, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(2) in the case of an assignee of a partnership interest of a partner who has the power, as provided in Section 704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

~~(b) In each case under subsection (a), the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.~~

COMMENT

Section 301(a) is new; no counterpart was found in the 1916 or 1976 Acts. This section imposes on the partnership an obligation to maintain in its records the date each limited partner becomes a limited partner. Under the 1976 Act, one could not become a limited partner until an appropriate certificate reflecting his status as such was filed with the Secretary of State. Because the 1985 Act eliminates the need to name limited partners in the certificate of limited partnership, an alternative mechanism had to be established to evidence the fact and date of a limited partner's admission. The partnership records required to be maintained under Section 105 now serve that function, subject to the limitation that no person may become a limited partner before the partnership is formed (Section 201(b)).

Subdivision (1) of Section ~~301(a)~~ 301(b) adds to Section 8 of the ~~prior uniform law 1916 Act~~ an explicit recognition of the fact that unanimous consent of all partners is required for admission of new limited partners unless the partnership agreement provides otherwise. Subdivision (2) is derived from Section 19 of the ~~prior uniform law 1916 Act~~ but abandons the former terminology of "substituted limited partner."

§ 302. Voting

Subject to Section 303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter.

COMMENT

Section 302 is new, first appeared in the 1976 Act, and must be read together with subdivision (b)(5)(C) of Section 303. Although the ~~prior uniform law 1916 Act~~ did not speak specifically of the voting powers of limited partners, it was is not uncommon for partnership agreements to grant such powers to limited partners. Section 302 is designed only to make it clear that the partnership agreement may grant such power to limited partners. If such powers are granted to limited partners beyond the "safe harbor" of subdivision (c) or (8) of Section 303(b)(5), a court may (but of course need not) hold that, under the circumstances, the limited partners have participated in "control of the business" within the meaning of Section 303(a). Section 303(c) ~~simply means~~ makes clear that the exercise of powers beyond the ambit of Section 303(b) is not ipso facto to be taken as taking part in the control of the business.

§ 303. Liability to Third Parties

(a) Except as provided in subsection (d), a limited partner is not liable for the obligations of a limited partnership unless he [or she] is also a general partner or, in addition to the exercise of his [or her] rights and powers as a limited partner, he [or she] ~~takes part~~ participates in the control of the business. However, if the limited partner's ~~participation~~ partner participates in the control of the business ~~is not substantially the same as the exercise of the powers of a general partner~~, he [or she] is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:

(1) being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;

(2) consulting with and advising a general partner with respect to the business of the limited partnership;

(3) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(4) approving or disapproving an amendment to the partnership agreement taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership; or

(5) voting on one or more of the following matters:

(5) requesting or attending a meeting of partners;

(6) proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business; or

(v) the admission or removal of a general partner;

(vi) the admission or removal of a limited partner;

(vii) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(viii) an amendment to the partnership agreement or certificate of limited partnership; or

(ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection (b), which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;

(7) winding up the limited partnership pursuant to Section 803; or

(8) exercising any right or power permitted to limited partners under this [Act] and not specifically enumerated in this subsection (b).

(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him [or her] in the business of the limited partnership.

(d) A limited partner who knowingly permits his [or her] name to be used in the name of the limited partnership, except under circumstances permitted by Section 102(2), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

COMMENT

Section 303 makes several important changes in Section 7 of the ~~prior uniform law 1916 Act~~. The first sentence of Section 303(a) ~~carries over the basic test from former Section 7 — whether the limited partner "takes part in the control of the business" — in order to insure that judicial decisions under the prior uniform law remain applicable to the extent not expressly changed differs from the text of Section 7 of the 1916 Act in that it speaks of participating (rather than taking part) in the control of the business; this was done for the sake of consistency with the second sentence of Section 303(a), not to change the meaning of the text. It is intended that judicial decisions interpreting the phrase "takes part in the control of the business" under the prior uniform law will remain applicable to the extent that a different result is not called for by other provisions of Section 303 and other provisions of the Act. The second sentence of Section 303(a) reflects a wholly new concept. Because in the 1976 Act that has been further modified in the 1985 Act. It was adopted partly because of the difficulty of determining when the "control" line has been overstepped, it was thought it unfair to impose general partner's liability on a limited partner except to the extent that a third party had knowledge of his participation in control of the business. On the other hand, in order to avoid permitting a limited partner to exercise all of the powers of a general partner while avoiding any direct dealings with third parties, the "is not substantially the same as" test was introduced but also (and more importantly) because of a determination that it is not sound public policy to hold a limited partner who is not also a general partner liable for the obligations of the partnership except to persons who have done business with the limited partnership reasonably believing, based on the limited partner's conduct, that he is a general partner. Paragraph (b) is intended to provide a "safe harbor" by enumerating certain activities which a limited partner may carry on for the partnership without being deemed to have taken part in control of the business. This "safe harbor" list has been expanded beyond that set out in the 1976 Act to reflect case law and statutory developments and more clearly to assure that limited partners are not subjected to general liability where such liability is inappropriate. Paragraph (d) is derived from Section 5 of the ~~prior uniform law 1916 Act~~, but adds as a condition to the limited partner's liability the ~~fact~~ requirement that a limited partner must have knowingly permitted his name to be used in the name of the limited partnership.~~

§ 304. Person Erroneously Believing Himself [or Herself] Limited Partner

(a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he [or she] has become

a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he [or she]:

(1) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(2) withdraws from future equity participation in the enterprise by executing and filing in the office of the Secretary of State a certificate declaring withdrawal under this section.

(b) A person who makes a contribution of the kind described in subsection (a) is liable as a general partner to any third party who transacts business with the enterprise (i) before the person withdraws and an appropriate certificate is filed to show withdrawal, or (ii) before an appropriate certificate is filed to show ~~his status as a limited partner and, in the case of an amendment, after expiration of the 30-day period for filing an amendment relating to the person as a limited partner under Section 202~~ that he [or she] is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

COMMENT

Section 304 is derived from Section 11 of the ~~prior uniform law, 1916 Act~~. The "good faith" requirement has been added in the first sentence of Section 304(a). The provisions of subdivision (2) of Section 304(a) are intended to clarify an ambiguity in the prior law by providing that a person who chooses to withdraw from the enterprise in order to protect himself from liability is not required to renounce any of his then current interest in the enterprise so long as he has no further participation as an equity participant. Paragraph (b) preserves the liability of the equity participant prior to withdrawal ~~(and after the time for appropriate amendment in the case of a limited partnership) by such person from the limited partnership or amendment to the certificate demonstrating that such person is not a general partner to any third party who has transacted business with the person believing in good faith that he was a general partner.~~

Evidence strongly suggests that Section 11 of the 1916 Act and Section 304 of the 1976 Act were rarely used, and one might expect that Section 304 of the 1985 Act may never have to be used. Section 11 of the 1916 Act and Section 304 of the 1976 Act could have been used by a person who invested in a limited partnership believing he would be a limited partner but who was not identified as a limited partner in the certificate of limited partnership. However, because the 1985 Act does not require limited partners to be named in the certificate, the only situation to which Section 304 would now appear to be applicable is one in which a person intending to be a limited partner was erroneously identified as a general partner in the certificate.

§ 305. Information

Each limited partner has the right to:

(1) inspect and copy any of the partnership records required to be maintained by Section 105; and

(2) obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable.

COMMENT

Section 305 changes and restates the rights of limited partners to information about the partnership formerly provided by Section 10 of the ~~prior uniform law, 1916 Act~~. Its importance has increased as a result of the 1985 Act's substituting the records of the partnership for the certificate of limited partnership as the place where certain categories of information are to be kept.

Section 305, which should be read together with Section 105(b), provides a mechanism for limited partners to obtain information about the partnership useful to them in making decisions concerning the partnership and their investments in it. Its purpose is not to provide a mechanism for competitors of the partnership or others having interests or agendas adverse to the partnership's to subvert the partnership's business. It is assumed that courts will protect limited partnerships from abuses and attempts to misuse Section 305 for improper purposes.

ARTICLE 4

GENERAL PARTNERS

§ 401. Admission of Additional General Partners

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted only as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the specific written consent of each partner all partners.

COMMENT

Section 401 is derived from, but represents a significant departure from, Section 9(1)(e) of the prior uniform law 1916 Act and Section 401 of the 1976 Act, which required, and carried over the unworkable requirements that all limited partners must consent as a condition to the admission of an additional general partner, that all limited partners consent and that such consent must specifically identify the general partner involved. Section 401 of the 1985 Act provides that the written partnership agreement determines the procedure for authorizing the admission of additional general partners, and that the written consent of all partners is required only when the partnership agreement fails to address the question.

§ 402. Events of Withdrawal

Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(1) the general partner withdraws from the limited partnership as provided in Section 602;

(2) the general partner ceases to be a member of the limited partnership as provided in Section 702;

(3) the general partner is removed as a general partner in accordance with the partnership agreement;

(4) unless otherwise provided in writing in the certificate of limited partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself [or herself] any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him [or her] in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his [or her] properties;

(5) unless otherwise provided in writing in the certificate of limited partnership agreement, [120] days after the commencement of any proceeding against the general partner

seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within [90] days after the appointment without his [or her] consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his [or her] properties, the appointment is not vacated or stayed or within [90] days after the expiration of any such stay, the appointment is not vacated;

(6) in the case of a general partner who is a natural person,

(i) his [or her] death; or

(ii) the entry of an order by a court of competent jurisdiction adjudicating him [or her] incompetent to manage his [or her] person or his [or her] estate;

(7) in the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) in the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) in the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

(10) in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

COMMENT

Section 402 expands considerably the provisions of Section 20 of the ~~prior uniform law~~ 1916 Act, which provided for dissolution in the event of the retirement, death or insanity of a general partner. Subdivisions (1), (2) and (3) recognize that the general partner's agency relationship is terminable at will, although it may result in a breach of the partnership agreement giving rise to an action for damages. Subdivisions (4) and (5) reflect a judgment that, unless the limited partners agree otherwise, they ought to have the power to rid themselves of a general partner who is in such dire financial straits that he is the subject of proceedings under the National Bankruptcy Act Code or a similar provision of law. Subdivisions (6) through (10) simply elaborate on the notion of death in the case of a general partner who is not a natural person. ~~Of course, the addition of the words "and in the partnership agreement" was not intended to suggest that liabilities to third parties could be affected by provisions in the partnership agreement.~~ Subdivisions (4) and (5) differ from their counterparts in the 1976 Act, reflecting the policy underlying the 1985 revision of Section 201, that the partnership agreement, not the certificate of limited partnership, is the appropriate document for setting out most provisions relating to the respective powers, rights and obligations of the partners inter se. Although the partnership agreement need not be written, the 1985 Act provides that, to protect the partners from fraud, these and certain other particularly significant provisions must be set out in a written partnership agreement to be effective for the purposes described in the Act.

§ 403. General Powers and Liabilities

(a) Except as provided in this [Act] or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(b) Except as provided in this [Act], a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this [Act] or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

COMMENT

Section 403 is derived from Section 9(1) of the ~~prior uniform law~~ 1916 Act.

§ 404. Contributions by General Partner

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his [or her] participation in the partnership as a limited partner.

COMMENT

Section 404 is derived from Section 12 of the ~~prior uniform law~~ 1916 Act and makes clear that the partnership agreement may provide that a general partner who is also a limited partner may exercise all of the powers of a limited partner.

§ 405. Voting

The partnership agreement may grant to all or certain identified general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter.

COMMENT

Section 405 ~~is new~~ first appeared in the 1976 Act and is intended to make it clear that the Act does not require that the limited partners have any right to vote on matters as a separate class.

ARTICLE 5

FINANCE

§ 501. Form of Contribution

The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

COMMENT

As noted in the comment to Section 101, the explicit permission to make contributions of services expands Section 4 of the ~~prior uniform law~~, 1916 Act.

§ 502. Liability for Contribution

(a) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(b) Except as provided in the ~~certificate of limited partnership agreement~~, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he [or she] is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, he [or she] is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the ~~certificate of limited partnership records~~ required to be kept pursuant to Section 105, of the stated contribution which has not been made.

(c) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this [Act] may be compromised only by consent of all partners. Notwith-

standing the compromise, a creditor of a limited partnership who extends credit, or whose claim arises, otherwise acts in reliance on that obligation after the filing of the certificate of limited partnership or an amendment thereto partner signs a writing which, in either case, reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

COMMENT

Section 502(a) is new; it has no counterpart in the 1916 or 1976 Act. Because, unlike the prior uniform acts, the 1985 Act does not require that promises to contribute cash, property, or services be described in the limited partnership certificate, to protect against fraud it requires instead that such important promises be in a signed writing.

Although Section 17(1) of the ~~prior uniform law~~ 1916 Act required a partner to fulfill his promise to make contributions, the addition of contributions in the form of a promise to render services means that a partner who is unable to perform those services because of death or disability as well as because of an intentional default is required to pay the cash value of the services unless the ~~certificate of limited partnership~~ partnership agreement provides otherwise.

Subdivision ~~(b)~~ (c) is derived from, but expands upon, Section 17(3) of the ~~prior uniform law~~ 1916 Act.

§ 503. Sharing of Profits and Losses

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the certificate of limited partnership records required to be kept pursuant to Section 105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

COMMENT

Section 503 is new; first appeared in the 1976 Act. The prior uniform law 1916 Act did not provide for the basis on which partners would share profits and losses in the absence of agreement. The 1985 Act differs from its counterpart in the 1976 Act by requiring that, to be effective, the partnership agreement provisions concerning allocation of profits and losses be in writing, and by its reference to records required to be kept pursuant to Section 105, the latter reflecting the 1985 changes in Section 201.

§ 504. Sharing of Distributions

Distributions of cash or other assets of a limited partnership shall be allocated among the partners and among classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value, as stated in the certificate of limited partnership records required to be kept pursuant to Section 105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

COMMENT

Section 504 is new; first appeared in the 1976 Act. The prior uniform law 1916 Act did not provide for the basis on which partners would share distributions in the absence of agreement. Section 504 also differs from its counterpart in the 1976 Act by requiring that, to be effective, the partnership agreement provisions concerning allocation of distributions be in writing, and in its reference to records required to be kept pursuant to Section 105, the latter reflecting the 1985 changes in Section 201. This section also recognizes that partners may choose to share in distributions on a different basis than different from that on which they share in profits and losses.

ARTICLE 6

DISTRIBUTIONS AND WITHDRAWAL

§ 601. Interim Distributions

Except as provided in this Article, a partner is entitled to receive distributions from a limited partnership before his [or her] withdrawal from the limited partnership and before the dissolution and winding up thereof:

(1) to the extent and at the times or upon the happening of the events specified in the partnership agreement; and

~~(2) if any distribution constitutes a return of any part of his contribution under Section 609(a), to the extent and at the times or upon the happening of the events specified in the certificate of limited partnership.~~

COMMENT

Section 601 is new first appeared in the 1976 Act. The 1976 Act provisions have been modified to reflect the 1985 changes made in Section 201.

§ 602. Withdrawal of General Partner

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him [or her].

COMMENT

Section 602 is new first appeared in the 1976 Act, but is generally derived from Section 38 of the Uniform Partnership Act.

§ 603. Withdrawal of Limited Partner

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified ~~in the certificate of limited partnership and in accordance with~~ in writing in the partnership agreement. If the ~~certificate agreement~~ agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at his [other] address on the books of the limited partnership at its office in this State.

COMMENT

Section 603 is derived from Section 16(e) of the ~~prior-uniform-law~~ 1916 Act. The 1976 Act provision has been modified to reflect the 1985 changes made in Section 201. This section additionally reflects the policy determination, also embodied in certain other sections of the 1985 Act, that to avoid fraud, agreements concerning certain matters of substantial importance to the partners will be enforceable only if in writing. If the partnership agreement does provide, in writing, whether a limited partner may withdraw and, if he may, when and on what terms and conditions, those provisions will control.

§ 604. Distribution Upon Withdrawal

Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he [or she] is entitled under the partnership agreement and, if not otherwise provided in the agreement, he [or she] is entitled to receive, within a reasonable time after withdrawal, the fair value of his [or her] interest in the limited partnership as of the date of withdrawal based upon his [or her] right to share in distributions from the limited partnership.

COMMENT

Section 604 ~~is new~~ first appeared in the 1976 Act. It fixes the distributive share of a withdrawing partner in the absence of an agreement among the partners.

§ 605. Distribution in Kind

Except as provided in writing in the ~~certificate of limited partnership agreement~~, a partner, regardless of the nature of his [or her] contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him [or her] exceeds a percentage of that asset which is equal to the percentage in which he [or she] shares in distributions from the limited partnership.

COMMENT

The first sentence of Section 605 is derived from Section 16(3) of the ~~prior uniform law, 1916 Act~~; it also differs from its counterpart in the 1976 Act, reflecting the 1985 changes made in Section 201. The second sentence first appeared in the 1976 Act, ~~is new~~, and is intended to protect a limited partner (and the remaining partners) against a distribution in kind of more than his share of particular assets.

§ 606. Right to Distribution

At the time a partner becomes entitled to receive a distribution, he [or she] has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

COMMENT

Section 606 ~~is new~~ first appeared in the 1976 Act, and is intended to make it clear that the right of a partner to receive a distribution, as between the partners, is not subject to the equity risks of the enterprise. On the other hand, since partners entitled to distributions have creditor status, there did not seem to be a need for the extraordinary remedy of Section 16(4)(a) of the ~~prior uniform law, 1916 Act~~, which granted a limited partner the right to seek dissolution of the partnership if he was unsuccessful in demanding the return of his contribution. It is more appropriate for the partner to simply sue as an ordinary creditor and obtain a judgment.

§ 607. Limitations on Distribution

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

COMMENT

Section 607 is derived from Section 16(1)(a) of the ~~prior uniform law, 1916 Act~~.

§ 608. Liability Upon Return of Contribution

(a) If a partner has received the return of any part of his [or her] contribution without violation of the partnership agreement or this [Act], he [or she] is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a partner has received the return of any part of his [or her] contribution in violation of the partnership agreement or this [Act], he [or she] is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

(c) A partner receives a return of his [or her] contribution to the extent that a distribution to him [or her] reduces his [or her] share of the fair value of the net assets of the limited partnership below the value, as set forth in the ~~certificate of limited partnership records required to be kept pursuant to Section 105,~~ of his contribution which has not been distributed to him [or her].

COMMENT

Paragraph (a) is derived from Section 17(4) of the ~~prior uniform law 1916 Act,~~ but the one year statute of limitations has been added. Paragraph (b) is derived from Section 17(2)(b) of the ~~prior uniform law 1916 Act~~ but, again, a statute of limitations has been added.

Paragraph (c) ~~is new,~~ first appeared in the 1976 Act. The provisions of former Section 17(2) that referred to the partner holding as "trustee" any money or specific property wrongfully returned to him have been eliminated. Paragraph (c) in the 1985 Act also differs from its counterpart in the 1976 Act to reflect the 1985 changes made in Sections 105 and 201.

ARTICLE 7

ASSIGNMENT OF PARTNERSHIP INTERESTS

§ 701. Nature of Partnership Interest

A partnership interest is personal property.

COMMENT

This section is derived from Section 18 of the ~~prior uniform law,~~ 1916 Act.

§ 702. Assignment of Partnership Interest

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his [or her] partnership interest.

COMMENT

Section 19(1) of the ~~prior uniform law 1916 Act~~ provided simply that "a limited partner's interest is assignable", raising a question whether any limitations on the right of assignment were permitted. While the first sentence of Section 702 recognizes that the power to assign may be restricted in the partnership agreement, there was no intention to affect in any way the usual rules regarding restraints on alienation of personal property. The second and third sentences of Section 702 are derived from Section 19(3) of the ~~prior uniform law,~~ 1916 Act. The last sentence ~~is new,~~ first appeared in the 1976 Act.

§ 703. Rights of Creditor

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This [Act] does not deprive any partner of the benefit of any exemption laws applicable to his [or her] partnership interest.

COMMENT

Section 703 is derived from Section 22 of the ~~prior uniform law~~ 1916 Act but has not carried over some provisions that were thought to be superfluous. For example, references in Section 22(1) to specific remedies have been omitted, as has a prohibition in Section 22(2) against discharge of the lien with partnership property. Ordinary rules governing the remedies available to a creditor and the fiduciary obligations of general partners will determine those matters.

§ 704. Right of Assignee to Become Limited Partner

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) (i) the assignor gives the assignee that right in accordance with authority described in the ~~certificate of limited partnership agreement~~, or (2) (ii) all other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this [Act]. An assignee who becomes a limited partner also is liable for the obligations of his [or her] assignor to make and return contributions as provided in ~~Article~~ Articles 5 and 6. However, the assignee is not obligated for liabilities unknown to the assignee at the time he [or she] became a limited partner ~~and which could not be ascertained from the certificate of limited partnership~~.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his [or her] liability to the limited partnership under Sections 207 and 502.

COMMENT

Section 704 is derived from Section 19 of the ~~prior uniform law~~ 1916 Act, but paragraph (b) defines more narrowly than Section 19 the obligations of the assignor that are automatically assumed by the assignee. Section 704 of the 1985 Act also differs from the 1976 Act to reflect the 1985 changes made in Section 201.

§ 705. Power of Estate of Deceased or Incompetent Partner

If a partner who is an individual dies or a court of competent jurisdiction adjudges him [or her] to be incompetent to manage his [or her] person or his [or her] property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling his [or her] estate or administering his [or her] property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

COMMENT

Section 705 is derived from Section 21(1) of the ~~prior uniform law~~ 1916 Act. Former Section 21(2), making a deceased limited partner's estate liable for his liabilities as a limited partner was deleted as superfluous, with no intention of changing the liability of the estate.

ARTICLE 8
DISSOLUTION

§ 801. Nonjudicial Dissolution

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

- (1) at the time specified in the certificate of limited partnership;
- (2) ~~or~~ upon the happening of events specified in writing in the certificate of limited partnership agreement;
- ~~(2)~~(3) written consent of all partners;
- ~~(3)~~(4) an event of withdrawal of a general partner unless at the time there is at least one other general partner and the ~~certificate of limited~~ written provisions of the partnership agreement ~~permits~~ permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal, if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or
- (4)(5) entry of a decree of judicial dissolution under Section 802.

COMMENT

Section 801 merely collects in one place all of the events causing dissolution. Paragraph (3) is derived from Sections 9(1)(g) and 20 of the ~~prior uniform law, 1916 Act~~, but adds the 90-day grace period. Section 801 also differs from its counterpart in the 1976 Act to reflect the 1985 changes made in Section 201.

§ 802. Judicial Dissolution

On application by or for a partner the [designate the appropriate court] court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

COMMENT

Section 802 is ~~now~~ first appeared in the 1976 Act.

§ 803. Winding Up

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs; but the [designate the appropriate court] court may wind up the limited partnership's affairs upon application of any partner, his [or her] legal representative, or assignee.

COMMENT

Section 803 is ~~now~~ first appeared in the 1976 Act, and is derived in part from Section 37 of the Uniform General Partnership Act.

§ 804. Distribution of Assets

Upon the winding up of a limited partnership, the assets shall be distributed as follows:

- (1) to creditors, including partners who are creditors, to the extent permitted by law, in

satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under Section 601 or 604;

(2) except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under Section 601 or 604; and

(3) except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

COMMENT

Section 804 revises Section 23 of the ~~prior uniform law~~ 1916 Act by providing that (1) to the extent partners are also creditors, other than in respect of their interests in the partnership, they share with other creditors, (2) once the partnership's obligation to make a distribution accrues, it must be paid before any other distributions of an "equity" nature are made, and (3) general and limited partners rank on the same level except as otherwise provided in the partnership agreement.

ARTICLE 9

FOREIGN LIMITED PARTNERSHIPS

§ 901. Law Governing

Subject to the Constitution of this State, (i) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and (ii) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State.

COMMENT

Section 901 ~~is new~~ first appeared in the 1976 Act.

§ 902. Registration

Before transacting business in this State, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall submit to the Secretary of State, in duplicate, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this State;

(2) the ~~state~~ State and date of its formation;

(3) ~~the general character of the business it proposes to transact in this State;~~

(4) (3) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this ~~state~~ State, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this State;

(5) (4) a statement that the Secretary of State is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under paragraph (4) (3) or, if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence;

(6) (5) the address of the office required to be maintained in the ~~State~~ state of its organization by the laws of that ~~State~~ state or, if not so required, of the principal office of the foreign limited partnership; and

~~(7) if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and business addresses of the partners, a list of the names and addresses,~~

(6) the name and business address of each general partner; and

(7) the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this State is cancelled or withdrawn.

COMMENT

Section 902 ~~is now,~~ first appeared in the 1976 Act. It was thought that requiring a full copy of the certificate of limited partnership and all amendments thereto to be filed in each state in which the partnership does business would impose an unreasonable burden on interstate limited partnerships and that the information ~~on file was~~ Section 902 required to be filed would be sufficient to tell interested persons where they could write to obtain copies of those basic documents. Subdivision (3) of the 1976 Act has been omitted, and subdivisions (6) and (7) differ from their counterparts in the 1976 Act, to conform these provisions relating to the registration of foreign limited partnerships to the corresponding changes made by the Act in the provisions relating to domestic limited partnerships. The requirement that an application for registration be sworn to by a general partner is simply intended to produce the same result as is provided for in Section 204(c) with respect to certificates of domestic limited partnerships: the acceptance and endorsement by the Secretary of State (or equivalent authority) of an application which was not sworn to by a general partner should be deemed a mere technical and insubstantial shortcoming, and should not result in the limited partners being subjected to general liability for the obligations of the foreign limited partnership (See Section 907(c)).

§ 903. Issuance of Registration

(a) If the Secretary of State finds that an application for registration conforms to law and all requisite fees have been paid, he [or she] shall:

- (1) endorse on the application the word "Filed", and the month, day, and year of the filing thereof;
- (2) file in his [or her] office a duplicate original of the application; and
- (3) issue a certificate of registration to transact business in this State.

(b) The certificate of registration, together with a duplicate original of the application, shall be returned to the person who filed the application or his [or her] representative.

COMMENT

Section 903 first appeared in the 1976 Act.

§ 904. Name

A foreign limited partnership may register with the Secretary of State under any name, whether or not it is the name under which it is registered in its state of organization, that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

COMMENT

Section 904 ~~is now,~~ first appeared in the 1976 Act.

§ 905. Changes and Amendments

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in

the office of the Secretary of State a certificate, signed and sworn to by a general partner, correcting such statement.

COMMENT

Section 905 ~~is new~~, first appeared in the 1976 Act. It corresponds to the provisions of Section 202(c) relating to domestic limited partnerships.

§ 906. Cancellation of Registration

A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to [claims for relief] [causes of action] arising out of the transactions of business in this State.

COMMENT

Section 906 ~~is new~~, first appeared in the 1976 Act.

§ 907. Transaction of Business Without Registration

(a) A foreign limited partnership transacting business in this State may not maintain any action, suit, or proceeding in any court of this State until it has registered in this State.

(b) The failure of a foreign limited partnership to register in this State does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this State.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this State without registration.

(d) A foreign limited partnership, by transacting business in this State without registration, appoints the Secretary of State as its agent for service of process with respect to [claims for relief] [causes of action] arising out of the transaction of business in this State.

COMMENT

Section 907 ~~is new~~, first appeared in the 1976 Act.

§ 908. Action by [Appropriate Official]

The [designate the appropriate official] may bring an action to restrain a foreign limited partnership from transacting business in this State in violation of this Article.

COMMENT

Section 908 ~~is new~~, first appeared in the 1976 Act.

ARTICLE 10

DERIVATIVE ACTIONS

§ 1001. Right of Action

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the

action or if an effort to cause those general partners to bring the action is not likely to succeed.

COMMENT

Section 1001 ~~is new~~, first appeared in the 1976 Act.

§ 1002. Proper Plaintiff

In a derivative action, the plaintiff must be a partner at the time of bringing the action and (i) must have been a partner at the time of the transaction of which he [or she] complains or (ii) his [or her] status as a partner had must have devolved upon him [or her] by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

COMMENT

Section 1002 ~~is new~~, first appeared in the 1976 Act.

§ 1003. Pleading

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

COMMENT

Section 1003 ~~is new~~, first appeared in the 1976 Act.

§ 1004. Expenses

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him [or her] to remit to the limited partnership the remainder of those proceeds received by him [or her].

COMMENT

Section 1004 ~~is new~~, first appeared in the 1976 Act.

ARTICLE 11

MISCELLANEOUS

§ 1101. Construction and Application

This [Act] shall be so 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.

COMMENT

Because the principles set out in Sections 28(1) and 29 of the 1916 Act have become so universally established, it was felt that the 1976 and 1985 Acts need not contain express provisions to the same effect. However, it is intended that the principles enunciated in those provisions of the 1916 Act also apply to this Act.

§ 1102. Short Title

This [Act] may be cited as the Uniform Limited Partnership Act.

§ 1103. 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 the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

§ 1104. Effective Date, Extended Effective Date and Repeal

Except as set forth below, the effective date of this [Act] is _____ and the following acts [list prior existing limited partnership acts] are hereby repealed:

(1) The existing provisions for execution and filing of certificates of limited partnerships and amendments thereunder and cancellations thereof continue in effect until [specify time required to create central filing system], the extended effective date, and Sections 102, 103, 104, 105, 201, 202, 203, 204 and 206 are not effective until the extended effective date.

(2) Section 402, specifying the conditions under which a general partner ceases to be a member of a limited partnership, is not effective until the extended effective date, and the applicable provisions of existing law continue to govern until the extended effective date.

(3) Sections 501, 502 and 608 apply only to contributions and distributions made after the effective date of this [Act].

(4) Section 704 applies only to assignments made after the effective date of this [Act].

(5) Article 9, dealing with registration of foreign limited partnerships, is not effective until the extended effective date.

(6) Unless otherwise agreed by the partner, the applicable provisions of existing law governing allocation of profits and losses (rather than the provisions of Section 503), distributions to a withdrawing partner (rather than the provisions of Section 604), and distributions of assets upon the winding up of a limited partnership (rather than the provisions of Section 804) govern limited partnerships formed before the effective date of this [Act].

COMMENT

Subdivisions (6) and (7) did not appear in Section 1104 of the 1976 Act. They are included in the 1985 Act to ensure that the application of the Act to limited partnerships formed and existing before the Act becomes effective would not violate constitutional prohibitions against the impairment of contracts.

§ 1105. Rules for Cases Not Provided for in This [Act]

In any case not provided for in this [Act] the provisions of the Uniform Partnership Act govern.

COMMENT

The result provided for in Section 1105 would obtain even in its absence in a jurisdiction which had adopted the Uniform Partnership Act, by operation of Section 6 of that act.

§ 1106. Savings Clause

The repeal of any statutory provision by this [Act] does not impair, or otherwise affect, the organization or the continued existence of a limited partnership existing at the effective date of this [Act], nor does the repeal of any existing statutory provision by this [Act] impair any contract or affect any right accrued before the effective date of this [Act].

COMMENT

Section 1106 did not appear in the 1976 Act. It is included in the 1985 Act to ensure that the application of the Act to limited partnerships formed and existing before the Act becomes effective would not violate constitutional prohibitions against the impairment of contracts.

HB

113

HOUSE COMMITTEE REPORT

3/5
Jud
Finance

(7)

Date Referred: February 1, 1993

FURTHER REFERRALS:

Date of Committee Action: 3/04/93

The LABOR AND COMMERCE Committee considered:

HB 113

HOUSE BILL NO. 113

CHARITABLE & TELEPHONIC SOLICITING/SALES

"An Act regulating the solicitation of contributions by charitable organizations and paid solicitors and the solicitation of sales by telephonic means; and amending Alaska Rules of Civil Procedure 79 and 82."

RECOMMENDATIONS: [] the same title
 be replaced with _____ [] a new title

[] have attached amendments(s)

[X] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

[] fiscal impact _____

[] fiscal note(s) _____

[X] zero fiscal note LAW ~~7/1/93~~

[] zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Brian J. Porter Porter</i>					
<i>Art Sitton Sitton</i>					
<i>John Mulder Mulder</i>					
<i>Chris Green Green</i>					
<i>Bill Hudson Hudson</i>					

Bill Hudson Hudson
 CHAIRMAN'S SIGNATURE

2/24/93

They're at it again: Telemarketers target Alaska

By ANNABEL LUND

The JUNEAU EMPIRE

The attorney general's consumer protection office and Alaska Better Business Bureau are warning residents — particularly the elderly — to listen carefully to sales pitches from telemarketing companies canvassing the state for business.

Two elderly Juneau residents were contacted recently by out-of-state firms and both later called the Juneau police for help. There is little that can be done.

Ingrid Dull, 80, sent International Marketing of Las Vegas \$398 to

win what they said would be a cash prize. But instead she received a small box of pens and Frisbees with an anti-drug message written on them, according to Juneau Police Lt. Steve Kalwara.

Barry Walden, a customer services representative with International Marketing, told the Empire his company never guaranteed which award Dull would receive.

"It was her choice to do it, to help her community fight drugs. If that's what she wanted to do, what can we say?" Walden said.

He said International Marketing of Las Vegas was not connect-

ed in any way to International Marketing of Phoenix, Ariz., which also sells items with anti-drug messages.

That company was recently shut down by the Arizona attorney general's office after the company allegedly took \$525 from an 80-year-old Soldotna woman and promised to send her an anti-drug kit for her community, according to Jerry Williams, an attorney general's office investigator. The kit turned out to be a handful of bumper stickers, he said.

The woman sent a check for \$3,000 more at the company's re-

quest, but authorities managed to put a stop on it and Soldotna police are assisting Arizona authorities with their case against the firm, Williams said.

Dull was also contacted by Worldwide Marketing of San Diego, which said she would be eligible for several prizes, including \$25,000 in cash and vacation trips to Hawaii or Mexico. If she would send them \$399, she did, and received a small box of cosmetics, Kalwara said.

Nicole Miles of Worldwide Marketing in San Diego told the Empire the company would not return

Dull's money but that the shampoo, conditioner and lotion was worth \$400.

Miles said Dull must have misunderstood if she thought she was going to get a \$25,000 prize. "We said she was eligible. Eligible: That's the key word."

Miles said her company, and other telemarketing firms like hers, make their phone calls from lists of people who respond to other promotions and contests.

Art Krows, president of Main Line America, a telemarketing firm from Las Vegas, said his

Please see Scams, back page

Scams...

Continued from Page 1

company is legitimate and the complaint filed against him Tuesday by 83-year-old Jan Woodring of the Juneau Pioneers' Home was "because she obviously didn't listen to what we said. She only heard what she wanted to hear," Woodring told police she was called Monday evening by a company identifying "itself" as Main Line America. She said company spokesman Robert Chesmore told her she had won \$20,000 worth of prizes that she could collect as soon as she sent them \$2,100, Federal Express.

"They said the \$2,100 was supposed to take care of costs associated with the award. I turned it down and they called me again. They really have pressure tactics. They make you feel guilty," Woodring told the Empire.

Krows said Woodring was guaranteed one of several awards: a 1993 Saturn, a Chevy S-10 pickup, a certified lithograph by Adolph Shering valued at \$2,500, or a 41-inch TV. Krows said Woodring's \$2,100 would have purchased either cleaning supplies or a security system that Main Line America markets.

Woodring laughed when told what Krows had said. "That's not what they said. I live in the pioneers' home, why would I want \$2,100 worth of cleaning supplies? That doesn't make sense."

Krows said his industry provides a service. "There are some people who sit by their phone all night and dial all these 800 numbers because these people are so lonely. It's a true but pathetic fact. We brighten their day.

"Why does telemarketing work? Telemarketing is based on greed, the greed of the American people. People want to get something for nothing but there is no free lunch. We're not con men, we're just plain human beings selling to people who buy because of greed," Krows said.

Woodring disagreed. "I'm not greedy. I'm not lonely. It's not just a matter of being elderly. But I have had a series of mini-strokes. I don't need this harassment, this stress."

Dora Conway of the Las Vegas Better Business Bureau said Main Line America had been in business since March 1992 and had recently signed a voluntary compliance agreement with the state of Oregon, agreeing not to engage directly or indirectly in solicitation there and to pay restitution to any Oregonian requesting it.

"Did I go to Alaska and put a gun to (Woodring's) head and tell her to send a check? No. She does it of her own free will," Krows said.

Another Las Vegas telemarketing company apparently targeting Alaska's elderly calls itself Corporate Bank Services. Last week, a 73-year-old Anchorage woman sent \$1,225 to the company by Federal Express, according to Williams. The telemarketer said the money would be used to pay taxes she owed for a \$50,000 prize the company claimed she would receive the next day. She hasn't heard from them since.

"This company has a long history of scams. They move into a motel one day and they're gone the next. It appears to be a straight criminal operation," Williams said.

Conway said Corporate Bank Services had gone out of business months ago but some unscrupulous people may be using its name when they call out-of-state residents.

Rick Gilmore, president of the Anchorage-based Alaska Better Business Bureau, said, "Ripping off the elderly seems to be the fashionable thing to do. People should know that when they are called by any of these companies, they should first invest a couple of dollars in a long-distance phone call to the Better Business Bureau because we can tell consumers whether companies are legitimate or not."

Assistant Attorney General Jim Forbes, who works on consumer protection issues for the state, said telemarketing is almost completely unregulated in Alaska and fraudulent schemes cost Alaskans millions of dollars each year. Many of the victims are elderly or live in Native villages, he said.

Meanwhile, Rep. Ron Larson, D-Palmer, is sponsoring legislation this session that would regulate telemarketers, mandate a cooling-off period by requiring a written contract, and make it a felony to violate the law. The bill, which would also govern solicitations by charitable groups, is patterned after laws in Oregon and Florida.

Forbes said one reason Alaskans are targeted by so many out-of-state telemarketers is because "of the successful implementation of regulations in other states. Telemarketers who find inhospitable conditions in other states ... are turning their attention to states like Alaska which do not have similar legislation."

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 113

Revision Date: February 12, 1993

Department Affected: Law

Title: "...regulating the solicitation of charitable contributions...solicitation of sales by telephonic means..."

BRU: Legal Services

Component: Fair Business Practices

Sponsor: Representative Larson

Requestor: Representative Larson

COMPONENT SERIAL NO. 1823

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services Division

Date: February 12, 1993

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law

Date: February 12, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 113

ANALYSIS: (continued)

This bill would amend Title 45 by adding regulatory provisions to address abuses in charitable fundraising and telemarketing solicitations.

Under this bill, non-exempt charities would be required to:

1. File registration papers with the attorney general identifying the party making the charitable solicitation, and describing the charitable purpose to be served with the proceeds;
2. Execute written contracts with any paid fundraisers establishing the method of payment for the paid fundraiser, including the amount of any contingent fee; and
3. Provide certain information to donors.

Non-exempt telemarketers would be required to:

1. Register with the attorney general; and
2. Execute written contracts with customers as a condition of closing any sales. This provision creates an enforceable "cooling off period" that is currently lacking in these high pressure sales situations.

The bill provides criminal penalties for charitable solicitors who refuse to honor the consumer's right to revoke a deal, or who take the consumer's money without observing the cooling off period under the written contract provision.

This bill is an attempt to solve the related problems presented by high pressure charity fundraisers who make misrepresentations regarding their fundraising purposes; and telephone sales artists who use high pressure tactics to sell merchandise at greatly inflated prices with false promises of extravagant prizes, and other illusory inducements.

Because there is no regulatory scheme now in effect, the Department of Law cannot say with certainty how much additional staff time will be required to meet the paperwork generated by this bill. But we estimate that the initial year's filings will not greatly exceed 250 charities, and 100 telemarketers.

The staff time needed to file the registration documents will be partially offset by a time savings in the investigation sphere, because the files will contain data that significantly reduces investigative effort in cases involving charitable fundraisers and telemarketers. Both types of cases currently involve significant investigative time spent identifying the people and organizations involved. Of course, to the extent that the bill deters illegal conduct, it will result in additional reductions of investigative time, due to the reduction in law violations requiring investigation. Investigators will be free to devote resources to those other pressing matters needing their attention which currently go unaddressed because of reduced funding.

In the event that the time estimates are inaccurate, the Department of Law may need to return with a request for additional funding in the future. Until such time, however, this bill does not require an increased appropriation.

Alaska State Legislature

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Representative Ronald L. Larson
District 27

MEMORANDUM

TO: Representative Bill Hudson, Chairman
Labor & Commerce Committee

FROM: Representative Ron Larson 

DATE: February 10, 1993

RE: HB 113 - Charitable Solicitations

I respectfully request that HB113, An Act regulating the solicitation of contributions by charitable organizations be heard by the House Labor and Commerce Committee.

I have attached two section by section analyses, one done by Legislative Counsel Theresa L. Bannister and one done by Assistant Attorney General James Forbes of the Fair Business Practice Section for back-up information on this bill.

This bill was introduced for the first time at the end of the 17th Legislative Session. We have had significant interest from the public, a few who have been taken advantage of by phony solicitors. Also interest has been shown by Non-profit charitable organizations who, feel regulations such as this might instill trust in the public, and perhaps benefit their worthy organizations with the public feeling secure in donating to their individual causes.



DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 3, 1993

SUBJECT: Sectional summary of HB 113

TO: Representative Ron Larson
Artn: Judy

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have requested a sectional summary of the above described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 of the bill adds a new chapter regulating telephonic solicitations.

Section 45.63.010 requires a person selling property or services by telephonic means to register with the Department of Law before the solicitation campaign, if the person makes substantially the same offer on substantially the same terms to two or more persons. Establishes certain procedures and information requirements for registration. Prohibits the seller from giving false information in the notice of intent to engage in the solicitation campaign.

Section 45.63.020 requires a telephonic seller to obtain from the buyer a signed, written contract before finalizing a purchase payment. Requires the contract to notify the buyer of the buyer's cancellation and replacement rights under sec. 45.63.030.

Section 45.63.030 provides the buyer with certain cancellation and replacement rights. Establishes when the sale becomes final.

Section 45.63.040 prohibits the seller from making certain representations to the buyer.

Section 45.63.050 prohibits a waiver of the buyer's rights under the chapter. Makes a waiver void.

Section 45.63.060 establishes a criminal penalty for violating the chapter.

Section 45.63.070 declares that the remedies in the chapter are in addition to other remedies that may be available to the buyer or the department.

Section 45.63.080 exempts certain sellers and types of sales from the chapter.

Section 45.63.090 directs the department to adopt regulations to implement the chapter.

Section 45.63.100 defines certain terms for the chapter.

Section 2 of the bill adds a new chapter regulating charitable solicitations.

Section 45.68.010 prohibits a charitable organization from soliciting contributions unless it is registered with the Department of Law. Prohibits a paid solicitor from soliciting contributions for a charitable organization unless the paid solicitor is registered with the department. Establishes the registration procedure. Establishes the duration and renewal of the registration. Requires that a material change in the information provided in the initial or renewal registration statements to be reported to the department within seven days after the change.

Section 45.68.020 prohibits a paid solicitor seller from soliciting contributions for a charitable organization without having a written contract with the organization. Indicates what the contract is to contain and requires a copy to be filed with the department.

Section 45.68.030 requires a paid solicitor to make certain disclosures to the person being solicited.

Section 45.68.040 requires a paid solicitor who makes mail, radio, or television solicitations to mail written confirmation of contribution pledges to the contributors within a certain time. Requires the confirmation to include the disclosures required by sec. 45.68.030.

Section 45.68.050 identifies certain practices that a person may not engage in when soliciting for a charitable organization.

Section 45.68.060 establishes that the documents required to be filed with the department under the chapter are public records.

Section 45.68.070 requires a charitable organization and a paid solicitor who are either subject to or exempted from the chapter under sec. 45.68.120 to maintain the records required by the chapter for three years.

Representative Ron Larson
February 3, 1993
Page 3

Section 45.68.080 establishes that charitable organizations and paid solicitors who have certain out-of-state connections and who are required to be registered under the chapter are considered to have appointed the department their agent for service of process in a proceeding under the chapter. Requires the department to deliver notice of the service and a copy of the process to the appropriate person in order to complete the service.

Section 45.68.090 authorizes a charitable organization that suffers damages because of a violation of the chapter by another charitable organization or a paid solicitor to bring a civil action against the violator. Authorizes a contributor to bring a civil action against a charitable organization or paid solicitor who violates the chapter. Indicates the type of relief that the court may provide. Requires the complainant to serve a copy of the complaint on the department and to mail a copy of an order or judgment in the action to the department.

Section 45.68.100 establishes a criminal penalty for violating the registration requirements of the chapter.

Section 45.68.110 declares that the chapter's remedies are in addition to other available remedies.

Section 45.68.120 exempts certain persons from the registration requirement. Requires exempt persons to maintain certain records relating to the exemption.

Section 45.68.130 directs the department to adopt regulations to implement the chapter.

Section 45.68.900 defines certain terms for the chapter.

Section 3 of the bill adds violations of the two new chapters to the list of unlawful trade practices prohibited by the Unfair Trade Practices and Consumer Protection Act (AS 45.50.471 - 45.50.561).

Section 4 of the bill describes how certain court rules are changed by the bill.

If I may be of further assistance, please advise.

TLB:pl
93-063.plm

MEMORANDUM

State of Alaska

Department of Law

TO: Honorable Ron Larson
State of Alaska
House of Representatives

DATE: January 29, 1993

FILE NO:

TEL NO: 269-5206

SUBJECT: House bill regulating
telephonic and charitable
solicitations

FROM:

James Forbes
Assistant Attorney General
Fair Business Practices Section

Description of Bill

This bill would regulate solicitations for telephonic sales and charitable fund raising; areas which are, for the most part, unregulated. State consumer protection investigators have noticed a dramatic increase in fraudulent activity in this area. Most states have adopted legislation dealing with charitable solicitation fraud and telemarketing scams, but Alaska lags behind. As a result, scam artists are increasingly avoiding those states, and are concentrating their activities on unregulated states, such as Alaska. We believe that they cause the loss of millions of dollars each year in Alaska -- money which would otherwise circulate among legitimate businesses in the local economy. Many of the victims are elderly or reside in native villages, and we have documented cases where individual victims have lost substantial amounts of money -- in the tens of thousands of dollars.

Section 1: Regulation of Telemarketers

Purpose: This section is designed to curtail a rampant form of fraud which typically involves a high pressure sales pitch by telephone. The caller is almost invariably an out-of-state "boiler room" operator with minimal ties to any one locality, and with the ability to quickly close up shop, change identity, and re-open at another location.

The typical scam involves a promise to the consumer that (s)he has won a fabulous prize, usually including a new car, and all that is necessary to get the new car (or other fabulous prize) is that the consumer agree to purchase products (frequently vitamins or skin care products) for a high price, usually in the \$500 to \$750 range. The seller utilizes high pressure tactics

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To <i>Judy</i>	From <i>Jim Tab</i>	Co.	
Dept.	Phone # <i>269 5206</i>	Fax #	

Honorable Ron Larson

January 29, 1993
Page 2

designed to force the consumer to make a quick decision to agree to the purchase, lest the opportunity to win the fabulous prize be lost. The consumer is usually required to make payment on the spot, either by authorizing a credit card charge over the telephone or, more recently, by writing out a check which is picked up within minutes by a courier, such as Federal Express, dispatched by the telemarketer. The consumer is promised that (s)he will receive the valuable prize after several weeks. By the time the consumer realizes that the prize is not forthcoming, the telemarketer has frequently moved on to a new location, with a new identity.

State investigators have observed that the victims of these scams are frequently elderly, and once they agree to a sale by one telemarketer, they become the target of numerous telemarketers because their names are added to a "suckers list" which is sold for substantial sums of money to other telemarketers.

Remedy proposed by bill: Section 1 of the bill attacks the above-described problem in three important ways:

- (1) It requires registration of telemarketers, including detailed information about exactly who they are, their histories, and the physical location from which they are operating;
- (2) It mandates a "cooling off period" by prohibiting the telemarketer from taking the customer's money until the agreement is reduced to a written contract; and
- (3) It provides criminal penalties for violators.

The registration and identification requirements will allow the state to pinpoint the individuals who are operating high pressure telephonic sales, and determine whether they have prior criminal histories or significant other past problems dealing with sales fraud, making closer scrutiny appropriate. The state currently has no effective means of forcing individuals, who conduct sales by telephonic means across state lines, to identify themselves. Businesses operating within Alaska are required to obtain a state business license, but interstate telemarketers routinely fail to comply with this requirement -- and they are the operators the state has the most need to supervise.

The written contract requirement will put an end to the "high pressure" tactic which is so successful in separating consumers from their money when the promise of a valuable prize is involved. Consumers who have acquiesced to high pressure sales techniques frequently wish to cancel the sale after they have had time to calmly reflect on the transaction. But when they have already authorized a credit card sale by telephone, or a courier

Honorable Ron Larson

January 29, 1993

Page 3

has already picked up their payment, revocation of the sale is not always possible. The written contract requirement will put high pressure telemarketers on more of an equal footing with local, established merchants who are, on a day-to-day basis, accountable to their customers after the sale.

Criminal penalties at the felony level are necessary if the regulations are to be taken seriously by the telemarketers. In our experience, and in discussions with our counterparts in other states, we find that fraudulent telemarketing operators build the cost of defending civil suits into their profit structures, and are not the least bit deterred by the threat of civil litigation by state attorneys general. Misdemeanor penalties would not be adequate because they do not permit extradition, and fraudulent telemarketing operators virtually always work across state lines. Elevating the penalty to the felony level is, therefore, necessary in order to provide a credible deterrent to those who are otherwise disposed to violate the law. Considering the degree of theft we have observed in this area, and the vulnerability of many of the victims, felony treatment is appropriate to the offense.

Exemptions: This bill is noteworthy for the types of transactions not covered. The bill provides a total of 16 exempt categories. These categories exempt sales operations which we have not perceived as presenting a fraud problem. Most legitimate enterprises are exempt by the express language of the bill, but those legitimate sellers that are not exempt will have no difficulty complying with the requirements of the bill.

Section II: Regulation of Charitable Solicitations

Purpose: Alaska is one of the few states without some form of charitable solicitation regulation. Investigators for the Fair Business Practices Section have uncovered numerous recent examples of scam artists collecting money from the public by posing as charitable organizations. We believe this problem to be doubly pernicious because these scam artists divert the limited amount of money available for charitable giving from legitimate charities to their own pockets; and they poison the atmosphere for charitable giving by making members of the public cynical about donating money to charity. We believe that this bill will adequately address those problems.

Operation of the Section: Section II of the bill requires all non-exempt organizations to file a registration document with the Attorney General. In the case of a paid solicitor (an organization under contract with a charitable organization to raise money) a bond must also be filed. Organizations are required to re-register each year in September.

Honorable Ron Larson

January 29, 1993

Page 4

The registration statement will be on a form provided by the Attorney general, in accordance with regulations to be adopted under the bill. There will be no registration fee.

The bill requires that paid solicitors enter into a written contract with the charitable organization on whose behalf the solicitations are made. The contract must clearly spell out the respective obligations of the parties, including the method for calculating the compensation of the paid solicitor. A copy of that contract must be filed with the Attorney General.

Disclosures: Paid solicitors are required by the bill to disclose identifying information to the person solicited so that (s)he will have a clear picture of who it is that is calling, who it is that they represent, and what charitable purpose is served by the organization. Upon request, a paid solicitor is required to provide a financial statement of the charitable organization and the terms of the contract under which the solicitor is paid.

Mail and Broadcast Solicitations: Paid solicitors who raise money by means of mail, radio, or television are required by the bill to send the donor written confirmation of any pledge that is received, including disclosure of the identity of the person making the solicitation, the charitable organization on whose behalf the solicitation is being made, and the purpose for which the funds will be used.

Unlawful Practices: The bill prohibits the use of any deceptive statements in the course of a solicitation. State investigators have discovered that, particularly in the case of telephonic solicitations by phony or "sound alike" charities, deceptive or false information is frequently disseminated.

Records: The bill provides that the registration statements, written contracts, and other documents filed with the Attorney General are public records. Charitable organizations are also required to maintain their records for a period of three years in a form that permits them to be audited.

Enforcement and Penalties: Violations of this law can be enforced privately by either the charitable organization which sustains damages as a result of another organization or solicitor's violation of the section, or by a person who makes a charitable contribution to a solicitor who violates the law. It can also be enforced by the Attorney General. The bill provides a powerful private remedy in that it permits the court to: issue an injunction against further violations; award damages for the violation; and require the violator to pay 100% of the attorney's fees and costs incurred by the aggrieved party. In the case of a

Honorable Ron Larson

January 29, 1993
Page 5

willful violation, treble damages can be awarded under the Consumer Protection Act. The bill also provides a criminal misdemeanor penalty for nonexempt persons or organizations who fail to file the necessary registration papers.

Exemptions: The following are exempt from registration under this bill: church or religious organizations; political candidates; organizations that do not raise more than \$5,000 in contributions in a given year; and charitable gaming operators licensed under AS 05.15.100. The term "paid solicitor" under the bill does not apply to an individual who counsels a person or institution on whether to make a contribution, nor does it include a salaried officer, employee, or volunteer of a charitable organization.

Regulations: The bill gives the Department of Law authority to adopt regulations to implement it.

Section III: Relation to Consumer Protection Law

Violation of either Section I or Section II of this bill would constitute a violation of the Consumer Protection Act, AS 45.50.471(b). Under this section, both the Attorney General and private individuals would have authority to enforce provisions of the law with the mechanisms available under the Consumer Protection Act. These mechanisms include injunctive relief, and treble damages in the case of a "willful" violation.

Section IV: Full Costs and Attorney's Fees

By providing that litigation under Section II of the bill could result in an award of full costs and attorney's fees, the bill conflicts with Civil Rules 79 and 82. Section 4 of the bill resolves the conflict by specifically providing that Rules 79 and 82 be amended to the extent provided in the bill. Section 4 requires, therefore, passage by a two-third vote of the Legislature.

Conclusion

Section I of the bill dealing with telemarketing is largely patterned after existing statutes in Oregon and Florida. The Oregon and Florida laws have reportedly been helpful in deterring telemarketing fraud. In fact, we believe that the current increase in telemarketing fraud in Alaska may be the result, at least in part, of the successful implementation of regulations in other states. Telemarketers who find inhospitable conditions in other states due to effective legislation are probably turning their attention to states like Alaska which do not

Honorable Ron Larson

January 29, 1993
Page 6

have similar legislation. Law enforcement officers in other states who have executed search warrants on telemarketer "boiler rooms" report that they have seen signs on the walls reminding the sales agents not to make solicitation calls in certain states, due to the anticipated level of law enforcement.

We believe that Section I of the bill strikes the appropriate balance between legitimate sales operations and society's need to regulate illegitimate scam operations. We believe that Section I of the bill does so without interfering unduly in legitimate sales operations.

Section II of the bill is largely patterned after the Michigan charitable solicitation statute, with certain provisions borrowed from California and Hawaii. We believe that Section II strikes the appropriate balance between noninterference with legitimate charitable organizations' fund raising efforts and society's need to deal with scam artists who steal money that otherwise might be donated to legitimate charities. We anticipate that legitimate charitable organizations will support this bill.

JF:bev

cc: Attorney General Charlie Cole
Deputy Attorney General Bruce Botelho
Regulations Attorney Deborah Behr
Legislative Liaison Kris Lethin

Bill targets phone scams

Law requires written contracts, cooling-off period

By IAN MADER

The Associated Press
Telephone scam artists would face prison terms under a House bill aimed at combatting what officials say is rampant telephone fraud in Alaska.

There are no statistics available on how much money Alaskans lose to telephone fraud, but Assistant Attorney General Jim Forbes said it may be costing millions of dollars a year.

Typically, scam victims are told they have won a prize that they can claim after making an expensive credit-card purchase, Forbes said. Either the prize never shows up or

it is worth much less than expected. No Alaska criminal laws deal with such activity, and civil lawsuits are difficult to pursue because the companies usually operate from the Lower 48 states. Scam outfits periodically change their names and move their operations to avoid lawsuits and prosecution, Forbes said.

House Bill 113, introduced by Rep. Ron Larson, D-Palmer, would require companies that solicit by mail and telephone in Alaska to file with the attorney general detailed information on their location and history.

Please see Page D-6, PHONE

Anchorage Daily News Thursday, February 11, 1993

PHONE SCAMS: State says it's multimillion-dollar problem

Continued from Page D-1

The bill would prohibit companies from taking any customer's money without a written contract. That would give customers a "cooling off" period after the high-pressure telephone pitches, Forbes said.

Criminal charges are needed because scam artists consider defending against civil lawsuits a routine part of their expenses, Forbes

said. The bill would allow suspects to be extradited from other states.

Forbes said tougher laws in other states are forcing more scam artists to focus on Alaska. One 89-year-old woman in the Matanuska-Susitna area gave more than \$35,000 in recent months to various fraudulent outfits from the West Coast, Forbes said.

Rick Gilmore of the Better Business Bureau of Alas-

ka said his office gets about 1,200 calls a month from residents complaining about such scams.

This is the biggest problem we have in the state of Alaska, because of our geographic location, Gilmore said. "So many people order things through catalogs and telephones, that we're very susceptible to telephone and mail solicitations,"

The bill also requires com-

panies that collect money for charities to file information with the state and prohibits them from misrepresenting their cause.

"It should cut down an awful lot of the unscrupulous actions that people have complained about," Rep. Bill Hudson, R-Juneau, said Tuesday.

"Anti-crime bills are expected to receive favorable consideration this year by the Republican-led majorities in the Legislature.

HB

114

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 10, 1993

FURTHER REFERRALS:

2/19

Date of Committee Action: 2/18/93

Rules

The LABOR AND COMMERCE Committee considered:

HE 114

HOUSE BILL NO. 114

DRUG DISPENSING: ADV. NURSE PRACTITIONERS

"An Act allowing the Board of Nursing to authorize an advanced nurse practitioner to dispense medical, therapeutic, and corrective measures."

- RECOMMENDATIONS: [] the same title
 be replaced with _____ [] a new title
- [] have attached amendments(s) *
- [X] do pass
- [] do not pass
- [] no recommendations
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

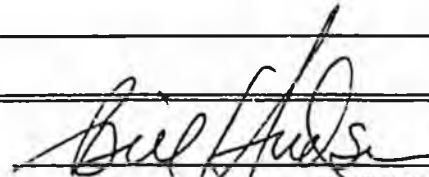
[] fiscal impact _____

[] fiscal note(s) _____

[] zero fiscal note _____

[X] zero fiscal note(s) Commerce + ED 2/10/93

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Brian D. Porter</i> <small>Porter</small>	✓				
<i>Joe Sittton</i> <small>Sittton</small>	✓				
<i>W. S. Williams</i> <small>Williams</small>	✓				
<i>Joseph Green</i> <small>Green</small>	✓				
<i>Bill Hudson</i> <small>Hudson</small>	✓				


 _____ Hudson
 CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

2/10

(9)

Date Referred: February 1, 1993

FURTHER REFERRALS:

Labor & Commerce

Date of Committee Action: 2-8-93

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 114

HOUSE BILL NO. 114

DRUG DISPENSING: ADV. NURSE PRACTITIONERS

"An Act allowing the Board of Nursing to authorize an advanced nurse practitioner to dispense medical, therapeutic, and corrective measures."

RECOMMENDATIONS: [] the same title
 be replaced with _____ [] a new title

[] have attached amendments(s)

do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

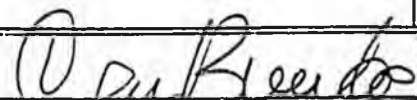
[] fiscal impact _____

[] fiscal note(s) _____

zero fiscal note _____ Commerce & Ec. Dev.

[] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
_____ Kott	X				
_____ Vezey	X				
_____ G. Davis	X				
_____ Bunde	X				
_____ Foynay	X				
_____ Olberg	✓				
_____ Michalia	X				
_____ B. Davis	X				
_____ Brice	X				


 CO-CHAIRMAN'S SIGNATURE



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE CYNTHIA D. TOOHEY

State Capitol
Juneau, AK 99801-1182

DISTRICT 13

SPONSOR STATEMENT

HOUSE BILL 114

"An Act allowing the Board of Nursing to authorize an advanced nurse practitioner to dispense medical, therapeutic, and corrective measures"

House Bill 114 would clarify in statute an advanced nurse practitioner's authority to dispense medication within the scope of practice.

Dispensing has been a common practice with ANP's for many years. Advanced nurse practitioners dispense medications for a variety of reasons. In some cases there is no access to a pharmacy and in other situations, the client may not have the resources to pay for the medications and the service of dispensing the medications better serves the immediate medical needs of that client.

In 1992 an advanced nurse practitioner requested clarification of her authority to dispense medication. The Department of Law advised that a statutory change would be necessary to clarify that authority.

Last year, a survey was distributed to ANP's across the State to ascertain the importance of having authority to dispense medications. The Board of Nursing and the Board of Pharmacy then worked together on the issue. The conclusion was the statutory change was essential.

House Bill 114 gives APN's the authority to dispense. The bill has a zero fiscal note.

The Board of Pharmacy supports this legislation.

Your support of this bill would be appreciated.

SPONSOR STATEMENT

POSITION PAPER
HOUSE BILL 114

"An Act allowing the Board of Nursing to authorize an advanced nurse practitioner to dispense medical, therapeutic, and corrective measures."

House Bill No. 114 amends AS 08.68.410(1) by adding a provision to the definition of advanced nurse practitioner that will give these health care providers dispensing privileges.

The Division of Public Health currently employs or contracts for the services of ten advanced nurse practitioners throughout the state to provide family planning services. These services are made available through clinics that provide family planning and disease prevention education, prescribe family planning methods, and treat sexually transmitted diseases. These clinics serve persons who would not otherwise have access to these services. If these practitioners were to be denied the ability to dispense treatments, the result would be a serious impact to this underserved population in their ability to prevent unwanted pregnancies, reduce the complications of untreated sexually transmitted diseases, and stem the spread of these diseases.

The Division also provides grants to 14 rural health clinics throughout the state. These grants subsidize the operation of community clinics that provide primary medical care through the services of a mid-level practitioner (i.e. advanced nurse practitioner or physician's assistant). Eligible clinics are located in communities that are generally too small to support the services of a physician, and whose populations would not otherwise have local access to medical care. The communities receiving these grants, places such as King Cove, Galena, and Pelican, are isolated and often experience difficulties in travel and shipment of goods due to poor weather conditions. If advanced nurse practitioners are not able to dispense medications, the residents of these communities would experience a significant negative impact on their health.

HB 114 does not expand the nurse practitioner's privilege of prescribing medication, but allows them to dispense what they are currently prescribing. Nurse practitioners are required by regulation to have 15 hours of continuing education in pharmacology in order to renew their licenses. This ensures the necessary competency to allow for the action of dispensing medications. To date, the Division of Public Health has had no report of abuse or misuse of prescriptive authority or problems with medications, birth control methods, or treatments of sexually transmitted diseases by advanced nurse practitioner employees. In general, these practitioners have rigorous licensure requirements, and high professional standards.

The Department of Health & Social Services strongly supports the passage of House Bill 114.

PP-93-03

POSITION PAPER - HCC

Peter Nakamura

Peter M. Nakamura, MD, MPH
Director

2/5/93
Date

Theodore A. Mala, Deputy Com

Theodore A. Mala, MD, MPH
Commissioner

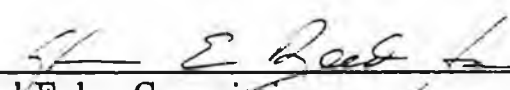
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HB 114: "An Act allowing the Board of Nursing to authorize an advanced nurse practitioner to dispense medical, therapeutic, and corrective measures."

This bill is necessary to provide legal authority for advanced nurse practitioners to dispense the medications which they prescribe.

Advanced Nurse Practitioners' (ANPs) dispensing has been occurring statewide since ANPs began practicing in Alaska under regulations established in 1980 by the Board of Nursing. A July 1992 Attorney General opinion stated there is no legal authority which allows ANP dispensing. A survey of ANPs conducted by the Board of Nursing in November 1992 with a 71% response rate, revealed that 55% of ANPs working in Alaska dispense in their practice. The survey further disclosed that 25% of the ANPs were in communities without pharmacies, and 22% were in communities without physicians.

The Boards of Nursing and Pharmacy have collaborated on the statute and regulation changes necessary to grant dispensing authority within the ANP scope of practice, and endorse the statute change. Therefore, the department supports HB 114.



Paul Fuhs, Commissioner
Department of Commerce and Economic
Development

2-5-93

Date

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(6) the practice of nursing by a nurse licensed in another state whose employment responsibilities include transporting patients into, out of, or through this state; however, this exception is valid for a period not to exceed 48 hours for each transport.

(b) In this section the word "nurses" includes registered and practical nurses, and "nursing" means registered and practical nursing. (art IX ch 90 SLA 1957; am § 10 ch 129 SLA 1974; am § 24 ch 14 SLA 1982; am § 14 ch. 65 SLA 1987)

Effect of amendments. — The 1987 amendment added subsection (a)(6) and made related stylistic changes.

Sec. 08.68.410. Definitions. In this chapter,

(1) "advanced nurse practitioner" means a registered nurse authorized to practice in the state who, because of specialized education and experience, is certified to perform acts of medical diagnosis and the prescription of medical, therapeutic, or corrective measures under regulations adopted by the board;

(2) "board" means the Board of Nursing;

(3) "incompetent" means that a nurse does not possess the skills, knowledge, and awareness of the nurse's limitations and abilities to safely practice nursing;

(4) "licensed practical nurse" is equivalent to the title "licensed vocational nurse" and to the name suffix abbreviations L.P.N. and L.V.N.;

(5) "licensed registered nurse" is equivalent to the common title "registered nurse" and the name suffix abbreviation R.N.;

(6) "nurse anesthetist" means a registered nurse authorized to practice in the state who, because of specialized education and experience, is certified to select and administer anesthetic and give anesthetic care under regulations adopted by the board;

(7) "practice of practical nursing" means the performance for compensation or personal profit of nursing functions that do not require the substantial specialized skill, judgment, and knowledge of a registered nurse;

(8) "practice of registered nursing" means the performance for compensation or personal profit of acts of professional service that require substantial specialized knowledge, judgment, and skill based on the principles of biological, physiological, behavioral, and sociological sciences in assessing and responding to the health needs of individuals, families, or communities through services that include

- (A) assessment of problems, counseling, and teaching
- (i) clients to maintain health or prevent illness; and
- (ii) in the care of the ill, injured, or infirm;

(B) administration, supervision, delegation, and evaluation of nursing practice;

(C) teaching others the skills of nursing;

(D) execution of a medical regimen as prescribed by a person authorized by the state to practice medicine;

(E) performance of other acts that require education and training that are recognized by the nursing profession as properly performed by registered nurses;

(F) performance of acts of medical diagnosis and the prescription of medical therapeutic or corrective measures under regulations adopted by the board. (§ 2 ch 90 SLA 1957; am § 5 ch 37 SLA 1970; am § 3 ch 67 SLA 1973; am §§ 11, 12 ch 129 SLA 1974; am § 25 ch 14 SLA 1982)

Chapter 70. Nursing Home Administrators.

Section	Section
10. Board of Nursing Home Administrators	120. Examination
20. Board membership	130. Provisional licenses
30. Election of officers	140. Expired licenses
40. Board meetings; quorum	150. Fees
50. Duties and powers of the board	155. Grounds for imposition of disciplinary sanctions
60. Removal of board members	170. Penalties
80. License required	175. Facilities operated by religious organizations
90. Application	180. Definitions
110. Licensing	

Collateral references. — Licensing and regulation of nursing or rest homes. 97 ALJ2d 1187; 63 ALR4th 689.

Sec. 08.70.010. Board of Nursing Home Administrators. There is established the Board of Nursing Home Administrators. (§ 1 ch 123 SLA 1975)

Sec. 08.70.020. Board membership. (a) The board consists of three members: one nursing home administrator licensed under this chapter and practicing in the state, a registered nurse licensed in the state and having no direct financial interest in any nursing home, and one person from the general public.

(b) [Repealed, § 49 ch 94 SLA 1987.]

(c) [Repealed, § 49 ch 94 SLA 1987.] (§ 1 ch 123 SLA 1975; am § 1 ch 77 SLA 1977; am §§ 3, 4 ch 141 SLA 1980; am § 2 ch 99 SLA 1986; am § 49 ch 94 SLA 1987)

Cross references. — For appointment and term of office, see AS 08.01.035. Effect of amendments. — The 1987 amendment repealed subsections (b) and (c), concerning appointment by the governor and term of office respectively.

AS 08.68.410 DEFINITION ADV. NURSE PRACT.

AS 08.68.410 DEFINITION ADV. NURSE PRACT.

A SURVEY WAS SENT TO ADVANCED NURSE PRACTITIONERS
IN 1972 REGARDING THE "DISPENSING" ISSUE
126 PEOPLE RESPONDED (71%) AND SURVEY COMMENTS (REGARDING "DISPENSING"
AUTHORITY)

- 001 Our clientele frequently do not have transportation to a pharmacy and occasionally do not have money to purchase medicines (we are able to bill for payment at a later date). Since beginning dispensation of medication from the clinic we enjoy much better compliance than previously. Medications are prepackaged and re-labeled, and are only dispensed by licensed providers.
- 002 It would devastate the practice as we could not provide health care services. The practice is 50% Native (ANMC) and 50% non-native. Native meds are supplied through ANMC. We could not provide services to the other half if we could not maintain some basic pharmaceuticals.
- 003 I work in a bush community, with the closest pharmacy 800 miles away. The ability to dispense prescription medication is a crucial aspect to providing health care to folks who are living in such a geographically isolating village.
- 004 Medications would have to be ordered by telephone and delivered by air. Air service is dependent upon weather conditions, therefore arrival time of the medications could be delayed by weather.
- I feel that essentially it would not be possible to practice in this location without dispensing medications. The community is too small to support a pharmacy separate from the clinic. The clients could not be treated in a timely manner and would be subjected to additional air speed pak costs.
- 005 Our clients are teens who pay for thier birth control pills; pharmacies charge twice the price our clinic charges and would put make it too expensive for teenagers. SEAR has the highest teen pregnancy rate in the world; interruption of contraceptives for this group would be catastrophic.
- 006 Blank
- 007 It would mean additional cost to the patients as well as added inconvenience to have the patient leave the building to buy medications. Additionally, it would often delay initiation of treatment.
- 008 Delayed processing clients through a busy clinic. Fewer patients could be accommodated.

- 009 It would make practice in Tok almost impossible. The nearest pharmacy is at least 100 miles away. Many of our patients have traveled great distance already just to get to us. It would not be practical for them to get to a pharmacy. In many cases, it would not be possible.
- 010 No pharmacy in this very small community. During the summer, mostly acute care problems present to the small clinic. The clients would be negatively affected if I could not dispense meds--the next largest town across river does not have a pharmacy. I have not had any problems dispensing med. I work summers in a fishing community. I am employed by a larger clinic which is located across the river which supplies my meds.
- 011 I run a psychiatric aftercare medication group which the psychiatrists do not wish to do. These patients would not comply well with individual out-patient appointments for meds.
- 012 No impact. I don't do any dispensing except free samples.
- 013 It would be a great inconvenience to the office and patients alike.
- 014 We have a few kinds of meds which we most often use. We bought them from local pharmacy. We have many patients who have -0- insurance, medicaid or money. These are the people we dispense meds to. If we could not do this, there would be many very psychotic people and very depressed people in the community without Rx. API admissions would _____ suicides would _____
- 015 Could not dispense samples only. Sometimes this means client will not begin treatment until they can afford medicine or until medicaid coupons come in, delayed treatment.
- 016 We do like to give out sample oral contraceptives to teens and women that can not afford to pay for them. Same goes for other samples,--ie: antibiotics. It's good to gauge patient response to medications, ie: anti-hypertensives.
- 017 Most significant, could not begin patients on Rx needed immediately. Also, would not have Rx for charity cases.

- 018 Our STD clinic and family planning clinic meds are supplied by the state (Fairbanks Health Center). We serve low-income clients that's why they come to our clinic. The meds for STD clinic, those meds need to be supplied by us as it's in the public's best interest to provide meds for GC, Syphilis, Chlamydia.
- 019 We are a 638 contract clinic in IHS system and also student health service for state vocational school. Funds for services and supplies are extremely limited. IHS beneficiaries receive all services at one site and thus cost to system and convenience to clients. Non-beneficiary students have limited resources. Many would not be able to fill prescriptions if they had to pay retail. If no medicines dispensed at clinic, the limited funds available for pharmacy needs in the community would be stretched beyond already inadequate limits. Currently, providers write for prescriptions not stocked at the clinic, (patient fill these scripts at local pharmacy, at greater cost, retail and dispensing fee, and much inconvenience, (transportation is an issue for many of our clients). These limited funds provided to local pharmacist ALREADY are inadequate even for our "overflow" needs. It would be a tremendous hardship to our practice and to our clients if we did not continue the present economical, safe and convenient system; from which we make no profit.
- 020 If I could not dispense meds it would be impossible for me to effectively practice. Mail system can take up to 7-10 days to our bush community.
- 021 I do not dispense drugs without orders from MD
- 022 Our clientele are either medicaid, (to whom no samples are dispensed) or private pay WITHOUT insurance. Many of our patients can not even afford transportation. If we have samples and can afford the cost of a prescription we try to. This may make newer, more effective drugs available to a poorer population. Most often we give the patient's Rx's to any pharmacy in the area except Lake Otis Pharmacy, which does not SEEM to want ANP business.
- 023 We give out samples free to indigent clientele. We sell pre-packaged medications as a convenience to clientele. For years there was no close pharmacy but in the past year one has opening in our building.

- 024 Clients probably would not get medications for their problems due to cost and inconvenience. Birth control pills could not be afforded by most of the clients and that has far reaching implications.
- 025 I am employed in a satellite clinic of Governor/Government hospital in NYC. Our clinic serves 170 female shelter residents. Our clients often do not have any money, or medicaid or health insurance. Health care services and treatment are provided to shelter residents free of charge.
- 026 Blank
- 027 It would take up to one week to obtain medication. The only drugs I dispense are birth control pills and "iron". I think compliance and accessibility are important. (I only give out the first packet of pills. They get the rest from a pharmacy.)
- 028 No other source of meds.
- 029 We prescribe some very expensive medications, such as Prozac in our mental health clinic. Many of our clients have no resources. We count on having some physician's samples to defray their expenses. Other clients, on Medicaid already, sometimes need a few days supply from our "stock". If it were not available, some of them would end up back in API, a very expensive result.
- 030 Clients would have to mail order drugs or wait a long time for the PHS pharmacist to fill. The impact would be greatest on the local. It's pharmacists there are only two. Pharmacists that fill for 6 physicians, 6 villages, 2 ANP's, we relieve their dispensing burden though they are packaging for us as well as CNA's!
- 031 Clients in crisis would have to wait for days at times and weeks at others. More clients would be in crisis. PA's can dispense medications. My clients would certainly have less faith in a nurse and probably less respect if I had to refer them to a PA, (or physician).

- 032 I work in a state program, (Family Planning) which depends on ability to dispense birth control pills and other supplies.
- 033 We, NP's, dispense only pre-labeled, women's health related medications out of a box when pharmacy is closed at our evening women's health clinic. It would be inconvenient for women to wait the next day to pick up Rx, many are leaving town on early flights.
- 034 Would not impact currently.
- 035 It would be pointless to have a sub-regional health clinic and an isolated area far away and inaccessible except by air.
- 036 -0- Impact.
- 037 None
- 038 It would not be impacted to any degree. I only sample occasionally, to start a patient on a new drug - usually O.C.'s
- 039 Not a problem. Two pharmacies and hospital in community. I do need my prescriptive privileges though to practice as CNM both outpatient and in hospital. Thanks for your work in representing us.
- 040 Health Aides, (whom I train and supervise) would just dispense them for me!
- 041 Blank
- 042 We have a pharmacist in our practice- he dispenses and prepares all medications given out. There is no charge for the medication. I work in a Native corporation clinic. If our clients were charged, they could not afford thier medications.
- 043 In the villages the clients meds are dispensed by whatever health care provider is in their village. If this was not possible they wouldn't get medicines. At the hospital the pharmacy dispenses them.
- 044 Little impact however have speculated whether to offer iron tablets.
- 045 I could not use the samples from drug reps. That helps my patients with cost.

- 046 The appropriate care for clients would come to a halt. These clients would not have access to care and dispensing of medicines. There are not enough doctors to go around.
- 047 It would be devastating! Hoonah has -0- pharmacy, (White Stone Logging camp, Mt. Bear Community, Hoonah), 40 miles west of Juneau by plane/boat, costs prohibitive for many. UAJ-college community - 2500/low incomes, many without cars.
- 048 It would make it impossible at the time to function without dispensing medication since there is no other access for 150 miles. IHS, Central Warehouse is trying to pre-package everything they can. Having to send prescriptions in would cause anywhere from 3-10 day delay depending on weather and mail.
- 049 No impact at present. However, I feel that dispensing samples can be useful at times and should not be restricted for those practices that require it.
- 050 I would be unable to function without prescriptive authority.
- 051 In college health the students health care access and access to medications is important to insuring that they receive treatment.
- 052 Difficult for client who do not funds or insurance coverage.
- 053 Most of folks we see are struggling with minimal incomes or are on public assistance. If we didn't treat STD's or provide birth control pills through the clinic the STD's would probably not get treated and having to pay \$20/pr or OCP's would be a further hardship and might be impossible for some.
- 054 As an FNP doing locum temens, mostly in the bush but also in large communities, I basically would be out of a job. I seek clinics with village attitudes or work mostly in the bush and without being able to dispense from small pharmacies I would lose the job sites I enjoy the most. I do not care for private practice clinics. Dispensing mostly antibiotics and T 3 for pain my clients could not be served by me. All villages would only be open to PA's - (like the slope currently is not, closed to FNP's but for different reasons) If I could not dispense I believe I would leave the practice. We are safe, and being an RN for seven years, prior to FNP, I make very rare drug errors as opposed to others who were not taught to read, check, then read again before giving any med, be it PO, IM, or IV.

- 055 Clients could not buy meds, come to us because they can't afford private care.
- 056 Blank
- 057 We have to.
- 058 Since I work for the federal government, it is my impression that there would be no impact, as the federal government seems to make it's own regulations. The only time I dispense medications is when working with a community health aide. It is part of their job to dispense medications.
- 059 INCOMPLETE
- 060 I would expect an increase in non-compliance of use of antibiotics, birth control pills and anti-inflammatories _____ as well as hormone therapy for abnormal bleeding.
- 061 There would be lack of medical care for village women, no teen wellness clinic for teens and my labor/delivery practice would be restricted in offering pain and anti-hemorrhage meds.
- 062 I COULD NOT WORK!! I work in an emergency room during daytime hours, pharmacy is open until 5pm. Medicine dispersed from a night cabinet. My clients receive all their medication from the hospital. Giving them a script for next day filling is extremely INAPPROPRIATE in our ER setting.
- 063 My practice itself not impacted. But the system I work in would be. As health care in rural areas by Indian Health Service often depends on nurse-practitioners management - and isolated locations necessitate dispensing of medication.
- 064 High risk OB/GYN patients would be seriously jeopardized. Women ages 14 and up with limited financial and/or social resources would be penalized.
- 065 My current practice of 2 years, 3 months, is in Fairbanks in a physician's office. Other than dispensing samples to those that need it, I do not handle "pharmacy" however-; the previous 16 years I worked in a rural area where the dispensing of medications was absolutely VITAL!
- PLEASE SEE ENCLOSED COMMENTS TO USE FOR TESTIMONY IN THIS DEBATE
- 066 It would not change

- 067 There is no pharmacy in the village, approximately 2 days to fill an Rx. Filled at the hospital arrives in the village to be dispensed. Obviously, this could be potentially dangerous to a sick or injured client. In the best case, it is inconvenient and time consuming to call the pharmacy for all Rx. It would also add expense to care, but benefit Alascom.
- 068 Treatment would be delayed considerably. Particularly in bad weather when planes carrying mail often can't land for 3-4 days at a time. This would create horrible risk with children.
- 069 It would significantly increase the cost of treatment for a large percentage of patients and decrease the ability of "sampling" a patient on a medication or dosage change easily.
- 070 We give out OCP, antibiotics, hormones to try and return for check-up and Rx. More pregnancies.
- 071 Clients I see would not get prescription filled elsewhere, financial constraints or difficulty with compliance, F/U.
- 072 Well Women's Clinic at night, (when pharmacy is closed) would not be able to dispense packaged and labeled contraception and anti-infectives. Well Child Clinic dispenses tylenol, anti-infectives to waiting time.
- 073 They wouldn't get any medications!
- 074 There would be a large increase in morbidity and mortality as the delay in getting drugs from a registered pharmacy is a week or more on the best of occasions.
- 075 I do not dispense meds, however, I would like to have contact with drug company representatives who provide samples, patient education literature and the like. This would be very helpful in getting the patient started on a new medication to have a sample, with instructions. I believe, the patient builds confidence when a sample is given and the medication is jointly discussed in the office. I had planned to eventually look into this. I have been too busy to follow through.

- 076 In this practice it would currently limit dispensing of samples given to patients who may not have access to funds for meds not in our pharmacy/formulary but available in the community at large. It would put an increased burden on our institutional pharmacy as we dispense all prenatal vitamins. It has the potential for affecting Norplant or other device placement. Of great concern to those in this facility with whom I work is who travels to outlying villages, it would seriously impact their ability to function in their positions.
- 077 Medicines would not be dispensed. Villagers can not afford to travel to pharmacy (\$250- per trip). Medicines could be delivered by postal services, which is (of course) not timely.
- 078 Blank
- 079 Blank
- 080 Students may not have prescriptions filled, so patient compliance is important. Also students may not have adequate funds for Rx outside the Health Center. Pharmacy importance is COMPLIANCE.
- 081 No impact
- 082 N/A
- 083 Impossible to imagine. We take village trips to have clinics in rural Alaska, plane accessible only. We must be able to give meds out during our clinics!
- 084 The only time I "dispense" meds is evening clinic when RX is closed or I'm in the village for a week on-site-visit. Not having meds to dispense would delay patient treatment by 24 hours or one week.
- 085 There is no other pharmacy except the clinic. Prescriptions would have to be mailed into the regional hospital, filled and mailed back to patient. It would be unreasonable, expensive and poor medical practice. Patients could wait up to 2 weeks if the weather is bad, which it frequently is. People can die from simple infections if meds aren't available. Also they couldn't get pain meds. The pharmacy board is not grounded in reality. They need to go to some villages, get sick and not have medication available.

- 086 Pre-packaged drugs are given only to patients -0- financial resources to pay for medications, such as teens, single working parents and under-insured or uninsured.
- Dispensing needs to be available for practitioners in rural areas, including controlled substances. I would like to see a voucher from drug companies that the client could take to the pharmacy for the prescribed medicine.
- 087 Have no comments, work part-time, 1-2 months a year.
- 088 If this practice is halted, I'll have to think of another alternative. Dispensing medications is a pain in the neck, but I do it for clients who have no money or very few resources. Most of the medications I dispense are samples from the drug company representatives, for which I do not charge. I have paid for prescriptions myself, from my office funds, so that clients can get needed medications.
- PS: Was a similar survey distributed Physician Practitioners?
- 089 Since so many of our clients are in financial straits and often transportation problems that the samples we can start them with are incredibly helpful, especially if we are just trying something out.
- 090 If you mean physically dispense meds to the patient from my office, neither I nor the patients would be affected in any fashion.
- 091 Would not impact me.
- 092 No impact.
- 093 I will try sample BCP's or other meds to see if a patient tolerates a new drug or a drug switch. If it works I then prescribe WHTI/121 Y a pharmacy for dispensing.
- 094 I don't dispense medications.
- 095 Only dispense prenatal vitamins, iron and calcium pre-packaged by our in-house pharmacy at ANMC.
- 096 No impact.

- 097 Since we provide health care to outlying villages without drug stores, the patients would have very limited or no access to most prescription medications. It would also destroy the Alaska Community Health Aide system.
- 098 If I could not dispense meds through our ANMC pharmacy, I would be severely limited in the services I could provide. In fact I could not see 90% of the women I see without utilizing a pharmacy service.
- 099 Our clients are low income women with the majority having no insurance. The impact would be having to close the clinic. Therefore, inexpensive birth control for low income women would not be available.
- 100 No impact.
- 101 Disaster. Without the prescriptive privileges, the patients could be assessed and a plan established, but no access to medications would be defeating the purpose of primary care from med levels. Thank you for requesting our feedback!
- 102 I would have to wait for an OK from the MD. By that time it could present a problem. Patients wants relief from pain and discomfort.
- 103 I only dispense and charge for 2 drugs. Metundaole_____ * and that only if the patient can not afford to get a prescription. This happened two times in the last year. In patients without _____. The other drug Ovral is no longer sampled by the drug company and I use it for the morning after pill, (4 pills) at \$30- for one package, as patient would be paying \$30- and the office visit and have 17 pills left over with no use for them. I do dispense samples especially birth control pills fairly freely. Some Premarin samples, some antibiotics, and yeast medicine. We give patients with bladder infections 4 Pyridium and do not charge because I buy a bottle of #100 for \$2.50.
- 104 Individuals with acute and/or emergency health problems may have clinically significant delays in initiating pharmacological therapies. Receipt of medical/pharmacy supplies is closely tied to weather conditions, with delays of 2-14 days possible.
- 105 None would affect me if could not distribute pre-packaged samples. I use these to try to save people money.

- 106 Blank
- 107 No impact.
- 108 My practice would be severely impacted both in the village and Seward if we could not dispense meds. We get the majority of our meds pre-packaged from IHS and dispense them to the patients. If we could not do this the majority of the patients would be unable to pay for their meds as contract care funds are usually depleted by the second week of the month. Also it would be a great inconvenience for village patients. Some of them would have to pay \$500- just to go in and get meds from a pharmacy.
- 109 I don't.
- 110 Unable to give 3 month birth control pills to starter patients. Unable to give pre-natal vitamins to start OB patients.
- 111 We dispense medications to clients who have no money or insurance to cover the cost. Most of the medications we supply to clients are from samples. We do keep commonly prescribed meds in stock to vie to clients. These meds are ones for which we have no samples available to use. It is more cost effective for us to purchase the meds in stock than to pay for the clients prescription at the pharmacy which is what we previously did. We cannot financially afford to pay for clients prescriptions any longer and if we were not able to dispense samples or stock medications to clients they would not be able to obtain their needed medications and would probably be eventually hospitalized at State expense. When we dispense samples or stock medications we follow the laws for labeling and inventory exactly as stated in the regulations. The medications we dispense are in small proportion to those that we prescribe but are absolutely essential for clients without money or insurance and who do not qualify for medicaid.
- In addition, we practice in a clinic with physicians. It would be a significant impairment to our practice and our value to the clinic if we were unable to dispense the medications that we, as Nurse Practitioners, prescribe and the physician had to come behind us and do so.

- 112 I would be unable to practice, as there are no pharmacies for 400 air miles.
- 113 1) 100-150 patients with NSU/MPC/Chlamydia seen last month and 50% claim inability to pay and no third party.
- 2) A local pharmacy quoted a price of \$4.80 per #14 dose of dory 100 mg, not including med and container to pre-packaged for us. Absolutely greedy!! Our clinic budget would suffer or patients would delay treatment.
- 114 Not at all, or very little. Sampling is for education and patient convenience/compliance only.
- 115 While I draw up and administer medications to hospitals and medivac patients, they are under standing orders from an MD. My RN license covers this type of medication administration therefore a change in Nurse Practitioner dispensing would not affect my patients.
- 116 Not a problem.
- 117 -0-
- 118 Even though the RN's at this hospital dispense meds after hours, it would require the pharmacy to extend it's hours and dispense the meds. All the nurses and nurse practitioners would be happy and pleased not to do it. We already have enough work to do.
- 119 I often start clients out on OCP's with 1-2 sample packs. If someone doesn't have insurance, will try to give antibiotic samples, if have.
- 120 It would save me time; be a major drag on my physician; cause a large percent of students to not get their meds at all, (nearest pharmacy is 1.5 miles away), cost money to our student who are currently "carried" (assuming they actually filled their Rx). Most likely it would force us to use a large percent of physician time grabbing meds rather than seeing students.
- 121 I work at the Family Planning Clinic in Kenai. Most of my patients are low-income. They either pay on a sliding fee or receive free services. It would be a great hardship to have to pay the prices at the pharmacy for birth control pills. These are usually given free, this through the state of Alaska.

- 122 Private pay clients would suffer added cost of meds. Also start up doses for patients would be decreased.
- 123 I work in pediatrics when kids are sick the whole family is usually exhausted and many times the kids are crying. If the family doesn't have to stand in line, much less get out of the care and into the store, they are very much appreciative. Plus we can give the first dose of meds in the office.
- I was with five physicians and only one physician offers this service. His patients seem to appreciate it very much and when I see his patients they usually request that service for the most part I do not offer it just because it takes more time!
- 124 Our patients are all rural. Half come from 10 to 40 miles north on Parks Highway or up in Hatcher Pass. Transportation costs are a barrier to their use of health care. If I could not provide medication patients would have to go to Wasilla. For most this would not only inconvenient but many would simply not use our services. I believe stopping the dispensing of meds would make it impossible to keep our little rural practice going.
- 125 Through ANS, there are limited funds available on contract three local pharmacy - when they're gone, (usually by the first week of the month) nothing else is available, drugs are supplied to us by Anchorage Chugachmuit. Planned Parenthood, primarily BCP's and GYN/Women's health care meds, (antibiotics, anti-fungal creams, etc)
- If these weren't available, patients would probably go un-treated or be pregnant!
- 126 N/A.

FAX-MAIL	TO: Jack Heesch	FROM: M Poore	DATE: 2/4/93
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NO. PAGES INCLUDING THIS PAGE 1
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P.O. Box 9396
Ketchikan, AK 99901

Cynthia Toohey
House HESS
State Capital Building
Juneau, AK 99801-1162

February 4, 1993

RE: HB 114 adding "dispense" to the statute regarding Advanced Nurse Practitioner practice.

I am an Advanced Nurse Practitioner (ANP) working with a majority of individuals who may be homeless or without access to insurance or medical services. Some are pregnant and have not yet established prenatal care. I see people both in Ketchikan and on Prince of Wales (POW) island. The individuals from POW are limited to expensive air travel or sporadic ferry service to obtain health care. Dispensing medications is crucial for prompt attention to health problems and decreases the delays and frustration of trying to get into town for treatment.

Please support HB 114.

Sincerely,



Marta Poore, Certified Nurse-Midwife
Advanced Nurse Practitioner

cc: Jack Heesch

10640 Misty Lane
Juneau, Alaska 99801
February 5, 1993

Representative Cynthia Toohey
Capitol, Room 104
Juneau, AK 99801-1182

RE: House Bill 114

FEB 03 1993

Dear Representative Toohey,

Last year and early this year, a joint subcommittee of the Board of Pharmacy and the Board of Nursing met on several occasions to discuss a statutory change which would give advanced nurse practitioners authority "to dispense medical, therapeutic, and corrective measures under regulations adopted by the board." The joint subcommittee also agreed on regulations, which would be promulgated by the Board of Nursing upon passage of such legislation.

The subcommittee presented its recommendations to the Board of Pharmacy and on January 28, 1993, the Board voted unanimously to support such legislation.

The Board of Pharmacy, therefore, supports House Bill 114.

Sincerely,



Gerald Race, President
Alaska State Board of Pharmacy

Office Phone: 694-4080



2-3-93

Cynthia Toohey
House HESS
State Capitol
Juneau, Alaska
99801-1182

Dear Cynthia Toohey,

This is a letter to support HB114 to add the word dispense to the Nurse Practitioners statute.

I have been in independent practice for 11 years and not being able to dispense would be a hardship to many of my patients.

I trust you will support HB114 so I can continue caring for patients who choose to have a Nurse Practitioner care for them.

Sincerely,

Lila McEwen, F.N.P.
Family Health Center
16839 Park Place
Eagle River, Alaska
99577

LM/js

Post-it brand

Fax Transmittal Memo 7672

To	Jack Heesch	No. of Pages	1	Today's Date	2/5/93	Time	10:15 am
Company	Lobbyist	From	Joan Nugent, NM	Company	Ketchikan Public Health Center	Location	Ketchikan
Location	Juneau	Company	Ketchikan Public Health Center	Location	Ketchikan	Dept. Charge	
Fax #	586-1001	Telephone #		Fax #	247-0978	Telephone #	225-4350
Comments	Original Disposition: <input type="checkbox"/> Destroy <input type="checkbox"/> Return <input type="checkbox"/> Call for pickup						

Attach Document At Line

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
 DIVISION OF PUBLIC HEALTH
 SECTION OF NURSING

KETCHIKAN HEALTH CENTER
 3034 FIFTH AVENUE
 KETCHIKAN, ALASKA 99901-5773
 PHONE: (907) 225-4350

January 5, 1993

Cynthia Tooley
 House HESS
 State Capitol
 Juneau, AK 99801

Dear Ms. Tooley,

I am writing to support passage of HB 114 which clarifies the intent of the nurse practitioner statute regarding dispensing of drugs. Nurse Practitioners are an essential part of the health care delivery system in Alaska, providing care primarily to the rural and indigent population in our State.

By statute Nurse Practitioners are already able to prescribe drugs according to their area of specialty. Dispensing allows the Nurse Practitioner the ability to physically give the bottle of pills to the client. The importance of adding this language to the statute is obvious. Having practitioners available to see patients, diagnose their illness but not give them the necessary medication assures an additional barrier to timely, appropriate care.

The need is greatest in those circumstances wherein the Nurse Practitioners are the primary care givers, that is in rural communities where pharmacists are not available to count and distribute medication as well as in indigent care where clients haven't the financial nor transportation resources to access a pharmacy.

HB 114 does not change the scope of practice for the Nurse Practitioner. It does not add additional rights and responsibilities. It changes the language to assure that practitioners' current practice is safeguarded by statute.

Sincerely,



Joan Nugent
 Nurse Manager

cc. Jack Heesch
 Representative Bill Williams

Phyllis Yetka
P.O. Box 958
Ward Cove, Ak 99928

Feb. 4, 1993

Representative Cynthia Toohey
House HESS
State Capitol
Juneau, AK 99801-1182

Dear Rep. Toohey,

I am writing to voice my support of HB114. I am a pediatric nurse practitioner from Ketchikan, Ak. It is imperative that the word "dispense" be added to the State Statute regarding nurse practitioners and how we are able to best serve our patients. Being able to "dispense" medications to those who are in need of help or unable to get to a pharmacy is not only good medicine but it is economically sound. Nurse practitioners can competently provide the quality, cost-effective health care that our patients deserve. The addition of the word "dispense" to HB114 would aid us in our goal.

Thank You.


Phyllis Yetka R.N., C.P.N.P.

February 4, 1993

Representative Cynthia Jockey
House HESS
State Capitol
Juneau, AK 99801-1182

Dear Ms Jockey,

I am a nurse practitioner in Bethel. I travel to the surrounding villages conducting 3-5 day clinics. I am writing to urge your support of HB114.

As a nurse practitioner I have been able to prescribe medications for clients since 1985. This bill will allow me to dispense those medications to the patients in the field where there are no pharmacies. This would greatly increase the efficiency & cost-effectiveness of our health care delivery system in bush Alaska.

Thank you,
Cathy Foxster, ANP
P.O. Box 805
Bethel, AK 99559

November 5 - 1992

Nancy Schupp
1953 Kingfisher
Fairbanks, Alaska
99709
479-5207H 452 4768W

RECEIVED
NOV 16 1992
Division of Occupational Licensing

Gail Mc Guill, RN
Executive Secretary
Alaska Board of Nursing
3601 C Street, suite 722
Anchorage, Alaska
99503-5986

Dear Gail,

The following is my testimony concerning the need to continue the practice of the dispensing of medicines to clients:

I strongly believe that it is absolutely necessary to certain populations of this state, that nurses continue to dispense medications and are able to with safety and provision of good patient education at that time. I also believe that anyone who dispenses medication needs to label appropriately.

Alaska is proud of its rural areas and all it stands for. Having provided a full range of health care services to the seven communities in the Yukon-Koyokuk River Subregion for 14 years, following 2 years in a remote corner of Washington State, I am acutely aware of the need for people to have access to medications without extended delays. I have worked with the pharmacists associated with that area to provide medications to individuals safely. I've enjoyed the assistance from the pharmacists in Tanana and Fairbanks in setting up automatic refill programs, prepackaging, storage, and reference advice. We have utilized patient education materials and provided instructions at the time of dispensing medication.

The nearest pharmacy, physician, and hospital had been about 200 miles away in Tanana until it closed. Fairbanks is almost 300 miles away with only airplane travel as the common mode of travel and mail. We commonly used prepackaged and labeled bottles but because of the tremendous variety of acute needs that can develop in a diverse community, we also used stock bottles to pour from into smaller bottles, label and distribute as necessary. We also provided this service for semi-emergent situations to send to individuals in the surrounding villages when a delay caused by waiting for delivery from a Fairbanks would have been detrimental to the patient. This was only done when seemed absolutely necessary.

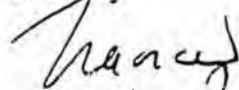
I have seen a variety of time delays in medication reaching a village or subregional community. When it all has worked out and it was obvious that there was an acute need and getting a medication to a patient was much cheaper than the 200+ dollars it can cost

to bring a patient into Fairbanks, we've been able to call the pharmacy, they would fill the prescription in Fairbanks, have a messenger take it to a private air taxi, pay the minimum freight charge, the air taxi in Galena would call the clinic who would need to send a messenger to the air port to pick it up bring it to the clinic and thatn we could pass it on to a patient all in the same day. The above is the best of situations. Smaller village clinics are one more airline step further away. Generally it takes several days to coordinate the deliverance of a medication never mind the expense of phone calls, air frieght or express mail and worker's time. During January of 1989, it was three weeks before a plane was able to fly into the surrounding villages.

A professional nurse, nurse practitioners being some of the most trained, and most committed of them, have been drilled since school how to administer medication safely. The dispensing and labeling is one step further. But nurse practitioners are certainly capable of this step. They are also the best in patient education. I am in full agreement that they need to follow the same laws and guidelines that pharmacists must adhere to during that practice.

I have seen the need for dispensation of drugs by a nurse practitioner thousands of times to prevent prolongation or exacerbation of a patients health problem. I have done it safely thousands of times and the people of those communities have only benefited.

Sincerely



Nancy Schupp, ANP

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

NOV 17 1992

DIV. OF OCCUPATIONAL LICENSING

Sun November 8, 1992

17:21pm

Dixie L. Light ANP/FNP, M.Sc.N., PhD.
P.O. Box 382
Houston, Alaska 99694
Telephone (907) 892-8804

Gail M. McGuill, RN, Executive Secretary
Alaska Board of Nursing
Department of Commerce and Economic Development
7th Floor Frontier Bldg.
3601 C Street, Suite 722
Anchorage, Alaska 99502

RECEIVED

Division of Occupational Licensing

Dear Gail,

I doubt if you remember me with all you have to do but, we met briefly at the 1991 ANP Conference in Anchorage. Looking forward to meeting you again this year at the conference.

Last week I sent you my response to your questionnaire regarding the dispensing of pharmaceuticals. The implications of being unable to provide medications in my small rural practice are fairly alarming.

I serve families along the Parks Highway from just South of Big Lake, the community of Big Lake, Houston, and again along the highway about 15 miles North of Willow, the Hatcher Pass, and fly ins from the Susitna and Yentna rivers. Our practice is small, in 14 months we have opened 480 records or which 30 are summer visitors (removal of fish hooks and small emergencies).

There is a lot of data in my charts and I am kicking myself for not having put it in a data base to be able to draw more meaning that you might find useful. People come to me because:

1. they usually don't have to wait.
2. they learn I and my husband listen (and make sure we make time to do that if it's needed).
3. we accept small portions of the office fee and charges for medications when they are short and need to pay later (about 16% of our clients).
4. they can get some basic prescription medications from us without traveling further from home.
5. 90% of my patient time is spent in health teaching. Patients have learned we will search for the health information we don't have on hand.
6. we always follow up with no charge visits or telephone calls.

Our service is very personal and focused on family needs from the family members' perception expanded by giving them my own perception. Without the availability of medications some of these people will still use our services.

LETTERS OF SUPPORT

NOV 17 1992

Many of my clients would still use us if we can't dispense, but DIV. OF OCCUPATIONAL LICENSES

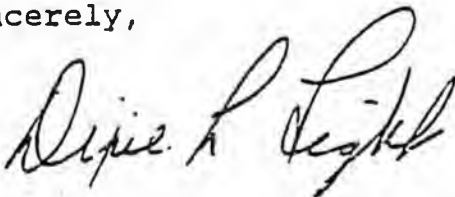
1. some won't fill their prescriptions because they lack ready cash or the other usual reasons people don't pick up or take prescribed medications or actions.
2. a large number will not use us because they would need to drive 20 to Wasilla for the prescription anyway.
80% of our clients are low income or acquire their annual income in summer to be measured out over the next 3 months. Transportation costs are a very large problem.

My husband and I run this practice. At the end of 14 months we bring in just a little more than our costs. I am having a ball working for myself and doing work we both feel is needed. My husband says he loves the work too and he has been a real help to parents with kid questions and problems.

We do not think we can maintain the practice without dispensing medications. There is no pharmacy nearby and we would lose about half of our clients. I am certain that we would have to close. We try to follow sound small business practices. We purchased most of our medical equipment used but in safe and working condition. We might be committing a "good business" error by leniency about payments but people have paid us (better than 99% of the time when they received some cash).

Last winter a man came to us with a severe burn. His wife told me she used all of the family cash reserve to pay the emergency room and ambulance. After my assessment I told the family what still needed to be done. I gave them the truth including the probability of complications. The 2nd degree burns of face, hands, and anterior tibial skin required sterile supplies, 9 dressing changes by me, and in a later stage teaching the couple to change the dressings themselves, services for which I charged \$150. They had no money and we never expected to see any return, but this last week we got a check for everything we charged. Whatever happens I will feel we have made a difference and enjoyed doing it.

Sincerely,



Dixie L. Light PhD, ANP/FNP, MScN.



Yukon-Kuskokwim Health Corporation
Community Health Aide Program

"Fostering Patient Self-Determination in Primary Care, Prevention and Health Promotion"

P.O. Box 528 Bethel, Alaska 99559 (907) 543-5075 543-4471

FEB 11 1993

FEB. 8, 1993

Dear Ms. Toohy,

I am writing in support of HB114 to add the word 'dispense' to our statute regarding Nurse Practitioner practice.

I am a Family Nurse Practitioner who worked as a health care provider in an Alaska bush community for 13 months. From Sept. 1991 to Oct. 1992, I was the sole practitioner in Akutan, a small fishing village, which is located 800 miles from Anchorage and 30 miles from Dutch Harbor.

My patient population included non-natives as well as beneficiaries of Alaska Native Medical Center services. Dispensing medication was the only method in which patients received their medications. There were several times when a pharmacy in Anchorage needed to mail medication to Akutan; seven days was a minimum time for mail delivery.

If the ability of dispensing medication was not an option for me in this setting, clearly the quality of care would have been altered. An individual would have access to health care, without the benefit of receiving treatment.

The ability to dispense is critical to function within the scope of practice for Nurse Practitioner's working in rural communities in the State of Alaska.

Sincerely,

Nancy Walsh-Robart FNP



Tom Fink,
Mayor

Municipality of Anchorage

Department of Health and Human Services

625 "L" Street
P.O. Box 196650 Anchorage, Alaska 99519-6650



February 8, 1993

Rep Cynthia Toohey
CoChair HESS
Capitol Room 104
State Capitol
Juneau, Alaska 99801-1182

Dear Rep Toohey:

We support HB 114. Ninety percent of our clients are low-income women falling below the poverty guidelines. In taking care of these women who are uninsured or who fall below the poverty guidelines it is vital we be able to dispense medication for the improvement of their health.

Thank you for introduction of this bill. We appreciate all the support that you and the HESS Committee are providing to continue the vital role of the nurse practitioners in providing quality health care to the citizens of Alaska.

Please share this letter with other committee members.

Sincerely,

Lorraine Martin ANP

Lorraine Martin, ANP

Karen Murray ANP

Karen Murray, ANP

NORTH SLOPE BOROUGH**DEPT. OF HEALTH AND SOCIAL SERVICES
PUBLIC HEALTH NURSING**P.O. Box 69
Barrow, Alaska 99723Greist Family Services
Phone: (907) 852-0270

To: The House Labor & Commerce Committee
From: Lianne Mcroier, ANP *LM*
Date: February 10, 1993

Subject: HB #114

I would like to express my support for the HB 114. I live and practice as a Women's Health Care Nurse Practitioner in Barrow. There is not a private pharmacy on the North Slope.

Currently, we have a single pharmacist that is located in the IHS hospital. She is extremely over worked by servicing six physicians, six villages, and two nurse practitioners. Patients have to wait for long periods of time for medications, sometimes a long as three hours for a routine prescription. One of my major concerns is in the refill for birth control pills; for the Nurse Practitioner not to be able to dispense to BCP there may be a reluctance to come in for refills knowing the long wait that will be encountered at IHS. With the NSB birth rate being one of the highest in the State I would not like to see any further impedance to family planning services. Please feel free to contact me in regards to any further questions.