ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7983 HOUSE LABOR & COMMERCE

248

Table 5B - Recipient District by Fiscal Year

All Abortions - Elective and Nonelective

	FY 89		FY 90		FY 91		TOTAL ALL FY'S	
Region	Count	Amount	Count	Amount	Count	Amount	Count	Amount
Southeast	-	-	1	$2,262.94	7	$4,329.72	8	$6,592.66
Juneau	44	$68,313.40	60	$83,474.71	66	$56,607.23	170	$208,395.34
Sitka	25	$28,911.34	19	$20,647.59	15	$13,343.85	59	$62,902.78
Ketchikan	31	$43,588.33	31	$54,547.42	47	$50,589.36	109	$148,725.11
Northern	121	$65,415.33	110	$66,545.55	188	$110,979.58	419	$242,940.46
Fort Yukon	2	$1,245.94	3	$1,443.36	2	$1,150.00	7	$3,839.30
Fairbanks	33	$30,659.33	19	$18,033.29	29	$13,912.27	81	$62,604.89
Nome	7	$3,611.02	2	$808.87	3	$980.00	12	$5,399.89
Kotzebue	13	$6,487.29	13	$3,710.19	13	$6,291.09	39	$16,488.57
Bethel	23	$10,921.50	18	$6,094.14	17	$5,802.58	58	$22,818.22
Kenai	47	$31,351.19	62	$46,266.24	76	$66,957.51	185	$144,574.94
Wasilla	87	$42,896.65	90	$62,468.91	97	$72,622.87	274	$177,988.43
Southcentral / Northwest	5	$1,773.11	6	$2,089.73	8	$16,363.25	19	$20,226.09
Southcentral	26	$14,717.56	25	$21,747.15	24	$16,862.34	75	$53,327.05
Anchorage - Gambell	18	$12,331.46	20	$7,581.30	26	$12,466.92	64	$32,379.68
Anchorage - Muldoon	442	$252,758.59	419	$234,628.66	549	$317,922.58	1410	$805,309.83
Total	924	$614,982.04	898	$632,350.05	1167	$767,181.15	2989	$2,014,513.24

DEFINITIONS

Elective abortions as defined by the Department of Health and Social Services Division of Medical Assistance include:

Diagnosis Codes found in the *International Classification of Diseases 9th Revision Clinical Modification* (ICD-9-CM) - Volume 1 1989 - 1991. These codes specify legally induced abortion which includes elective, legal, therapeutic abortion; Illegally induced abortion which includes criminal, illegal, self-induced abortion; and, unspecified abortion.

Procedure Codes found in the ICD-9-CM - Volume 3 1989 - 1991. These codes specify Dilation & Curettage for termination of pregnancy; Aspiration and curettage therapeutic abortion; Other surgical induction of labor; Hysterotomy to terminate pregnancy; Intra-amniotic injection for abortion.

Procedure Codes found in the *Physician's Current Procedure Terminology* (CPT) 1988 - 1991. These codes specify Hysterotomy, abdominal, for legal abortion; Hysterotomy, abdominal, for legal abortion with tubal ligation; Induced abortion Dilation & Curettage; Induced abortion Dilation & Evacuation; Induced abortion - amniocentesis (e.g. saline); Induced abortion - amniocentesis with Dilation & Curettage; Induced abortion - amniocentesis with hysterotomy.

Nonelective abortions include:

Diagnosis codes found in the ICD-9-CM - Volume 1 1989 - 1991. These codes specify missed abortion; Tubal abortion; Spontaneous abortion.

Procedure codes found in the ICD-9-CM - Volume 3 1989 - 1991. This code specifies insertion of prostaglandin suppository for induction of abortion.

Procedure codes found in the CPT 1988 - 1991. These codes specify Dilation and Curettage, diagnostic and/or therapeutic; Hysterotomy, abdominal (e.g., for hydatidiform mole, abortion); Treatment of spontaneous abortion; Missed abortion first trimester; Missed abortion second trimester; Septic abortion; Insertion of cervical dilator (e.g., laminaria, prostaglandin).

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STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAL ASSISTANCE

P.O. BOX 110660
JUNEAU, ALASKA 99811-0660
PHONE: (907) 465-3355

November 2, 1992

Randy Welker
Legislative Auditor
P.O. Box W
Juneau, AK 99811-3300

Re: Preliminary Audit Report Department of Health and Social Services, Division of Medical Assistance, Selected Abortion Issues, July, 10, 1992

Dear Mr. Welker;

We appreciate the opportunity to respond to the findings and recommendations contained in above-captioned preliminary audit report. Our responses follow the order of your report.

Recommendation No. 1

> The Department of Health and Social Services (DHSS), Division of Medical Assistance (DMA) should modify present reporting procedures for state-funded abortions that would accurately and consistently account for the total number of abortions reported as well as the associated costs.

Response

The Medicaid Management Information System (MMIS) claims payment system was not designed as an extensive data collection and analysis device for qualitative assessment and the production of demographic, longitudinal or epidemiological studies. To our knowledge, no MMIS in the country or other insurance or third party payment system collects that extensive information and produces production reports of that nature, especially on this issue. Rather, other states use specialized staff (excluding their claims payment staff) and data from a variety of sources, including their MMIS, to produce this type of special research and analysis.

The MMIS was designed to pay enrolled providers for allowed services rendered to eligible clients. In FY 92 the system accurately and timely paid 885,139 individual claims for a total of $195,124,579. It did this within an average of 15 days from date of receipt of a claim to the date of payment. This is better payment performance than any other third party payor in the state.

This ability of the provider to be timely paid for services rendered is a key component of guaranteeing access to health care for needy Alaskan clients.

After review we concur with the auditor's finding that the report generation parameters overlooked the possibility of a recipient having more than one abortion in a fiscal year by counting unduplicated recipients only. Additionally, we concur that the report retrieval system does not capture associated expenses such as laboratory, pharmaceutical, transportation or other charges that were related to the abortion procedure. However, that is not a failing of the report retrieval system or the logic which supports it. Rather, it stems from the inability of the claims payment system to identify the abortion procedure related claims because other provider types have no way of knowing when they provide a service that the service is related to an abortion procedure.

It has been suggested that a time "window" of two weeks on each side of the abortion procedure date be used to capture claims for abortion related medical services for each recipient. This approach would work to the extent that it would identify <u>all</u> claims for medical services provided the recipient during the four weeks surrounding the abortion procedure. It would <u>not</u> identify if the service was related to the abortion procedure; nor would it identify related services provided more than two weeks after the abortion procedure. Even the manual review by a physician of each claim for service during the "window" period to determine abortion procedure relatedness would not produce an exact definitive determination of relatedness. As an example; how would the physician looking at a claim for mental health services within the "window" period judge whether these costs were abortion related? The same dilemma would occur for pharmaceuticals. As an example, antibiotics could be related to an abortion procedure or one of several dozen other medical causes. How would the physician judge if the costs were related to the abortion procedure? The same question would apply for most other medical services which the program covers.

The Division's Prior Authorization Review contractor for hospital admissions charges $100 per special case review performed by a physician. Each review takes approximately one hour to complete. Therefore, in a year when there were 800 abortion procedures it would cost $80,000 to purchase that new service assuming the same time and review charges.

The Division's physician currently reviews certain suspended claims for necessity, appropriateness, duration, and scope of service. These claims reviews are documented to have saved the state in avoided costs a monthly average of $68,900 during FY 92. If the

Division reallocated the physician's time from the current claims reviews to reviewing the "window" period claims; we estimate that greater than one half (> $413.4) of the costs currently avoided would in the future not be avoided. This estimate assumes the same 800 hours of claims review.

A theme of Recommendation No. 1 is a requirement for accuracy and consistency. We have been unable to devise, nor does the auditor offer any way within the current claims payment system to provide the degree accuracy sought by Recommendation No. 1. The abortion report generation parameters were modified and changed as a result of input by your staff during their review. We believe that the parameters as they currently exist are as refined as is possible given that the claims payment environment (as you note in the Management Letter) is in a continual state of change. We estimate that 10% of the more than 20,000 Current Procedural Terminology (CPT) codes and International Classification of Diseases (ICD-9) diagnosis codes are changed annually as outdated codes are removed, new codes added and changes in technology and practice patterns produce modifications in codes. The report parameters as they will be modified in the future should continue to produce reports which meet the consistency requirement of Recommendation No. 1.

Other themes of Recommendation No. 1 are rates and causes of change and statistical population trends and cost averages. All claims payment systems, and Alaska's is no exception, are a balance between the information needed to pay a valid obligation of the state and how much information the providers are willing to provide to be paid for their services. I have attached pages from provider billing manuals to demonstrate the information elements collected on physician and hospital billing forms. Pages numbered at the bottom center IV-1 thru IV-3 are billing forms for physicians among other provider types and pages numbered IV-9 thru IV-20 are hospital billing forms. Alaska utilizes the nationally standard medical provider billing forms. There are 14 fields required to be completed for payment on the physician form and 47 fields required for the hospital billing. <u>None of the required fields on either form provides information of a causative nature.</u> Causative being the "why" some action has or has not occurred. Some examples which spring to mind are: Why did the woman choose to have an abortion? Why did the woman select a physician rather than a hospital or clinic to perform the procedure? Why did the provider choose to perform the abortion procedure? Why did the provider charge what was charged for the procedure? Why was this the second procedure for that woman in the fiscal year? It is not appropriate for the claims payment system to ask for, collect or track that information. I must emphasize that no claims payment system is designed with the potential to evaluate the change of social, educational, economic, religious or moral values.

Regarding the anomalous decrease in reported abortions; we do not concur that the lack of a reliable tracking system could be causing trend distortions. While the decrease is anomalous in terms of the trend FY 83 forward; statistically it is not unusual for a decrease to occur during periods of general growth or an increase during periods of decline. Several factors may have impacted the abortions performed during FY 90 as compared with fiscal years 89 and 91. Implementation and outreach of the new Healthy Baby program may have made women aware of the availability of medical services for their pregnancy and the future care of the child. The tragic Oil Spill in FY 90 pumped millions of dollars into Alaska's economy. This infusion of funds may have encouraged women not to abort their pregnancy, or allowed women to abort the pregnancy without state involvement. Again, the claims payment system is not designed to collect, track or report this causative statistical information.

Neither we nor the Health Care Financing Administration (HCFA) which paid for 90% of the development cost of the claims payment system and continues to pay 75% of the operational costs, think the claims payment system does a poor or unreliable job of tracking everything it is designed to track. The MMIS scored 97% on HCFA's systems performance review last year. In HCFA's opinion the claims payment system is clearly doing what it is designed to do very well.

The auditor identifies the decreasing average cost per abortion as another aberration that remains unexplained by the claims payment system. We do not disagree with some of the explanations offered by the auditor for this phenomena and would offer the addition of the following for your consideration. While the inflation rate in Alaska's health care industry was spiraling physicians payment rates for the period FY 85 thru FY 91 were frozen by the medical assistance program. Lastly, one of the problems of averages is that they by mathematical action distort the basis of a change in the data. An average could change because the numerator increased or decreased, the denominator increased or decreased, or some combination of the changes in both the numerator and denominator. In no case does the statistical data indicate "why" there was a change to the underlying data.

We feel that the claims payment reporting system has been modified to the point that it now accurately and consistently (within the confines described above) accounts for state-funded abortion procedures.

Recommendation No. 2

DHSS should clarify through the regulatory process current practices of funding abortions through the General Relief Medical (GRM) program.

Response

We have considered your recommendation and believe that the references in 7 AAC 43 (43.005, Scope, and 43.140, Abortions) are already clear in stating that a Medicaid eligible recipient may receive this service from the GRM program.

Recommendation No. 3

In light of U.S. Supreme Court rulings, DHSS, with assistance from the Attorney General, should initiate action to amend AS 18.16.010; parts of which have been determined unconstitutional by the Attorney General. In addition, Alaska Administrative Code, per 7 AAC 43.140, should be amended to reflect changes in federal law.

Response

We understand your recommendation to legislate medicaid coverage for abortion services and to provide for a statutory update of portions of existing state law. It is our understanding that there is some likelihood that the next Legislature may consider legislation to accomplish this.

Sincerely,

Theodore A. Mala, MD, MPH
Commissioner

TAM:rs

SB

64

Alaska State Legislature

Senator Tim Kelly, Chair
Senator Steve Rieger, Vice Chair
Senator Bert Sharp
Senator Judy Salo
Senator Georgianna Lincoln

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SENATE LABOR AND COMMERCE COMMITTEE

Sponsor Statement
SB 64
Civil liability / workplace safety inspections

In 1988 the Legislature passed a comprehensive revision of Alaska's worker' compensation laws. Since taking effect the new workers' compensation provisions have proven successful.

In 1991, SB-219 was introduced by the Labor & Commerce Committee. The bill addressed two problems in the workers' compensation statutes; 1) injuries incurred as a result of employer sponsored recreational activities and; 2) removal of liability for safety inspections conducted on behalf of self-insured employers and workers' compensation carriers. These provisions have passed the Senate twice, but HCS CSSB 219 (Jud) am H was vetoed by the Governor because many more objectionable provisions were added in the House. The safety inspection issue was brought to the forefront as a result of the *1989 Van Biene v. ERA Helicopters, Inc.* decision our Supreme Court, which held that *"workers' compensation carrier could be held liable to estates of deceased pilots for negligent performance of safety inspection if insurer actually inspected the working conditions of the employer prior to the incident."* (See decision in bill file.)

SB 64 removes insurers, insurance service agents, self-insured employers, and trade associations from civil liability for damages resulting from the performance or failure to perform a workplace safety inspection or a safety advisory service unless the act is intentional.

SB 64 ensures workplace safety inspections will continue, that workers' compensation insurance will be available and affordable because of safety inspections, and that employees benefit from safety inspections.

The Department of Commerce is neutral on the bill, (see position paper) although their position suggests the law might better be placed under AS 23 (Labor and Workers' Compensation). Legislative Legal Services

responds (see memo) that "*the workplace safety inspection immunity provision seems to logically fit alongside the workplace safety program.*" Legal Services further advised that placement of the law under AS 21 was the recommendation of the revisor of statutes, and Commerce responded that it was a minor point not germane to the issue at hand.

ZERO Fiscal Note, Department of Commerce, Division of Insurance.

FISCAL NOTE

STATE OF ALASKA **BILL NO. CS SB 64 (Jud) (efd fld)**

1994 LEGISLATIVE SESSION

Revision Date:
Title: Civil Liability for Workplace Safety Inspections

Sponsor: Senate Labor & Commerce Committee
Requestor:

Department Affected: Commerce and Economic Development
BRU: Insurance
Component: Operations

COMPONENT SERIAL NO. 354

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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 EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0
FUND SOURCE						
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

Estimate of current year (FY 94) cost: $ 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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared by: Joan Brown, Administrative Officer
Division: Insurance
Phone: 465-2597
Date: 12-10-93

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development
Date: 12/13/93

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ALASKA STATE AFL-CIO

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MANO FREY
Executive President

BRUCE LUDWIG
Secretary / Treasurer

February 26, 1993

TO: THE HONORABLE MEMBERS OF THE ALASKA STATE SENATE

FROM: PAT SMUTZ, LEGISLATIVE DIRECTOR Pat

RE: SENATE BILL 64 - INEQUITY FOR INJURED WORKERS

There are some lobbyists who would make you believe Senate Bill 64 is a union vs. non-union issue. Some of those same folks would have you believe that safety is the real reason for passing Senate Bill 64. One individual recently wrote to you suggesting that it is also a matter of balancing out the terrible effects the Alaska Supreme Court Van Biene decision had on the 1988 Workers' Compensation reform. Furthermore, there are those who are mistaken on the constitutionality of amending the bill to give injured workers the chance to keep themselves and their families covered under their existing health insurance. I would like to address these misconceptions.

1. **This is not a union vs. non-union issue.** Almost everyone who works for an honest living is supposed to be covered under the Alaska Workers' Compensation Act. The lack of a Health Benefits amendment will affect non-union workers more seriously because many union workers build up an hour bank of coverage which can carry their insurance beyond the work related injury recovery time. Non-union employees are not officially represented in Juneau and they have no collective voice such as organized labor.

2. **Safety is a main factor in this legislation, but liability is *the* main issue.** If you look a little more closely you may find that certain organizations' safety budgets are also a main driving force. When you charge for a service, such as safety inspections, you have to deliver that service - otherwise you can't reasonably charge for it. It has yet to be proven that the stoppage of safety inspections and programs have resulted in an increase in accidents. Why are the Workers' Comp. Insurance rates still coming down since the 1988 reform act?

3. **The 1988 Workers' Compensation reform act was not balanced**, it was enacted to help employers reduce their Comp. insurance premiums and costs by reducing benefits to injured workers. Injured workers gave up too much under the 1988 act. Organized labor negotiated with management to help mitigate the damage to the existing act.

4. **The addition of health benefits to Senate Bill 64 is not unconstitutional.** People are trying to confuse many legislators on a constitutional basis. This is a pure example of misinformation being used as a political weapon. The National AFL-CIO and our attorney (who is an expert who worked on the 1988 reform act) are confident that our language will pass constitutional muster. The Dist. of Columbia v. Wash. Trade case is a much different situation. See attachment.

5. **The exclusion of tort liability should go as a package with the health benefits.** It is unacceptable to put the issues in separate bills. Some people are saying that the issues should be in separate bills because it is mixing apples and oranges. Nonsense. The 1988 reform act had all different kinds of changes. Workers' compensation legislation should be worked out between labor and management. Senate Bill 64 should have both sides supporting it. It doesn't make sense to seperate the issues and have the political fight continue through the process as we know it will.

Kevin Dougherty
ATTORNEY AT LAW
2501 Commercial Drive, Suite 140
Anchorage, Alaska 99501
(907) 276-1640

February 26, 1993

Mano Frey
Alaska AFL-CIO
350 Irwin Street
Juneau, Alaska 99801

Re: Senate Bill 64

Gentlemen:

You have asked for a legal opinion regarding the legislative provision pending to finally address an injured worker's compensation for lost health insurance.

The needs of Alaskan injured workers to provide health insurance for their families remains a serious public policy fault. Indeed, the Governor's Task Force on Worker Compensation, the 1990 Senate Bill 508 supported by both the WCCA and Alaska Labor and the 1991 Senate Bill 219 represent the strong bipartisan recognition of the problem.

You have specifically asked whether the Dist. of Col. v. Wash.Trade, 121 L.Ed.513 (1993) case somehow effects the Alaskan legislation.

As a matter of law, the Alaska draft provision is legally distinguishable from the D. C. legislation and hence not effected by that decision. The difference lies in the Dist. of Columbia's novel attempt to "regulate" ERISA health insurance plans to mandate coverage of injured workers. In contrast, the Alaska draft avoids any effort to regulate ERISA plans but instead follows the traditional loss compensation basis used in states such as Colorado, Florida, etc. which have withstood legal muster for decades. In fact our Alaska effort was frugally drafted to avoid the novel issues raised in the D.C. case in the lower courts and with the consultation of James Ellenburger, Washington-based expert on worker compensation. [See also our Alaska Supreme Court's Ragland v. M-K, #3103 (Alaska 1986) recognizing the need to make whole employees for such losses.]

Simply put, a comparison of the Alaska draft with the D.C. draft "confuses apples with oranges."

If I can be of further help, please call.

Sincerely,

Kevin Dougherty

Jermain Dunnagan & Owens, P.C.
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March 1, 1993

Mano Frey
Alaska AFL-CIO
350 Irwin Street
Juneau, AK 99801

RE: PROPOSED SENATE BILL 64

Dear Mano:

I have been asked to provide a legal opinion concerning whether the provisions of Proposed Senate Bill 64 would be preempted by federal law under the Employment Retirement Income Security Act of 1974, as amended (ERISA), particularly in light of the recent U.S. Supreme Court decision in the case of District of Columbia v. Greater Washington Board of Trade, ____ U.S. _____, 121 L. Ed.2d 513 (1993). After reviewing that decision, as well as the proposed additions to AS 23.30.047 (as provided in Senate Bill 219 offered during the 1991 legislative session) which are proposed in Senate Bill 64, it is my opinion that these proposed revisions to the Alaska Workers' Compensation Act would not be preempted by ERISA.

Although the U.S. Supreme Court has interpreted and applied the preemption doctrine (particularly under ERISA) in a very broad manner, there are two critical factors upon which I base this legal opinion: First, the statutory provision contained in the District of Columbia Workers' Compensation law required an employer to provide health insurance coverage to any injured employee, while the employee was receiving worker's compensation benefits, which was equivalent to the existing health insurance coverage of the employee at the time of his injury. That provision was sufficiently related to an employee benefit plan that it was preempted by Section 514(a) of ERISA. In contrast, the proposed provisions of Senate Bill 64 would not require an employer to provide health insurance coverage to an injured employee but, rather, simply require the employer to reimburse the employee in an amount equal to the cost of health insurance coverage, if that coverage is discontinued after the employee sustains a work related injury. The critical distinction is between requiring an employer to provide continued or equivalent health insurance coverage (which relates to an employee benefit plan and is, therefore, preempted under ERISA) from requiring an employer to reimburse an employee the cost of maintaining health insurance coverage

attachment ②

(which is not sufficiently related to any employee benefit plan, but is consistent with the compensation benefits payable to an injured employee.)

Second, Section 514(b)(3) exempts from the coverage of ERISA any employee benefit plan whose primary purpose is to comply with applicable disability insurance laws. Clearly, Alaska's Worker's Compensation law falls within the disability insurance law under this exemption; furthermore, to the extent that these proposed statutory provisions constitute a plan, it may be specifically exempt from ERISA. On the other hand, if the provisions do not constitute a plan, then, as discussed above, they are not sufficiently related to an employee benefit plan which would allow for preemption.

I hope that this legal opinion will assist you or others concerning the legislative changes or additions in the proposed Senate Bill 64. Of course, if you have any questions or I can provide any additional information, please do not hesitate to contact me at your convenience.

Very truly yours,

JERMAIN, DUNNAGAN & OWENS, P.C.

Bradley D. Owens

/wj

attachment 6

ALASKA STATE AFL-CIO

2501 Commercial Drive · Anchorage, Alaska 99501 · 907-258-6284 · Fax 274-0570

MANO FREY
Executive President

BRUCE LUDWIG
Secretary / Treasurer

February 22, 1993

Senator Fred Zharoff
Pouch V
Juneau, AK 99801

Dear Senator Zharoff,

Senate Bill 64 is a very unbalanced bill. It offers an exemption from civil liability for insurance companies while giving nothing to injured workers. The bill is a remedy for a loss insurers suffered in the Alaska Supreme Court in a case called Van Beine vs. Era Aviation Inc. Those insurers who provide safety inspections or safety advisory services to those whom they insure for Workers' Compensation were found not to be excluded from civil liability if their actions in their safety programs proved to be at fault for injury. The bill would provide an exclusion from civil liability, in other words - strip injured workers of their rights for redress through the courts. Stripping workers of any rights should be compensated for in some manner.

The AFL-CIO has always been of the philosophy that Workers' Compensation laws are a compromise between employees and employers. When an injured worker loses an arm or an eye, that worker is compensated. When an injured worker loses the right to gains redress for losses suffered the worker should be compensated. Balance is the key idea here.

In 1988 workers gave up many things without receiving much in return in order to help bring Workers' Comp. premiums down. Since the 1998 act, rates have indeed come down considerably. It now appears that the insurance companies are willing to ask for something that is solely for their benefit.

It's been said by insurance companies that the safety programs were halted as a result of the Van Beine case, and they would be reinstituted at great benefit to the worker. To date, nobody has been able to prove that the loss of these highly touted insurance company safety programs resulted in an increase in accidents on the job. In fact, accident rates for most areas where these safety programs have been withdrawn have experienced a decrease in accident rates. We feel that the reason the insurance companies are saying their safety programs are needed desperately is a smoke screen to hide their real issue - fear of profit loss.

Over the past four years there has been an agreement between employers, insurance companies, and labor to address this liability concern while providing something for the injured workers. The agreement was what other states have enjoyed - the continuation of health benefits for injured workers who were receiving medical benefits at the time of injury. Now that the insurance industry feels they have an advantage in this legislature, they are pressing ahead with only half of the equation.

The vote you will make on this piece of legislation is a vote that is either for or against injured workers. It is not a union vs. non-union issue it is an issue that affects everyone who works for an honest living. **It is a vote that I urge you to vote "NO" on.** It is a vote that could end the cooperation labor and management have historically enjoyed. Without something such as the Health Benefits Amendment for the injured worker, a **"YES" vote equates to an anti-injured worker vote.**

Sincerely,

Mano

Mano Frey
Executive President

Mr. Harley Olberg
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Olberg:

As an Alaska citizen for many years, I ask your interest in stopping a problem that has hurt a lot of Alaskan workers -- and I am one of them.

My name is Gary Woodward and I have worked throughout my life in law enforcement and the construction industry to provide health insurance for my family. Health insurance is an important part of my compensation for my family of three children.

In October of 1991 I suffered an extreme disability to my hands which has now required three operations. Since I cannot return to my construction position with Haskel Construction yet, (and the doctors cannot release me to return to work), I have been on worker compensation.

The worker compensation system has provided me a small income (about 1/2 my weekly income with Haskel Construction) during my recovery period but I have completely lost my health insurance coverage. I am told that the Alaska worker compensation act apparently ignores the loss of health insurance benefits. This situation has put me in the worst financial crisis of my life.

Two weeks ago I suffered a Grand Mal seizure and was medi-vaced out of Valdez for emergency care at Providence Hospital. Currently I am undergoing diagnosis to determine my medical problem and I am under medication to prevent eruption of further seizures.

On top of these serious medical conditions, I am now faced with thousands of dollars of medical bills to Providence Hospital, the Valdez (Lutheran) Hospital, medi-vac services, and numerous doctors. The lack of health insurance due to my worker compensation status leaves me in serious distress. I also believe Providence Hospital and the others deserve payment but the lack of insurance under worker compensation certainly affects them adversely.

I ask you as our representative in Juneau, to address this serious defect in the worker compensation system. Thank you for your efforts.

Sincerely,

Gary Woodward

Gary Woodward
P. O. Box 41
Valdez, Alaska 99686
Phone: 835-2680

Letter from recovering injured worker without Health Benefits

Alaska State Senators
Pouch V
Juneau, Alaska 99811

Dear Senators:

As an Alaska citizen for many years, I ask your interest in stopping a problem that has hurt a lot of Alaskan workers -- and I am one of them.

My name is Gary Woodward and I have worked throughout my life in law enforcement and the construction industry to provide health insurance for my family. Health insurance is an important part of my compensation for my family of three children.

In October of 1991 I suffered an extreme disability to my hands which has now required three operations. Since I cannot return to my construction position with Haskel Construction yet, (and the doctors cannot release me to return to work), I have been on worker compensation.

The worker compensation system has provided me a small income (about 1/2 my weekly income with Haskel Construction) during my recovery period but I have completely lost my health insurance coverage. I am told that the Alaska worker compensation act apparently ignores the loss of health insurance benefits. This situation has put me in the worst financial crisis of my life.

Two weeks ago I suffered a Grand Mal seizure and was medi-vaced out of Valdez for emergency care at Providence Hospital. Currently I am undergoing diagnosis to determine my medical problem and I am under medication to prevent eruption of further seizures.

On top of these serious medical conditions, I am now faced with thousands of dollars of medical bills to Providence Hospital, the Valdez (Lutheran) Hospital, medi-vac services, and numerous doctors. The lack of health insurance due to my worker compensation status leaves me in serious distress. I also believe Providence Hospital and the others deserve payment but the lack of insurance under worker compensation certainly affects them adversely.

I ask you as our representative in Juneau, to address this serious defect in the worker compensation system. Thank you for your efforts.

Sincerely,

Gary Woodward

Gary Woodward
P. O. Box 41
Valdez, Alaska 99686
Phone: 835-2680

WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Gov. Veto message for SB 219

June 14, 1991

The Honorable Richard I. Eliason
President of the Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Eliason:

Under art. II, sec. 15 of the Alaska Constitution, I have decided to veto House Committee Substitute for Committee Substitute for Senate Bill No. 219 (Jud) am H (efd add), which would amend the Alaska workers' compensation statute.

As passed by the Senate, this bill was designed to address two relatively non-controversial issues -- injuries incurred as a result of employer sponsored recreational activities and removal of liability for safety inspections conducted on behalf of self-insured employers and workers' compensation carriers. However, in the latter days of the session, a collection of amendments addressing various special issues were added. I'm advised that many of the amendments were added in the final days of the session which resulted in an insufficient opportunity and time for public participation and comment on the issues raised by the bill.

Neither the Department of Law nor the Department of Labor support the bill as written. I've received many letters in my office explaining the flaws in this bill and urging me to veto it. I believe that the rush to amend the legislation in the final days of the session did not allow time for its proper consideration. It is my opinion that it is in the best interests of all Alaskans that I prevent this bill from becoming law.

I do support the exclusion of employer sponsored recreational activities from coverage under the Workers' Compensation Act. To accomplish that goal one of my first acts next year will be to submit a new bill which will resolve the recreational sports issue.

In the broader perspective of the Workers' Compensation Act and the many issues raised by the collection of amendments in this bill, I believe that we must address those issues in a comprehensive fashion. In that vein I look forward to working with the Legislature, labor union leaders, and our business community to accomplish a better statute.

I want to make plain that I personally believe that workers' compensation is an issue of great importance to both workers and employers throughout Alaska. On the one hand, it is a primary worker protection program. On the other, it is one of the highest costs of doing business for many employers.

For that reason, I recommend that an in-depth review take place of the current law. I am pleased to discover that a number of legislators, including sponsors of this bill, have agreed to dedicate themselves to this task.

Sincerely,

Walter J. Hickel
Governor

* HONORING *
* THE LABOR/MANAGEMENT TASK FORCE *
* ON *
* WORKERS' COMPENSATION REFORM *

The members of the Fifteenth Alaska Legislature are pleased to recognize and honor the significant contributions made toward workers' compensation reform legislation by the members of the joint labor/management task force.

In October of 1986, ten individuals, five representing organized labor organizations and five representing business interests within Alaska, gathered to begin discussion of workers' compensation reform. They organized because spiralling worker compensation rates threatened to close many Alaskan companies, causing greater distress to Alaska's already troubled economy and displacing even more workers.

Eighteen months and countless hours of work sessions, hearings and testimony have produced reform legislation which will afford significant savings to Alaska businesses, while providing excellent protection and coverage for Alaska's workers.

Their tireless efforts embody the strength of our democratic system, citizen participation. Two groups of nonelected individuals working together to forge a compromise benefiting both parties and advancing that solution through the political process.

The members of the task force include:

Mary Pierce	Robert Anders
Richard Cattanach	Kevin Dougherty
David Gottstein	Ralph Mingo
Ralph Lewis	Joseph Thomas
Stephan Rehnberg	Kenneth Weist

At considerable expense to themselves and their companies and organizations and no cost to the state, these members made themselves available for testimony and guidance at literally all hours and served as the backbone of the reform effort.

We, the members of the Fifteenth Alaska Legislature, commend the members of the labor/management task force for their outstanding contributions benefiting the state of Alaska, its businesses and workers.

SPEAKER OF THE HOUSE

PRESIDENT OF THE SENATE

Date: May 6, 1988

Requested by: Senators Kelly, Rodey, Sturgulewski, Szymanski, Kerttula, Fahrenkamp, Binkley and Uehling

Bundy & Associates (907) 262-1424
P. O. Box 3164, Soldotna, Alaska 99669 FAX(907) 262-9809

April 4, 1993

Honorable Bill Hudson, Chairperson
House Labor and Commerce Committee
State Capital
Juneau, Alaska 99801-1182

Re: Committee hearing on SB 64, Immunity for Safety Inspectors.

Dear Mr. Hudson,

I understand the House Labor and Commerce Committee will review SB 64 on 4/5/93. I would like to present some written comments on this proposed bill.

I am a Board Certified Safety Professional and an American Board Certified Industrial Hygienist who currently performs safety and industrial hygiene services for a major oil and gas support contractor on the North Slope. I feel I am obligated to professional explain that SB 64 has some major flaws.

This bill will not serve the Publics best interest giving liability protection to select groups of insurance carriers and agents. One of the major reasons Insurance were found to have third party liability was due to the poor quality inspections by unqualified or incompetent inspectors. There are no current standards to ensure the safety inspections or inspectors are competent or qualified.

This law does not provide any qualifications for the "safety inspector" it is intended to protect. In essence, the State giving liability protection to safety inspectors without assuring these inspectors are competent to provide those services is comparable to giving hangers to back alley abortionists and sanctioning their activities. If the State intends to give protection for liability to a group, the State must ensure the group protected has professional standards, oth[illegible] and licensing to assure they are at least competent to perform those services.

The State of Texas Worker's Compensation Board requires work compensation inspections to be conducted by a Certified Safety Professional, Certified Industrial Hygienist, or a Registered

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P. O. Box 3164, Soldotna, Alaska 99669 FAX(907) 262-9809

Professional Engineer in Safety Practices. The State of Texas recognized the problem was quality of inspection prevents liability and not quantity. Most of the insurance loss control inspections are by entry level persons with very little training who are given checklist that are often not appropriate to the type inspection, work activity, or industry they are trying to inspect.

I would recommend the safety inspectors we are trying to give immunity to be competent or held liable for their actions. The only way to ensure competency of the inspector is to require safety inspectors to be certified by:

American Board of Industrial Hygiene (ABIH);
Board of Certified Safety Professionals (BCSP), or;
Joint Committee of ABIH and BCSP for Occupational Health & Safety Technologist.

When the State legislators passed similar protection to registered nurses, doctors, emergency medical technicians, etc., each one of the groups protected had to demonstrate a minimal level of competency by licensing to provide those services before they were covered under the good Samaritan act. There is no current qualification or level of competency for the these safety inspectors which means inspections performed are not always done by qualified individuals who can recognize hazards in the work place, evaluate those hazards, and recommend or implement the proper controls for injury in the work place.

Depending upon the agent, current quality of insurance safety inspection vary widely. Some carriers do provide competent personnel. Others only provide a warm body to report to the underwriters potential catastrophic loss information. Many do not even provide reasonable reports back to the client to abate the hazards they claim to find. One of the problems with work compensation in this State is the people who manage these issues are not providing good practices and solutions for the protection of the worker or property. If the State gives these people immunity from civil liability, and not make them accountable, then why even have safety at the work place.

Another major problem is liability protection for insurance, but not for other similar professionals is inequitable. Why protect only

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insurance safety persons with no established qualifications and require private sector safety consultants who may be more qualified to bear the liability. This creates unfair competition practices. An analogy is letting insurance companies provide engineering services without professional engineers and requiring all other private sector registered professional engineers to have bear liability for their services.

Senate bill 64 could be made acceptable if two conditions were included for the protection of the public and worker.

1. Require the safety inspectors to meet the same minimal qualifications as proposed in the State House draft, Licensing of Safety Professionals (as defined as a Licensed Safety Professional). This provision will require minimum qualifications and accountability of these "Safety inspectors" to a licensing board.

2. Any other owner, partnership, or corporation that uses a Licensed Safety Professional as determined under the current proposed State House Draft for Licensing of the Safety Professional will receive similar immunity from civil liability for that Licensed Safety Professional. Currently, no such protection is available by insurance carriers in Alaska for Safety and Industrial Hygiene Professionals who provide similar services as a consultant or as an employee of an employer in fields outside of the insurance industry.

Including these two provisions will:

a) Provide fair treatment of all safety inspectors in the State and not just Insurance carriers, and;

b) Ensure the people that where the State is giving immunity from civil liability to safety inspectors, these safety inspectors are at least minimally qualified to provide those services, while still making those safety inspectors accountable to their respective Licensing Boards.

I believe we need to make sure we are protecting the Alaskan Worker and Business before we protect the Insurance Industry. Lets us at least require the persons who manage work compensation issues have the qualifications to do so. Attached is a press release from the Department of Labor. I firmly believe much of the problem

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in escalation worker compensation cost is lack of qualified safety and industrial hygiene personnel working as safety inspectors. Get qualified personnel, and the liability issue along with work compensation cost will begin to come under control.

Thank you for your time and consideration.

Respectfully,

Timothy K. Bundy, CSP, CIH

FISCAL NOTE

No. 1

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SB 64
(S) Publish Date: 2-10-93

Revision Date: 1/22/93
Title: Civil Liability for Workplace Safety Inspections
Sponsor: Senate Labor & Commerce Committee
Requestor:

Department Affected: Commerce and Economic Development
BRU: Insurance
Component: Operations

COMPONENT SERIAL NO. 354

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 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			
PART-TIME	0	0	0			
TEMPORARY	0	0	0			

Changes in CSSB 64 (JUD) have no fiscal impact. This fiscal note is appropriate.

2/22 (date) KRL (Comte Aide (initial))

Estimate of current year (FY 93) impact:

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared by: Joan Brown, Administrative Officer
Division: Insurance
Phone: 465-2597
Date: 1/29/93

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development
Date: 2-3-93

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FISCAL NOTE COM. MERC

DAVISON & DAVISON LAWFIRM incorporated

SHELBY L. NUENKE-DAVISON
BRUCE E. DAVISON, P.E.*

*MEMBER OF ALASKA AND WASHINGTON STATE BAR

March 30, 1993

TO: Members of the House Labor and Commerce Committee

FROM: Shelby L. Nuenke-Davison

RE: Senate Bill 64

Dear Representatives:

I understand that Senate Bill 64 may be voted on by the House Labor and Commerce Committee today. I have been defending employers in the workers' compensation arena over the last ten years and I think it is in the best interest of both employees and employers that Senate Bill 64 be enacted. Most employers in Alaska are small and cannot afford safety consultants or in-house safety engineers. The only way that safety consultation is provided to small employers is through their insurance companies. However, unless Senate Bill 64 passes, insurance companies will not provide safety instruction and consultation to their insureds. Since the predominant goal of workers' compensation should be the prevention of injuries, I believe it is in the employees and employers best interest that Senate Bill 64 be passed.

Sincerely,

VISON & DAVISON, INC.

Shelby L. Nuenke-Davison

Shelby L. Nuenke-Davison

SND/cah

Alaska Action Trust
P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 "L" Street, Suite 206 • Anchorage, AK 99501
(907) 258-4040 • FAX (907) 276-7185

TO: **Representative Hudson, Chair of House Labor & Commerce**
Representative Green, Vice-Chair of House Labor & Commerce
Representative Mulder
Representative Porter
Representative Williams
Representative Sitton
Representative Mackie

FROM: **Michael Schneider**

DATE: **March 22, 1993**

RE: **SB 64: Immunity for Work-Place Safety Inspections**

****

On behalf of the Academy of Trial Lawyers, I have been asked to express our strong opposition to SB 64. In 1989, the Alaska Supreme Court announced its ruling in Van Biene v. Era Helicopters, Inc., 779 P.2d 315 (Alaska 1989). It held that those negligently (unreasonably) performing safety inspections could be liable if their negligent conduct was a legal cause of someone else's injury. This ruling was no surprise to the insurance industry. Illinois has had this rule of law for approximately 30 years, Alabama for over 20 years, and Georgia for about 20 years. The rule is codified in the Restatement (Second) of Torts, at Section 323, and has been well established in the United States for the better part of a century.

It should be noted that an injured worker can never sue his employer or co-employees. That has been the law in Alaska for over thirty years. See AS 23.30.055. Van Biene is the only reported case in Alaska where this kind of a claim has been made against a defendant. There appear to be very few cases of this type that have been brought in the past.

There is no hard evidence before the legislature that safety inspections are not being performed, or that those performing them are being sued. The end of the "deep-pocket" theory with the passage of Proposition II in 1988 (effective March 5, 1989) means that a safety inspector could never be responsible for much of plaintiff's damages unless the faulty inspection was the main reason for plaintiff's injury.

Under current law, the public policy of Alaska is in line with that of other states. Those of us who engage in activities, whether we are driving our vehicles or acting in our professions, are encouraged to do so reasonably. If our unreasonable conduct is the legal cause of injury, then we may be held accountable in damages for the consequences of that unreasonable conduct. This rule is broadly applicable to all of us, appropriately encourages reasonable and responsible conduct, and discourages the indifferent performance of important professional services such as safety inspections.

Under current law, we are all equal before the law. The legislature, in evaluating SB 64, is being asked to carve out a special exception for the insurance industry. This largely foreign industry is no more entitled to this sort of special treatment than anyone else. SB 64 would leave injured workers without a meaningful remedy against safety inspectors on those rare occasions where negligence causes serious injury. If a shoddy inspection relied upon by an employer caused injury to a worker, the worker and his or her family would be left with nothing more than the meager benefits allowed under the workers' compensation system. Those unreasonably performing the safety inspection would be taken off the hook by this new law that encourages a disregard for the important professional functions relied upon by workers and employers around the state. SB 64 is bad public policy, and it should receive your negative vote.

Alaska Timber Insurance Exchange

2555 First Avenue
Ketchikan, Alaska 99901
FAX (907) 225-9454
(907) 225-9451

March 16, 1993

The Honorable Bill Hudson
Chairman
House Labor and Commerce Committee
House of Representatives
Alaska State Legislature
P O Box V
Juneau, Alaska 99811

RE: S.B. 64

Dear Representative Hudson:

The Van Biene Bill, (S.B. 64), now before the House Labor and Commerce Committee, is of particular importance to the management and policyholders of the Alaska Timber Insurance Exchange, (the Exchange).

Since beginning operations in 1980, the Exchange has developed into the State of Alaska's largest writer of workers' compensation insurance for loggers. Today we have 47 policyholders representing approximately 2,000 employees, most of whom are located in logging camps throughout Southeast Alaska.

Unfortunately, the Alaska Supreme court decision, (Van Biene vs ERA), enlarging the ability of employees covered by Alaska State workers' compensation to sue the Carrier for damages in connection with safety audits and/or recommendations, forced the Exchange to made the hard call and no longer perform safety audits nor offer safety related recommendations.

The Van Biene decision fosters a departure from promoting a safe work environment and therefore, the passage of S.B. 64 is of paramount importance.

The Alaska Supreme Court realized the Van Biene decision could have an adverse effect on insurance companies' workplace safety programs, and on workers' safety in general. However, the court declined to make legal decision based on public policy considerations, stating: "We decline to judicially amend the Act on the basis of such a policy argument. This type of policy determination is appropriately left for the legislature."

Therefore, the Exchange encourages the House to pass S.B. 64 as quickly as possible so that workplace safety programs can once again be implemented without the fear of litigation.

Thank you for the opportunity to comment on this matter.

Sincerely,

Dona Lewis

Dona Lewis, President
Alaska Timber Exchange
Management Corporation

DL/ljl

cc: Mr. Martin Pihl, Chairman

WILLIAM GRANT CALLOW
A PROFESSIONAL CORPORATION
ATTORNEY AT LAW
425 G STREET, SUITE 610
ANCHORAGE, ALASKA 99501
TEL (907) 276-1221
FAX (907) 258-7329

March 16, 1993

The Honorable Bill Hudson
Chair, House Labor & Commerce Committee
House of Representatives
State Capital
Juneau, Alaska 99801-1182

RE: SB 64, proposed immunity for workplace safety inspections

Dear Mr. Hudson:

I am a lawyer in general practice in Anchorage. I am also a commissioner of the National Conference of Commissioners on Uniform State Laws (NCCUSL).

I am very concerned that Alaska workers and other members of the public will be exposed to great risk of danger if SB 64 passes and eventually becomes law.

In my capacity as a commissioner of the NCCUSL, I have been very active in studying and drafting model and uniform acts that concern or relate to the insurance industry. In addition, my law practice has from time to time involved insurance matters and workplace safety.

The practical effect of the SB 64 will be that it will *dis*courage *good* safety inspections and instead encourage sloppy ones. This is because the proposed law would guarantee that an insurer (or "insurance service agent"--whatever that is) to a self-insured employer or trade association would have *absolutely no liability* for any sloppy, negligent, reckless safety inspection it conducted or sponsored. At the same time, the workplace, business or industry being inspected would not be liable because it would have relied on the insurance company to do its safety inspection.

What this means for the people of Alaska is that if this bill becomes law, there will be 1) no incentive for insurers to do good quality safety inspections; 2) there will be a significant decline in workplace safety; 3) there will be a consequent increase in injuries to workers, other members of the public, and to the environment (as in the case of oil spills or the release of toxic waste, for example); and 4) there will be a lack of any means of fairly compensating the victims of safety violations.

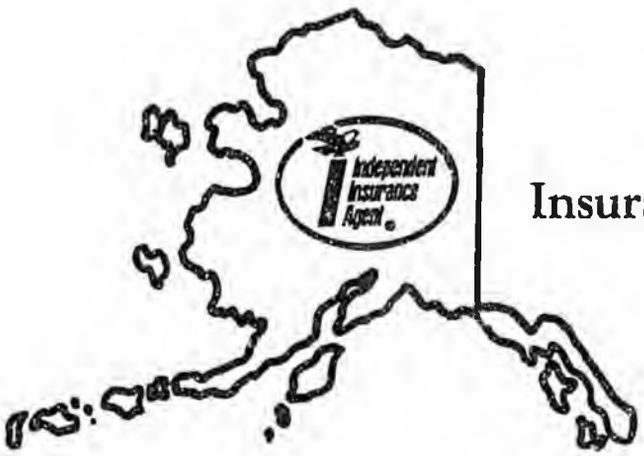
In summary, this bill, if passed into law, would in practice have the *opposite* effect of what its proponents in the insurance industry would have you to believe. It will *not* increase workplace safety. Instead, it will *decrease* safety, it will decrease responsibility and it will decrease accountability, all of which will do a great disservice to the people of Alaska, especially to the victims of workplace safety violations.

Sincerely yours,

Wm. Grant Callow

WGC/jlg

office\ltr1.hudson
193.000



Alaska Independent Insurance Agents & Brokers, Inc.

March 11, 1993

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

Dear Representative Hudson:

I understand that SB 64 regarding insurance company liability for inspections will be sent to House Labor & Commerce in the near future.

I want to let you know that we are in support of this legislation, insofar as it will encourage the insurance companies to continue the practice of inspections of employers which they insure. The Van Biene decision in 1989 was a concern to all of the industry, and this bill will resolve that concern.

As you know, our organization represents 50 independent insurance agency located throughout Alaska, consisting of over 300 agents and brokers. One of our main goals is to protect the Alaskan consumer. We feel that working with the insurance carriers to make sure they have a fair legal, legislative and regulatory climate is of benefit to the industry as well as the Alaskan consumer. We hope this legislation can be passed during this half of the session, and are willing to answer any questions you may have.

Thanks for taking the time to meet with Bud Jaeger, Dana Pruhs and I while we were in Juneau earlier this month. I hope we will be able to work together on the SR-22 financial responsibility problem which was discussed.

Regards,

Gina K. McBride, AAI, CIC
Executive Director

P.O. Box 203088 • Anchorage, Alaska 99520-3088 • Tel: (907) 349-2500 • Fax: (907) 349-1300

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To Rep Bill Hudson	From Bill Casler
Co.	Co.
Dept.	Phone # 659-8466
Fax # 465-6790	Fax # 6597805

A. Cynda — For Files - committee info as Bill is Lenth.

March 12, 1993

268 Grand Larry Street
Anchorage, Alaska 99504

Representative Bill Hudson
State Capital
Juneau, Alaska 99801-1182

Re: Senate Bill 64 titled "An Act relating to civil liability for the workplace inspections; and providing for an effective date."

Dear Representative Hudson,

I am a Certified Safety Professional with 20 years experience in the safety profession. Seven of those years were spent performing safety inspections for insured clients in the insurance industry.

I have reviewed Senate Bill 64 and cannot support it as written. This bill will not serve the Publics best interest by giving liability protection to select groups of insurance carriers and agents.

This bill does not require or set minimum qualifications for the "safety inspector" it is intended to protect. In essence, the State is giving liability protection to safety inspectors without assuring these inspectors are competent to provide those services. As one of my colleagues recently said "this is comparable to giving hangers to back alley abortionists and sanctioning their activities". If the State intends to give protection from liability to a group, the State must ensure the group protected has professional standards, ethics, and licensing to assure they meet at least some minimum level of competency to perform these services.

These safety inspectors should be certified by one of the following three groups in order to receive immunity in order to ensure qualified personnel perform these safety inspections:

WCCA WORKERS' COMPENSATION COMMITTEE OF ALASKA
P.O. Box 200631 • Anchorage, Alaska • 99520

March 30, 1993

Bill Hudson, Chairman
House Labor and Commerce Committee
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Hudson:

Earlier this month I wrote you a letter indicating WCCA's support for SB 64. As indicated at that time, SB 64 is a safety bill which should have the support of both management and labor and should not be a subject of negotiation. It deserves the support of everyone who is interested in the safety of their personnel.

Our position on SB 64 has never wavered.

In support of further reform in the area of Worker's Compensation we have been asked by representatives from labor to reconvene the ad-hoc committee. In response to that request, I sent a letter to Mr. Kevin Dougherty identifying management members who were willing to be involved in such a committee. Our letter was certainly not an indication that our position on SB 64 had changed. SB 64 is a safety bill that benefits all sides.

Should you have any questions or wish to speak to me directly, do not hesitate to contact me at 562-3252.

Truly yours,

Willem Van Hemert
President WCCA

WCCA WORKERS' COMPENSATION COMMITTEE OF ALASKA
P.O. Box 200631 • Anchorage, Alaska • 99520

March 18, 1993

Bill Hudson, Chairman
House Labor and Commerce Committee
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Hudson:

I am writing you on behalf of the Workers' Compensation Committee of Alaska, representing over 115 employers (see attached listing), both large and small, uninsured and self insured, throughout the State of Alaska.

We wish to assure you of the support of our organization for SB 64, commonly referred to as the Van Biene Bill, and strongly urge your support and passage.

Although we are in agreement with the concept of negotiated agreements between management groups and labor groups in most instances, we do not consider the Van Biene issue to be one in that Van Biene is essentially a safety bill which should certainly have the support of labor as well as management.

The 1988 Workers' Compensation reform, considered model legislation, was built around a no fault system. The Supreme Court's unfortunate ruling eroded the exclusive remedy of Workers' Compensation. A situation never intended by the legislature, labor or management.

With the Supreme Court's ruling on Van Biene, all safety inspections and those who perform then are placed at risk of being sued simply because they attempt to perform a safety inspection to lessen the risk of accidents and potential injuries. In many, if not most cases, these safety inspections are performed by insurance carriers' safety personnel, and generally at no cost to the employer. Now they are not willing to take the risk of the financial responsibility that the Supreme Court attached to these safety measures.

SB 64 is a safety bill which clearly states the original intent of the 1988 reform legislation. This bill should definitely have the support of both management and labor and should not be a subject of negotiation. It deserves the support of everyone who is interested in the safety of their personnel.

Truly yours,

Willem Van Hemert
President WCCA

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To Dave Hutchins	From Willy Van Hemert
Co.	Co. WCCA
Dept.	Phone # 562-3252
Fax # 463-3611	Fax # 561-2273

DO YOU NEED MEMBER LIST?

"A publication for people concerned about workers' compensation reform"

The
WCCA Sounder

January/February 1993

Spring membership meeting scheduled for April 14

Make your reservations now

Mark your calendars now for Wednesday, April 14, when WCCA will sponsor its annual spring general membership meeting in Anchorage. The luncheon meeting will begin at 11:30 at the Anchorage Hilton Hotel. Featured speaker will be Leonard A. Traiman of the National Council on Compensation Insurance, or NCCI. This non-profit organization operates in nearly three dozen states as either a rating or an advisory organization regarding workers' compensation insurance rates. In Alaska NCCI is in the unique position of providing data to the Division of Insurance, which reviews and approves NCCI's rate filings; NCCI also performs the function of a licensed rating organization.

Len's topic will be "How Work Comp Rates Are Set." The rate making process will be explained "in plain English" with real-life examples to help illustrate the process. If you've ever wondered how the experts come up with the figure on your work comp premium insurance bill, you should find the program interesting. After Len's presentation there will be ample time for questions.

(continued on back page)

Comp claimants not guaranteed group health coverage

U.S. Supreme Court strikes D.C. law

A U.S. Supreme Court ruling that strikes down a District of Columbia law extending group health care benefits to employees receiving workers' compensation benefits is having an impact far beyond the district's borders. The 8-to-1 ruling handed down in December held that the Employee Retirement Income Security Act of 1974 (ERISA) pre-empted a 1990 D.C. law. That law had required employers that provide health insurance for active employees to provide equivalent coverage for workers receiving workers' compensation benefits, even if they are no longer able to work.

The decision sends a signal to other states and jurisdictions that they will not be able to use other laws to mandate health and welfare benefits. If the District of Columbia could have required employers to provide benefits beyond the time workers were actually employed, it could have required other benefits as well.

A clear signal to the states

Had the court upheld the law, it would have been "devastating" to national health care reform because it would have eliminated uniformity, according to a spokesman for the ERISA Industry Committee quoted in the December 21, 1992 issue of *Business Insurance*. The committee is a Washington-based lobbying group.

Writing for the majority, Justice Clarence Thomas held that the D. C. law "specifically refers to welfare plans regulated by ERISA and on that basis alone is pre-empted.... Such employer-sponsored health insurance programs are subject to ERISA, and any state law imposing requirements by reference to such covered programs must yield to ERISA."

American Board of Industrial Hygiene (ABIH);
Board of Certified Safety Professionals (BCSP), or;
Joint Committee of ABIH and BCSP for Occupational Health & Safety Technologist.

When the State legislators passed similar protection to registered nurses, doctors, emergency medical technicians, etc., each one of these protected groups has had to demonstrate a minimal level of competency by licensing before they were covered under the good Samaritan act and could provide those services. There are no current qualifications or levels of competency for the those safety inspectors, which means inspections performed are not always done by qualified individuals who can recognize hazards in the work place, evaluate those hazards, and implement the proper controls for injury in the work place.

Depending upon the agent, the quality of insurance safety inspection varies widely. Some carriers/agents do provide competent personnel. Others only provide a warm body to report to the underwriters potential loss information. Many do not provide reasonable reports back to the client to abate the hazards they claim to have found. One of the problems with workmans compensation in this State is that the people who manage these issues are not providing good practices and solutions for the protection of the worker. If the State gives these people immunity from civil liability, and does not make them accountable, by requiring some minimal level of competency, then why even have safety at the work place.

Another major problem is providing liability protection for those in the insurance industry, but not for other similar professionals in other industries is inequitable. Why protect only insurance safety persons with no established qualifications and require private sector safety consultants who may be more qualified to bear the liability. This creates unfair competition. An analogy is letting anyone with a first aid kit play doctor and incur no liability, while the "real" doctors will be required accept and bear liability for their actions.

Senate bill 64 could be made acceptable if two conditions were made for the protection of the public and worker.

1. Require that safety inspectors meet the same minimal qualifications as proposed in the State House draft for the Licensing of Safety Professionals (as defined as a Licensed Safety Professional). This provision would require that minimum qualifications and accountability of these "Safety inspectors" to a licensing board.

2. Any other owner, partnership, or corporation that uses a Licensed Safety Professional as determined under the current proposed State House Draft for Licensing of the Safety Professional would receive similar immunity from civil liability for that Licensed Safety Professional. Currently, no such protection is available to insurance carriers in Alaska for Safety and Industrial Hygiene Professionals who provides similar services as a consultant or as an employee of an employer in fields outside of the insurance industry.

Including these two provisions will:

a) Provide fair and equal treatment of all safety inspectors in the State of Alaska and not just insurance carriers, and;

b) Ensure the workers of the State, that those receiving immunity from civil liability, as safety inspectors, are at least minimally qualified to provide those services, while still making those safety inspectors accountable to a Licensing Board.

I believe we need to make sure we are protecting the Alaskan Worker before we protect the insurance industry. Let's at least require those people who manage workmens compensation issues, by providing safety services to

demonstrate that they have the minimum qualifications to do so. I firmly believe much of the problem in escalation worker compensation cost is the lack of qualified safety and industrial hygiene personnel working as safety inspectors both within and outside of the insurance industry. When industry starts to hire people who can demonstrate that they meet some minimal level of competency then much of the liability issue along with work compensation cost will begin to come under control.

Sincerely,

William C. Casler
Board of Certified Safety Professionals #7837

Alaska Independent
Insurance Agents & Brokers, Inc.

Gina McBride, AAI, CIC
Executive Director

Alaska Independent
Insurance Agents & Brokers, Inc.

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Anchorage, Alaska 99520-3088

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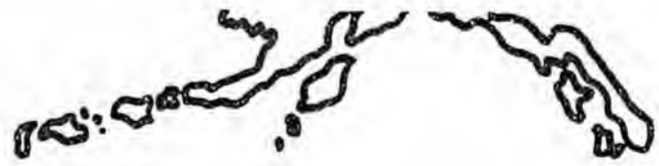

March 11, 1993

Senator Tim Kelly
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Kelly:

On behalf of the Alaska Independent Insurance Agents & Brokers, I would like to thank you for your sponsorship and work on Senate Bill 64 regarding liability for inspections.

We are in support of this legislation, insofar as it will encourage the insurance companies to continue the practice of inspections of employers which they insure. The Van Biene decision in 1989 was a concern to all of the industry, and this bill will resolve that concern.

Our organization represents 50 independent insurance agency located throughout Alaska, consisting of over 300 agents and brokers. One of our main goals is to protect the Alaskan consumer. We feel that working with the insurance carriers to make sure they have a reasonable legal, legislative and regulatory climate is of benefit to the industry as well as the client.

Once again, thanks for your efforts! If we can be of assistance, feel free to contact me.

Regards,

Gina K. McBride, AAI, CIC
Executive Director

ASSOCIATED GENERAL CONTRACTORS of ALASKA

6911 S STREET • ANCHORAGE, ALASKA 99503
P.O. BOX 240420 • ANCHORAGE, ALASKA 99524-0420
TELEPHONE (907) 561-1234 • FAX (907) 562-1151

March 3, 1993

Alaska State Senators
Alaska Legislators
Pouch V
Juneau, AK 99811

Re: SB64

Dear Senators:

The AGC has been pleased to accomplish real improvements in the Alaska Workers Compensation Act through our mutual respect and efforts with Alaska labor. Most notable is the actual decreases in Worker Compensation Premiums of 19.2% overall for Alaska employers. (A decrease of over $20 million statewide, while the lower 48 is plagued by 30-50% increases!) This was done through efficiencies in the system which respected Alaska labors concerns for fairness. Such labor-management cooperation was of benefit to all.

SB64 is not a product of labor-management cooperation, and therefore we do not support it. The current SB64 draft is wholly unbalanced, since it solely covers the insurance industry Van Blond issue without covering the health care compensation. The health care benefits have long been part of the Alaska labor-management compact, and we honor that commitment. We cannot support SB64 in its unbalanced form.

Thank you for your efforts.

Sincerely,

ASSOCIATED GENERAL CONTRACTORS
OF ALASKA

Henry Springer
Executive Director

FAIRBANKS
P.O. BOX 74339 • FAIRBANKS, AK 99707
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JUNEAU
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SOLDOTNA
P.O. BOX 350 • SOLDOTNA, AK 99669
(907) 262-2405

SB 64

"A publication for people concerned about workers' compensation reform"

The
WCCA Sounder

January/February 1993

Spring membership meeting scheduled for April 14

Make your reservations now

Mark your calendars now for Wednesday, April 14, when WCCA will sponsor its annual spring general membership meeting in Anchorage. The luncheon meeting will begin at 11:30 at the Anchorage Hilton Hotel. Featured speaker will be Leonard A. Traiman of the National Council on Compensation Insurance, or NCCI. This non-profit organization operates in nearly three dozen states as either a rating or an advisory organization regarding workers' compensation insurance rates. In Alaska NCCI is in the unique position of providing data to the Division of Insurance, which reviews and approves NCCI's rate filings; NCCI also performs the function of a licensed rating organization.

Len's topic will be "How Work Comp Rates Are Set." The rate making process will be explained "in plain English" with real-life examples to help illustrate the process. If you've ever wondered how the experts come up with the figure on your work comp premium insurance bill, you should find the program interesting. After Len's presentation there will be ample time for questions.

(continued on back page)

Comp claimants not guaranteed group health coverage

U.S. Supreme Court strikes D.C. law

A U.S. Supreme Court ruling that strikes down a District of Columbia law extending group health care benefits to employees receiving workers' compensation benefits is having an impact far beyond the district's borders. The 8-to-1 ruling handed down in December held that the Employee Retirement Income Security Act of 1974 (ERISA) pre-empted a 1990 D.C. law. That law had required employers that provide health insurance for active employees to provide equivalent coverage for workers receiving workers' compensation benefits, even if they are no longer able to work.

The decision sends a signal to other states and jurisdictions that they will not be able to use other laws to mandate health and welfare benefits. If the District of Columbia could have required employers to provide benefits beyond the time workers were actually employed, it could have required other benefits as well.

Had the court upheld the law, it would have been "devastating" to national health care reform because it would have eliminated uniformity, according to a spokesman for the ERISA Industry Committee quoted in the December 21, 1992 issue of *Business Insurance*. The committee is a Washington-based lobbying group.

A clear signal to the states

Writing for the majority, Justice Clarence Thomas held that the D. C. law "specifically refers to welfare plans regulated by ERISA and on that basis alone is pre-empted.... Such employer-sponsored health insurance programs are subject to ERISA, and any state law imposing requirements by reference to such covered programs must yield to ERISA."

Alaska National
INSURANCE COMPANY

April 6, 1993

The Honorable William Hudson
Chair of House Labor & Commerce
House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Hudson:

This letter is written in response to the letter dated March 22, 1993 from Michael Schneider to your Committee regarding SB 64.

It is important for the Committee, when considering SB 64, which is an amendment to the Workers' Compensation Act, not to be distracted by references to public policy that come from the law concerning bodily injury tort law.

For example, in the letter written to the Committee by Michael Schneider opposing the adoption of this measure, he refers liberally to sources that have nothing to do with injuries to workers arising in the context of the workplace.

The Restatement of Torts (2nd) is a good resource for understanding the developments of law in general personal injury cases and Mr. Schneider correctly notes that the law of torts includes the doctrine that a person undertaking a duty must discharge that duty carefully.

The Van Biene Case, however, deals with liability arising from a workplace injury. This takes the matter out of the common law concerning common injuries and makes the question before you today clearly a matter of defining public policy in the statutory regime for compensating injured workers.

The more appropriate source book is The Law of Workmen's Compensation by Arthur Larson, the recognized authority of workers' compensation laws around the country and a respected commentator on the developing public policy in this area. Larson is often referred to as authority by the Alaska Supreme Court.

Larson, at sec. 72.90 et.seq. of his Treatise, notes that the question of whether the exclusive remedy applies to the workers' compensation insurer for employers has been much litigated and, frankly, the state supreme courts have split on the answer.

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Fax (907) 266-9252 Fax (907) 266-9250

What is compelling to observe, though, is that many of the states which had not addressed this issue specifically in its statute, when a case was decided adverse to the carrier, subsequently adopted a statutory amendment to clarify the point that the employer's insurer should have the benefit of the exclusive remedy rule.

Today, over twenty-four states have statutes that make the exclusive remedy rule expressly applicable to the employer's workers' compensation carrier. Several more states have a similar public policy in the statutes by inference and yet several more, without specific statutory provision, adopt the public policy of carrier immunity by decision of their Supreme Court.

This Committee should bear in mind that the Workers' Compensation regime adopted by this legislature recognizes that, without the compensation system, the injured employee would likely have a tort remedy. The system contemplates, however, that the worker relinquishes his tort remedies in favor of a system that pays almost automatically, and pays all of his medical and rehabilitation expenses, reimburses him for lost wages and provides a schedule of benefits for permanent impairments, all without having to go to court, hire attorneys, wait for long periods of time and without risking taking nothing because of possible defenses that might be available in the tort system or inability to prove actual negligence.

The system adopted by this legislature contemplates an integrated response to industrial injury from the employer and the insurance carrier. The carrier is, by statute, an integral part of the system.

If the carrier were to be treated as both part of the system obligated to meet its statutory obligations, and as an enterprise outside of the system subject to common law tort liability for what it does while in the system, there would be an increase in cost to the carrier which would be passed on to the employer thereby defeating the very purpose of the exclusive remedy doctrine that has been an essential part of the statute from the outset.

This is part of the reason Arthur Larson observes that it is appropriate for the legislature to define the application of the exclusive remedy rules and why he believes that the issue will be decided by preventing dual recovery from the employer.

Sincerely,

James E. Pfeifer
President

JEP:lw

cc: Representative Joe Green, Vice-Chair of House Labor & Commerce
Representative Eldon Mulder
Representative Brian Porter
Representative Bill Williams
Representative Joe Sitton
Representative Jerry Mackie

bcc: George Suddock
Alex Miller
Charlie Miller
David Jones
Chron. File
Corres. File

SB

83

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 17, 1993 FURTHER REFERRALS:

Date of Committee Action: 4/01

The LABOR AND COMMERCE Committee considered: SB 83

SENATE BILL NO. 83 ALCOHOL SERVER EDUCATION COURSE

"An Act relating to an alcohol server education course."

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

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Brian Porter	✓	W.R. Williams		✓	
Joe Sutton	✓				
	✓				
	✓				
	✓				
Bill Hudson	✓				

Bill Hudson
CHAIRMAN'S SIGNATURE

No. 1

FISCAL NOTE

Bill Version: SB83

STATE OF ALASKA

BILL I

(S) Publish Date: 2-22-93

1993 LEGISLATIVE SESSION

Revision Date:

Dept. Affected: Revenue

Title: Alcohol Server Education Course

BRU: Alcoholic Beverage Control Board

Component:

Sponsor: Senator Kelly

Requestor: S HES

COMPONENT SERIAL NO. 0100

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
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 FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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 (FY93) impact: $ None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Patrick L. Sharrock, Director

Phone: 277-8638

Division: Alcoholic Beverage Control Board

Date: 2/3/93

Approved by Commissioner:

Date: 2/8/93

Agency: Department of Revenue

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FEB 08 1993

Alaska State Legislature

SENATOR TIM KELLY

Official Business

State Capitol
Juneau, AK 99801-1182

MEMORANDUM

TO: Representative Bill Hudson, Chair
House Labor & Commerce Committee

FROM: Senator Tim Kelly TDK

DATE: March 19, 1993

RE: Hearing Request for SB 83 - "An Act relating to an alcohol server education course."

- -

I respectfully request you consider scheduling a hearing for SB 83 at the House Labor & Commerce Committee's earliest convenience. It passed the Senate on March 15th with 18 yeas and 1 nay.

This legislation would require alcohol servers to take an alcohol server education course approved by the Alcohol Beverage Control Board (ABC Board). It is identical to legislation which passed the House last year (HB 445), moved out of the Senate Labor & Commerce Committee, was waived out of the Senate Judiciary Committee, and scheduled before the Senate Finance Committee in the closing hours of the 17th Legislature. Unfortunately, the clock ran out before the Finance Committee could send the bill on to the Rules Committee to be sent to the floor for a vote.

This bill was supported by the Department of Health & Social Services, the Municipality of Anchorage's Health & Human Services Commission, Mothers Against Drunk Driving, the Bristol Bay Area Health Corporation, the Daily News, the ABC Board, the Alaska Cabaret, Hotel, Restaurant & Retailers Association, and the Anchorage Restaurant & Beverage Association.

Attached you will find my position paper and analysis, as well as additional back-up and a fiscal note.

Thank you in advance for your consideration.

Alaska State Legislature

SENATOR TIM KELLY

Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR SB 83:

AN ACT RELATING TO AN ALCOHOL SERVER EDUCATION COURSE

Alcohol abuse is a severe problem in Alaska, impacting individuals, families, and communities throughout our State. This legislation -- which addresses the problem by requiring alcohol server education -- passed the House last session and the Senate Labor & Commerce Committee before dying in the closing minutes of the session in the Senate Finance Committee.

Alaska ranks 4th in the nation for per capita alcohol consumption, and has one of the highest rates of fetal alcohol syndrome in the country, with more than 30 infants born each year with alcohol related impairments. In 1991, there were more than 1,700 alcohol related vehicular accidents, resulting in 38 deaths. In Anchorage alone, there were more than 1,800 DWI arrests in 1991.

SB 83 was originally crafted last session to help address this problem through alcohol education for servers with cooperation from Mothers Against Drunk Driving (MADD), the alcohol industry, the Department of Motor Vehicles (DMV), and the Alcohol Beverage Control Board (A.B.C. Board).

Under SB 83, the A.B.C. Board would establish criteria with which to evaluate education programs currently available, and then approve a package of alcohol server education courses. This package would include a variety of courses which would ensure accessibility to alcohol servers in both urban and rural Alaska. Various instruction mediums, ranging from classroom instruction to viewing a video cassette followed by written exercises, would likely be utilized depending on the program.

Courses would include such topics as alcohol's affect on the body and behavior, particularly driving ability, drunk driving and civil liability laws, identifying fraudulent IDs, methods of recognizing the problem drinker, use of community treatment programs, and methods to peacefully terminate service to the problem customer and get him or her home safely, to name a few.

Alcohol servers would have 30 days from the date the A.B.C. Board approves a package to complete a course, and, for new employees, 30 days from the date of hire. Proof of completion of an approved course must be kept on the licensed premises during working hours.

Alcohol server education is already required by ordinance in the Municipality of Anchorage.

If enacted, SB 83 should go a long way towards reducing incidents of drunk driving, and help increase alcohol servers' awareness on how to serve alcohol responsibly.

This bill maintains a zero fiscal note, and has the support of the A.B.C. Board, Mothers Against Drunk Driving, the Alaska Cabaret, Hotel, Restaurant & Retailers Association, the Anchorage Restaurant & Beverage Association, the Bristol Bay Area Health Corporation, and the Municipality of Anchorage Health & Human Services Commission.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 83

Revision Date:
Dept. Affected: Revenue
Title: Alcohol Server Education Course
BRU: Alcoholic Beverage Control Board
Component:
Sponsor: Senator Kelly
Requestor: S HES
COMPONENT SERIAL NO. 0100

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
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 FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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 (FY93) Impact: $ None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Patrick L. Sharrock, Director
Phone: 277-8638
Division: Alcoholic Beverage Control Board
Date: 2/3/93
Approved by Commissioner:
Date: 2/8/93
Agency: Department of Revenue

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FEB 08 1993

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF REVENUE

ALCOHOLIC BEVERAGE CONTROL BOARD

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

February 4, 1993

The Honorable Tim Kelly
Alaska State Senate
State Capitol
Juneau, AK 99801-1182

RE: SB 83

Dear Senator Kelly:

This letter intends to express the Alcoholic Beverage Control Board's support for SB 83. As you may know, the board is currently informally requested under Municipality of Anchorage ordinance to approve training programs presented within the municipality.

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

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

Sincerely,

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

PS/cl

93-022

04-D15LH

Alaska Cabaret, Hotel,
Restaurant & Retailers Association

P.O. Box 104830 • Anchorage, Alaska 99510
401 K Street • (907) 272-8193 • Fax: (907) 277-8640

February 16, 1993

Senator Tim Kelly
State Capitol
Juneau, AK 99801-1182

Dear Senator Kelly,

The membership of the Alaska Cabaret, Hotel, Restaurant and Retailers Association endorses and supports Senate Bill 83 which you introduced. We feel that statewide mandatory alcohol server training benefits those in the beverage alcohol industry as well as the general public.

As a statewide trade association, we began offering server training on a voluntary basis as a service to our members in 1984. In 1986, such training was made mandatory in Anchorage and since that time we have trained and certified over 10,000 servers . We have instructors throughout the State and our instructors do travel to more remote areas upon request. Our TAM seminars (Techniques of Alcohol Management) have been given in Nome, King Salmon, Yakutat and Haines.

Our members are convinced that education is the tool to be used in reducing alcohol-related accidents - education of the general public as well as server education. In a 1990 report to Congress, the Secretary of Health and Human Services stated, "Evaluations of servers' post -training behavior suggest that training has a positive effect...on the probability of patron intoxication." We believe that the TAM program has very positive effects and devote a good deal of association effort and support to maintaining and enhancing its effectiveness.

Training all employees in responsible beverage service techniques can only benefit our industry and the general public. CHARR strongly endorses Senate Bill 83 and you have our appreciation for your support of this legislation.

Yours truly,

Stan Filler

Stan Filler
President

END

ANCHORAGE - RESTAURANT BEVERAGE - ASSOCIATION
ARBA

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

February 5, 1993

Senator Tim Kelly
State Capitol
Juneau, AK 99801-1182

Dear Senator Kelly:

The Anchorage Restaurant and Beverage Association (ARBA) strongly endorses and supports Senate Bill 83 you introduced making alcohol server training mandatory in Alaska.

Long before such training was made obligatory in Anchorage by the Municipal Assembly, ARBA working with the statewide trade association Cabaret, Hotel, Restaurant, and Retailers Association(CHARR), introduced the Techniques of Alcohol Management (TAM) program on a voluntary basis for the benefit of our members. To date, over 10,000 persons have attended a TAM Seminar here in Alaska.

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

Our Association strongly endorses Senate Bill 83 and has asked me to express our sincere appreciation to you.

Yours truly,

Carol Wilson

Carol Wilson
Executive Director

Pioneer Bar & Liquor Store, Inc.

CHRISTINE M. TENGS
President

141-143 Second Ave.
Post Office Box 190
Haines, Alaska 99827
(907) 766-9101 Business
(907) 766-2474 Office
(907) 766-3374 FAX

Senator Tim Kelly
State Capitol
Juneau, AK 99801-1182

Dear Senator Kelly:

I am writing to show my support for Senate Bill 83. As the owner of a bar, liquor store and restaurant in which beverage alcohol is served, I firmly believe that we in the industry play a key role in reducing alcohol related accidents and preventing underage persons from illegally trying to buy. Educational programs (such as the TAM program) give servers the knowledge and confidence they need to be professional in handling situations which otherwise might have disastrous consequences.

Although people in my business may argue against being mandated to provide training for their personnel, I believe, in the long run, they will see the benefits. It could show up in a simple change of attitude amongst their staff (and eventually their customers). Where it will really hit home, however, is in a reduction in the number of lawsuits and, perhaps one day, lower insurance rates.

As far as I can see, this is a win-win situation. Thank you for Senate Bill 83.

Sincerely,

Christy Tengs

BRISTOL BAY AREA HEALTH CORPORATION

P.O. BOX 130 • DILLINGHAM, ALASKA 99576

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

February 3, 1993

Senator Tim Kelly
Senate Labor & Commerce
State Capitol
Juneau, AK 99801-1182

Dear Senator Kelly,

We appreciate this opportunity to respond to your introduction of SB 83 and SB 84. The Bristol Bay Area Health Corporation has supported these bills in the past and will continue to advocate passage in the form of this letter of support.

We renumerate our concerns regarding alcohol abuse as our main social problem in our region and we encourage any efforts to resuscitate interest to curb underage drinking and educate alcohol servers. The alcohol servers course has the potential to change the alcohol establishments policies and procedures; increase marketing to generate increased profits, educate servers on the alcohol beverage laws, provide servers with tools and techniques that can be used with patrons, and additional education efforts can be focused on the consequences of prenatal drinking that can cause birth defects.

Once again, thank you for introducing these key pieces of legislation and the best of luck in their passage.

Sincerely,

BRISTOL BAY AREA HEALTH CORPORATION

Robert J. Clark
Chief Executive Officer

RCJ/ve

cc: Senator George Jacko
Senator Georgianna Lincoln
Representative Lyman Hoffman
Representative Irene Nicholia
Representative Carl Moses
file

The Unisea Inn
Dutch Harbor, Alaska 99692

March 5, 1993

Senator
State Capitol
Juneau, AK 99801-1182

Dear Senator,

It has come to our attention there are four bills awaiting approval, that will drastically affect our business here, in Alaska. We would like to take a few moments of your time to express our views on these issues.

We would like to pledge support for Senate Bill 83, the Alcohol Server Training Bill. This Bill would prove to be assertive and helpful in the fight against alcohol abuse and the efforts to reduce drunk driving accidents. The main emphasis of this Bill is the aspect on training and how trained employees become responsible, better employees, helping us to protect our business and our customers.

Senate Bill 84 continues in the direction of solving problems of alcohol abuse by targeting the underage drinker. Senate Bill 84 attacks the problem in its infancy, hoping to alleviate larger alcohol abuse problems later. By instituting stiffer controls, such as a hologram on the driver's license to help discourage counterfeiting, or the taking away of a driver's license from teenagers attempting to buy alcohol, the State of Alaska is taking a firm step forward in helping to solve problems before they get out of hand.

Both of the aforementioned Bills are well thought out and sincere in their attempts to help Alaskans gain ground in the arena of alcohol abuse awareness. Senator Tim Kelly has shown he truly cares about the public and we ask that, like us, you will support him in his efforts.

We understand that the pursuit of standards in the fight of alcohol abuse is important. This is why we oppose House Bill 61. The BAC for Alaska is currently at Ø.1Ø%. This is the recognized standard for 45 states. House Bill 61 would decrease the BAC to Ø.Ø8%. The intention is good, but the result could prove counterproductive. This Bill will intimidate the responsible alcohol consumer, creating a loss of sales and decreasing jobs my business can offer. By increasing the amount of offenders just by changing a number, the efforts needed to enforce our already tough laws, against DWI's, are diminished. The increase in DWI processing, court cases and corrections systems decreases the time available for regular activities, one of those being the arrest of serious heavy drinkers. We need to make a stand and enforce the good laws we have, instead of changing these laws to reflect a sense of morality only.

Finally, we would like to express our dissatisfaction with House Bill 53. Another increase in alcohol excise taxes is absurd. Federal excise tax rates just increased in 1991, and President Clinton's Administration is again proposing more increases. Alaska now ranks number four in the highest excise taxes for distilled spirits. Increasing the taxes even more will only decrease sales, which decreases jobs. It will not curb alcohol abuse. The previously mentioned Senate Bills, number 83 and 84, are heading in the right direction to help this battle, but tax increases are not the answer. Please help us discourage House Bill 53, since we see it as unproductive to our business and a detriment toward the health of the state.

Thank you,

Doug Bagnell

Doug Bagnell
General Manager
UniSea Inn
Pouch 5Ø3
Dutch Harbor, AK 99692

cc: Tim Kelly

SB

86

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 2, 1993 FURTHER REFERRALS: Judiciary

Date of Committee Action: 4/13/93

The LABOR AND COMMERCE Committee considered: SB 86

SENATE BILL NO. 86 FUND TRANSFERS UNDER THE UCC

"An Act relating to funds transfers under the Uniform Commercial Code; changing Alaska Rule of Civil Procedure 82; and providing for an effective date."

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

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[X] 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 _____ 2 [X] zero fiscal note(s) DCED, LAW

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Joe Sutton	✓	Brian Porter		✓	
Bill Hudson	✓			✓	
				✓	
				✓	
				✓	

Bill Hudson
CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1

STATE OF ALASKA
1993 LEGISLATIVE SESSION

I Version: SB 86

(S) Publish Date: 3-3-93

Revision Date:

Title: Fund transfers under the UCC

Sponsor: Senator Kerttula

Requestor:

Department Affected: Commerce and Economic Development

BRU: Banking, Securities and Corporations

Component:

COMPONENT SERIAL NO. 1233

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 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: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations

Phone: 465-2521
Date:

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

Date: 3-2-93

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STATE OF ALASKA
1993 LEGISLATIVE SESSION

FISCAL NOTE

No. 2

Bill Version: SB 86

(S) Publish Date: 3-3-93

Revision Date: February 10, 1993
Title: "...dealing with fund transfers under the Uniform Commercial Code..."
Sponsor: Senator Kerttula
Requestor: Senator Kerttula

Department Affected: Law
BRU: Legal Services
Component: Operations

COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

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

CAPITAL						

REVENUE FUND SOURCE:						

FUNDING:

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

POSITIONS:

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

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

ANALYSIS: (Attach a separate page if necessary.)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division

Phone: 465-3672
Date: February 10, 1993

Richard I. Pegues /FOR/

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Date: February 10, 1993

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Rev 11/92

Alaska State Legislature

SENATE

Committee on Finance

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

Bill

MEMO TO: Representative Bill Hudson, Chairman
House Labor & Commerce Committee

FROM: Sen. Jay Kerttula

DATE: April 6, 1993

SUBJECT: S.B. 86 and S.B. 112, UNIFORM COMMERICAL CODE

As sponsor, or facilitator, of S.B. 86 and S.B. 112, revising and updating Alaska's Uniform Commercial Code, I respectfully request that you schedule these bills for a public hearing at your committee's earliest convenience.

The bills, which both passed the Senate on 20-0 votes, have the support of the business community, the banking community, the legal community, and the state Departments of Law, Natural Resources, Commerce and Economic Development, as well as the support of the governor's office

The bill's bring the UCC, governing business transactions in Alaska, up to date with modern technological advances (such as electronic funds transfers), and bills similar to S.B. 86 and S.B. 112 have already been enacted by 45 other states. Passage of these bills will encourage Outside business interests in Alaska, further stimulating economic development and employment in Alaska.

Thank you for your timely consideration of this request.

Sincerely,

thanks

Jay Kerttula
State Senator

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

April 5, 1993

Hon. Bill Hudson
Alaska State House of Representatives
Room 108
State Capitol
Juneau, AK 99801

Re: SB 86

Dear Representative Hudson:

The Department of Law has reviewed SB 86 and finds no legal problems.

The bill makes important improvements to the Uniform Commercial Code.

We understand that the bill is before your committee. We would request early scheduling of a hearing on the bill.

If you have questions, please let us know.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: Deborah E. Behr
Deborah E. Behr
Assistant Attorney General

DEB:tg

cc: Alaska's Uniform Law Commissioners Delegation
Justice Jay Rabinowitz
Arthur H. Peterson, Esq.
Jerry Kurtz, Esq.
Tam Cook, Esq.
Grant Callow, Esq.

Kris Lethin, Legislative Liaison
Office of the Governor

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

April 5, 1993

Hon. Bill Hudson
Alaska State House of Representatives
Room 108
State Capitol
Juneau, AK 99801

Re: SB 112

Dear Representative Hudson:

The Department of Law has reviewed SB 112 and finds no legal problems.

The bill makes important improvements to the Uniform Commercial Code.

We understand that the bill is referred to your committee. We would request early scheduling of a hearing on the bill.

If you have questions, please let me know.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: Deborah E. Behr
Deborah E. Behr
Assistant Attorney General

DEB:tg

cc: Alaska's Uniform Law Commissioners Delegation
Justice Jay Rabinowitz
Arthur H. Peterson, Esq.
Jerry Kurtz, Esq.
Tam Cook, Esq.
Grant Callow, Esq.

Kris Lethin, Legislative Liaison
Office of the Governor

Law Office of Jeff Bush
Senate Building
175 S. Franklin St., Ste. 318
Juneau, AK 99801
(907)463-4150
Fax: 463-4122

April 6, 1993

Representative Bill Hudson
Chair, House Labor & Commerce Committee
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Re: SB 149; Recodification of the Alaska Banking Code

Dear Representative Hudson:

I am the attorney hired by the Division of Banking, Securities and Corporations to draft the recodification of the Alaska Banking Code. The bill was introduced by the Senate Labor & Commerce Committee, as SB 149, and passed the Senate last week. It has now been referred to your committee. The purpose of this letter is to provide the committee with some back-up materials and to request that you consider scheduling a hearing on this important piece of legislation, which is supported not only by the Administration, but also by the financial institutions.

Enclosed for your reference is a sectional analysis of the current bill. Also enclosed is a draft set of regulations, which would be adopted by the department once the new code is enacted.

This information was provided to each committee of referral in the Senate, and you may already have much of it in your file. If so, I apologize for the duplication of paper. If you have any questions about the bill, the sectional analysis, or the draft regulations, please feel free to contact me or Willis Kirkpatrick (465-2521). Thank you for your consideration of this request.

Sincerely,

Jeffrey W. Bush
Attorney

enclosures: Sectional Analysis
Draft proposed regulations

Summary of Senate Bill 149
Recodification of Alaska Banking Code

REVISIONS AND EXPANSIONS OF BANK POWERS

1. Creates an entirely new article on interstate and international banking, to allow foreign and other US banks to enter the Alaska marketplace. Section 87, beginning on page 52.

A. Either an interstate (a US bank headquartered outside Alaska) or international bank can purchase an Alaska state or national bank. Proposed AS 06.05.550(a), page 52.

B. An international bank may establish a new branch in Alaska; an interstate bank cannot, but rather must purchase an existing Alaska bank or branch. Proposed AS 06.05.550(b), page 52.

C. For an interstate bank, reciprocity with the bank's home state will be required. Proposed AS 06.05.555(d)(1), pages 53-54. This will hopefully open up the availability of other state markets for our banks.

D. Also for an interstate bank, FDIC insurance will be required. Proposed AS 06.05.550(a). An international bank, instead, will have to maintain assets in the state at least equal to 100% of its Alaska deposits. Proposed AS 06.05.560, pages 54-55.

E. Any branches of interstate or international banks will be subject to examination by the department, which also is authorized to examine the home office of the bank to the extent necessary to protect Alaska depositors. Proposed AS 06.05.565(c) and (d), pages 55-56.

2. Provides for banks to have subsidiaries. Proposed AS 06.05.272, section 47, page 24. The new code specifically authorizes subsidiaries engaged in real estate ownership, development and leasing; insurance; and securities brokerage. Other activities for subsidiaries are subject to department approval, and the plan, as set out in the draft regulations (see draft 3 AAC 02.200, at page 28), is to analyze other activities on a case-by-case basis for now.

3. Revamps the bank lending statutes.

A. Adopts general lending limits, i.e. the amount a bank can loan to any one person or entity, that are similar to those used by the Comptroller of the Currency (OCC); these limits have applied in Alaska for several years anyway by regulation adopted under AS 06.01.020, the "wildcard" statute. Proposed AS 06.05.205(b), section 25, page 14. Thus, if adopted, the statutes will be brought into conformity with current practice.

B. Provides that the department may adopt regulations (see draft 3 AAC 02.125(b) and (c), at page 19) to determine when a loan to one person will be attributed to another, for purposes of calculating the lending limits of AS 06.05.205(b). Proposed AS 06.05.205(g), section 28, page 15.

C. Eliminates all loan-to-value and term restrictions for real estate lending, requiring instead that lending comply with sound bank policies, subject to examination. Proposed AS 06.05.207, section 29, page 15.

D. At the request of the banks, the new code proposes a change to AS 06.05.215 to provide personal liability for directors or officers for loans made in violation of law or bank policies only when gross negligence is proven. Section 33, page 17.

REVISIONS TO DEPARTMENT'S REGULATION OF BANKS

1. Changes the capital and reserve requirements for banks.

A. With respect to reserve requirements, the new code provides that these will be set by regulation. Proposed AS 06.05.200(a), section 23, page 13. Current law provides for reserves of 20% of demand deposits and 8% of time and savings deposits. The draft regulations propose a new figure of 15% of all deposits. See draft 3 AAC 02.110(a). at page 15. Although this figure is arguably higher than the old numbers, the department also proposes greatly expanding the list of assets that can be considered for reserve purposes. Draft 3 AAC 02.110(b), at page 15. According to department calculations, the new proposal will not significantly raise or lower current requirements; the department's intention is to simply try to find a single figure, for ease of calculation, that approximates current requirements.

B. With respect to capital requirements, the new code raises minimum capital requirements to $1 million in general, and $2 million for banks in Anchorage and Fairbanks. Proposed AS 06.05.305, section 50, page 25. These are minimums -- the department will set the actual requirements in each case. At present, the smallest Alaska state bank has $7.9 million in capital.

2. Makes the Alaska Corporations Code, AS 10.06, generally applicable to banks. Proposed AS 06.05.301, section 49, page 25. This will eliminate the essentially duplicative statutory scheme with respect to bank formation, corporate actions, and filing requirements.

3. Sets up a permitting system for bank holding companies. Proposed AS 06.05.235(b), section 38, page 19, and AS 06.05.570(a), section 87, page 56.

4. Makes FDIC insurance optional, although only with a waiver from the department. Proposed AS 06.05.355(a), section 61, page 32. If waived, presumably there will need to be some alternative protection for depositors, like the asset requirements for international banks (see, e.g., proposed AS 06.05.560, section 87, pages 54-55).

5. Repeals Alaska's Savings Association Act, AS 06.30. Section 96, page 59. At present, there are no existing state S&L's, and if formed, a new one would be subject to duplicative state and federal regulation. Therefore, it would be better to repeal this authorization, and if an organization wishes to form a savings bank, it can do so either under a federal charter, or under the state Mutual Savings Bank Act, AS 06.15.

CHANGES TO THE DEPARTMENT'S ENFORCEMENT POWERS

1. The bill consolidates all penalty provisions of Title 06 into one section. Proposed AS 06.01.035, section 7, pages 5-7. The new code also grants the department the authority to assess administrative penalties for violations of the code, regulations or department orders. Proposed AS 06.05.035(e)-(g). See the sectional analysis, page 2, for a description of what other states and the FDIC do in this area.

2. Revises sections relating to bank liquidations. Proposed AS 06.05.466-474, sections 81-85, pages 40-47. During the 1980's when several banks closed, the department discovered that its liquidation statutes were generally pretty good, but needed a few changes. In particular, the Supreme Court held in Hoffman v. State that although the constitution might not require a hearing before the department takes possession of a bank, the statutes do. The changes proposed will clarify that this hearing may be closed to the public (proposed AS 06.01.030(e), section 6, page 4); in fact, it is the department's intention to hold a closed hearing with the board in these cases at a board meeting called by the department.

3. Provides that the department may remove a director from a bank's board under certain, enumerated conditions, generally where the director's actions are threatening the soundness of the bank. Proposed AS 06.05.435(g), section 68, page 36. Also, provides that the department can recommend that a board fire an officer or employee, and if the board refuses, it risks liability for negligent or intentional actions of that employee that cause losses. Proposed AS 06.05.437(c), section 70, page 37.

COMMITTEE SUBSTITUTE FOR SENATE BILL 149(FIN)
RECODIFICATION OF THE ALASKA BANKING CODE
SECTIONAL ANALYSIS

Section 1. Technical change. Alaska no longer issues a "charter," so references to that term are eliminated throughout the statutes.

Section 2. Technical change.

Section 3. This is current AS 06.05.025 and 06.05.040, mostly with minor technical changes. Recognizing that examiners should not be precluded from merely investing in banks, we have changed the provisions to allow an examiner to own up to 5% of the voting stock of another institution; this will allow simple investments but will not permit an examiner to have a controlling ownership interest in a bank.

Since the department examines all financial institutions, not just banks, the provisions relating to exams have been moved to AS 06.01, the chapter that applies to all financial institutions.

Section 4. Changed to bring the section up to date, given that the list of federal agencies in the current statute is inaccurate. The change will make the statute apply regardless of what changes occur in the future to the names of the federal agencies.

Also, at the banks' request, "corresponding" was removed in (2) to allow the department to equalize competition between financial institutions regardless of what they are called.

Section 5. Current AS 06.05.060(a) and (b). Only change is to clarify that this section applies only to records relating to financial institutions, not all records of DCED.

Section 6. (a) - (d). New cease and desist provisions, to more accurately set out the procedure used by the department; existing law has been confusing. These new subsections are generally taken from the FDIC Act (12 USC 1818(b)(1)) and the Alaska Securities Act (AS 45.55.200(a)), both of which have proven track records. (d) will permit the department to issue temporary orders before a hearing, to ensure preservation of the status quo (like a TRO).

(d) Current (b), amended to make it clear that public hearings need not be held in cease and desist proceedings.

(e) Current (c) & part of (d), without substantive change; the rest of (d) has been moved to Section 8 of the bill.

(f) Current (e).

(g) Defines "unsafe or unsound practice."

Section 7. This section consolidates all penalty provisions from AS 06 relating to financial institutions. Existing penalty provisions, scattered throughout the code, are repealed in this bill.

(a). The criminal sentences on individuals are generally kept

the same as in current law. However, this will raise the potential corporate sentences from the current $20,000 ($1000 for trust companies) to $200,000, under AS 12.55.035(c)(B). This subsection supersedes current AS 06.05.065(e), 06.05.090(c), 06.05.210(b), 06.05.235(d), 06.05.520, AS 06.20.320(b), and AS 06.25.320.

(b). Supersedes current AS 06.40.160(b).

(c). This is consistent with current AS 06.05.380(c), 06.05.500, and AS 06.25.060; current AS 06.05.510 seems to make it only a misdemeanor for the same violations, but a single consistent penalty is more appropriate in all these cases. Supersedes current AS 06.05.380(c), 06.05.500, 06.05.510, AS 06.25.060, 06.25.070, and AS 06.45.320.

(d). Penalizes receiving a deposit after being notified by the state or federal regulators that the institution is insolvent. Under the Credit Union Act, this is currently a Class A felony (AS 06.45.330). The general criminal law makes defrauding creditors a misdemeanor for up to $500, a Class C felony for $500 to $25,000, and a Class B felony for more than $25,000 (AS 11.46.730(c)). We have decided to go with the Class C felony for these cases. Supersedes AS 06.05.490 and AS 06.45.330.

(e) and (f). For intentional violations of the code or the department's orders; taken from Securities Act, AS 45.55.200(b). Note that (e) also applies to people who cause others to violate the code or department orders. A person assessed an administrative penalty would have a right to a hearing under AS 06.01.030. The differential rates for institutions as opposed to individuals is common in other states. See FL and OR below. For point of reference, here is a summary of what some other states allow for administrative fines:

IN allows up to $15,000 per violation (sec. 28-11-4-9).

GA allows $1000 per day per violation, until corrected (sec. 7-1-91).

OR allows $2500 per violation for individuals, $50,000 for institutions (sec. 708.980).

FL allows $10,000 per day if the violation is due to recklessness; and $50,000 per day for individuals and $500,000 per day for institutions if the violation is intentional (sec. 655.041).

By the way, the FDIC penalties are also very high -- $25,000 per day for reckless actions, up to $1 million per day for intentional violations (12 CFR 308.116).

(g). For non-intentional violations, taken from AS 45.55.200(c); also applies to those who cause others to commit a violation.

(h). Supersedes AS 06.01.010(c) and AS 06.05.505. These figures seem consistent with those used in other states. However, for late call reports the FDIC uses a sliding scale based on the size of the institution and whether the conduct is repetitious, charging from $100 to $2000 per day (12 CFR 308.132).

(i). Current AS 06.05.065(e).

Section 8. This is part of current AS 06.01.030(d), which is moved

because it did not belong as part of the section on departmental orders.

Section 9. This section lists most of the department's powers with respect to banks. To the extent the list refers to powers contained elsewhere in the code, the reference here is unnecessary, but it does offer a relatively comprehensive laundry list. In addition, (b)(13) and (14) give the department essentially unlimited authority to issue orders to get compliance with the code.

Current AS 06.05.005(3) has been repealed; neither the department nor the banks could determine what it meant or what was its purpose. Some current sections have been repealed elsewhere and included in this section. They are

(a)(2). AS 06.05.070 is repealed, and here it simply states that the department will provide for bank records retention through regulations.

(b)(1). Current AS 06.05.030, although we have removed the authority of the department to relieve a bank from the examination fee; this seemed appropriate given that fees for specific exams have been replaced with an assessment system. See AS 06.01.010(d).

(b)(6). Current AS 06.05.005(2).

(b)(7). Includes current AS 06.05.015. In (J), we have added authority to require loan loss reserves for loans classified as "doubtful." We also eliminated reference to "FDIC" exams and substituted "federal" exams, to include the Federal Reserve Bank.

Section 10. Amended to make the reporting requirements as to signatures consistent with FDIC requirements, so that the same reports can be used by the banks for both state and federal agencies.

Section 11. Here and in Section 12 of the bill, references to state "charter" have been removed as obsolete. Also, we removed reference to "lending" institutions to make the terminology consistent with that used in the rest of the code.

Section 12. Adds an exemption for mortgage loans existing at the time of hire. This section will no longer disqualify a person from working as a bank examiner if the person has a home mortgage loan with a state bank.

Section 13. Amended to clarify that all actions of the department under this chapter, not just the adoption of regulations, are designed to promote a sound banking system.

Section 14. These changes are primarily stylistic, to clarify the section's meaning.

Section 15. Amended to provide that the notice of charges for new accounts need only be provided where accounts are opened; for example, there is no reason to require this at a bank's automated

teller machine (ATM).

We will also clarify in regulation that "clearly post" can include using pamphlets or brochures, provided they are easily accessible and there is some notice or sign indicating their location.

Section 16. The phrase in current statute, "the extent necessary to meet the needs of customers," might be interpreted either to mean "to meet existing orders" or "to meet anticipated demands." This change, proposed by the banks, clarifies the meaning.

Section 17. The repealed language is all contained in other subsections -- the three day maximum closure is now contained in (e); the branch bank variance is now in (f). See Section 19, below. The reduction of necessary prior notice of a holiday closure, from 15 to 7 days, was done at the request of Northrim Bank.

Section 18. Many stylistic changes. We changed the notice requirement to be before closure, if possible, and otherwise as soon as possible after closure. Also, we removed the requirement that the Comptroller of the Currency be notified of these closures -- that is a matter that should be left to the comptroller and federal regulation. Finally, at the suggestion of First Bank, we clarified the final sentence in the subsection.

Section 19. (d). This is new, to cover the Key Bank "neighborhood day" situation.

(e). Currently in (a). The three day maximum closure applies not only to holidays, but also to board declared closures, but it does not apply to branch banks operating under a department approved different schedule.

(f). Currently the last sentence in (a).

Sections 20 & 21. At the request of the banks, we have changed this statute to clarify that bank records need not be released pursuant to subpoena. Given that subpoenas can be obtained routinely from the court clerk without judicial review, to permit release of the info in response to a subpoena would amount to an elimination of any customer confidentiality, and has resulted in a huge burden on the banks.

Section 22. This is new, also at the request of the banks. The current cost of responding to information requests is very high, and it is reasonable to provide the banks with reimbursement for these costs.

Section 23. First, the subsection is modified to apply to all banks -- the distinction of "commercial" banks is meaningless in Alaska law, and there was no reason for the exception for members of the federal reserve system. Second, the subsection has also been changed to provide that reserve requirements will be set by

regulation be based on the bank's liquidity needs (rather than as a means of protecting against capital impairment). There has been confusion in the past over the purpose of the reserve requirements. It should be noted that the Comptroller sets reserve requirements in federal law, but those requirements are not based on a bank's liquidity needs, but rather as a method to manipulate the supply of money in the U.S. Finally, we have changed "reserves" to "reserve fund" to avoid confusion with loan loss reserves.

Section 24. This change will give the department more discretion in regulating problem banks. If a bank falls below the reserve requirements, it will not automatically be prohibited from making loans or paying dividends -- that will be up to the department.

Section 25. This adopts the general lending limits used by the Office of the Comptroller of the Currency (OCC). The definition of "fully secured" will be put in regulation, probably requiring collateral equal to 100% of loan balance. The list of transactions not included in these calculations is generally taken from current subsection (b), with an addition in (3) of loans collateralized with assigned deposit accounts. This list is generally more liberal than OCC regulations, except for the requirement that cannery products and products in transit be insured to be exempt. The definition of "products in transit" in (4) is taken directly from current regulation and is not a change in current law.

Section 26. Amended to make loans unconditionally guaranteed by the state, such as AIDEA, also not count toward the loans to one borrower limitations.

Section 27. Expands the prohibition for bank loans to include loans collateralized by stock of any of the bank's holding companies, unless the stock is publicly traded, and to unsecured loans used to purchase stock of either the bank or its holding companies. Adds an exception to this rule for situations of bank acquisitions or mergers, with department approval.

Section 28. (g). New provision allowing the department to adopt regulations defining when a loan made in the name of one person or entity will be attributed to another for purposes of calculating the lending limits in this section. This is taken from the recommendations of Montana's advisory committee that reviewed that state's banking code.

Section 29. (a). Combines existing (a), (c), and (d). Specific loan-to-value (LTV) and term restrictions have been eliminated and replaced with a requirement that real estate loans be made consistent with sound bank policies. Also, the section's application is expanded to apply to all loans where the primary security for the loan is real estate, not just those on improved real estate; thus, current (e) and (f) were eliminated along with AS 06.05.206 and AS 06.05.211. Existing (g) has been eliminated as

obsolete.

(b). From current subsection (b); changed to apply to all junior liens, not just seconds.

Section 30. Several changes are proposed to this subsection. First, we clarify that all normal lending restrictions apply to loans to directors, officers and bank employees, in addition to the specific limitations of this section. Second, directors are added to those subject to this section. Third, the threshold for application of the section is raised to $100,000 in the aggregate, and up to $250,000 for personal primary residences of directors, officers and employees. We have also repealed the final sentence, since loans are defined in AS 06.05.540 to include overdrafts, making this sentence unnecessary.

There has been some confusion in the past whether a bank's board of directors could act through a committee for the approval of these loans. AS 10.06.468, incorporated under this act, would allow this, except for loans to directors which would still require full board approval.

Section 31. This subsection has been amended to remove specific LTV and term restrictions, and make these loans generally subject to the same restrictions as all real estate loans under AS 06.05.207.

Section 32. Changed to make this merely a prohibition; penalties are provided in AS 06.01.035 for all violations of the code, including this section.

Section 33. This section has been confusing and somewhat controversial in the past. We have rewritten it to make sense. The standard adopted here - knowingly or with gross negligence - is strongly supported by the banks, because they feel that a simple negligence standard might discourage people from becoming bank directors.

Section 34. This section probably could be repealed, since federal law arguably preempts the state law. (We have repealed AS 06.05.220 for this reason.) However, for clarity, this section is left in. The reference to AS 06.05.220 has been changed to refer directly to the applicable federal statute.

Section 35. The section currently is incorrect in its reference to "real estate," since it actually applies to both real and personal property, so this has been fixed. Also, the section has been broadened in several respects, to allow a bank to hold

1) property used for promotional purposes, such as a boat; of course, any asset so held will have to be used exclusively for bank purposes;

2) a building in which bank offices are located, even if only a portion of the building is used for the bank (this is already being done by several Alaska banks, arguably in violation of present law); and