

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7956 HOUSE LABOR & COMMERCE

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The statutory sunset provision for the Big Game Commercial Services Board should be extended until June 30, 1997.

Under Alaska Statute [AS 08.03.010(c)(5)], the termination date for the Big Game Commercial Services Board (BGCSB) was June 30, 1993. As of the date of this report, the BGCSB is technically in its one-year "wrap-up" period. If no action is taken by the legislature, the BGCSB will be dissolved at June 30, 1994.

We have reviewed the activities of the BGCSB since it was created as the successor to the Guide Board. In our view, the BGCSB is operating in the public's interest. The board, through the licensing and supervision of big game guides is adequately protecting the hunting public. Accordingly, we recommend that the board continue operations through FY 97.

The establishment and allocation of designated guiding areas between licensed guides was still very much in its "start-up" phase at the time of our audit fieldwork. The use, trading, and allocation of previous **exclusive** guiding areas was the central issue in the 1988 *Owsichek v. State* court decision. The *Owsichek* decision determined that the statutes under which the Guide Board was issuing and designating exclusive guide areas were unconstitutional.

The BGCSB and the Division of Occupational Licensing (OL) has just recently started the allocation and distribution of guide areas (on a **non-exclusive** basis) using regulations formally adopted in January 1993. Since this critical function is in the "start-up" phase, we suggest extending the board's "sunset" date for three years. By doing so, our agency can better assess and consider the manner the original area allocation process was carried out by OL and the board. At that time there would be two years of actual experience to analyze and consider when we conducted the subsequent BGCSB "sunset" review in the summer or fall of 1996.

### Recommendation No. 2

The Department of Commerce and Economic Development (DCED) and OL should continue to work with the Office of the Governor, Office of Management and Budget (OMB) in establishing fee levels for occupational licensees that are more reflective of the actual regulatory cost of the occupation.

OL's methodology for determining FY 93 fees allocates costs to a board or occupation in one of two ways. Some costs, termed direct costs by OL, are directly distributed to a specific licensing program. Direct costs include personnel assigned to one specific occupation, travel associated with board business, public notices of board proceedings, and

printing of board applications and statute booklets. Other costs, termed indirect costs, are allocated based upon the percentage of licensees in each occupation compared to the total number of occupational licensees. These costs include the expenditures associated with licensing examiners', investigators', hearing officers', management's, and clerical staff's time.

Effective August 24, 1992, DCED was required to establish fee levels so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for that occupation [AS 08.01.065(c)]. Prior to FY 93, DCED could establish fees that reflected, but did not exceed, the actual costs of the activity for which the fee was charged and could establish a fee at less than full cost if they deemed it unreasonable to impose the full cost of the activity on the licensee.

Our office and OMB have both reviewed OL's cost allocation methodology to determine if it is sufficient to meet the requirements of AS 08.01.065(c). Both our office and OMB do not believe that OL's cost allocation methodology distributes costs reflective of the actual effort spent. The primary disparity involves the classification of licensing examiners', investigators', and hearing officers' time. The manner in which these three categories of employees' cost have been allocated prior to FY 94 can cause occupations with a large number of licensees to absorb costs that are not reflective of the actual effort spent regulating their profession.

In addition to our concerns with OL's cost allocation methodology, we found problems in how they distributed costs in their calculation of a two-year average of expenditures used in determining FY 93 license fees. The percentages applied to allocate indirect costs were not always correct. These inconsistencies were caused by formula errors on spreadsheets prepared by OL staff. Also, documentation supporting some expenditures on the spreadsheets has not been retained. Review of the selected current information available does not confirm these numbers. As discussed with OL staff, we recommend that OL retain original supporting documentation in their future distributions of costs.

In their September 1993 report, *Occupational Licensing Fee-Setting Policy Assessment*, OMB made seven recommendations to OL on how to allocate costs so that the intent of AS 08.01.065(c) is met. According to OMB's report, "A follow-up review for this project will be scheduled for March 1994." DCED has recently indicated that, for the determination of the FY 94 fees, they will allocate costs for licensing examiners, investigators, and hearing officers based on estimated time spent by those employees, with periodic adjustments to actual time spent in accordance with our office and OMB's recommendations. As of October 1993, the allocation of direct and indirect costs using FY 93 expenditure data has not been performed.

DCED should continue to work with OMB in establishing fee levels for occupational licensees that are more reflective of actual regulatory cost of the occupation.

### Recommendation No. 3

OL should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and production of an annual report.

Alaska Statute 08.01.050 establishes DCED's administrative duties for professional licensing boards. Alaska Statute 08.01.070 identifies the administrative duties of the boards. Included in the board's responsibilities are the taking of minutes and records of all proceedings, forwarding of a draft of the minutes of proceedings to the department within 30 days after the proceedings, and submission of an annual performance report to the department before the end of the fiscal year. However, we found that OL rather than the Big Game Commercial Services Board performed these duties.

For example, the licensing examiner is responsible for tape recording the board proceedings, recording votes, taking notes, and preparing the minutes. OL also compiles much of the information in the board's annual report. OL has the records needed to determine statistics such as the number of licenses issued and examinations given and passed.

We recommend that OL review the statutes and request changes that reflect actual responsibilities and timelines that are both practical and timely.

### Recommendation No. 4

DCED, OL should, in conjunction with the Equal Employment Office, review the licensure application for each professional occupation to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

The guide-outfitter, class-A assistant guide-outfitter, and assistant guide-outfitter applications require the height and weight of the candidate. The Equal Employment Office (EEO) within the Department of Administration, Division of Personnel discourages agencies from asking applicants information on height and weight. If an applicant were denied a license, the board or OL may find it difficult to prove that there was no discrimination involved if this type of information had been provided to the persons reviewing the application for licensure.

The application forms used by OL should be reviewed with EEO to make sure that the height and weight are pertinent to the licensure of guide-outfitter candidates. One of the reasons height and weight were requested was for identification. However, the information has not been used for identification, it is no longer printed on licenses, and it is no longer entered into the licensing data base. If this information is considered necessary for identification or other reasons, it should be separated from the application prior to review of the application for licensure. If the information is not necessary, the request for it should be removed from the application.

Recommendation No. 5

DCED, OL should develop and implement written policies and procedures for reporting potential violations of the Executive Branch Ethics Act to the Department of Law.

The Alaska Executive Branch Ethics Act (AS 39.52) requires members of boards and commissions to disclose potential violations of that Act to their designated supervisor. The designated supervisor for members of a board is the chair or acting chair of the board. Functionally, OL staff advise the professional licensing boards associated with them as to the reporting necessary for compliance with the Ethics Act, as does the Department of Law (Law). Disclosures by board members are compiled by OL for submission to Law. These reports are required to be submitted on a quarterly basis. Law reviews these submissions and makes available to the public a summary of the reports received with sufficient deletions to prevent disclosure of a person's identity.

These reports have not been submitted in a timely manner. In 1991, no reports were submitted to Law. In 1992, reports were submitted three to six months after the end of the quarter. In 1993, the first two quarters' reports were submitted in July. In addition division personnel have indicated that there is some confusion as to what should be reported. While staff at the Department of Law believe that OL understands what should be reported, written policies and procedures governing the reporting of potential ethical violations would benefit OL as well as board members. There would be clear criteria for OL staff to follow as to what should be reported as well as when it should be reported.

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

*The extent to which the board, commission, or program has operated in the public interest.*

1. The board adopted regulations concerning guide-outfitter qualifications, guide-outfitter operations, professional conduct, transporters, guide-outfitter use areas, and use area registration to insure the public of qualified practitioners. The public is notified about upcoming examinations and meetings and is invited to provide input at board meetings.
2. The board has developed goals and objectives. Some of the goals the board achieved in FY 93 include:
  - a. The board continued to place a strong emphasis on maintaining a consistent discipline program to ensure compliance with the new statutes and regulations.
  - b. With the exception of the assistant guide-outfitter examinations, many board members actively participated in the administration of the registered guide-outfitter written and oral examinations offered in Anchorage.
  - c. The board continued to define current regulations relating to transporters, commercial use permit holders, and guide-outfitters, and worked in conjunction with the Department of Natural Resources and the Department of Fish and Game with the implementation of the guide-outfitter use area registration system.
3. The board has conducted guide-outfitter examinations twice a year, and the exam for class-A assistant guide-outfitters and assistant guide-outfitter 6 times a year.

*The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.*

See the following section.

*The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.*

The board has been seeking further definition from the legislature on several issues:

1. **Alaska Statute 08.54.350(a)(10)** requires a guide-outfitter candidate to have

*been favorably recommended in writing by six big game hunters, two for each year of the person's most recent three years as a class-A assistant guide-outfitter or assistant guide-outfitter, whose recommendations have been solicited by the board from a list provided by the applicant.*

In several cases, an assistant guide-outfitter or class-A assistant guide-outfitter has been injured after working for one client. As a result that year is the most recent year, but there is no way s/he can be licensed as a guide-outfitter until three years later. This is not fair.

Under House Bill 266 eight recommendations will be required, one of which must be for a grizzly hunt and another for a mountain or Dall sheep or mountain goat hunt. Also, the applicant must have spent at least 90 days in the field during three of the last five years.

This will help assure: (1) that the guide is qualified by having been on the type of hunt guide-outfitters are hired for and, (2) eliminate the incompetent but not the unfortunate.

2. House Bill 87 and Senate Bill 52 make amendments to AS.08.54.395 regarding insurance requirements for guide-outfitter, marine mammal guide-outfitters, class-A assistant guide-outfitters, and assistant guide-outfitters.
3. The board also requested legislation relating to commercial users other than guide-outfitters and transporters. This includes people who sell wildlife photos and videos, military bases that use wildlife resources and brokerage firms, and "ecotourism" operators who commercially exploit big game resources without board overview and without compensation to the State. The legislation did not pass.

*The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.*

The public is invited to attend board meetings. Notices of meetings and examinations are published in at least three major newspapers and a time for public comment is reserved at board meetings.

*The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.*

Public notices of proposed regulations are published in major newspapers. Public comment to proposed regulations, both written and oral, are considered at board meetings.

The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

The Division of Occupational Licensing (OL) receives more complaints regarding the activities of license holders regulated by the Big Game Commercial Services Board (BGCSB) than for any other profession for which the agency is responsible. Since FY 89, OL investigators have opened more than 100 complaint investigations involving guide-outfitters. When added with other guiding-related complaints and those involving assistant guides, guide applicants, and unlicensed guides the total comes to more than 180.

More than half of these complaints have originated from the Department of Law and state or federal officials responsible for enforcement of laws protecting wildlife resources. Seventeen complaint cases since December 1988 have resulted in the revocation of licenses for four or more years.

We reviewed a sample of cases that were both currently open or had recently been closed by OL in consultation with the Department of Law (Law). For those cases reviewed, particularly those involving consumer complaints regarding guide services we felt OL and Law resolved the complaints in a timely and appropriate manner considering the resources available.

Further, review of recently closed Ombudsman's case files and inquiries with the Human Rights Commission, Equal Employment Opportunities Office, and the Attorney General indicated that no significant complaints were either unresolved or outstanding involving the BGCSB or their licensing activities.

*The extent to which the board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.*

As of June 30, 1993, the board regulated 423 guide-outfitters, 116 class-A assistant guide-outfitters, 551 assistant guide-outfitters, 134 transporters, and 31 commercial use permit holders.

*The extent to which state personnel practices, including affirmative action requirements have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.*

The Equal Employment Opportunity Office has not received any complaints related to the board's activities.

*The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.*

See above.

## APPENDIX A

Department of Commerce and Economic Development  
Big Game Commercial Services Board  
Schedule of Revenues Compared with Expenditures  
(Unaudited)  
(Note 1)

Revenues (Note 2)	\$190,270
Expenditures (Note 3)	<u>205,707</u>
Excess of Expenditures over Revenues (Note 3)	<u>\$(15,437)</u>

### Note 1

The Schedule of Revenues Compared with Expenditures was prepared from discussions with Division of Occupational Licensing (OL) personnel and from OL prepared documents comparing revenue and expenditures for fee determination. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Schedule of Revenues Compared with Expenditures.

### Note 2

A significant portion of revenues is comprised of license renewal fees. For the current fee structure, see Appendix B. Most licenses are renewed biennially. Because of the renewals, revenues vary substantially year to year. Therefore, OL combined revenues collected in FY 90 and FY 91 and calculated an average in order to obtain a representative amount of annualized revenues collected for comparison with expenditures.

### Note 3

Expenditures consist of direct costs resulting from board member activities, (i.e., travel and per diem) and an allocation of overhead costs of OL. Our understanding of the allocation methodology is discussed in Recommendation No. 2 of this report and is the subject of a September 1993 Office of Management and Budget (OMB), Division of Audit and Management Services report entitled *Occupational Licensing Fee-Setting Policy Assessment*. Both our office and OMB do not believe that OL's method of allocating costs to a professional licensing board distributes costs reflective of the actual effort spent regulating their profession.

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**Appendix B**  
**Big Game Commercial Services Board**  
**Application, License, and Other Fees<sup>1</sup>**

<b>Application and Other Fees<sup>2</sup></b>			
Type of Fee	Guide- Outfitter	Class-A Assistant and Assistant Guide- outfitters	Commercial Use Permits and Transporter Licenses
Application	\$50	\$50	\$50
Examination	50	50	N/A
Unit examination for taking initial examination, retaking examination, or adding units	50/per unit	N/A	N/A
Use area registration application for each use area	50	N/A	N/A
<b>License Fees</b>			
License Category	Initial	Renewal <sup>3</sup>	
Guide-outfitter	\$200	\$200	
Class-A Assistant and Assistant Guide Outfitter	200	200	
Use area registration for each use area (The fee is due for each year of the registration)	100	N/A	
Transporter license	150	150	
Commercial Use Permit	100	100	

<sup>1</sup>The licensing fees charged by the Division of Occupational Licensing for Big Game Commercial Services Board are set out in the Alaska Administrative Code at § 12 AAC 02.230. The last change to the board's fee regulations became effective February 25, 1993. According to Division of Occupational Licensing staff, at this time there are no planned fee changes for this board.

<sup>2</sup>The Division of Occupational Licensing is also authorized to charge administrative fees. Administrative fees include duplicate license fee, photocopying fee, and penalty for reinstatement of a registration, license, permit, or certificate which remains lapsed for more than 60 days.

<sup>3</sup>The renewal periods for the Big Game Commercial Services Board license categories are as follows: Annual guide outfitters, December 31, 1993; biennial Class-A Assistant and Assistant Guide-outfitter license, December 31, 1994; annual Transporter license, December 31, 1993; and annual Commercial Use Permit, December 31, 1993.

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WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

P O BOX 110800  
JUNEAU, ALASKA 99811-0800  
PHONE: (907) 465-2500  
FAX: (907) 463-3841

November 24, 1993

Mr. Randy Welker  
Legislative Auditor  
Legislative Budget and  
Audit Committee  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300

Dear Mr. Welker:

Thank you for the opportunity to review the preliminary audit report regarding whether the Big Game Commercial Services Board (BGCSB) should be continued or terminated under AS 44.66.010.

The department concurs with **Recommendation No. 1, The statutory sunset provision for the Big Game Commercial Services Board should be extended until June 30, 1997.** The department believes that the Big Game Commercial Services Board is operating in the public's interest and protecting the hunting public. The establishment of the nonexclusive guide-outfitter use area system in 1993 has helped to stabilize the industry which has been troubled since the Owsichuk Decision in 1988 which declared the exclusive guide area system unconstitutional. The Big Game Commercial Services Board is also working toward regulation of the transporter industry and revision of the examination process.

**Recommendation No. 2, The Department of Commerce and Economic Development (DCED) and the Division of Occupational Licensing (DOL) should continue to work with the Office of the Governor, Office of Management and Budget (OMB) in establishing fee levels for occupational licensees that are more reflective of the actual regulatory cost of the occupation.**

During 1993, the division accomplished fee revisions for all program areas to reflect program expenses. The calculations were based upon all available data regarding direct and indirect program costs.

Concerns were voiced by various boards regarding their fee increases/program costs. Based on these concerns, the department requested an independent review by OMB of the procedures used in calculating expenses by the Office of Management and Budget. The OMB

audit was completed early October. OMB's recommendations for defining direct costs, including the implementation of timekeeping records for licensing staff, investigators, and hearing officers has been implemented effective July 1, 1993 by the division.

The OMB audit recommended a cap on incremental fee increases of no more than 10-25% per licensing period. This is problematic inasmuch as it places a limit on recovering the actual cost of licensing the industry. OMB budget reviewers placed an even more restrictive cap of 7% on the license fee this fiscal year. Unpredictable and unforeseen program expenses occur due to, investigations, litigation and legal challenges which are not controlled by the board or the division. Limiting expenditures in order to comply with these caps is anticipated to have serious effects on the boards' abilities to comply with their statutory mandates. Under the present scheme, once a program has expended its "acceptable" limit for fee increase adjustments under the OMB recommendations and in accordance with AS 08.01.065, the board will effectively be shut down for the remainder of the fiscal year. The consequences have potential health and safety risks as well as potential economic hardships for licensees who wish to renew their licenses, complete area applications, etc. The division will make requests for additional spending allocation to Legislative Budget and Audit to alleviate these harsh consequences, but failing favorable consideration, the division must control its expenditures.

The division does not fully concur with the audit findings that errors were made in the calculation of a two-year average of expenditures used to determine the FY 93 license fees, and as a result, license fees did not truly reflect the cost of providing regulatory services to each occupation. Detailed expenditure information used in calculating a two-year average was based on information obtained from the state accounting system. It is a real possibility that data generated from the state accounting system for the purposes of this audit has changed from data obtained by division staff at the end of the fiscal year. Since appropriate division staff was not consulted regarding specific financial information, the division cannot agree with this finding until both audit and division staff has had the opportunity to discuss this matter.

The recommendation of estimating time spent by certain job classes of employees stated in the OMB fee-setting policy assessment audit was implemented on July 1, 1993; and at the start of FY 94, the division prepared an FY 94 budget allocation for each licensing program.

In conclusion, DCED has attempted to work with the OMB auditor regarding this issue, but we have been informed that the audit is over and no more time will be allocated to this issue.

The department concurs with Recommendation No. 3, the Division of Occupational Licensing should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and production of an annual report.

A rewrite of AS 08.01 is available, and we are seeking legislative support to introduce it. This rewrite makes numerous revisions including amendments to the statutes cited in this recommendation.

The rewrite includes revisions which make drafting minutes a department responsibility. It also provides for annual report deadline submission of August 1. The annual report deadline revision is necessary as many statistics needed for the annual report are not available until June 30, thus making it impossible for the boards to meet the existing deadline of submission by June 30.

The department strongly disagrees that the annual report authorship should be amended to make annual report submission a department responsibility. We recognize that division staff are instrumental in assisting boards when completing reports. Staff provide statistical and clerical assistance, however, this report must be reflective of the boards' position on various matters involving the profession regulated including legislative and regulatory needs, budget requests, and upcoming goals. These are areas which the board is solely responsible for developing.

The department disagrees with **Recommendation No. 4, DCED, DOL should, in conjunction with the Equal Employment Office, review the licensure application for each professional occupation to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.**

Height and weight questions continue to be reflected on the initial applications for Guide-Outfitters, Assistant Guide-Outfitters, and Class A Assistant Guide-Outfitters. The data from initial applications is entered in the computer and is considered appropriate for identification purposes. Height and weight information is printed on the wallet card portion of the license; the wallet card is typically the document carried in the field and shown to protection officers as proof of licensure.

We have removed height and weight questions from renewal applications for the following reasons: 1) typically, a licensee's height is not expected to change; 2) an individual's weight generally does not fluctuate a great deal and the administrative benefits of not being required to make minor weight alterations annually on each license screen overrides the need for "exact" weight at renewal; and 3) if the height/weight questions were left blank at renewal, the renewal would be processed with data already noted in the computer and reflected on the wallet card. Our experience in other license programs is that if a person's weight has greatly changed due to weight loss, we are notified by the licensee who wants his/her wallet card corrected to reflect the new weight; weight increase is not always reported.

Your suggestion of separating the information from applications before the board reviews them is troublesome for two reasons: 1) licensing applications are public records, and we believe it would be inappropriate for division staff to withhold public information from the board; and 2) the mandate for an oral exam prior to guide-outfitter licensure would defeat any

meaningful attempt to conceal the height and weight of an applicant since applicants are visually observed by board members.

License denials must be based upon a provision in boards' statutes or regulations. Denial notices must list the specific authority for rejection. We believe the procedures for denying an applicant, and the practice of listing the specific reasons for denial in the notice to the applicant provides adequate protection for the board from being subject to discrimination complaints based on the height/weight questions.

**Recommendation No. 5, DCED, DOL should develop and implement written policies and procedures for reporting potential violations of conflict of Executive Branch Ethics Act to the Department of Law.**

The department agrees and will comply with this recommendation. A written procedure developed by staff will be limited to include directives for staff follow-up at each meeting with collection of ethic reports as well as clarifying dates which quarterly reports must be compiled and forwarded to the Attorney General's Office. We concur that staff is responsible for the timely submission to the Department of Law. This is the limit of responsibility recognized on behalf of the department.

All other policy, procedures, interpretations, and written directives for what must be reported must come from the Department of Law. Guidance on when a member must report a conflict, what should be reported, confirmation of what constitutes a conflict, and who has authority to rule/overrule a decision made by a designated supervisor are all matters which are beyond the scope of DCED staff expertise. Consequently, the department disagrees with the statement in the text of recommendation #5 which states "Functionally, DOL staff advise the professional licensing boards associated with them as to the reporting necessary for compliance with the Ethic Act . . . ."

The department has asked for a written directive, from the Department of Law, in layman's terms which clarify these matters. Any forthcoming directives from the Department of Law will be distributed to board members.

Sincerely,

  
Paul Fuhs  
Commissioner

PF/sh033.fuh  
112493a

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300  
Juneau, AK 99811-3300  
(907) 465-3830  
FAX (907) 465-2347

December 16, 1993

Members of the Legislative Budget  
and Audit Committee:

We have reviewed the Department of Commerce and Economic Development, Division of Occupational Licensing (OL) response to our preliminary audit report on the Big Game Commercial Services Board. For those areas where they do not agree, we have considered their responses and in one case have modified the report because we believe that additional clarification was warranted. In particular, the section of Recommendation No. 2 regarding OL's cost allocation methodology was changed. After review by audit and OL staff, it was found that the percentages applied to allocate indirect costs were not always correct due to formula errors on spreadsheets prepared by OL staff. Also documentation supporting some expenditures on the spreadsheets has not been retained. Review of selected current information available does not confirm these numbers. As discussed with OL staff, we recommend that OL retain original supporting documentation in their future distribution of costs.

This change is considered minor and does not lead us to change our overall stated position. We therefore reaffirm our conclusions and recommendations as contained in this report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randy S. Welker".

Randy S. Welker, CPA  
Legislative Auditor

# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-3718

House Majority Leader

### SPONSOR STATEMENT FOR HOUSE BILL 266

### GUIDE-OUTFITTER AND MASTER GUIDE-OUTFITTER LICENSES

Presented to the House Labor and Commerce Committee  
on April 15, 1993

The objective of House Bill 266 is to provide a mechanism for upgrading the standards of the guiding profession and to eliminate the advantage in a competitive market place for those who currently hold a "Master Guide" license. It also helps alleviate several problems which have arisen in the recent past for individuals applying for guide-outfitting licenses. The current requirements that an individual must have guide-outfitted or guided at least three clients within each of the past two years has proven to be an unfair requirement simply because, for health, accident, or other reasons, an individual may not have been able to meet this requirement.

In addition, in 1989, legislation was passed which did away with the Master Guide-Outfitter license for new applicants but it allowed those individuals who already held this license to be grandfathered in, provided that the license is not suspended, revoked or lapsed. The title of master guide-outfitter gives an unfair advantage in obtaining clients simply by using this title in advertisements. While many other individuals possess equal or higher qualifications than the current "Master Guides," they are not currently seen as being equally qualified by potential clients reading the ads. This bill reinstates the "Master Guide" category of licenses.

Also, the Big Game Commercial Services Board which oversees the licensing of guide-outfitters and master guide-outfitters is due to sunset on June 30, 1993.

**SPONSOR STATEMENT**

House Bill 266 seeks to remedy each of these situations. First of all, I have included a provision to extend the board for another two years-- to June 30, 1995. In addition, the bill provides that a person now applying for a guide-outfitter license must receive favorable recommendations from eight big game hunters whom the person has personally served as a class-A assistant guide-outfitter or assistant guide-outfitter, including at least one favorable recommendation from a big game hunter who was guided-outfitted or assistant guide-outfitted on a brown or grizzly bear hunt and one on a sheep or mountain goat hunt. The person will no longer have to obtain the recommendations from big game hunters guide-outfitted in specific years.

In addition, the applicant must also show that they have spent at least 90 days in the field as a class-A assistant guide-outfitter or assistant guide-outfitter during the five years before applying for the license. This requirement cannot be satisfied by spending 90 days all within one year -- it must be accumulated during at least three years out of the last five.

House Bill 266 goes on to reestablish licensing procedures for the Master Guide-Outfitter license. A person may receive a master guide-outfitter license if the person is licensed as a guide-outfitter at the time of application and has been licensed as a guide-outfitter or guide for at least 12 years. The applicant must receive favorable evaluations from 10 former clients, not have been convicted of a state or federal hunting or guide-outfitting statute or regulation within the last five years for which the person was fined more than \$500 or imprisoned for more than five days, and pays a fee established by the Department of Commerce and Economic Development, if any.

This legislation has been requested by the Chairman of the Big Game Commercial Services Board, Paul Johnson. In addition, HB 266 is supported by the Alaska Professional Hunters Association whose President, Joe Klutch, is also here to testify today.

**HB 266: "An Act relating to guide-outfitter and master guide-outfitter licenses; extending the termination date of the Big Game Commercial Services Board; and providing for an effective date."**

Section 1 extends the Big Game Commercial Services Board to 1995. The board is currently implementing the use area registration system for fall 1993. The board will need to monitor this new system closely and continue to clarify its operations and other statutory provisions through regulation.

Section 2 helps to strengthen the entry requirements for the guide-outfitter license and eliminates the requirement of having to submit two client recommendations for each of the applicant's most recent three years which has been the subject of three litigations in the past year and is currently being appealed to the superior court. For example, under current law, an applicant may have guided numerous clients from 1985 through 1988. The applicant takes two clients in 1989, two in 1991 and only one in 1992. Because the statute states that the applicant is required to guide-outfit two clients for the most recent three years of guiding, this applicant would not qualify because of the one client in 1992. This applicant would have to start over in 1993 with two clients and would not be eligible until 1995 assuming he/she took two clients in 1994 and 1995.

It has been brought to the division's attention that occasionally, individuals are testing for the guide-outfitter license and have never guided a brown bear, mountain goat or sheep hunter. Nonresidents are required to hire a guide-outfitter for these three species. It makes a lot of sense to require that an applicant has guided for these species prior to authorizing them to book hunters for these species. In addition to this requirement, the entry requirements would also be raised under this bill by requiring a minimum of eight clients and a minimum of 90 days in the field during at least three of the last five years.

The department recommends that AS 08.54.350(a)(10), line 22, be amended to include "in the last five years" inserted after guide-outfitted. Line 31, page 2, refers to 90 days over three years. This should be clarified so as not to be interpreted as 90 days per year. Line 2, page 3, should be amended to read "one hunt [day]."

Section 3 reinstates the master guide-outfitter category which was repealed in 1989, however, approximately 35 individuals were grandfathered with this title. Master Guide-Outfitters appear to have an advantage when booking clients. The department supports the reinstatement of this category, noting

**CEED POSITION PAPER**

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, Alaska 99801-1182  
(907) 405-3718

House Majority Leader

### SPONSOR STATEMENT FOR HOUSE BILL 266

#### GUIDE-OUTFITTER AND MASTER GUIDE-OUTFITTER LICENSES

Presented to the House Labor and Commerce Committee  
on April 15, 1993

The objective of House Bill 266 is to provide a mechanism for upgrading the standards of the guiding profession and to eliminate the advantage in a competitive market place for those who currently hold a "Master Guide" license. It also helps alleviate several problems which have arisen in the recent past for individuals applying for guide-outfitting licenses. The current requirements that an individual must have guide-outfitted or guided at least three clients within each of the past two years has proven to be an unfair requirement simply because, for health, accident, or other reasons, an individual may not have been able to meet this requirement.

In addition, in 1989, legislation was passed which did away with the Master Guide-Outfitter license for new applicants but it allowed those individuals who already held this license to be grandfathered in, provided that the license is not suspended, revoked or lapsed. The title of master guide-outfitter gives an unfair advantage in obtaining clients simply by using this title in advertisements. While many other individuals possess equal or higher qualifications than the current "Master Guides," they are not currently seen as being equally qualified by potential clients reading the ads. This bill reinstates the "Master Guide" category of licenses.

Also, the Big Game Commercial Services Board which oversees the licensing of guide-outfitters and master guide-outfitters is due to sunset on June 30, 1993.

**SPONSOR STATEMENT**

House Bill 266 seeks to remedy each of these situations. First of all, I have included a provision to extend the board for another two years-- to June 30, 1995. In addition, the bill provides that a person now applying for a guide-outfitter license must receive favorable recommendations from eight big game hunters whom the person has personally served as a class-A assistant guide-outfitter or assistant guide-outfitter, including at least one favorable recommendation from a big game hunter who was guided-outfitted or assistant guide-outfitted on a brown or grizzly bear hunt and one on a sheep or mountain goat hunt. The person will no longer have to obtain the recommendations from big game hunters guide-outfitted in specific years.

In addition, the applicant must also show that they have spent at least 90 days in the field as a class-A assistant guide-outfitter or assistant guide-outfitter during the five years before applying for the license. This requirement cannot be satisfied by spending 90 days all within one year -- it must be accumulated during at least three years out of the last five.

House Bill 266 goes on to reestablish licensing procedures for the Master Guide-Outfitter license. A person may receive a master guide-outfitter license if the person is licensed as a guide-outfitter at the time of application and has been licensed as a guide-outfitter or guide for at least 12 years. The applicant must receive favorable evaluations from 10 former clients, not have been convicted of a state or federal hunting or guide-outfitting statute or regulation within the last five years for which the person was fined more than \$500 or imprisoned for more than five days, and pays a fee established by the Department of Commerce and Economic Development, if any.

This legislation has been requested by the Chairman of the Big Game Commercial Services Board, Paul Johnson. In addition, HB 266 is supported by the Alaska Professional Hunters Association whose President, Joe Klutch, is also here to testify today.

**HB 266: "An Act relating to guide-outfitter and master guide-outfitter licenses; extending the termination date of the Big Game Commercial Services Board; and providing for an effective date."**

Section 1 extends the Big Game Commercial Services Board to 1995. The board is currently implementing the use area registration system for fall 1993. The board will need to monitor this new system closely and continue to clarify its operations and other statutory provisions through regulation.

Section 2 helps to strengthen the entry requirements for the guide-outfitter license and eliminates the requirement of having to submit two client recommendations for each of the applicant's most recent three years which has been the subject of three litigations in the past year and is currently being appealed to the superior court. For example, under current law, an applicant may have guided numerous clients from 1985 through 1988. The applicant takes two clients in 1989, two in 1991 and only one in 1992. Because the statute states that the applicant is required to guide-outfit two clients for the most recent three years of guiding, this applicant would not qualify because of the one client in 1992. This applicant would have to start over in 1993 with two clients and would not be eligible until 1995 assuming he/she took two clients in 1994 and 1995.

It has been brought to the division's attention that occasionally, individuals are testing for the guide-outfitter license and have never guided a brown bear, mountain goat or sheep hunter. Nonresidents are required to hire a guide-outfitter for these three species. It makes a lot of sense to require that an applicant has guided for these species prior to authorizing them to book hunters for these species. In addition to this requirement, the entry requirements would also be raised under this bill by requiring a minimum of eight clients and a minimum of 90 days in the field during at least three of the last five years.

The department recommends that AS 08.54.350(a)(10), line 22, be amended to include "in the last five years" inserted after guide-outfitted. Line 31, page 2, refers to 90 days over three years. This should be clarified so as not to be interpreted as 90 days per year. Line 2, page 3, should be amended to read "one hunt [day]."

Section 3 reinstates the master guide-outfitter category which was repealed in 1989, however, approximately 35 individuals were grandfathered with this title. Master Guide-Outfitters appear to have an advantage when booking clients. The department supports the reinstatement of this category, noting

CEDED POSITION PAPER

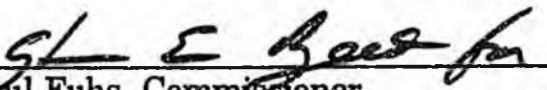
POSITION PAPER


HB 266

Page 2

that the requirements are essentially the same as when the category was in effect under the old law. The department recommends Section 3. AS 08.54.350(b), line 20, be amended by inserting the word "12 consecutive years."

In summary, the department supports this bill with the amendments noted above.

  
\_\_\_\_\_  
Paul Fuhs, Commissioner

  
\_\_\_\_\_  
Date

msw 3/22/93

Judi

Jones' Guide & Outfitting  
33675 Jones Dr.  
Homer, AK 99603

March 11, 1993

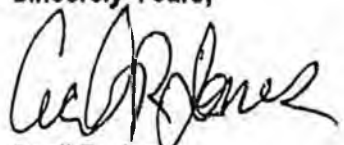
Dear Representative Phillips,

Thank you so much for your efforts concerning the licensing of Master Guide/Outfitters and other issues regarding the Guiding industry. Your concern and actions are highly appreciated.

I have reviewed the draft bill on Master Guide/Outfitter licensing that you sent and am very pleased with it as it is written. Hopefully we can get some of these things straightened out. It certainly helps when we have people like yourself representing us in Juneau.

Unfortunately there seems to be a lot of misunderstanding these days about the Guide industry. I think a lot of people have the impression that the guides are a wealthy group of outlaws out there destroying the resource and ripping off the public. Certainly this description could be applied to a few guides, but the vast majority are small time operators, adhering to the game regulations, have a sincere concern for the resource, and work together with the Department of Fish & Game to take care of the resource. Only the outlaws ever make the Headlines, so people never hear about the rest. This adversative attitude sometimes makes it difficult to get laws and regulations passed that are beneficial to the industry. In these times of economic hardships it is certainly in our best interest to lend support to those industries in Alaska that are dependent on renewable resources and have the potential to provide jobs and employment on an ongoing basis. But I had better get down off my soap box for now. Take care and thanks again.

Sincerely Yours,

  
Cecil R. Jones

LETTER OF SUPPORT

# FISCAL NOTE

**STATE OF ALASKA**  
**1993 LEGISLATIVE SESSION**

**BILL NO.** \_\_\_\_\_ **HB 266**

Revision Date: \_\_\_\_\_ Dept. Affected: Commerce & Economic Development  
 Title: An Act relating to Master Guide- BRU: Occupational Licensing  
Outfitters and Guide-Outfitters;... Component: Operations  
 Sponsor: Rep. Phillips  
 Requestor: Rep. Phillips COMPONENT SERIAL NO. 1844

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>
<b>CAPITAL</b>						
<b>REVENUE FUND SOURCE:</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>

**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>

**POSITIONS:**

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

Estimate of current year (FY 93) impact: \$

None

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

HB 266 extends the Big Game Commercial Services Board to June 30, 1995, reinstates the Master Guide license category, and strengthens entry requirements for a guide-outfitter license. New funds are not required to implement provisions of this bill.

Prepared by: Jennifer Strickler, Administrative Officer  
 Division: Occupational Licensing

Phone: 465-2144  
 Date: 4/6/93

Approved by Commissioner: Paul Fuhs  
 Agency: Commerce & Economic Development

Date: 4/9/93

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CLEO ZERO FISCAL NOTE

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

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

### MEMORANDUM

February 26, 1993

**SUBJECT:** Qualifications for guide-outfitter and master guide-outfitter licenses (Work Order No. 8-LS0704\A)

**TO:** Representative Gail Phillips  
ATTN: Judi Jordan

**FROM:** George Utermohle *GU*  
Legislative Counsel

This memorandum accompanies the draft bill that you requested relating to guide-outfitter and master guide-outfitter licenses.

Section 1 of the bill amends the requirements for a guide-outfitter license under AS 08.54.350(a). The requirement that persons applying for a guide-outfitter license be favorably recommended by two big game hunters whom the person has guide-outfitted during each of the most recent three years of service as a class-A assistant guide-outfitter or assistant guide-outfitter is eliminated. Instead, the person applying for a guide-outfitter license must receive favorable recommendations from eight big game hunters whom the person has personally served as a class-A assistant guide-outfitter or assistant guide-outfitter, including at least one favorable recommendation from a big game hunter who was guide-outfitted on a brown or grizzly bear hunt and from a big game hunter who was guide-outfitted on a sheep or mountain goat hunt. The person will no longer have to obtain the recommendations from big game hunters guide-outfitted in specific years.

The person seeking the guide-outfitter license must also show that the person has spent at least 90 days in the field as a class-A assistant guide-outfitter or assistant guide-outfitter during the five years before applying for the license. The person cannot satisfy the requirement by spending 90 days in the field in one year. The 90 days in the field must be accumulated during at least three years.

Section 2 of the bill repeals and reenacts AS 08.54.350(b), relating to master guide-outfitter licenses. Under current law only those persons who held master guide-outfitter licenses in 1989 may continue to receive a master guide-outfitter license, provided that the license is not suspended or revoked or has not lapsed.

**Drafter's Comments**

Representative Gail Phillips

February 26, 1993

Page 2

Under the bill, master guide-outfitter licenses would be issued to qualified guide-outfitters. A person may receive a master guide-outfitter license if the person is licensed as a guide-outfitter at the time of application, has been licensed as a guide-outfitter or guide for at least 12 years, receives favorable evaluations from 10 former clients that the person has personally guide-outfitted or guided, and pays the application fee established by the Department of Commerce and Economic Development, if any.

The grandfather provision for those licensed as master guide-outfitters in 1989 is also retained in the bill.

A master guide-outfitter license entitles the licensee to use the title "master guide-outfitter." In all other respects, a master guide-outfitter is treated as a guide-outfitter under AS 08.54.

The bill does not contain a reference to AS 08.54.310(a)(11) because it is not necessary. AS 08.54.310(a)(11) requires a person who applies for issuance or renewal of any class of guide-outfitter license, including a master guide-outfitter license, to state whether their sport fishing, hunting, or guide-outfitting license has been suspended or revoked in another state. It is advisable that the bill not include a specific reference to AS 08.54.310(a)(11) or the similar provisions in AS 08.54. The Department of Law considers the provisions to be violative of equal protection and due process, because it may result in a person being denied a guide-outfitter license in this state for having a sport fishing, hunting, or guide-outfitting license suspended or revoked in another state for acts that if committed in Alaska would not prevent the person from obtaining a guide-outfitter license. The Department of Law had recommended that the Governor veto the bill enacting AS 08.54.310(a)(11) and the related provisions.

If I may be of further assistance, please advise.

GU:gc  
93-166.glc

Enclosure

H B

2 7 2

HB 272

GA

DR. PATRICIA G. CONNERS-ALLEN  
CHIROPRACTIC PHYSICIAN  
WELLSPRING CLINIC  
2231 N. JORDAN AVENUE  
JUNEAU, AK 99801  
(907)789-1812  
FAX (907)789-7168

26 July 1993

Representative Bill Hudson  
Alaska House of Representatives  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Hudson:

The Board of Chiropractic Examiners would like to thank you for your efforts this past legislative session. It is because of you that our board did not sunset. This has ensured the continuation of responsible protection to both the profession and the public.

Once again, Thank You!

Sincerely,



Dr. Patricia G. Conners-Allen  
Secretary; Board of Chiropractic Examiners  
State of Alaska

cc: Board of Examiners/State of Alaska  
Alaska Chiropractic Society, Anchorage, AK

HB

279

(7)  
Date Referred: April 8, 1993

FURTHER REFERRALS:

Date of Committee Action: 4/13/93

The LABOR AND COMMERCE Committee considered:

HB 279

HOUSE BILL NO. 279

EXTEND ALASKA PUBLIC UTILITIES COMMISSION

"An Act extending the termination date of the Alaska Public Utilities Commission to June 30, 1997."

RECOMMENDATIONS:

be replaced with CS HB 279(L+C)  the same title  
 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 DCED

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Joe Sattor</i>	<input checked="" type="checkbox"/>	<i>Brian Porter</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>W.K. Williams</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>Bill Hudson</i>	<input checked="" type="checkbox"/>				

*Bill Hudson*  
CHAIRMAN'S SIGNATURE

# STATE OF ALASKA

## ALASKA PUBLIC UTILITIES COMMISSION DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

WALTER J. HICKEL, GOVERNOR

1016 WEST 6TH AVENUE  
SUITE 400  
ANCHORAGE, ALASKA 99501-1963  
PHONE: (907) 276-6222  
FAX: (907) 276-0160

April 8, 1993

Honorable Bill Hudson, Chairman  
House Labor & Commerce Committee  
Room 108, Capitol  
State Capitol  
Juneau, Alaska 99801-1182

Ref: Alaska Public Utilities Commission Sunset Legislation

Dear Representative Hudson:

I wanted to convey to you the Alaska Public Utilities Commission's appreciation for introducing HB 279, a bill extending the Commission's (Commission) sunset date by four years. I fully recognize that you are nearing the end of this legislative year and that your Committee is very busy. This letter sets out the reasons why sunset extension is in the public interest.

The Commission is scheduled to sunset on June 30, 1993. If no legislative action is taken to extend that sunset date this year, the Commission is required to close down during FY94. According to an Attorney General's legal opinion recently prepared at the request of Tuckerman Babcock, this would mean that the Commission would not be able to take on new proceedings during the wind-down year.

Unless significant statutory re-assignment to another agency were adopted this year, the following regulatory gridlock, at a minimum, could result:

Power Cost Equalization calculations would be interrupted and could interfere with payments to utilities in high-cost areas of the state (AS 44.83).

No certification of new utilities, extension of utility service areas, or transfer/sale of utilities would be possible. The same would be true of in-state pipeline carriers. Ironically, the deregulation of a telephone or electric cooperative by membership ballot or deregulation of other utility in the public interest could not occur. No increase or decrease in regulated utility rates or change in tariff provisions would be possible. For example, if Alascom or any other regulated carrier decided that it wanted to lower in-state rates in response to AT&T's announced intention to serve Alaska directly (as it applied to do to the Federal Communications Commission yesterday for interstate rates) that could not occur.

Letter to Honorable Bill Hudson  
April 9, 1993  
2 of 2

Consumer Protection complaints concerning regulated utilities would not be handled. Investigations into quality of service or over-charging allegations would not be handled.

Other duties being considered for specific statutory assignment to the Commission could not be carried out.

AS 44.66.050(b) places the burden on this agency to demonstrate the need for its continued existence. The Legislative Audit Report #08-1404-93 of the Alaska Public Utilities Commission dated January 26, 1993 confirms that the Commission has met its public purpose. In fact, the audit recommends a ten-year extension. However, since this would require substantive revision of the sunset statutes (such as is proposed in HB 110), the Commission supports a four-year extension.

A representative from the Commission will be available to testify on such legislation and we would attempt to respond affirmatively to any legitimate concerns raised.

Again, thank you for your action on this matter.

Sincerely,



Don Schröer  
Chairman

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. HB 279

Revision Date: April 8, 1993  
Title: Extending Alaska Public Utilities Commission  
Sponsor: Labor & Commerce  
Requestor: \_\_\_\_\_

Department Affected: Commerce and Economic Development  
BRU: Alaska Public Utilities Commission  
Component: Operations  
COMPONENT SERIAL NO. 364

EXPENDITURES/REVENUES:

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

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

REVENUE	0	0	0	0	0	0
FUND SOURCE:	0	0	0	0	0	0

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

POSITIONS:						
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: 0

ANALYSIS: This bill would extend the termination date of the APUC by four years until June 30, 1994. No increase in funds beyond normal operating budget levels is requested as a result of this bill.

Prepared by: Robert A. Lohr, Executive Director  
Division: Alaska Public Utilities Commission

Phone: 276-6222  
Date: April 9, 1993

Approved by Commissioner: \_\_\_\_\_  
Agency: Commerce and Economic Development Date: \_\_\_\_\_

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# HOUSE COMMITTEE REPORT

(7)

Date Referred: April 8, 1993

FURTHER REFERRALS:

Date of Committee Action: 4/13/93

The LABOR AND COMMERCE Committee considered:

HB 279

HOUSE BILL NO. 279

EXTEND ALASKA PUBLIC UTILITIES COMMISSION

"An Act extending the termination date of the Alaska Public Utilities Commission to June 30, 1997."

**RECOMMENDATIONS:**

be replaced with \_\_\_\_\_

CS HB 279

the same title  
 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 DCEI

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Joe Sattor</i>	✓	<i>Brian Porter</i>		✓	
<i>Jim [unclear]</i>	✓	<i>W.K. Williams</i>		✓	
<i>Allen [unclear]</i>	✓				
<i>[unclear]</i>	✓				
<i>Bill Hudson</i>	✓				

*Bill Hudson*  
 \_\_\_\_\_  
 CHAIRMAN'S SIGNATURE

HB

281

# FISCAL NOTE

**STATE OF ALASKA**  
**1993 LEGISLATIVE SESSION**

**BILL NO.** HB 281

Revision Date: \_\_\_\_\_ Dept. Affected: Commerce & Economic Development  
 Title: An Act extending the termination date BRU: Occupational Licensing  
of the Big Game Commercial Services Board... Component: Operations  
 Sponsor: Rep. Hudson  
 Requestor: House Labor & Commerce COMPONENT SERIAL NO. 1844

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>
<b>CAPITAL</b>						
<b>REVENUE FUND SOURCE:</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>

**FUNDING:**

(Thousands of Dollars)

	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>	<b>.0</b>

**POSITIONS:**

	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: \$ None

**ANALYSIS:** (Attach a separate page if necessary)  
 The bill extends the termination date of the Big Game Commercial Services Board to June 30, 1995. Funding for the board is included in the FY 94 operating budget; therefore, new funds are not required. A regulation project that proposes to increase fees to cover full costs of the program is under review in the Dept. of Law.  
 Average Annual Costs: \$205.7  
 Average Annual Revenue: 190.8

Prepared by: Jennifer Strickler, Administrative Officer Phone: 485-2144  
 Division: Occupational Licensing Date: 4/14/93  
 Approved by Commissioner: Paul Fuhs Date: 4-15-93  
 Agency: Commerce & Economic Development

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# Alaska

## Professional Hunters Association, Inc.

P.O. Box 91932 • 301 E. 77th • Anchorage, Alaska 99509  
(907) 522-3221

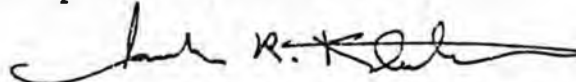
April 15, 1993

The Big Game Commercial Services Board was created by the guide-outfitter legislation of 1989 for the purpose of licensing and regulating the activities of those businesses providing services to big game hunters. These include guides, transporters, and gear and equipment service rental companies.

The value of Alaska's wildlife resources cannot be overstated. A rational utilization of these renewable resources facilitated by commercial entities requires a carefully structured system of regulations. These regulations should ensure high licensing and performance standards. They are necessary to enforce legal and ethical practices which support principles of game conservation. It is essential that we conduct our activities as stewards of the resource and not as unregulated exploiters of it.

It is in the best public interest that the Big Game Commercial Services Board regulate commercial activities related to the taking of game. Without this board, there would be chaos and the depletion of one of Alaska's most important value-added resources.

Joseph R. Klutsch, President



**CHAPTER 54.  
BIG GAME COMMERCIAL SERVICES.**

**Article**

1. Big Game Commercial Services Board (§§ 08.54.300—08.54.330)
2. Licensing (§§ 08.54.350—08.54.470)
3. Discipline and Unlawful Acts (§§ 08.54.500 — 08.54.540)
4. General Provisions (§§ 08.54.550, 08.54.590)

**ARTICLE 1.  
BIG GAME COMMERCIAL SERVICES BOARD**

**Section**

300. Creation and membership of board
310. Duties and powers
320. Board regulations
330. Board assistance

**Sec. 08.54.300. Creation and membership of board.** (a) For the purposes of licensing and regulating the activities of providers of commercial services to big game hunters in the interest of the state's wildlife resources there is created the Big Game Commercial Services Board. For administrative purposes, the board is in the Department of Commerce and Economic Development.

(b) The board consists of nine members:

- (1) two members who are licensed guide-outfitters;
- (2) two members who are licensed transporters, one of whom must be engaged in the business of providing air transportation services;
- (3) one member who holds a commercial use permit, but does not hold any class of guide-outfitter license or a transporter license;
- (4) one member of the Board of Game who is chosen by the Board of Game and who does not hold a commercial use permit;
- (5) one member who represents Native landholders; and
- (6) two public members.

**Sec. 08.54.310. Duties and powers.** (a) The board shall

- (1) prepare, grade, and administer
  - (A) a written and oral examination of an applicant for a guide-outfitter license that requires demonstration that the applicant is qualified generally to provide guide-outfitted hunts and, in particular, to guide-outfit in each game management unit the applicant has selected; if an applicant demonstrates limited ability to read or write the English

ALASKA STATUTES

AS 08.54.310

AS 08.54.310

language, the entire examination shall be administered orally; and

(B) an oral examination of a guide-outfitter who seeks an amendment of a game management unit certification; the examination must require demonstration that the guide-outfitter is qualified to provide guide-outfitted hunts in each new game management unit for which the guide-outfitter seeks to be certified;

(2) determine qualifications of applicants for class-A assistant guide-outfitter, marine mammal guide-outfitter, and assistant guide-outfitter licenses and authorize the issuance of licenses to those who qualify;

(3) establish performance standards for providers of big game commercial services and regulate the activities of these providers;

(4) compile, maintain, and publish an annual register of big game commercial service providers subject to this chapter who have not been convicted of a violation of a state or federal statute or regulation relating to the provision of big game commercial services; a big game commercial services provider listed in the register whose license or permit is revoked or suspended shall be removed from the register while the provider's license or permit is revoked or suspended;

(5) prohibit guide-outfitting, transporting, and other big game commercial services activities that are unsportsmanlike, unethical, unsafe, against principles of game conservation, degrading to a profession subject to this chapter, or that adversely affect natural resources;

(6) after a hearing, revoke, suspend, or deny renewal of a license or permit under AS 08.54.500—08.54.510;

(7) authorize issuance of transporter licenses;

(8) authorize issuance of commercial use permits;

(9) meet at least twice annually, once in Anchorage and once in another municipality;

(10) provide for registration of base camps and facilities used by persons who are licensed or who hold a permit under this chapter.

*[Editor's Note: Effective January 1, 1993 a new paragraph will be added to read:*

*(11) require an applicant for issuance or renewal of any class of guide-outfitter license to state in a written and signed document whether the applicant's right to obtain, or exercise the privileges granted by, a sport fishing, hunting, trapping, or guide-outfitting license is revoked or suspended in another state.]*

(b) The board may

(1) establish, subject to the prior approval of the commissioner of fish and game, a resource-based management system for allocating access to big game hunting opportunities among guide-outfitters licensed under this chapter;

ALASKA STATUTES

AS 08.54.320

AS 08.54.350

(2) establish the level of supervision that a guide-outfitter shall provide for class-A assistant guide-outfitters and assistant guide-outfitters who are employed by the guide-outfitter.

**Sec. 08.54.320. Board regulations.** The board shall adopt procedural and substantive regulations required by this chapter or reasonably necessary for its administration.

**Sec. 08.54.330. Board assistance.** The Department of Fish and Game, Department of Natural Resources, and Department of Public Safety shall provide the board with information, data, or technical assistance requested by the board for the purposes of licensing and regulating the activities of providers of commercial services to big game hunters.

HB

290

# HOUSE COMMITTEE REPORT

(7)

Date Referred: April 22, 1993

FURTHER REFERRALS:

State Affairs

Date of Committee Action: 3/15/94

The LABOR AND COMMERCE Committee considered:

HB 290

HOUSE BILL NO. 290

EXEMPT SPORTS OFFICIALS FROM WORKERS COMP

"An Act exempting certain sports officials from workers' compensation coverage."

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 LABOR

[ ] zero fiscal note(s) \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Brian D. Hyster</i>	✓				
<i>Bill Hudson</i>	✓				
<i>W.K. Williams</i>	✓				
<i>Joe Sutton</i>	✓				

*Bill Hudson*  
 \_\_\_\_\_  
 CHAIRMAN'S SIGNATURE

# Sponsor Statement HOUSE BILL 290

## OVERVIEW

Recently, the Department of Labor, Division of Workers Compensation, has determined that amateur sports officials must be covered by workers compensation policies, under a ranking of extremely high risk. This decision, according to sports officials' associations, will cause sports organizations which contract with referees, time keepers, and line judges, to pay anywhere between 17 and 54% of their compensation for officiating to cover worker's compensation premiums.

HB 290 is designed to eliminate this problem by exempting amateur sports officials from worker's compensation coverage as we do other contractual groups. Worker's compensation laws were designed to provide medical and income replacement for injured workers. Whereas few, if any, amateur sports officials are injured while officiating, the current high insurance premiums do not accurately reflect the amount of risk they experience as officials.

HB 290 is supported by sporting associations, officials' groups and officials themselves throughout the state. Included in the packets are letters of support from these groups.

This is a serious problem facing amateur sports in Alaska and threatens their future existence. HB 290 will eliminate this problem and allow the greatest number of people to play and officiate the games that they love to be involved in.

GEORGE H. "Tip" TIPTON

Manager, Ketchikan Terminal



White Pass Alaska

P.O. Box 7398, Ketchikan  
Alaska 99901  
Telephone: (907) 225-2106  
Telefax: (907) 225-2104  
Residence: (907) 225-6392

Alaska Only:  
1-800-478-7277

Bill Hudson  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

Bill,

I am writing to solicit your support for House Bill 290. I am the District Softball Commissioner for Ketchikan & Petersburg and the President of the Ketchikan Softball Association & we need an exemption from the workmen's compensation coverage requirements for our Umpires Association.

The Anchorage Sports Association & Mat-Su Softball have already been charged for coverage based upon Gross dollars paid to their officials. This happened after the season, and, of course, was not budgeted for. We were told at the State Softball meeting in late September by a representative of the insurance industry that the workmen's comp rate for umpires would be higher than the person performing field maintenance duties!!

We are a non-profit group and an additional burden of workmens comp insurance for umpires forces us to charge more to sponsors & players alike to recoup the approximate 15-17% that would be charged per \$100 Gross income. This is an amateur sport and the current requirements for insurance are out of line, thus the proposed bill will help correct this situation.

I appreciate your time and support. Thank you.

Respectfully,

George H. Tipton  
Ketchikan Softball Commissioner & President

AMATEUR SOFTBALL

ASSOCIATION



PATRICIA A. LILLIAN  
Alaska State Commissioner  
2950 Drake Drive  
Anchorage, Alaska 99508  
(907) 272-7683

March 9, 1994

Honorable Eldon Mulder  
Alaska House of Representatives  
Juneau, AK 99811

Dear Mr. Mulder:

I want to speak in favor of House Bill 290. This bill addresses an extremely important issue, the Worker's Compensation exemption for amateur sports officials.

Speaking for the sport of softball in particular, this issue bears directly on the ability of several Alaska communities to continue to be able to afford the cost of recreation programs. The additional burden of an exorbitant rate for a program which has no history of claims seems less than reasonable.

The number of sports officials, programs, and communities this affects, is significant.

Please continue the efforts to exempt these officials from the Worker's Compensation coverage requirement.

Sincerely,

A handwritten signature in cursive script that reads "Patricia A. Lillian".

Patricia A. Lillian  
Alaska Commissioner  
Amateur Softball Association



**GOLDEN HEART SOFTBALL ASSOCIATION, INC.**

P.O. Box 74921, Fairbanks, AK 99707  
Phone (907) 452-6768

Office located at 2120 Lathrop Street  
• Hex Ray Complex •

March 8, 1994

TO: Tim Sullivan  
FROM: G.H.S.A, Executive Board of Directors  
RE: Worker's Compensation Coverage for Umpires  
(HOUSE BILL NO. 290)

The members of the Golden Heart Softball Board of Directors would like to express our unanimous support for House Bill No. 290. The passage of Bill 290, which will exempt certain persons employed as sports officials on a contractual basis from worker's compensation coverage, is a must.

Local softball umpires consider officiating nothing more than a part-time job. Of those polled none expressed a desire to be covered by worker's compensation insurance for officiating.

The current rates of 15 to 17 percent (Surcharged through pool) per \$100 are outrageous. Neither the officials nor the G.H.S.A. can afford to pay the current rates. Slowpitch softball poses little or no risk to officials and no worker's compensation claims have ever been filed.

Thanks for your attention to the above.

# PEARSON & HANSON

ATTORNEYS AT LAW

408 OJA WAY - SUITE B

P.O. BOX 90

SITKA, ALASKA 99835

PHONE 907-747-3257 FAX: 907-747-4977

DENTON J. PEARSON  
ALASKA / OREGON

BRIAN E. HANSON  
ALASKA

March 9, 1994

VIA FAX

Rep. Eldon Mulder  
Alaska State Legislative  
State Capital (MS 3100)  
Juneau, Alaska 99801-1182

Re: HB 290

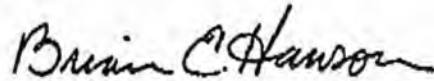
Dear Rep. Mulder:

I am writing this letter on behalf of the Sitka Softball Umpires Association.

We are writing to support HB 290 which would exempt sports officials from the Workers Compensation Act.

Please contact me if more specific information is needed to support our position. Thank you.

Sincerely,



Brian E. Hanson

BFD/rlw  
mulder.wp.cn



## Mat-Su Softball Association, Inc.

P.O. Box 875550  
Wasilla, Alaska 99687  
(907) 376-9050

March 10, 1994

### SUPPORT OF HOUSE BILL NO. 290

To All Members of the House and Senate:

I am writing to urge your support of House Bill No. 290 regarding the exempt status of contracted sports officials working with unpaid athletes. These sports include youth and adult basketball, volleyball, baseball, hockey, broomball, softball, skiing, dog mushing, rodeo and all other amateur sports.

Please keep in mind that the Workman's Compensation requirement did not originate from any sports officials but from insurance audits.

The Mat-Su Softball Association has paid Workman's Compensation on our umpires, scorekeepers, and tournament directors since a 1992-93 insurance audit revealed the requirement.

While researching the insurance requirements, I found that while branches of the state government disagree with the requirement of this insurance, they did agree on the fines for not having it.

I found that there have been no reported instances of injury by any such sports official in this state and that our insurance carrier could find no statistics nation wide to support the need for such insurance (but she was sure there must be some).

I found that the rates seem to be set arbitrarily in order to build an insurance fund "just in case" there ever is such an incident and are based on a National Insurance Code with no geographic nor population variance allowed.

I was also told that the goal of the national insurance board is also to require Workman's Compensation payments for unpaid volunteers and to increase the rates. Please refer to the amateur Anchorage Aces hockey team.

Mat-Su Softball Association, Inc.

pg 2 of 2

Currently, the rates are approximately \$15.99 per \$100.00 earned and there is a \$500.00 wage minimum, i.e., if an umpire from Kenai comes to our tournament and earns \$150.00 in a weekend, our Association is required to pay insurance as if he or she had earned \$500. At this time, the rate also applies to a scorekeeper who earns \$5.00 per game, i.e., if a person keeps score on 1 game in a tournament and is paid \$5.00 for that service, the workman's compensation insurance for that individual will be \$79.95.

The not-profit sports organizations in this state do not depend on state funding to provide service to our communities. Most communities in this state do not have anything except their imagination and energy to create activities for their people.

The stipend paid amateur officials is not a livable wage. The amateur officials I have met enjoy what they do and realize that without them, participants could not enjoy what they do.

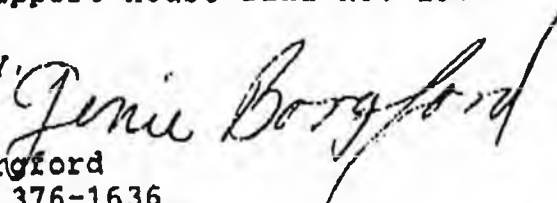
I have coached Little League T-Ball players and continue to coach Junior Softball Players and Youth Bowlers. I have served on the Mat-Su Softball Association Board of Directors for 8 years and was President for 3 years. I am presently the Mat-Su District Commissioner to the Alaska State Softball Association and Vice-President of that Association. I am also the league representative to the Mat-Su Association for our Youth League. My husband, daughter and I play softball, bowl, ride horses, train dogs, and ski.

I understand the costs involved in running recreational activities and in participating. Our goal has always been to keep the costs as low as possible to allow as many people to participate as possible.

This unnecessary and expensive cost will be passed on to participants and will stop many people from becoming active in their communities through these recreational outlets.

Please support House Bill No. 290.

Sincerely,

  
Genie Borgford  
Hm phone 376-1636  
Wk phone 272-1457

**FARTHEST NORTH UMPIRES ASSOCIATION**

PO BOX 74988  
FAIRBANKS, AK 99707-4988

March 5, 1994

RE: House Bill No. 290

I would like to take this opportunity to voice our organizations support for House Bill No. 290, "An Act exempting certain sports officials from workers' compensation coverage".

Our organization trains umpires in support of recreational slow pitch softball in the Interior of Alaska. Our organization services such groups as Ft. Wainwright Softball Association, Golden Heart Softball Association, Interior Girls Softball Association and North Pole Church Softball Leagues.

Without the passage of House Bill No. 290, an unjust financial burden will be placed on all sports officials. The current rate of workers' compensation is such that continuing in this part-time, seasonal and recreational field would not be justified.

Our organization would appreciate any effort in support of the passage of the House Bill No. 290. On behalf of Farthest North Umpires Association, thank you for your consideration in this matter.

Sincerely,



Randall D. Port  
President, Farthest North Umpires Association

Rep. Eldon Mulder  
Capital Room 116  
Juneau, Alaska 99801

March 3, 1994

RE: House Bill #290

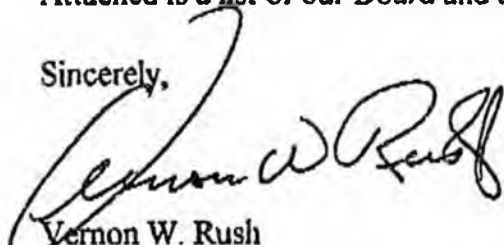
Sir,

The board of directors of the Anchorage Soccer Referee's Association have directed me to write you as to our position on Bill #290. We would like to go on record as to being IN FAVOR of the bill.

We are independent contractors, and are covered under USSF insurance as to accidents/liability, etc. We have no need to be covered under workmen's compensation. We believe that the original concept was never to include groups such as ours. This is a perfect opportunity to clear up the situation.

Attached is a list of our Board and a membership roster for your information.

Sincerely,



Vernon W. Rush  
President

Guy Warren  
Past-President  
Juneau-Douglas Officials Assn  
4362 Taku Blvd  
Juneau, AK 99801

March 7, 1994

The Honorable Eldon Mulder  
Alaska State House of Representatives  
Room 116  
State Capitol  
Juneau, Alaska 99811-1182

Dear Representative Mulder:

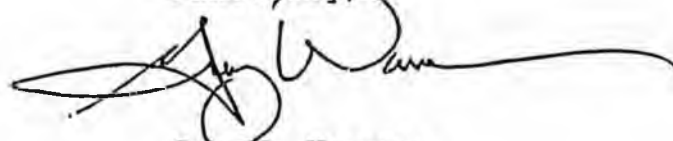
On behalf of the Juneau-Douglas Officials Association, I sincerely appreciate your sponsorship of House Bill 290, "An Act exempting certain sports officials from workers' compensation coverage."

This bill, which is supported by officials, officials groups and amateur sports associations throughout the state, will, if passed, address a serious problem facing amateur sports and amateur sports officials. Recent interpretations of existing law have led to the determination that amateur sports officials must be covered by workers' compensation policies. Further, these interpretations have placed sports officials into extremely high-risk categories. For example, we have been informed that the cost of providing this coverage to our softball umpires will be 17% of our current compensation. For football officials the rate will be 54% of our current compensation. These high rates will force increased costs for amateur sports participants and seriously decreased compensation for sports officials. These increased costs will only serve to decrease the number of individuals willing to officiate or will reduce the number of individuals participating in amateur athletics.

We believe the workers' compensation laws were designed to provide benefits to workers, providing medical and income replacement coverage for workers statewide. However, whereas few, if any amateur sports officials in the state receive a significant amount of their personal income from sports officiating, we cannot justify the high expense of this coverage for the limited benefits it will provide. It should be understood that for most officials, officiating is a hobby, our way of participating in the sports we enjoy. The money we receive, while important to maintaining our participation as officials, is never the sole reason we officiate.

In conclusion, I would once again like to thank you for your sponsorship of House Bill 290, and would like to offer our organizations support for its passage. Please contact us if you would like any assistance in presenting this bill to the Legislature.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy M. Warren", with a long horizontal flourish extending to the right.

Guy M. Warren

HPB

292

File 1

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

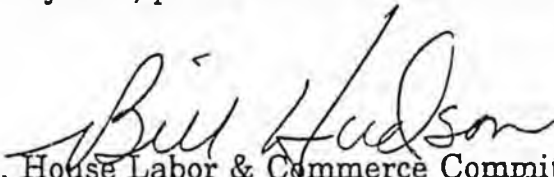
STATE CAPITOL, JUNEAU, AK 99801-1182  
(907) 465-4954



## LETTER OF INTENT CSHB 292(L&C)

The House Labor and Commerce Committee considered House Bill 292, an Act relating to civil actions, and has replaced it with Committee Substitute for House Bill 292 (L&C), and referred it to the Judiciary Committee.

It is the intent of the House Labor and Commerce Committee that the Judiciary Committee reconsider the amendment to current law that would delete the exclusion of disfigurement or severe physical impairment from the cap on noneconomic damages in Section 7 of CSHB 292(L&C) and adopt an amendment that: 1) defines the phrase "disfigurement or severe physical impairment; and 2) restores the exclusion or establishes a more "realistic cap" on these types of injuries, per the commitment of the Chair of the Judiciary Committee.

  
Chair, House Labor & Commerce Committee

*With amendments rolled in.*

8-LS0914NR  
Ford  
1/31/94

CS FOR HOUSE BILL NO. 292( )

IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 11,  
2 49, 68, 82, and 95; and providing for an effective date."

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

4 \* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

5 (1) civil justice in this state has generally been developed by the courts on a  
6 case-by-case basis; this process has resulted in some significant changes in the law, and the  
7 legislature has periodically intervened to bring about needed reforms;

8 (2) the level of malpractice insurance premiums discourage physicians,  
9 architects, engineers, attorneys, and other professionals from initiating or continuing their  
10 practice or offering needed services to the public;

11 (3) society as a whole cannot afford the price of lawsuits years after  
12 construction, manufacture, the delivery of services and other actions; the widespread use of  
13 claims made insurance policies makes it impossible to adequately and economically insure  
14 against actions for an unlimited period of time; likewise it is extremely difficult to defend

1 against a claim that has become stale after information and witnesses have disappeared;

2 (4) on the whole society is better served with a statute of repose even though  
3 in a few limited instances injuries may go without compensation;

4 (5) hospitals that comply with the disclosure requirements set out in this Act  
5 should not be liable for the negligence of independent contractors; to this extent this Act is  
6 intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987);

7 (6) the issues in the Act were intended to be addressed in a comprehensive  
8 way in 1986; however, the legislation passed in 1986 fell short of accomplishing the goals of  
9 the legislature and the problems that existed in 1986 still exist in 1993.

10 (b) It is the purpose of this Act to

11 (1) enact further reforms that create a more equitable distribution of the cost  
12 and risk of injury;

13 (2) reduce costs associated with the civil justice system, while ensuring that  
14 adequate and appropriate compensation for persons injured through the fault of others is  
15 available;

16 (3) help match losses with compensation by helping to

17 (A) ensure that money paid to an injured person is available when  
18 anticipated expenses or losses occur;

19 (B) ensure that a claimant with substantial injury requiring long-term  
20 treatment will have money available for future medical care;

21 (C) reduce reparation system costs by eliminating those portions of  
22 awards that are not needed to compensate the claimant;

23 (D) eliminate duplicate recoveries; and

24 (E) reduce the costs of litigation;

25 (4) ensure that in actions involving the fault of more than one person, the fault  
26 of each claimant, defendant, third-party defendant, person who has been released from  
27 liability, or other person responsible for the damages be determined and awards be allocated  
28 in accordance with their fault;

29 (5) reduce the amount of litigation proceeding to trial by modifying the  
30 allocation of attorney fees and court costs based on the offer of judgment and the final court  
31 award thereby providing a financial incentive to both parties to settle the dispute;

1 (6) accumulate additional information concerning the costs to society of the  
2 civil justice system as it is presently constituted by having the division of insurance compile  
3 useful information and present a report to the legislature; this information is necessary to  
4 determine whether the civil justice, health care, and insurance systems as they are presently  
5 constituted are fairly serving victims and whether a disproportionate amount of compensation  
6 dollars is absorbed by the system;

7 (7) enact a statute of repose that meets the tests set out in Turner Construction  
8 Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988);

9 (8) clarify the circumstances in which hospitals are held directly liable for the  
10 actions of health care providers not employed by the hospital.

11 \* Sec. 2. AS 08.64 is amended by adding a new section to read:

12 Sec. 08.64.125. MEDICAL PRACTICE PARAMETERS. (a) The board shall  
13 appoint a committee representative of medical specialties for the purpose of developing  
14 medical practice parameters. The practice parameters shall, consistent with appropriate  
15 standards of care, be designed to prevent claims of medical malpractice and to  
16 eliminate the practice of defensive medicine undertaken to avoid civil litigation.  
17 Medical practice parameters shall be adopted by the board by regulation and shall  
18 apply to the practice of medicine in the areas of anesthesiology, obstetrics, gynecology,  
19 emergency medicine, radiology, and other medical specialties determined by the  
20 committee.

21 (b) Practice parameters developed under (a) of this section

22 (1) must consider the needs of health care consumers and others in the  
23 health care system;

24 (2) are admissible as evidence in a civil action alleging professional  
25 negligence brought against a person licensed under this chapter; and

26 (3) must be revised at least every two years.

27 \* Sec. 3. AS 09.10 is amended by adding a new section to read:

28 Sec. 09.10.052. CERTAIN ACTIONS THAT MUST BE BROUGHT IN SIX  
29 YEARS. (a) Notwithstanding the disability of minority described under  
30 AS 09.10.140(a), a person may not bring an action for personal injury, death, or  
31 property damage unless commenced within six years of the earlier of the date

1 (1) a newly manufactured product was first used for its intended  
2 purpose; however, the limitation of this paragraph does not apply to a claim for faulty  
3 maintenance of a product;

4 (2) of substantial completion of the construction alleged to have caused  
5 the personal injury, death, or property damage; or

6 (3) of the last act alleged to have caused the personal injury, death, or  
7 property damage.

8 (b) This section does not apply if

9 (1) the personal injury, death, or property damage was caused  
10 intentionally; ~~intentionally;~~ *Hudson Amendment #13 Adopted*

11 (2) facts that would give notice of a potential cause of action are  
12 intentionally concealed; or

13 (3) a shorter period of time for bringing the action is imposed under  
14 another provision of law.

15 (c) In this section, "substantial completion" means the date when construction  
16 is sufficiently completed to allow the owner or a person authorized by the owner to  
17 occupy the improvement or to use the improvement in the manner for which it was  
18 intended.

19 \* Sec. 4. AS 09.10 is amended by adding a new section to read:

20 Sec. 09.10.065. LIMITATION ON ACTIONS AGAINST HEALTH CARE  
21 PROVIDERS. (a) Notwithstanding the disability of minority described under  
22 AS 09.10.140(a), an action based on professional negligence may not be brought  
23 against a health care provider unless

24 (1) the action is brought within two years from the date the alleged  
25 negligent act or omission was discovered or should have been discovered by the  
26 exercise of reasonable diligence; or

27 (2) if the injured person is, on the date the alleged negligent act or  
28 omission less than six years of age, the action is brought before the person's eighth  
29 birthday unless a longer period is allowed under (1) of this subsection.

30 (b) The limitation imposed under (a) of this section is tolled during any period  
31 in which there exists

1 (1) fraud, including fraud or collusion by a parent, guardian, insurer,  
2 or health care provider, resulting in the failure to bring an action on behalf of an  
3 injured minor; or

4 (2) intentional concealment of facts that would give notice of a  
5 potential action.

6 (c) In this section,

7 (1) "health care provider" has the meaning given in AS 09.55.560;

8 (2) "professional negligence" means a negligent act or omission by a  
9 health care provider in rendering professional services;

10 (3) "professional services" means services provided by a health care  
11 provider that are within the scope of services for which the health care provider is  
12 licensed, and that are not prohibited under the health care provider's license or by a  
13 hospital in which the health care provider practices.

14 \* Sec. 5. AS 09.10.070 is amended to read:

15 Sec. 09.10.070. ACTIONS TO BE BROUGHT IN TWO YEARS. A [NO]  
16 person may not bring an action (1) for libel, slander, assault, battery, seduction, or  
17 false imprisonment [, OR FOR ANY INJURY TO THE PERSON OR RIGHTS OF  
18 ANOTHER NOT ARISING ON CONTRACT AND NOT SPECIFICALLY  
19 PROVIDED OTHERWISE]; (2) upon a statute for a forfeiture or penalty to the state;  
20 or (3) upon a liability created by statute, other than a penalty or forfeiture; unless  
21 commenced within two years.

22 \* Sec. 6. AS 09.10 is amended by adding a new section to read:

23 Sec. 09.10.075. LIMITATION ON ACTIONS INVOLVING INJURY TO  
24 PERSON OR PROPERTY. (a) Notwithstanding the disability of minority described  
25 under AS 09.10.140(a), a person may not bring an action for personal injury, death,  
26 or property damage unless the action is brought within two years of the accrual of the  
27 action.

28 (b) This section does not apply if a shorter period of time for bringing the  
29 action is imposed under another provision of law.

30 \* Sec. 7. AS 09.17.010 is amended to read:

31 Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to recover

1 damages for personal injury or wrongful death, all damage claims [BASED ON  
2 NEGLIGENCE, DAMAGES] for noneconomic losses shall be limited to compensation  
3 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of  
4 enjoyment of life, loss of consortium, and other nonpecuniary damage.

5 (b) The amount of damages awarded by a court or a jury under (a) of this  
6 section may not exceed \$500,000 for all claims, including a loss of consortium  
7 claim, arising out of a single injury or death [EACH CLAIM BASED ON A  
8 SEPARATE INCIDENT OR INJURY].

9 (c) The limit under (b) of this section does not apply to noneconomic damages  
10 awarded by a court or jury against a person who was convicted of a class A or  
11 unclassified felony, if the person bringing the action was a victim of that offense  
12 and the action is based in that offense. In this subsection, "victim" has the  
13 meaning given in AS 12.55.185 [FOR DISFIGUREMENT OR SEVERE PHYSICAL  
14 IMPAIRMENT].

15 \* Sec. 8. AS 09.17.020 is amended to read:

16 Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be  
17 awarded in an action, whether in tort, contract, or otherwise, unless supported by clear  
18 and convincing evidence of malice or conscious acts showing deliberate disregard  
19 of another person by the person from whom the punitive damages are sought.

20 \* Sec. 9. AS 09.17.020 is amended by adding new subsections to read:

21 (b) The amount of punitive damages awarded by a court or jury under (a) of  
22 this section may not exceed three times the amount of compensatory damages awarded  
23 or \$200,000, whichever amount is greater.

24 (c) The limit under (b) of this section does not apply to punitive damages  
25 awarded by a court or jury against a person convicted of a class A or unclassified  
26 felony if the person bringing the action was a victim of that offense and the action is  
27 based on that offense. In this subsection, "victim" has the meaning given in  
28 AS 12.55.185.

29 \* Sec. 10. AS 09.17.030 is amended to read:

30 Sec. 09.17.030. DAMAGES RESULTING FROM COMMISSION OF A  
31 CRIME. A person who suffers personal injury or death may not recover damages for

1 the personal injury or death if the injuries or death occurred while the person was  
2 attempting to commit or committing a felony, or fleeing from [ENGAGED IN] the  
3 commission of a felony, [THE PERSON HAS BEEN CONVICTED OF THE  
4 FELONY, INCLUDING CONVICTION BASED ON A GUILTY PLEA OR PLEA  
5 OF NOLO CONTENDERE,] and the action [FELONY] substantially contributed to  
6 the injury or death. [THIS SECTION DOES NOT AFFECT A RIGHT OF ACTION  
7 UNDER 42 U.S.C. 1983.]

8 \* Sec. 11. AS 09.17.040(a) is amended to read:

9 (a) In every case where damages for personal injury or death are awarded by  
10 the court or jury [,]

11 (1) the verdict shall be itemized between economic loss and  
12 noneconomic loss, if any, as follows:

13 (A) [(1)] past economic loss;

14 (B) [(2)] past noneconomic loss;

15 (C) [(3)] future economic loss;

16 (D) [(4)] future noneconomic loss; [AND]

17 (E) [(5)] punitive damages; and

18 (2) the amount of economic damages awarded for past or future  
19 gross earnings shall be reduced by the amount of federal and state income tax  
20 that would be paid on the earnings under tax rates in effect on the date of the  
21 injury or death.

22 \* Sec. 12. AS 09.17.040(d) is amended to read:

23 (d) In an action to recover damages, the court shall, at the request of a [AN  
24 INJURED] party, enter judgment ordering that amounts awarded a judgment creditor  
25 for future damages be paid to the maximum extent feasible by periodic payments  
26 rather than by a lump-sum payment. If a portion of the judgment awarded is owed  
27 to an attorney under a contingent fee agreement, that portion of the judgment  
28 shall be reduced to present value and paid in a lump sum.

30 \* Sec. 13. AS 09.17.040(e) is amended to read:

31 (e) Except as provided in this subsection, if a judgment is paid by periodic

1        payments, the [THE] court shall [MAY] require security be posted [,] in order to  
 2        ensure that funds are available as periodic payments become due. The court may not  
 3        require security to be posted if an authorized insurer, as defined in AS 21.90.900,  
 4        acknowledges to the court its obligation to discharge the judgment.

5        \* Sec. 14. AS 09.17.040(f) is amended to read:

6                (f) A judgment ordering payment of future damages for personal injury or  
 7        death by periodic payment shall specify the recipient, the dollar amount of the pay-  
 8        ments, including any increases in future payments for anticipated inflation, the  
 9        interval between payments, and the number of payments or the period of time over  
 10        which payments shall be made. Payments may be modified only in the event of the  
 11        death of the judgment creditor, in which case payments may not be reduced or  
 12        terminated, but shall be paid to persons to whom the judgment creditor owed a duty  
 13        of support, as provided by law, immediately before death. In the event the judgment  
 14        creditor owed no duty of support to dependents at the time of the judgment creditor's  
 15        death, the money remaining shall be distributed in accordance with a will of the  
 16        deceased judgment creditor accepted into probate or under the intestate laws of the  
 17        state if the deceased had no will.

18        \* Sec. 15. AS 09.17.070 is repealed and reenacted to read:

19                Sec. 09.17.070. COLLATERAL BENEFITS. (a) Except when the collateral  
 20        source is a federally funded program that by law must seek subrogation or when the  
 21        collateral source has a right of subrogation by law or contract, and except for death  
 22        benefits paid under life insurance, a claimant in an action for personal injury or death  
 23        may only recover damages that exceed amounts received by the claimant, or that with  
 24        reasonable probability will be received in the future by the claimant, as compensation  
 25        for the injuries from collateral sources, whether private, group, or governmental, and  
 26        whether contributory or noncontributory.

27                (b) A person defending a claim may introduce into evidence an amount paid  
 28        or payable as a benefit to the claimant as a result of the personal injury or death under  
 29        42 U.S.C. 301 - 1397 (Social Security Act); a state or federal disability or workers'  
 30        compensation act; health, sickness, disability, accident, or income-disability insurance;  
 31        insurance that provides health benefits or income-disability coverage; and a contract

1 or agreement of a group, organization, partnership, or corporation, or other collateral  
2 source, to provide, pay for, or reimburse the cost of medical, hospital, dental, or other  
3 health care services, disability, or lost wages. However, evidence of a collateral source  
4 that has a right of subrogation under law or contract may not be introduced under this  
5 subsection. If a person defending a claim elects to introduce evidence described in this  
6 subsection, the claimant may introduce evidence of the amount that the claimant has  
7 paid or contributed to secure the claimant's right to an insurance or contractual benefit  
8 introduced by the person defending the claim as evidence.

9 (c) Unless evidence of a collateral source has already been introduced under  
10 (b) of this section, evidence of a collateral source, other than a federal program that  
11 by law must seek subrogation or when the collateral source has a right of subrogation  
12 by law or contract, and except for a death benefit paid under life insurance, is only  
13 admissible after the fact finder has rendered an award. The court may take into  
14 account the value of the claimant's rights to coverage exhausted or depleted by  
15 payment of the collateral benefit by adding back a reasonable estimate of their  
16 probable value, or by designating and holding for possible periodic payment under  
17 AS 09.17.040 that amount of the award that would otherwise have been deducted, to  
18 determine if the impairment of the claimant's rights actually takes place in the future.

19 (d) A person who provides a collateral benefit admissible under (a) or (b) of  
20 this section may not recover any amount against the claimant as reimbursement for  
21 those benefits and may not be subrogated to the rights of a claimant against a person  
22 defending a claim.

23 \* Sec. 16. AS 09.17.080(a) is amended to read:

24 (a) In all actions involving fault of more than one person [PARTY TO THE  
25 ACTION], including third-party defendants and persons who have been released under  
26 AS 09.17.091 [AS 09.16.040], the court, unless otherwise agreed by all parties, shall  
27 instruct the jury to answer special interrogatories or, if there is no jury, shall make  
28 findings, indicating

29 (1) the amount of damages each claimant would be entitled to recover  
30 if contributory fault is disregarded; and

31 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO

1 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,  
2 [AND] person who has been released from liability under AS 09.17.091, or other  
3 person responsible for the damages to each claimant regardless of whether the  
4 other person is or could have been named as a party to the action [AS 09.16.040].

5 \* Sec. 17. AS 09.17.080(c) is amended to read:

6 (c) The court shall determine the award of damages to each claimant in  
7 accordance with the findings, subject to a reduction under AS 09.17.091  
8 [AS 09.16.040], and enter judgment against each party liable. The court also shall  
9 determine and state in the judgment each party's equitable share of the obligation to  
10 each claimant in accordance with the respective percentages of fault as determined  
11 under (a) of this section. An assessment of a percentage of fault against a person  
12 who is not a party may only be used as a measure for accurately determining the  
13 percentages of fault of a named party. Assessment of a percentage of fault  
14 against a person who is not a party does not subject that person to civil liability  
15 in this or another action and may not be used as evidence of civil liability in  
16 another action.

17 \* Sec. 18. AS 09.17 is amended by adding a new section to read:

18 Sec. 09.17.091. EFFECT OF RELEASE. When a release or covenant not to  
19 sue or not to enforce judgment is given in good faith to one of two or more persons  
20 civilly liable for the same injury or the same wrongful death

21 (1) it does not discharge any of the other persons from liability for the  
22 injury or wrongful death unless its terms so provide; but it reduces the claim against  
23 the others to the extent of any amount stipulated by the release or the covenant, or in  
24 the amount of the consideration paid for it, whichever is the greater; and

25 (2) it discharges the person to whom it is given from all liability for  
26 contribution to any other person.

27 \* Sec. 19. AS 09.30.065 is amended to read:

28 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10 days  
29 before the trial begins either the party making a claim or the party defending against  
30 a claim may serve upon the adverse party an offer to allow judgment to be entered in  
31 complete satisfaction of the claim for the money or property or to the effect specified

1 in the offer, with cost then accrued. If within 10 days after the service of the offer the  
2 adverse party serves written notice that the offer is accepted, either party may then file  
3 the offer and notice of acceptance together with proof of service, and the clerk shall  
4 enter judgment. An offer not accepted within 10 days is considered withdrawn and  
5 evidence of that offer is not admissible except in a proceeding to determine the form  
6 of judgment after verdict. If the judgment finally entered on the claim as to which an  
7 offer has been made under this section is not more favorable to the offeree than the  
8 offer, the offeree shall pay the actual costs and attorney fees incurred by the  
9 offeror from the date the offer was made [THE INTEREST AWARDED UNDER  
10 AS 09.30.070 AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED  
11 SHALL BE ADJUSTED AS FOLLOWS:

12 (1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE  
13 INTEREST RATE SHALL BE REDUCED BY FIVE PERCENT A YEAR;

14 (2) IF THE OFFEREE IS THE PARTY DEFENDING AGAINST THE  
15 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A  
16 YEAR].

17 \* Sec. 20. AS 09.30.070(a) is amended to read:

18 (a) The rate of interest on judgments and decrees for the payment of money  
19 is three percent above the 12th Federal Reserve District discount rate in effect on  
20 January 2 of the year in which the judgment or decree is entered [10.5 PERCENT  
21 A YEAR], except that a judgment or decree founded on a contract in writing,  
22 providing for the payment of interest until paid at a specified rate not exceeding the  
23 legal rate of interest for that type of contract, bears interest at the rate specified in the  
24 contract if the interest rate is set out in the judgment or decree.

25 \* Sec. 21. AS 09.30.070 is amended by adding a new subsection to read:

26 (c) Prejudgment interest may not be awarded for future economic damages,  
27 future noneconomic damages, or for punitive damages.

28 \* Sec. 22. AS 09.55.535(k) is amended to read:

29 (k) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180,  
30 apply to arbitrations under this section if they do not conflict with the provisions of  
31 this section; arbitrations under this section shall be conducted in accordance with

1 procedures established by any rules of court which may be adopted and according to  
2 provisions of AS 09.55.540 - 09.55.547 [AS 09.55.540 - 09.55.548] and AS 09.55.554  
3 - 09.55.560, and AS 09.65.090.

4 \* Sec. 23. AS 09.55.580(a) is amended to read:

5 (a) Except as provided under (f) of this section, when the death of a person  
6 is caused by the wrongful act or omission of another, the personal representatives of  
7 the former may maintain an action therefor against the latter, if the former might have  
8 maintained an action, had the person lived, against the latter for an injury done by the  
9 same act or omission. The action shall be commenced within two years after the  
10 death, and the damages therein shall be the damages the court or jury may consider  
11 fair and just. The amount recovered, if any, shall be exclusively for the benefit of the  
12 decedent's spouse and children when the decedent is survived by a spouse or children,  
13 or other dependents. When the decedent is survived by no spouse or children or other  
14 dependents, the amount recovered shall be administered as other personal property of  
15 the decedent but shall be limited to economic [PECUNIARY] loss. When the plaintiff  
16 prevails, the trial court shall determine the allowable costs and expenses of the action  
17 and may, in its discretion, require notice and hearing thereon. The amount recovered  
18 shall be distributed only after payment of all costs and expenses of suit and debts and  
19 expenses of administration.

20 \* Sec. 24. AS 09.55.580(c) is amended to read:

21 (c) Except as provided in AS 09.17.010 and (g) of this section, in [IN]  
22 fixing the amount of damages to be awarded under this section, the court or jury shall  
23 consider all the facts and circumstances and from them fix the award at a sum which  
24 will fairly compensate for the injury resulting from the death. In determining the  
25 amount of the award, the court or jury shall consider but is not limited to the  
26 following:

27 (1) deprivation of the expectation of economic [PECUNIARY] benefits  
28 to the beneficiary or beneficiaries, without regard to age thereof, that would have  
29 resulted from the continued life of the deceased and without regard to probable  
30 accumulations or what the deceased may have saved during the lifetime of the  
31 deceased;

- 1 (2) loss of contributions for support;  
2 (3) loss of assistance or services irrespective of age or relationship of  
3 decedent to the beneficiary or beneficiaries;  
4 (4) loss of consortium;  
5 (5) loss of prospective training and education;  
6 (6) medical and funeral expenses.

7 \* Sec. 25. AS 09.55.580 is amended by adding new subsections to read:

8 (g) The amount awarded by the court or jury under this section for economic  
9 damages may not exceed \$10,000 if the deceased is not survived by a spouse, minor  
10 child, or dependent. In this subsection, "dependent" means a father, mother, child,  
11 grandchild, or sibling who was dependent on the deceased at the time of death.

12 (h) The limit under (g) of this section does not apply to damages awarded by  
13 a court or jury against a person convicted of a class A or unclassified felony if the  
14 deceased was a victim of that offense and the action is based on that offense. In this  
15 subsection, "victim" has the meaning given in AS 12.55.185.

16 \* Sec. 26. AS 09.60.010 is repealed and reenacted to read:

17 Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING  
18 PARTY. The supreme court shall determine by rule or order the costs, if any, that  
19 may be allowed a prevailing party in a civil action. Unless specifically authorized by  
20 statute or by agreement between the parties, attorney fees may not be awarded to a  
21 party in a civil action for personal injury, death, or property damage related to or  
22 arising out of fault. In this section, "fault" has the meaning given in AS 09.17.900.

23 \* Sec. 27. AS 09.65 is amended by adding a new section to read:

24 Sec. 09.65.096. CIVIL LIABILITY OF HOSPITALS FOR NONEMPLOYEES.

25 (a) A hospital is not liable for civil damages as a result of an act or omission by a  
26 health care provider who is not an employee or actual agent of the hospital if the  
27 hospital provides notice that the health care provider is an independent contractor. The  
28 notice required by this subsection must be posted conspicuously in all admitting areas  
29 of the hospital, published at least annually in a newspaper of general circulation in the  
30 area, and must be in substantially the following form:

31 Notice of Limited Liability

1 The following health care providers are independent contractors  
2 and are not employees of the hospital:

3 (List specific health care providers)

4 The hospital is responsible for exercising reasonable care in granting staff privileges  
5 to practice in the hospital, for reviewing those privileges on a regular basis, and for  
6 taking appropriate steps to revoke or restrict privileges in appropriate circumstances.  
7 The hospital is not otherwise liable for the acts or omissions of a health care provider  
8 who is an independent contractor.

9 (b) This section does not preclude liability for civil damages that are the  
10 proximate result of the hospital's own negligence or intentional misconduct.

11 (c) In this section,

12 (1) "health care provider" has the meaning given in AS 18.23.070,  
13 except that it does not include a hospital or an employee of the hospital;

14 (2) "hospital" has the meaning given in AS 18.20.130 and includes a  
15 governmentally owned or operated hospital.

16 \* Sec. 28. AS 09.65 is amended by adding a new section to read:

17 Sec. 09.65.125. SIGNING OF PLEADINGS, MOTIONS, AND OTHER  
18 PAPERS; SANCTIONS. Every pleading, motion, and other paper of a party  
19 represented by an attorney shall be signed by at least one attorney of record in the  
20 attorney's individual name, whose address shall be stated. A party who is not  
21 represented by an attorney shall sign the party's pleading, motion, or other paper and  
22 state the party's address. Except when otherwise specifically provided by the Alaska  
23 Rules of Civil Procedure or statute, pleadings need not be verified or accompanied by  
24 affidavit. The signature of an attorney or party constitutes a certificate by the signer  
25 that the signer has read the pleading, motion, or other paper; that to the best of the  
26 signer's knowledge, information, and belief formed after reasonable inquiry it is well  
27 grounded in fact and is warranted by existing law or a good faith argument of the  
28 extension, modification, or reversal of existing law; and that it is not interposed for any  
29 improper purpose, including to harass or to cause unnecessary delay or needless  
30 increase in the cost of litigation. If a pleading, motion, or other paper is not signed,  
31 it shall be stricken unless it is signed promptly after the omission is called to the

1 attention of the pleader or movant. If it is alleged or appears that a pleading, motion,  
2 or other paper is signed in violation of this section, the court, upon motion or upon its  
3 own initiative, shall immediately set the matter for hearing. If the court determines  
4 that a pleading, motion, or other paper is signed in violation of this section, the court  
5 shall impose upon the person who signed it, a represented party, or both, an  
6 appropriate sanction that shall include an order to pay to the other party the amount  
7 of the reasonable expenses incurred because of the filing of the pleading, motion, or  
8 other paper, including reasonable attorney fees, and monetary sanctions that are not  
9 less than \$500 nor more than \$10,000.

10 \* Sec. 29. AS 09.17.040(c) and AS 09.55.548 are repealed.

11 \* Sec. 30. AS 09.17.080(a), as amended in sec. 16 of this Act, has the effect of amending  
12 Alaska Rule of Civil Procedure 49 by requiring the jury to answer the special interrogatory  
13 listed in AS 09.17.080(a)(2), regarding the percentages of fault to be allocated among the  
14 parties.

15 \* Sec. 31. AS 09.30.065, as amended by sec. 19 of this Act, has the effect of amending  
16 Alaska Rule of Civil Procedure 68 by providing that if a judgment is not more favorable to  
17 the offeree than the offer, the offeree shall pay actual costs and attorney fees incurred by the  
18 offeror.

19 \* Sec. 32. AS 09.30.070(c), added by sec. 21 of this Act, has the effect of amending  
20 Alaska Rule of Civil Procedure 68 by providing that prejudgment interest may not be awarded  
21 for future economic or noneconomic damages.

22 \* Sec. 33. AS 09.60.010, as repealed and reenacted by sec. 26 of this Act, has the effect  
23 of amending Alaska Rule of Civil Procedure 82 by providing that attorney fees may not be  
24 awarded in a civil action for personal injury, death, or property damage, unless authorized by  
25 statute or by agreement of the parties.

26 \* Sec. 34. AS 09.65.125, added by sec. 28 of this Act, has the effect of amending Alaska  
27 Rules of Civil Procedure 11 and 95 by requiring an immediate hearing to consider appropriate  
28 sanctions for certain failures relating to the signing of pleadings, motions, or other papers.

29 \* Sec. 35. REPORT. (a) The division of insurance shall compile information necessary  
30 to determine if the civil justice system is adequately serving claimants and whether a  
31 disproportionate amount of compensation dollars are being absorbed by the system. In

1 examining the civil justice system, the division of insurance shall consider the effect of the  
2 health care and insurance systems in the state.

3 (b) The information compiled under (a) of this section shall be reported back to the  
4 legislature by June 1, 1995.

5 \* Sec. 36. TRANSITION. The State Medical Board shall adopt by regulation the initial  
6 practice parameters required under AS 08.64.125, enacted by sec. 2 of this Act, by January 1,  
7 1997.

8 \* Sec. 37. SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the  
9 application of a provision of this Act to any person or circumstance is held invalid, the  
10 remainder of this Act and the application to other persons shall not be affected.

11 \* Sec. 38. APPLICABILITY. This Act applies to all causes of action accruing on or after  
12 the effective date of this Act.

13 \* Sec. 39. This Act takes effect July 1, 1994.

8-LS0914V

Ford

8/27/93

*Rep Porter  
fax*

CS FOR HOUSE BILL NO. 292( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49,  
2 68. and 82; and providing for an effective date."

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

4 \* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

5 (1) civil justice in this state has generally been developed by the courts on a  
6 case-by-case basis; this process has resulted in some significant changes in the law, and the  
7 legislature has periodically intervened to bring about needed reforms;

8 (2) the level of malpractice insurance premiums discourage physicians,  
9 architects, engineers, attorneys, and other professionals from initiating or continuing their  
10 practice or offering needed services to the public;

11 (3) society as a whole cannot afford the price of lawsuits years after  
12 construction, manufacture, the delivery of services and other actions; the widespread use of  
13 claims made insurance policies makes it impossible to adequately and economically insure  
14 against actions for an unlimited period of time; likewise it is extremely difficult to defend

1 against a claim that has become stale after information and witnesses have disappeared;

2 (4) on the whole society is better served with a statute of repose even though  
3 in a few limited instances injuries may go without compensation;

4 (5) hospitals that comply with the disclosure requirements set out in this Act  
5 should not be liable for the negligence of independent contractors; to this extent this Act is  
6 intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987);

7 (6) the issues in the Act were intended to be addressed in a comprehensive  
8 way in 1986; however, the legislation passed in 1986 fell short of accomplishing the goals of  
9 the legislature and the problems that existed in 1986 still exist in 1993.

10 (b) It is the purpose of this Act to

11 (1) enact further reforms that create a more equitable distribution of the cost  
12 and risk of injury;

13 (2) reduce costs associated with the civil justice system, while ensuring that  
14 adequate and appropriate compensation for persons injured through the fault of others is  
15 available;

16 (3) help match losses with compensation by helping to

17 (A) ensure that money paid to an injured person is available when  
18 anticipated expenses or losses occur;

19 (B) ensure that a claimant with substantial injury requiring long-term  
20 treatment will have money available for future medical care;

21 (C) reduce reparation system costs by eliminating those portions of  
22 awards that are not needed to compensate the claimant;

23 (D) eliminate duplicate recoveries; and

24 (E) reduce the costs of litigation;

25 (4) ensure that in actions involving the fault of more than one person, the fault  
26 of each claimant, defendant, third-party defendant, person who has been released from  
27 liability, or other person responsible for the damages be determined and awards be allocated  
in accordance with their fault;

29 (5) reduce the amount of litigation proceeding to trial by modifying the  
30 allocation of attorney fees and court costs based on the offer of judgment and the final court  
31 award thereby providing a financial incentive to both parties to settle the dispute;

1 (6) accumulate additional information concerning the costs to society of the  
 2 civil justice system as it is presently constituted by having the attorney general compile useful  
 3 information and present an annual <sup>#1</sup> report to the legislature; this information is necessary to  
 4 determine whether the civil justice, health care, and insurance systems as they are presently  
 5 constituted are fairly serving victims and whether a disproportionate amount of compensation  
 6 dollars is absorbed by the system;

7 (7) enact a statute of repose that meets the tests set out in Turner Construction  
 8 Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988);

9 (8) clarify the circumstances in which hospitals are held directly liable for the  
 10 actions of health care providers not employed by the hospital.

11 \* Sec. 2. <sup>4A</sup> AS 09.10 is amended by adding a new section to read:

12 Sec. 09.10.052. CERTAIN ACTIONS THAT MUST BE BROUGHT IN SIX  
 13 YEARS. <sup>#2</sup> (a) Notwithstanding AS 09.10.140, a person may not bring an action for  
 14 personal injury, death, or property damage unless the action is brought within six years  
 15 of the earlier of the date

16 (1) a product alleged to have caused the personal injury, death, or  
 17 property damage was purchased; <sup>#3</sup>

18 (2) of substantial completion of the construction alleged to have caused  
 19 the personal injury, death, or property damage; or

20 (3) of the last act alleged to have caused the personal injury, death, or  
 21 property damage.

22 (b) This section does not apply if

23 (1) the personal injury, death, or property damage was caused  
 24 intentionally; <sup>(Hudson 1)</sup>

25 (2) facts that would give notice of a potential cause of action are  
 26 intentionally concealed; or

27 (3) a shorter period of time for bringing the action is imposed under  
 28 another provision of law.

29 (c) In this section, "substantial completion" means the date when construction  
 30 is sufficiently completed to allow the owner or a person authorized by the owner to  
 31 occupy the improvement or to use the improvement in the manner for which it was

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\* Sec. 3. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.065. LIMITATION ON ACTIONS AGAINST HEALTH CARE PROVIDERS. (a) Notwithstanding AS 09.10.140, an action based on professional negligence may not be brought against a health care provider unless

(1) the action is brought within <sup>#4</sup>two years from the date of the alleged negligent act or omission; or *was discovered or shd. have been discovered through reasonable diligence*

(2) if the injured person is, on the date of the alleged negligent act or omission less than six years of age, the action is brought before the person's eighth birthday.

(b) The limitation imposed under (a) of this section is tolled during any period in which there exists

(1) fraud, including fraud or collusion by a parent, guardian, insurer, or health care provider, resulting in the failure to bring an action on behalf of an injured minor;

(2) intentional concealment of facts that would give notice of a potential action; or

(3) the undiscovered presence of a foreign body, that has no therapeutic or diagnostic purpose or effect, in the body of the injured person and the action is based on the presence of the foreign body.

(c) In this section,

(1) "health care provider" has the meaning given in AS 09.55.560;

(2) "professional negligence" means a negligent act or omission by a health care provider in rendering professional services;

(3) "professional services" means services provided by a health care provider that are within the scope of services for which the health care provider is licensed, and that are not prohibited under the health care provider's license or by a hospital in which the health care provider practices.

\* Sec. 4. AS 09.10.070 is amended to read:

Sec. 09.10.070. ACTIONS TO BE BROUGHT IN TWO YEARS. A [NO] person may not bring an action (1) for libel, slander, assault, battery, seduction, or

AMENDMENT  
#4 impacts  
all of sec. 3

1 false imprisonment [, OR FOR ANY INJURY TO THE PERSON OR RIGHTS OF  
 2 ANOTHER NOT ARISING ON CONTRACT AND NOT SPECIFICALLY  
 3 PROVIDED OTHERWISE]; (2) upon a statute for a forfeiture or penalty to the state;  
 4 or (3) upon a liability created by statute, other than a penalty or forfeiture; unless  
 5 commenced within two years.

6 \* Sec. 5. AS 09.10 is amended by adding a new section to read:

7 Sec. 09.10.075. LIMITATION ON ACTIONS INVOLVING INJURY TO  
 8 PERSON OR PROPERTY. (a) Notwithstanding AS 09.10.140, a person may not  
 9 bring an action for personal injury, death, or property damage unless the action is  
 10 brought within two years of the accrual of the action.

11 (b) This section does not apply if a shorter period of time for bringing the  
 12 action is imposed under another provision of law.

13 \* Sec. 6. AS 09.17.010(a) is amended to read:

14 (a) In an action to recover damages for personal injury or wrongful death  
 15 [BASED ON NEGLIGENCE], <sup>AS deleted</sup> ~~damages~~ for noneconomic losses shall be limited to  
 16 compensation for pain, suffering, inconvenience, physical impairment, disfigurement,  
 17 loss of enjoyment of life, loss of consortium, and other nonpecuniary damage.

18 \* Sec. 7. AS 09.17.010(b) is amended to read:

19 (b) The amount of damages awarded by a court or a jury under (a) of this  
 20 section may not exceed \$500,000 for all claims, including a loss of consortium  
 21 claim, arising out of a single injury or death [EACH CLAIM BASED ON A  
 22 SEPARATE INCIDENT OR INJURY].

23 \* Sec. 8. AS 09.17.020 is amended to read:

24 Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be  
 25 awarded in an action, whether in tort, contract, or otherwise, unless supported by clear  
 26 and convincing evidence of malice and conscious acts showing deliberate disregard  
 27 of another person by the person from whom the punitive damages are sought.

28 \* Sec. 9. AS 09.17.020 is amended by adding a new subsection to read:

29 (b) The amount of punitive damages awarded by a court or jury under (a) of  
 30 this section may not exceed three times the amount of compensatory damages awarded  
 31 or \$200,000, whichever amount is greater.