

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8425 SENATE LABOR & COMMERCE

# Alaska State Legislature

Representative Brian S. Porter

CHAIRMAN  
HOUSE JUDICIARY COMMITTEE

MEMBER  
HOUSE LABOR & COMMERCE COMMITTEE  
SELECT COMMITTEE ON LEGISLATIVE ETHICS

MEMBER  
FINANCE SUBCOMMITTEES  
DEPARTMENT OF LAW  
DEPARTMENT OF PUBLIC SAFETY  
COURTS



DISTRICT 20

SESSION:  
STATE CAPITOL, ROOM 118  
JUNEAU, ALASKA 99801-1100  
PHONE: (907) 465-4900  
FAX: (907) 465-3834

INTERIM:  
716 W. 4TH AVE., SUITE 640  
ANCHORAGE, AK 99501-2133  
PHONE: (907) 258-8197  
FAX: (907) 258-5510

## SPONSOR STATEMENT

HB 277 requires the state and municipalities to indemnify public employees who are sued for acts or omissions occurring during the performance and within the scope of the employee's job. The statute would **NOT** require employers to indemnify an employee for acts of intentional or willful misconduct or to pay an award of punitive damages.

The bill is based on the current state policy for defense and indemnification of state employees. A copy of this policy is attached, along with a memorandum from the Attorney General's Office explaining the policy reasons why indemnification of public employees is a good idea. In addition to enumerating the benefits to the employer of indemnification, the Department of Law explanation points out the "widely felt" belief "that where an employee acting in good faith injures a person within the performance and scope of employment, the employer should indemnify the employee." This bill will codify this policy, extend it to borough, municipal and city employees, and provide them with the same protections in statute as currently extended to our university employees and our teachers.

HB 277 is currently supported by the Alaska Peace Officers Association, The Association of Chiefs of Police and the Municipality of Anchorage.

# Alaska State Legislature

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JUNEAU, ALASKA 99801-1182  
PHONE: (907) 465-4930  
FAX: (907) 465-3834

INTERIM:  
710 W. 4TH AVE., SUITE 040  
ANCHORAGE, AK 99501-2133  
PHONE: (907) 258-8107  
FAX: (907) 258-5510

DISTRICT 20

## MEMORANDUM

DATE: April 12, 1994

TO: Senator Tim Kelly, Chairman  
Senate Labor & Commerce Committee

FROM: Representative Brian Porter *Brian Porter*

RE: HB 277 - Indemnification of Public Employees

=====

If at all possible, I am asking you to waive the Senate Labor & Commerce Committee referral on this proposed legislation as it did not receive a Labor & Commerce referral in the House and, in addition, has had five previous committee hearings.

The legislation would require public employers to indemnify employees who are sued for acts or omissions occurring during the performance and within the scope of the employee's duty. An employer would not be obligated to indemnify an employee for acts of intentional or willful misconduct.

The standards for indemnification set in HB 277 are those currently used, as a matter of policy, by the Department of Law when determining whether to indemnify public employees. By codifying existing practice, HB 277 eliminates the concerns that many public employees feel about whether their employers will support them in court if they are sued, yet does so in a way that protects public employers against paying for employee misconduct. This bill will codify this policy, extend it to borough, municipal and city employees, and provide these employees with the same protections in statute as currently extended to our university employees and our teachers.

House Bill 277 is supported by the Alaska Police Officers Association, the Association of Chiefs of Police, the Municipality of Anchorage and Anchorage Telephone Utility.

In the event you are unable to waive the Senate Labor & Commerce Committee referral, would you please schedule this bill for a hearing, pending referral from the Senate State Affairs Committee as soon as possible. I believe all of the necessary documentation is attached.

Sec. 14.12.090. Oath. School board members, before taking office, shall take and sign the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska and that I will honestly, faithfully, and impartially discharge my duties as a school board member to the best of my ability." (§ 1 ch 98 SLA 1966)

NOTES TO DECISIONS

Stated in Tunley v. Municipality of Anchorage Sch. Dist., 617 P.2d 490 (Alaska 1980).

Sec. 14.12.100. Application. AS 14.12.010 — 14.12.100 apply to home rule and general law municipalities. (§ 1 ch 98 SLA 1966)

Revisor's note. — In 1968 the word "may" was deleted before the word "apply" to correct a manifest error in the original publication of this section.

Sec. 14.12.110. Single body as assembly and school board. Notwithstanding the provisions of this chapter or other law, a single body may serve as both the assembly and school board in the manner provided for third class boroughs under AS 29.20.300(b), if

- (1) an ordinance for that purpose is approved by the assembly and ratified by a referendum of a majority of the qualified borough voters voting on the question at a regular or special election; and
- (2) the public school population within the borough is 500 pupils or less. (§ 1 ch 214 SLA 1970; am § 28 ch 74 SLA 1985)

Sec. 14.12.115. Indemnification. A school board shall insure or indemnify and protect the board, any member of the board, or any agent, employee, teacher, student teacher, officer, or member of the supervisory or administrative staff of the school district against financial loss and expense, including reasonable legal fees and costs arising out of any claim, demand, suit or judgment by reason of alleged negligence, alleged violation of civil rights or alleged wrongful act resulting in death or bodily injury to any person or accidental damage to or destruction of property, inside or outside the school premises, if the board member, agent, employee, teacher, student teacher, officer, or member of the supervisory or administrative staff, at the time of the occurrence, was acting under the direction of the school board within the course or scope of the duties of the board member, agent, employee, teacher, student teacher, officer, or member of the supervisory or administrative staff. (§ 2 ch 148 SLA 1978)

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EDUCATION

§ 14.40.175

**Cross references.** — For definition of university receipts, see AS 14.40.491; for provisions related to the transfer of land from the commissioner of natural resources to the board of regents, see §§ 1-3 and 7-9, ch. 22, SLA 1983, in the Temporary and Special Acts; for duties of board

related to sex-based discrimination, see AS 14.18.080.

**Legislative history reports.** — For letter of intent on ch. 46, SLA 1977 (HCSSB 261), see 1977 House Journal, p. 1019.

NOTES TO DECISIONS

Applied in *University of Alaska v. National Aircraft Leasing, Ltd.*, 536 P.2d 121 (Alaska 1975); *McGrath v. University of Alaska*, 813 P.2d 1370 (Alaska 1991).

Stated in *State v. University of Alaska*, 624 P.2d 807 (Alaska 1981).

Cited in *State v. O'Neill*, 336 F. Supp. 1255 (D. Alaska 1972); *Carter v. Alaska Pub. Em. Ass'n*, 663 P.2d 916 (Alaska 1983).

**Collateral references.** — Regulation as to fraternities and similar associations connected with educational institution. 10 ALR3d 389.

Student organization registration statement, filed with public school or state university or college, as open to inspection by public. 37 ALR3d 1311.

Liability of college or university to student enrolled in course of instruction terminated prior to completion. 51 ALR3d 1003.

Validity of regulation of college or university denying or restricting right of student to receive visitors in dormitory. 78 ALR3d 1109.

**Sec. 14.40.175. Indemnification.** The Board of Regents shall insure or indemnify and protect the Board of Regents, any member of the Board of Regents, or any agent or employee of the University of Alaska or of the Board of Regents against financial loss and expense, including reasonable legal fees and costs arising out of any claim, demand, suit, or judgment by reason of alleged negligence, alleged violation of civil rights, or alleged wrongful act resulting in death or bodily injury to any person or accidental damage to or destruction of property, inside or outside the university premises, if the Board of Regents member, agent or employee, at the time of the occurrence, was acting under the direction of the Board of Regents within the course or scope of the duties of the member, agent, or employee. (§ 3 ch 148 SLA 1978)

**Collateral references.** — Modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning. 33 ALR3d 703.

Tort liability of public schools and institutions of higher learning for accident occurring during school athletic events. 35 ALR3d 725.

Tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students. 36 ALR3d 330.

Tort liability of public schools and insti-

tutions of higher learning for accidents occurring in physical education classes. 36 ALR3d 361.

Tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes. 37 ALR3d 712.

Tort liability of public schools and institutions of higher learning for injuries due to condition of grounds, walks, and playgrounds. 37 ALR3d 738.

Immunity of private schools and insti-

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 277 (Jud)

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "Public employers defending and indemnifying BFLU: Personnel/OEEO  
public employees...within scope of employment..." Component: Personnel/OEEO  
 Sponsor: Porter  
 Requestor: (H) Jud COMPONENT SERIAL NO. 56

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of current year (FY94) cost: none

**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)

Prepared by: Kevin Ritchie, Director Phone: 465-4430  
 Division: Personnel/OEEO Date: \_\_\_\_\_  
 Approved by Commissioner: Nancy Bear Usery Date: 2/10/94  
 Agency: Administration

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For further

FISCAL NOTES

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 277 (JUD)

Revision Date: \_\_\_\_\_  
Title: 'Public employees defending and indemnifying public employees . . . within scope of employment. . .'  
Sponsor: Porter  
Requestor: (H) JUD

Department Affected: Administration  
BRU: Risk Management  
Component: Risk Management  
COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
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

FUNDING SOURCE: (Thousands of Dollars)

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

Estimate of any 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.)

The Division of Risk Management, as a matter of policy, already practices the defense and indemnity provisions now being committed to statute.

Prepared by: Brad Thompson, Director  
Division: Risk Management

Phone: 465-2180  
Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usara  
Agency: Department of Administration

Date: 2/10/94

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# STATE COMMITTEE REPORT

DATE: 4/13/94

FURTHER: Judiciary

DATE TURNED INTO OFFICE: 4/29/94

L&C Committee considered CS FOR HOUSE BILL NO. 277(JUD)

\*An Act re public emp. employmen.. HB 277 INDEMNIFICATION OF PUBLIC EMPLOYEES yees and former in the scope of

and recommends:

replace with S CS CS HB 277 (L&C)  same title  
 adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( )  new title  
 attaches amendment(s)  technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTES**

Department	Date	Zero	Fiscal
D.O.A. / Risk & Man	1/26/94	<input checked="" type="checkbox"/>	
D.O.A. / Personnel	1/26/94	<input checked="" type="checkbox"/>	

Appropriation No Fiscal Note

**DO PASS:**

Judith E. Salo

**OTHER RECOMMENDATIONS:**

NR  
Don't know No Rec  
Steve Kait No Recommendation during

T. Kelly - No Rec

Chair: Signature and Recommendation

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 277(JUD)

Page 5, after line 13:

Insert a new bill section to read:

"\* Sec. 2. This Act applies only to claims and actions that arise on or after the effective date of this Act."

CS FOR HOUSE BILL NO. 277(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE PORTER

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to public employers defending and indemnifying public employees  
2 and former public employees with respect to claims arising out of conduct that  
3 is within the scope of employment."

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

5 \* Section 1. AS 39 is amended by adding a new chapter to read:

6 CHAPTER 55. DEFENSE AND INDEMNIFICATION OF  
7 PUBLIC EMPLOYEES.

8 Sec. 39.55.010. PUBLIC EMPLOYER'S DUTY TO PROVIDE DEFENSE.

9 (a) Except as otherwise provided in this chapter, a public employer shall provide legal  
10 defense of civil claims against, and pay settlements and judgments including attorney  
11 fees and costs entered against, a public employee when the claims, settlements, or  
12 judgments are based on acts or omissions that occurred during the course and within  
13 the scope of the employee's employment with the public employer.

14 (b) A public employer does not have an obligation to defend or indemnify if

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the

(1) acts or omissions at issue were a result of gross negligence or intentional or wilful misconduct on the part of the employee; however, a public employer may not, based solely on an allegation of gross negligence or intentional or wilful misconduct made by a party other than the public employer, withhold legal defense in a civil action;

(2) claim or action involves a disciplinary, administrative, or criminal matter brought against the employee or is an appeal from a disciplinary, administrative, or criminal action;

(3) civil claim or action is based on conduct for which the employee has been convicted of a criminal offense or terminated from employment by the public employer; or

(4) public employee settled or compromised the claim or action before requesting the public employer to provide legal defense or indemnification or while a request for defense was pending.

(c) This chapter does not apply if a collective bargaining agreement that covers the employee includes a provision for defense and indemnification, in which case the terms of the collective bargaining agreement apply.

(d) A public employer does not have an obligation to pay an award for punitive damages against an employee.

(e) A public employer may adopt an internal policy or enter into an agreement with an employee that requires the employer to defend or indemnify the employee or pay punitive damages in circumstances in which the employer would not otherwise have an obligation to do so.

(f) Defense or indemnification provided to a public employee under this chapter does not constitute a waiver, limitation, or expansion of sovereign immunity or of other immunity.

(g) A public employer that is obligated to provide legal defense under this chapter shall, through its designated legal counsel, provide legal services to the employee. The public employer has the right to determine which attorney shall represent the employee.

1 (h) This chapter applies to a former employee to the same extent as a current  
2 employee.

3 Sec. 39.55.020. EMPLOYEE'S DUTIES WHEN REQUESTING DEFENSE  
4 AND INDEMNIFICATION. (a) A public employer's obligation to defend and  
5 indemnify an employee under this chapter arises only if

6 (1) the employee notifies the public employer in writing, in the manner  
7 required by the employer, within 10 days after receipt of a claim, demand, or suit,  
8 unless there is good cause for the employee's failure to provide timely or proper notice  
9 and the employer has not been materially prejudiced; and

10 (2) the employee makes a good faith effort to cooperate in the defense  
11 and resolution of the claim or action.

12 (b) An employee for whom a public employer has provided legal defense  
13 under this chapter or who has a request for the provision of legal defense pending may  
14 not settle the claim brought against the employee unless the public employer approves  
15 the settlement.

16 (c) An employer who has provided legal defense and indemnification may  
17 settle a claim or action without the consent of the employee so long as the settlement  
18 resolves all the outstanding claims against the employee.

19 Sec. 39.55.030. EMPLOYEE'S RIGHTS WHEN EMPLOYER REFUSES TO  
20 PROVIDE LEGAL DEFENSE. (a) If a public employer refuses to provide legal  
21 defense for an employee, the employer shall provide the employee with written notice  
22 of this decision within 60 days after receiving a request for legal defense from the  
23 employee or service of the summons and complaint on the employee, whichever is  
24 later. The notice must include a copy of this chapter.

25 (b) An employee whose employer refuses to provide legal defense under this  
26 chapter may file an action for declaratory relief in superior court if the employee wants  
27 the employer to provide legal defense. The employee must file the action for  
28 declaratory relief within 30 days after the employee received a written notice of refusal  
29 to defend from the employer.

30 (c) If an employee who has been denied legal defense settles the claim or  
31 action without filing a declaratory relief action under (b) of this section, the employee

1 waives any right to defense or indemnification. If the employee files a declaratory  
2 relief action under (b) of this section, the employee may settle the claim for a  
3 reasonable amount without the employer's consent.

4 (d) If an employee prevails in a declaratory relief action against the employer,  
5 the employee may bring an action for indemnification no later than one year after the  
6 final judgment in the declaratory relief action or final judgment or dismissal of the  
7 underlying action, whichever is later.

8 **Sec. 39.55.040. DEFENSE WITH RESERVATION OF RIGHTS; DENIAL OF**  
9 **INDEMNIFICATION; EMPLOYEE LIABILITY FOR EXPENSES.** (a) A public  
10 employer may undertake the defense of an employee under this chapter while  
11 contesting the obligation to indemnify the employee, either partially or fully. A public  
12 employer that offers a defense with a reservation of rights to an employee, may  
13 provide legal defense and place limitations on its agreement to indemnify an employee  
14 pending the outcome of the case.

15 (b) If an employer denies indemnification or offers a defense with a  
16 reservation of rights to an employee, the employer shall provide written notice to the  
17 employee. The notice must include the reason for the denial or reservation of rights  
18 and a copy of this chapter.

19 (c) If a final judgment is entered against an employee in a claim or action in  
20 which the employer provided a legal defense and the employer agrees to only partially  
21 indemnify the employee or denies indemnification entirely, the employee may bring  
22 an action for indemnification against the employer not later than one year after the  
23 entry of the final judgment against the employee.

24 (d) A public employer who has defended an employee may bring an action  
25 against the employee for expenses incurred in the defense if the trier of fact found that  
26 the employee's conduct was not within the course or scope of employment. The action  
27 for expenses under this subsection must be brought not later than one year after the  
28 execution of a written agreement settling the underlying claim or action or entry of  
29 final judgment in the action.

30 **Sec. 39.55.100. DEFINITIONS.** In this chapter,

31 (1) "employee" or "public employee" means a person who performs a

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service for wages or other remuneration under a direct contract of hire, written ~~and~~<sup>and</sup>,  
express ~~or implied~~, for a public employer and includes a member of a board or  
commission established by the employer; "employee" or "public employee" does not  
include an independent contractor;

(2) "employer" or "public employer" means the state, a public or  
quasi-public corporation or authority established by state law, and a political  
subdivision of the state including a municipality and a public or quasi-public  
corporation established by a municipality; however, "employer" or "public employer"  
does not include the University of Alaska, a municipal school district, or a rural  
educational attendance area;

(3) "settlement" means the execution of a written agreement settling the  
claim or action that gave rise to the employer's obligation to defend or indemnify the  
public employee.

**HB**

**294**

Dear Legislators,

The Board of Pharmacy has a termination date of June 30, 1993. Legislation (HB110) was introduced earlier in this session to prevent our sunseting, however the omnibus approach has been slow. The committee which reviewed the regulatory boards acknowledged the Board of Pharmacy's self-sufficiency and recommended its renewal. HB 294 is now before you to ensure that the Board of Pharmacy continues its charge of protecting the public.

A recent example that illustrates the importance of Boards of Pharmacy occurred in the state of Washington in 1991. Tylenol capsules were adulterated with cyanide which killed several people. The Board of Pharmacy quickly embargoed all Tylenol products. This swift action was nationally recognized as a life-saving maneuver.

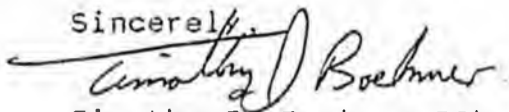
Fortunately, emergencies rarely occur. The use of medication, on the other hand, frequently occurs. The Board of Pharmacy protects the public by examining license applicants to ensure that they are qualified to practice pharmacy. We inspect pharmacies to ensure compliance with state and federal law. Current statutes and regulations that govern pharmacy in Alaska are woefully out-of-date and are being rewritten. This revision will address specific deficiencies in the law as well as enable the Board to regulate the rapidly changing role that pharmacy will play in solving the health care crisis.

Termination of the Board of Pharmacy would essentially prevent Alaska from licensing pharmacists. A pharmacist is licensed by credentials or by taking the National Association of Boards of Pharmacy (NABP) exam. Forty-nine states rely on NABP to test all pharmacy candidates and forty-eight states rely on NABP to serve as the national clearinghouse of all pharmacy licenses (exceptions are California and Florida). NABP requires each state to have a Board of Pharmacy in order to participate in the national testing process and to utilize its services as a clearinghouse.

The Board of Pharmacy promotes, preserves and protects the public by regulating the practice of pharmacy.

I urge you to support HB 294.

Sincerely,



Timothy J. Boehmer RPh.  
Acting President  
Board of Pharmacy

LTR. FROM BOARD OF PHARMACY

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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

October 26, 1993

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

### DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF PHARMACY

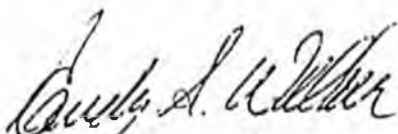
October 26, 1993

Audit Control Number

08-1421-94

The objective of the audit was to determine whether the Board of Pharmacy should continue its existence. Alaska Statute 08.03.010(20) has scheduled the board for termination on June 30, 1993. As of the date of this report, the board is technically in its one-year "wrap up" period and, if no action is taken by the legislature, the board will be dissolved at June 30, 1994. We recommend that the legislature extend the board's termination date to June 30, 2003.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.

  
Randy S. Welker, CPA  
Legislative Auditor

**AUDITOR'S REC.**

# Alaska State Legislature

REPRESENTATIVE  
SEAN R. PARNELL



P.O. BOX 240622  
ANCHORAGE, ALASKA 99524

While in Juneau  
STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
(907) 465-2995

## HOUSE OF REPRESENTATIVES

### SPONSOR STATEMENT

HOUSE BILL 294

Extending the Termination Date of the "Board of Pharmacy"

This bill would extend the termination date of the Board of Pharmacy to June 30, 1997, the maximum extension allowable under the current law.

The Board of Pharmacy provides greatly needed oversight of State and Federal laws pertaining to the pharmaceutical industry and Alaskan's health and safety. The Board provides a very important service for the State of Alaska and is an integral part of Alaska's pharmacy licensing process.

During the Board of Pharmacy's review, the reviewing committee acknowledged the Pharmacy Board's self sufficiency and recommended its renewal.

Passage of House Bill 294 would maintain this valuable service for Alaskans.

SENATE COMMITTEE REPORT

DATE: 4/27/93

FURTHER: FINANCE

DATE TURNED INTO OFFICE: 1/26/94

L&C Committee considered HOUSE BILL NO. 294

"An Act extending the termination date of the Board of Pharmacy."

and recommends:

[X] replace with S CS HB 294 (L&C)
or [ ] adopt previous CS
[ ] attaches amendment(s)

[X] same title
[ ] new title
[X] technical title change (HB only)

[ ] adopts Letter of Intent

[ ] further referral to the

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

NEW FISCAL NOTES

Table with 4 columns: Department, Date, Zero, Fiscal. Row 1: DCED updated, 1/24/94, 2, [checkmark]

PREVIOUS FISCAL NOTES

Table with 4 columns: Department, Date, Zero, Fiscal. All cells are empty.

[ ] Appropriation No Fiscal Note

DO PASS:

Handwritten signatures for 'DO PASS' including Ti Keel, Bob M. Sharp, and Alvin...

OTHER RECOMMENDATIONS:

Handwritten signature and 'NR' for 'OTHER RECOMMENDATIONS'.

Ti Keel - Do Pass

Chair: Signature and Recommendation

HOUSE BILL NO. 294  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES PARNELL, Navarre

Introduced: 4/23/93

Referred: Rules

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the termination date of the Board of Pharmacy."

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

3 \* Section 1. AS 08.03.010(c)(20) is amended to read:

4 (20) Board of Pharmacy (AS 08.80.010) - June 30, <sup>1999</sup>~~1997~~ [1993];

# FISCAL NOTE

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**BILL NO. HB 294**

Revision Date: 1/24/94  
 Title: An Act extending the termination date of  
the Board of Pharmacy.  
 Sponsor: Rep. Parnell  
 Requestor: Senate Labor & Commerce

Department: Commerce and Economic Dev.  
 BRU: Occupational Licensing  
 Component: Operations  
 COMPONENT SERIAL NO. 1844

Expenditures/Revenues		(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00	
PERSONAL SERVICES							
TRAVEL							
CONTRACTUAL							
SUPPLIES							
EQUIPMENT							
LAND & STRUCTURES							
GRANTS, CLAIMS							
MISCELLANEOUS							
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0	

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
--------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 General Fund							
1005 GF/Program Receipts							
1006 GF/MHTIA							
Other							
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0	

Estimate of any current year (FY 94) cost: \$ None

POSITIONS		FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME		0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME		0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY		0.0	0.0	0.0	0.0	0.0	0.0

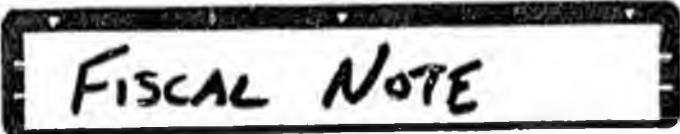
**ANALYSIS:** (Attach a separate page if necessary)

The bill extends the termination date of the Board of Pharmacy to June 30, 1997. Funding for the board is included in the FY 95 operating budget request; therefore, new funds are not required.

Average Annual Cost: \$61.2  
 Average Annual Revenue: 56.1

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144  
 Division: Occupational Licensing Date: 1-24-94  
 Approved by Commissioner: Paul Fuhs Date: \_\_\_\_\_  
 Agency: Commerce and Economic Development

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# FISCAL NOTE

**STATE OF ALASKA**  
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**BILL NO. HB 294**

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**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
--------------------	-----	-----	-----	-----	-----	-----

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 94) cost: \$ None

**POSITIONS**

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

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

The bill extends the termination date of the Board of Pharmacy to June 30, 1997. Funding for the board is included in the FY 95 operating budget request; therefore, new funds are not required.

Average Annual Cost: \$61.2  
 Average Annual Revenue: 56.1

changes in SCS HB 294 (LEC)  
 have no fiscal impact. This  
 fiscal note is appropriate.

1/26/94  
 date

APF  
 Comte Aide (initial)

Prepared by: Jennifer Strickler, Administrative Officer  
 Division: Occupational Licensing  
 Approved by Commissioner: Paul Fuhs  
 Agency: Commerce and Economic Development

Phone: 465-2144  
 Date: 1-24-94  
 Date: \_\_\_\_\_

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# Audit Report

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DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
BOARD OF PHARMACY

October 26, 1993

---



Audit Control Number:

08-1421-94

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

# LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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## DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Anchorage or Juneau.

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Senator Al Adams  
Senator Steve Frank  
Senator Steve Rieger  
Senator Bert Sharp  
Senator Jay Kerttula (alternate)

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Representative John Davies  
Representative Mark Hanley  
Representative Ron Larson  
Representative Eileen MacLean  
Representative Sean Parnell (alternate)

### DIVISION OF LEGISLATIVE AUDIT

Randy S. Welker, CPA  
Legislative Auditor  
Merle R. Jenson, CPA  
Deputy Legislative Auditor

P.O. Box 113300  
Juneau, Alaska 99811-3300

(907) 465-3830, Juneau  
(907) 561-1445, Anchorage  
(907) 465-2347, Juneau FAX

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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

October 26, 1993

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

### DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF PHARMACY


October 26, 1993

Audit Control Number

08-1421-94

The objective of the audit was to determine whether the Board of Pharmacy should continue its existence. Alaska Statute 08.03.010(20) has scheduled the board for termination on June 30, 1993. As of the date of this report, the board is technically in its one-year "wrap up" period and, if no action is taken by the legislature, the board will be dissolved at June 30, 1994. We recommend that the legislature extend the board's termination date to June 30, 2003.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.

  
Randy S. Welker, CPA  
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**AUDITOR'S REC.**

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Pharmacy to determine if it should continue in existence.

As required by statute, the legislative committee of reference is to consider this report as part of the legislative oversight process in determining whether this board should be reestablished. The law currently specifies that the Board of Pharmacy will terminate on June 30, 1993 and will have one year from that date to conclude its affairs. As of the date of this report, the board is technically in its one-year "wrap up" period.

During the course of our examination, we reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Interviews with Department of Commerce and Economic Development, Division of Occupational Licensing personnel.
3. Minutes of board meetings.
4. Interviews with Board of Pharmacy board members.
5. Review of other states' boards compositions and duties.
6. Office of the Ombudsman closed case files.
7. Proposed revisions to Board of Pharmacy statutes and regulations.
8. Licensing files for pharmacists and pharmacies.
9. Investigation files.
10. Other documents considered pertinent.

## ORGANIZATION AND FUNCTION

Alaska Statute 08.80.010 established the Board of Pharmacy as a regulatory board with seven members. Law requires that two members be public members having no direct financial interest in the health care industry and five members be professionals with three years practical experience and licensed in Alaska. The statute further states that whenever possible, each judicial district should be represented by a board member.

The board regulates six types of licenses: pharmacists, retail pharmacies, wholesale pharmacies, hospital pharmacies, drug rooms, and out-of-state pharmacies. Alaska Statute 08.80.040 establishes the duties of the board. They include:

1. Examining and issuing licenses to qualified applicants.
2. Establishing, amending, or eliminating licenses in accordance with the Administrative Procedures Act when a person has violated pharmacy statutes or regulations.
3. Adopting regulations insuring that renewal of licenses is contingent upon proof of continued competency.

Applicants for registration as a pharmacist are required to pass the National Association of the Boards of Pharmacy Licensing Examination and a jurisprudence examination covering Alaska pharmacy law and the Federal Controlled Substance Act.

Pharmacists licensed to practice in another state who apply for licensure in Alaska can be licensed by credentials, except for those applicants from California or Louisiana. These two states require applicants to pass a state exam, not the national exam. Consequently, these applicants must take the national examination when applying in Alaska.

The board may also issue temporary or emergency permits. Temporary permits allow qualified applicants to practice until the board can formally license them; emergency permits allow pharmacists licensed in another state to practice in Alaska in an emergency. Both permits are limited in their duration and application.

The board is assisted in its duties by Division of Occupational Licensing (OL) personnel. OL processes applications, maintains licensing files, answers board-related correspondence, and provides administrative support to the board. In addition, OL investigates any complaints involving pharmacists and pharmacies.

---

### Alaska Board of Pharmacy Members

#### Registered Pharmacists

Timothy Boehmer  
Chris Coursey  
Stanley Thompson  
Paul Gionet  
Sally Sarber

#### Public Members

Charles Lastulka  
Patricia Douglas

---

# **CORRECTION**

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

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Patricia Douglas

---

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## REPORT CONCLUSIONS

Alaska Statute 08.03.010(20) requires that the Board of Pharmacy be terminated on June 30, 1993. Alaska Statute 08.03.020 provides one year in which to conclude its affairs if the legislature does not enact legislation for the continuance of the board. As of the date of this report, the board is technically in its one year "wrap up" period and, if no action is taken by the legislature, the board will be dissolved June 30, 1994. We recommend that the legislature enact legislation that extends the board's termination date until June 30, 2003 (see Recommendation No. 1).

The Findings and Recommendations section describes areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the board.

(Intentionally left blank)

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The statutory provision for the Board of Pharmacy should be extended until June 30, 2003.

The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Assurance that licensed professionals act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses when appropriate.

Alaska currently has the most restrictive time period for sunset reviews, with sunsets scheduled for every four years. In the 24 states with sunset laws, agency reestablishment has ranged from 4 to 13 years. The average review cycle is eight years with many states going to review cycles of ten years or longer.

The Board of Pharmacy is a well established board that consistently has been found to satisfy a public purpose. The board has demonstrated an ability to conduct business in an adequate manner and deficiencies have been relatively minor. Though the sunset review this year does reveal a few areas to be addressed (see following recommendations), there does not appear to be any need to review the Board of Pharmacy every four years.

### Recommendation No. 2

Office of the Governor, Boards and Commissions should appoint Board of Pharmacy members in accordance with Alaska Statute.

Alaska Statute 08.80.010 says, in part, ". . . *Whenever possible, the board shall include at least one member from each judicial district.*" The board consists of seven members, six are from the Southcentral area and one from Southeast. The Interior (Fourth Judicial District) and Northwestern (Second Judicial District) regions of the State are not represented. According to Office of the Governor, Boards and Commissions, there have been no recent applicants from the Northwestern region, and only a few from the Interior.

Alaska Statute 08.80.030(3) gives the Board of Pharmacy the power to ". . . *assist the department in inspections and investigations.* . ." and board members seem to agree on the importance of regular pharmacy inspections. Though the Board of Pharmacy Annual Report lists these inspections as a goal for each coming year, the board has found it increasingly difficult to inspect pharmacies around the State. One reason for this difficulty is that the board has funds to cover travel only to board meetings. In recent history, the board has been able to rely on members to perform inspections in each of their own districts. Though all districts were not covered at all times, some pharmacies in each area were inspected at least

occasionally. The concentration of board members in only the Southcentral and Southeast regions has severely reduced the likelihood of inspections in other regions.

The concentration of board members in only two regions also affects the ease with which pharmacist candidates may become licensed. Pharmacist candidates are required to pass the Alaska Jurisprudence Examination, which must be administered by a board member. Each candidate must schedule the examination with a board member, generally in the board member's home town. Accordingly, candidates outside of the Southeast or Southcentral region must travel to take the jurisprudence examination. While requiring travel may not constitute a barrier to entry into the profession, it does add an inconvenience that would be unnecessary if the examination could be offered in a variety of locations.

Two Board of Pharmacy members report that they were recruited by the Office of the Governor to fill specific board positions. Boards and Commissions should develop an information program for non-participating portions of the State and direct recruitment efforts toward regions of the state for which little or no representation exists.

### Recommendation No 3

The Board of Pharmacy should review pharmacy inspection procedures to ensure that pharmacies inspected are impartially selected and evaluated.

Though board members acknowledge that inspecting competing pharmacies is a potentially awkward situation, little has been done to formalize the process or to limit potential charges of bias. The inspection selection process, the evaluation form, and any potential licensing action all may be subject to criticisms of partiality.

Historically, the board's selection process for pharmacies to be inspected has been relatively informal. Inspections were apparently done at the direction of the president and at the convenience of board members. The lack of formal criteria for selection may leave the board open to charges of favoritism; while some pharmacies are inspected regularly, others, often those in outlying areas, have not been inspected for years. The board should establish a maximum timeframe between pharmacy inspections, then develop a formal selection process to include each pharmacy in the State.

The board should also attempt to quantify inspection forms. The board has developed an extensive checklist for inspections, but it is unclear which or how many infractions would cause a pharmacy to "fail" an inspection or to require a reinspection. Because each pharmacy may be visited by a different team of inspectors, it is important to ensure that criteria for passing or failing a pharmacy are applied consistently. One way to reduce the subjectivity of the form would be to develop a rating scale with a numeric value for each checklist item.

The board has recently discussed the possibility of sanctions against pharmacies that are found, on inspection, to have severe infractions or that, on re-inspection have refused to

correct previously noted infractions. Though such sanctions may be necessary to protect the public, they will further complicate the inspection issue.

According to the Department of Law, a board member cannot be both an inspector and an adjudicator of a case. If licensing action is taken against a pharmacy as the result of an inspection, the board members that inspected the pharmacy should recuse themselves from the vote. The Board of Pharmacy, as described above, is comprised of only seven members. If the two of these members that formed the inspection team cannot vote, the board may find it difficult to secure a quorum.

Though statute gives the board the power to assist the department in inspections, it does not require board members to perform the inspections. In light of the difficulties the board has encountered in accomplishing impartial, supportable inspections, the board should consider the necessity of continuing to inspect pharmacies. If it appears that the inspection capacity of the board will impair the other board functions, the board, in conjunction with the Division of Occupational Licensing, should consider either revising the statute to eliminate inspections as a board responsibility or changing the way in which that responsibility is met.

After the board has developed a workable selection and evaluation process for pharmacy inspections, the mechanics of that process should be added to the board's regulations. Regulations associated with inspections should specify who does inspections, what is inspected, and how often inspections are done. Adding the inspection process to the regulations will benefit the board not only through formalization of the process, but as an educational tool as well. Because regulations are available for public comment, interested members of the general public and the profession would, through the public process, become aware of inspection criteria.

#### Recommendation No. 4

The Board of Pharmacy should revise these statutes to reflect current pharmacy practices.

Alaska Statute 08.80 describes State of Alaska pharmacy law. Though the statute has been amended slightly over the years, it has not kept pace with changes in the practice of pharmacy. One board member describes the present statute as "woefully out of date." Recent introductions of prescriptions by facsimile machine and home infusion, for example, are not presently covered by Alaska statute. The board has additionally identified the need for more board meetings per year, but has not yet been able to revise the statute to require additional meetings.

In recognition of the many recent changes in the practice of pharmacy, the National Association of Boards of Pharmacy has developed a model act for Boards of Pharmacy. The model act is designed to address changes in the practice of pharmacy and to give individual boards a starting point for drafting their own legislation. Though the model does provide a framework for drafting new legislation, it will require significant tailoring to ensure that the proposed bill is in compliance with the constitution.

The public should have the benefit of statutes that are current with professional practices. Some of the changes suggested by the model act have been necessary for several years and there is no certainty that the required bill to adopt these changes will be introduced this session. We recommend that the Board of Pharmacy statute revision process be initiated without further delay.

#### Recommendation No. 5

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

The Division of Occupational Licensing's (OL's) methodology for determining FY 93 fees allocates costs to a board or occupation in one of two ways. Some costs, termed direct costs by OL, are directly distributed to a specific licensing program. Direct costs include personnel assigned to one specific occupation, travel associated with board business, public notices of board proceedings, and printing of board applications and statute booklets. Other costs, termed indirect costs, are allocated based upon the percentage of licensees in each occupation compared to the total number of occupational licensees. These costs include the expenditures associated with licensing examiners', investigators', hearing officers', management's, and clerical staff's time.

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

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

In addition to our concerns with OL's cost allocation methodology, we found problems in how they distributed costs in their calculation of a two-year average of expenditures used in determining FY 93 license fees. The percentages applied to allocate indirect costs were not always correct. These inconsistencies were caused by formula errors on spreadsheets prepared by OL staff. Also, documentation supporting some expenditures on the

spreadsheets has not been retained. As discussed with OL staff, we recommend that OL retain original supporting documentation in their future distributions of costs.

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

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

#### Recommendation No. 6

OL should, in conjunction with the Equal Employment Opportunity Office (EEO), review the Board of Pharmacy licensure application form to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

The pharmacy application requires a photograph of the candidate. EEO within the Department of Administration, Division of Personnel discourages agencies from asking applicants information on sex, height, weight, and hair and eye color. If an applicant were denied a license, the board or OL may find it difficult to prove that there was no discrimination involved if this type of information had been provided to the board members reviewing the application for licensure.

The pharmacist application form used by OL should be reviewed with EEO to make sure that a photograph is pertinent to the licensure of pharmacy candidates. OL indicated that one of the reasons photographs are required is to prevent fraud when a licensee moves from one state to another. If a photograph is considered necessary for identification, to prevent fraud or for other reasons, it should be separated from the application prior to review of the application for licensure.

### Recommendation No. 7

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

Alaska Statute 08.01.050 establishes DCED's administrative duties for professional licensing boards. Alaska Statute 08.01.070 identifies the administrative duties of the boards. Included in the board's responsibilities are the taking of minutes and records of all proceedings, forwarding of a draft of the minutes of proceedings to the department within 20 days after the proceedings, and submission of an annual performance report to the department before the end of the fiscal year. However, we found that OL rather than the board performed these duties.

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

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

### Recommendation No. 8

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

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

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

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

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

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

According to the board's annual reports for the fiscal years 1990 through 1993, the board has licensed more than 100 new pharmacists and 62 pharmacies and drug rooms. In addition, the board has inspected a number of retail and wholesale pharmacies. During the last two years, the board had added to its licensing responsibilities, by adding the categories of Out-of-State pharmacies and Related Facility Drug Rooms. The board has also administered the National Association of the Boards of Pharmacy Examination for five candidates in the last three years.

The board has developed goals and objectives. One of the major accomplishments of the board is the draft of new statutes and regulations. Some of the areas included in the drafted legislation, such as an increase in the number of annual meetings, address items that the board has listed as goals for several years. Unfortunately, the proposed bill has not yet been presented to the legislature and many of the new regulations cannot take effect until after the statute is amended (see Recommendation No. 4).

Another goal described in several annual reports is the inspection of pharmacies. The board believes that on-site inspections of pharmacies are necessary to protect the health of the consumer, but has been unable to conduct these inspections for rural pharmacies. The board does not receive funding for travel to remote areas and does not currently have a board member from those areas (see Recommendations No. 2 and 3). Many pharmacies that are inspected have minor infractions that require follow-up visits to ensure that problems have been corrected. This follow-up rarely occurs as the board has neither the staff nor the time to do them.

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

Over the last three years, the board has consisted of members from three major geographic areas of the State: Southeast, Southcentral, and Interior. The distribution of board members has not completely met the requirements of the statute creating the board (AS 08.80.010) which says, in part: "Whenever possible, the board shall include at least one member from

*each judicial district.*" The Northwest region of the State has traditionally not been represented on the Board of Pharmacy. Over the last few years, however, board members from various areas around the State have been replaced with new members from the Southcentral area. The board is now comprised of six members from the Southcentral area and one from the Southeast area. Boards and Commissions reports that, for the last round of appointments, there were applicants from the Interior region, but none from the Northwest region.

Board members are chosen based on a variety of qualifications ranging from job experience to letters of support. Because the statutory regional representation is worded as "*whenever possible. . .*", Boards and Commissions has interpreted regional representation as an optional consideration.

The concentration of board members in the southcentral region affects not only the ability of the board to do inspections, but board members' availability to the public and to pharmacist candidates, who must take the jurisprudence examination from a board member before they can be licensed (see Recommendation No. 2).

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

As discussed above, the board has recommended significant changes to Board of Pharmacy statutes and regulations. Board members report that these changes are necessary to address current pharmacy practices and concerns. Some of the issues addressed by proposed legislation are prescription by facsimile machine, home infusion, and the number of annual meetings. Board members have also commented that the existing statute covers some issues more appropriately found in regulations. Accordingly, the board has worked extensively on both statute and regulations revisions.

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

The Division of Occupational Licensing has published public notices of all examinations, meetings and regulation changes. A period of time for public comment has also been available at each public meeting.

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

Each board meeting has time allotted for public comment. The public has been encouraged to use these public comment periods to express concerns and obtain information from the

board. The public comment period for regulations changes also assures that the public has the opportunity to participate in the regulatory process.

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

During FY 90 through FY 93, the Division of Occupational Licensing investigative unit investigated 20 cases against pharmacies, pharmacists, and unlicensed pharmacists. Of these, all but one were handled in a timely and efficient manner. There were no complaints at the Office of the Ombudsman.

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

According to the board's June 30, 1993 Annual Report, 409 pharmacists are licensed by the State. Of these, 20 were licensed in FY 93. The board ensures the qualifications of these members through screening of applications, examination and continuing education requirements. In testing of the licensure procedures, we found no instances of the licensure of unqualified applicants.

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

The application form for the Board of Pharmacy contains several questions which have been questioned by EEO (see Recommendation No. 6).

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

As discussed above and in Recommendation No. 4, the few statutory and regulatory changes made in the last few years have not kept pace with changing practices in the profession. The board has reviewed and approved a Model Pharmacy Act provided by The National Association of Boards of Pharmacy. The bill stemming from the model act would address many of the changes in the profession as well as the need for more meetings annually. At this point, the bill has neither been reviewed by legal counsel nor introduced by the administration or the legislature. Please also refer to the previous section, Findings and Recommendations.

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APPENDICES

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## APPENDIX A

Department of Commerce and Economic Development  
Board of Pharmacy  
Schedule of Revenues Compared with Expenditures  
(Unaudited)  
(Note 1)

Revenues (Note 2)	\$49,630
Expenditures (Note 3)	<u>61,222</u>
Excess of Expenditures over Revenues (Note 3)	<u>\$(11,592)</u>

### Note 1

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

### Note 2

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

### Note 3

Expenditures consist of direct costs resulting from board member activities, (i.e., travel and per diem) and an allocation of overhead costs of OL. Our understanding of the allocation methodology is discussed in Recommendation No. 5 of this report and is the subject of a September 1993 Office of Management and Budget (OMB), Division of Audit and Management Services report entitled *Occupational Licensing Fee-Setting Policy Assessment*. Both our office and OMB do not believe that OL's method of allocating costs to a professional licensing board distributes costs reflective of the actual effort spent regulating their profession.

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**APPENDIX B**  
**Department of Commerce and Economic Development**  
**Board of Pharmacy**  
**Application, License, and Other Fees<sup>1</sup>**

**Application and Other Fees<sup>2</sup>**

Type of Fee	Amount
Application	\$50
Examination fee	150
Temporary license	50
Emergency permit	90

**License Fees**

License Category	Initial and Biennial Renewal Fee <sup>3</sup>
Pharmacist	\$180
Wholesale drug dealer	200
Retail pharmacy	200
Hospital pharmacy	200
Hospital drug room	200
Nursing home and related facilities for in-patient dispensing	200
Registered pharmacy located outside of the State	100
Pharmacy Intern	50

<sup>1</sup>The licensing fees charged by the Division of Occupational Licensing for the Board of Pharmacy are set out in the Alaska Administrative Code at § 12 AAC 02.310. The last fee change for this board was effective May 28, 1993. According to Division of Occupational Licensing staff, at this time there are no planned fee changes for this board.

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

<sup>3</sup>The next biennial renewal period for the Board of Pharmacy is June 30, 1994.

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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

November 15, 1993

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

Dear Mr. Welker:

I am responding to your request for a written response to preliminary audit report 08-1421-93 Department of Commerce and Economic Development, Board of Pharmacy dated October 26, 1993.

Three corrections to the report are as follows:

Page 7, Recommendation No. 2, 1st paragraph:

- 1) In the last three years, there have been no applicants from the Second Judicial District, and only one applicant from the Fourth Judicial District.
- 2) The previous board member from Fairbanks did not apply for reappointment to a second term.

Page 8, Recommendation No. 2, continued, 3rd paragraph:

- 3) No Board of Pharmacy members were recruited by the Office of the Governor to fill specific Board of Pharmacy positions. Members of the public were provided information about vacancies on boards and commissions, and individuals chose to apply for specific seats on specific boards. The Office of the Governor, Boards and Commissions, is pleased to continue statewide informational programs about participation on boards and commissions, and will continue to strive for balanced geographical representation on all statewide boards.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Kristie Leaf".

Kristie D. Leaf  
Director, Boards and Commissions

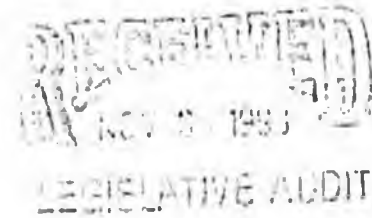
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DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

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

November 29, 1993



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

Dear Mr. Welker:

This is written in response to the Audit Division's (hereinafter "Audit") preliminary audit report of its sunset performance review of the Board of Pharmacy (hereinafter "Board"). Below is the Department of Commerce and Economic Development's (hereinafter "Department") comments on Audit's preliminary findings and recommendations.

Response to Recommendation No. 1

The statutory provision for the Board of Pharmacy should be extended until June 30, 2003.

The Department concurs with this recommendation. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety and welfare.

Response to Recommendation No. 2

Office of the Governor, Boards and Commissions should appoint Board of Pharmacy members in accordance with Alaska Statute.

The Department concurs with this recommendation. However, it is out of the Department's control to see that this recommendation is implemented.

Response to Recommendation No. 3

The Board of Pharmacy should review pharmacy inspection procedures to ensure that pharmacies inspected are impartially selected and evaluated.

The Department concurs that pharmacies selected for inspection must be impartially selected and evaluated. If the Board is going to continue inspecting pharmacies, the Board should have the proper tools for such an inspection, i.e., standardized forms (checklist), guidelines for a pass or fail inspection, etc. The Board is in the process of rewriting their entire set of regulations, and in that rewrite has clarified that anytime there is a change of ownership or change in location of a pharmacy, an inspection would be required. Again, these are simply proposed regulations and have not even been put out for public comment.

An important question is whether the Board should continue with inspections. The Board continues to address this topic at board meetings, and the Department concurs that once a workable solution has been determined, that all steps must be clarified in regulation. However, there are many variables in considering a statewide inspection program, i.e., the vast size of the state, the location of board members, and the cost to inspect each pharmacy. The Department believes that it will be some time before this issue is fully settled, but strongly recommends that the inspection function be separated from the board's responsibility so that the board can act as an impartial body if and when licensing action is required.

#### Response to Recommendation No. 4

The Legislature should revise Board of Pharmacy statutes to reflect current pharmacy practices.

The Department concurs with this recommendation.

#### Response to Recommendation No. 5

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

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

Concerns were voiced by various boards regarding their fee increases/program costs. Based on these concerns, the department requested an independent review by OMB of the procedures used in calculating expenses by the Office of Management and Budget. The OMB audit was completed early October. OMB's recommendations for defining direct costs, including the implementation of timekeeping records for licensing staff, investigators and hearing officers has been implemented effective July 1, 1993 by the division.

OMB audit recommended a cap on incremental fee increases of no more than 10-25 percent per licensing period. This is problematic inasmuch as it places a limit on recovering the actual cost of licensing the profession. OMB budget

reviewers placed an even more restrictive cap of seven percent on the license fee this fiscal year. Unpredictable and unforeseen program expenses occur due to investigations, litigation and legal challenges which are not controlled by the board or the division. Limiting expenditures in order to comply with these caps is anticipated to have serious effects on the board's abilities to comply with their statutory mandates. Under the present scheme, once a program has expended its "acceptable" limit for fee increase adjustments under the OMB recommendations and in accordance with 08.01.065, the board will effectively be shut down for the remainder of the fiscal year. The consequences have potential health and safety risks as well as economic hardships for licensees who may wish to renew their licenses, etc. The division will make requests for additional spending allocation to LB&A to alleviate these harsh consequences, but failing favorable consideration must control its expenditures.

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

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

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

#### Response to Recommendation No. 6

OL should, in conjunction with the Equal Employment Office (EEO), review the Board of Pharmacy licensure application to assure that personal qualifications of a potential discriminatory nature are essential for prudent licensure.

The Department has been working towards updating all of its licensing applications with emphasis towards the American with Disabilities Act and also EEO concerns. Because of the many considerations involved in revising our applications and the number of professions affected, the Department is not rushing through this project to satisfy immediate concerns, but rather making a concerted effort to give this review the quality of thoroughness it deserves.

EEO's concerns that it may be difficult to prove that discrimination was not a factor in the denial of licensure (because the board had been provided a picture of an applicant) may be unnecessary. Specifically, license denials must be based upon a provision in the board's statutes or regulations. Denial notices must list the specific authority for rejection. We believe the procedures for denying an applicant, and the practice of listing the specific reasons for denial in the notice to the applicant provides adequate protection for the board from being subject to discrimination complaints. Further, your suggestion of separating the photo from an application prior to board review is questionable since licensing applications are public documents and we believe it would be inappropriate for division staff to withhold public information from the board.

Response to Recommendation No. 7

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

The Department concurs with Recommendation No. 6. A rewrite of AS 08.01 makes numerous revisions including amendments to the statutes cited in this recommendation. The rewrite includes revisions which make drafting minutes a Department responsibility. It also provides for annual report deadline submission of August 1. The annual report deadline revision is necessary as many statistics needed for the annual report are not available until June 30, thus making it impossible for the boards to meet the existing deadline of submission by June 30.

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

Response to Recommendation No. 8

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

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

Mr. Randy Welker

-5-

November 29, 1993

All other policy, procedures, interpretations, and written directives for what must be reported must come from the Department of Law. Guidance on when a member must report a conflict, what should be reported, confirmation of what constitutes a conflict and who has authority to rule/overrule a decision made by a designated supervisor are all matters which are beyond the scope of DCED staff expertise. Consequently, the Department disagrees with the statement in the text of recommendation no. 8 which states: "Functionally, OL staff advise the professional licensing boards as to the reporting necessary for compliance with the Ethics Act . . . ."

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

Thank you for this opportunity to respond. If my department can assist you in any other way, please let me know.

Sincerely,

  
Paul Fuhs  
Commissioner

PF/JW/dgl5294D  
112993b

cc: Karl Luck, Director, Division of Occupational Licensing

**HB**

**300**



P.O. Box 1353  
Valdez, AK 99686  
Phone: 907-835-4300  
Fax: 907.835.5679

February 9, 1994

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

Dear Representative Hudson:

I am writing to you on behalf of the Alaska Wilderness Recreation and Tourism Association's members to request that you schedule HB 300 An Act Relating to Civil Liability for Commercial Recreation for hearings and move it out of your committee.

This bill establishes the responsibilities of tour operators and participants. It increases the safety of commercial recreational activities through better preparedness on the part of tour operators to respond to a medical situation and increased awareness by trip participants of the inherent risks. The bill reduces the likelihood of frivolous suits which are becoming a significant problem in the industry elsewhere. At AWRTA's annual meeting last year, a representative from AWRTA's group insurance company gave several examples of insurance scams that "tourists" are running in other states.

Other states, including Wisconsin and Colorado, have passed similar legislation. It has resulted in significant reductions in insurance premiums. Insurance premiums in Alaska are extremely high for small tour operators. Our own company, Alaska Wilderness Sailing Safaris, pays about \$10 a day per person in insurance costs for guests to walk in the Chugach National Forest. This is in addition to our insurance for the time they spend sailing. For Alaskan commercial recreation businesses to remain competitive price-wise with other states, we must have comparable insurance rates.

On behalf of our 230 business members, I encourage you to pass this bill out of committee as soon as possible.

Sincerely,

Nancy R. Lethcoe

Printed on recycled paper

- LETTERS OF SUPPORT -



## Marine Adventure Sailing Tours

---

Representative Bill Hudson  
Chair, Labor and Commerce Committee  
Alaska State Legislature  
State Caniral Building  
Juneau, Alaska 99801-1182

February 16, 1994

Dear Bill:

There are, this session, a few bills floating around the legislature in which I am interested. As one of your constituents, I thought you would like to know my thoughts on them. I offer also whatever help I can give to you and your staff regarding these actions.

**HB 300** "An Act relating to civil liability for commercial recreational activities; and providing for an effective date."

This bill may be uninteresting to many in the times of such fiscal distress, but to me and many other operators of commercial outdoor businesses, this is a desirable action. I do not believe that it will reduce our insurance costs much, but it will offer more protection to us in the case of some legal action. I have been operating for 12 years and have never had an accident, but the possibility always exists.

In my business, I use an informational form which reads very much like HB 300. It simply advises my clients that Alaska can offer some difficult challenges and that if there is any doubt about anything, ask. As a concessionaire for the Glacier Bay National Park, I am advised by NPS to have clients sign a release (enclosed) which reads again like HB 300. The U.S. Forest service also requires guiding insurance and since most of Southeast is in the Tongass, HB 300 could be quite influential on the USFS regulations.

I won't go on about this, but instead urge you to hear the bill and move it out of committee before the rush of other matters befalls you. I don't see any opposition to the bill as it is currently written and I expect a zero fiscal note. This is not a tort reform bill, but rather the recognition that Alaska still has a wild and wonderful outdoors.

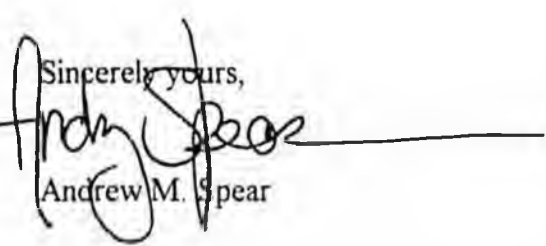
**HB 238/SB215 Funding for the Oil and Hazardous Substance Release Response Fund (470 Fund)**

I'm sure you know my sentiments on these actions, but I will ask your assistance in keeping the "470 Fund" intact. During my time as the manager of the ADEC Oil Pollution Control Program, I found that small oil spills are by far a more serious problem than is recognized by the public and their representatives. When the *Exxon Valdez* hit the skids, I was introduced to the devastation of both the natural environment, and the very fabric which holds together our local communities. Any defunding and de-emphasis on the prevention and control of oil pollution is a false economy. Take a minute and recall some of the telephone calls you got during the *Exxon Valdez* disaster. I shudder when I do.

Finally as I write this infrequent letter, I must address again a defunding issue: the ATMC. You know that I am a small operator, but that I live and participate in my local community. I spend just about everything here and believe that I help make Alaska a better place. There are many others like me, but because we are small, spending \$5,000 for an ad in a national magazine is a heavy burden. There is little out there to help us compete in a very competitive market, but one thing that does help is the ATMC. I get more business from the "Alaska Planner" than from any other source. Please do not defund us any more. At least, see if we can maintain programs that keep our businesses here rather than favor large, foreign flag operations. If the Governor wants to find some money, maybe he can sell the road to Cordova or perhaps save a little aviation gas and stop the wolf kill. I'm feeling the pinch from the wolf kill boycott so I don't need to take another blow by way of a defunded ATMC. I've said enough.

Thank you for your attention and patience. I will come in to talk to Linda about HB 300 and perhaps we can meet as well. In the mean time, my best to you and your staff. Say hello to Lucy and keep up the good work.

Sincerely yours,

  
Andrew M. Spear

- No NEED TO ANSWER, Bill.

Copy AWARTA

VISITOR'S ACKNOWLEDGEMENT OF RISK  
(SAMPLE)

I recognize that there is an element of risk in any adventure, sport or activity associated with the outdoors. I am also fully cognizant of the risks and dangers inherent in \_\_\_\_\_ (activity(s)). Knowing of the inherent risks, (may include specific risks) dangers and rigors required of said activity(s), I certify that I am and my family, including minor children are fully capable of participating in the said activity(s). Therefore, I assume full responsibility for myself, my family, including minor children for bodily injury, death and loss of personal property and expenses thereof as a result of my negligence or the negligence of my family participating in said activity(s) except to the extent such damage or injury may be due to the negligence of \_\_\_\_\_ (concessioner). I further understand that \_\_\_\_\_ (concessioner) reserves the right to refuse any person it judges to be incapable of meeting the rigors and requirements of participating in \_\_\_\_\_ (activity(s)).

Name of Participants:

Self \_\_\_\_\_

Spouse \_\_\_\_\_

Minor Children \_\_\_\_\_  
\_\_\_\_\_

I have read, understand and accept the terms and conditions stated herein and acknowledge that this agreement shall be effective and binding upon the parties during the entire period of participation in the said activity(s).

Parent/Guardian \_\_\_\_\_

Customer Signature \_\_\_\_\_ Date \_\_\_\_\_

It is also understood that due to the unavailability of liability insurance that (concessioner) does not have such coverage and in the event of an accident resulting in bodily injury, death or loss of personal property (concessioner) ability to compensate me or members of my family may be limited.

NOTE: Form may be modified to provide for the signature of each individual member of a group.

JUST WORKING ON  
A NEW ONE.

DRAFT

## INFORMATION, BILL OF RIGHTS and TERMS

The purpose of this document is to set out the terms and conditions of liability for persons on the sailing vessel *ADVENTURESS* and its auxiliary equipment as operated by Andrew M. Spear who is also the owner of the vessel or his staff. This document does not relieve the owner from operating the vessel in a reasonable manner and does not remove your right to protection from acts of gross negligence. However, The *ADVENTURESS* is a sailing vessel and like most sailing vessels, it has numerous lines, wires, deck fittings and other obstacles which can be dangerous. As with all boats, it rolls, pitches and yaws and while under certain points of sail, it leans considerably. In addition, the *ADVENTURESS* is equipped with a small outboard powered inflatable tender boat. Because this is a light and fast vessel, it provides even greater risks. Life jackets should be worn at ALL TIMES when using this boat. Passengers who use this boat, do so entirely at their own risk. Should you rent, request or bring your own kayaks, MAST will not be liable for

The above conditions are to be expected and by being a passenger on this vessel you are accepting these elements of risk. It is also made clear here that:

It is set out here that the owner of this vessel is not in any way liable for accidents resulting from actions of passengers either to themselves or to other passengers. By way of example such actions include:

1. Injury caused by leaving the vessel without direction from the operator; eg. jumping onto the dock, jumping into the water and jumping into another boat.
2. Burns caused by hot foods or beverages
3. Accidents caused by intoxication
4. Tripping, slipping and falling except where the operator is grossly negligent
5. Rope burns or other line handling injuries
6. Accidents caused by Alaska's different fish and wildlife or the passenger,s attempts to catch or photograph them. It is also recognized that passengers unfamiliar with the way of boats present considerable risk to the owner/operator and to the vessel and that risk is accepted, however, passengers will be expected to act in a reasonable manner and will be responsible for injuries and damages they may cause deliberately, by gross negligence or actions of malicious intent. Finally, as passengers, you should be familiar with:

1. The location and operation of all lifesaving equipment.
2. The emergency procedures, and
3. The location and operation of fire extinguishers.

**IF YOU DO NOT KNOW, ASK.**

I have read and understand this notice \_\_\_\_\_

February 15, 1994

Linda Giguere  
Legislative Aide

Dear Linda,

Per our phone conversation yesterday, I want to put a few thoughts in writing regarding HB 300.

This bill is important to me because I know that many people living in the villages want to start small-scale tourism businesses but are stopped, in part, by the high cost of insurance. Anything the legislature can do to relieve or remove this obstacle to rural tourism development would be greatly appreciated by many people.

I am currently working for the City Council of a small Interior Athabaskan village to develop their village as a tourism destination. Several residents there want to start small tourism operations. Insurance costs are inhibiting some of these potential businesspeople. They know the dangers of bush excursions and the terms of HB 300 would suit the kind of clients and activities they want to have.

I hope that you can hold a hearing on HB 300 during this session and move out of committee to a successful vote on the floor. Thank you for your time, attention, and energy on this crucial piece of legislation.

Sincerely,

David Cornberg, Ph.D.  
General Manager  
LOCAL WORKS, Inc.  
P.O. Box 82631  
Fairbanks, AK 99708

488-7328

# *Afognak Wilderness Lodge*

SEAL BAY, ALASKA 99697

CATERING TO ADVENTUROUS VACATIONERS • PHOTOGRAPHERS • FISHERMEN • HUNTERS

Radio Phone Contact: (907) 486-6442  
FAX: (907) 486-2217

ROY & SHANNON RANDALL  
Owners & Operators

FAX: 465-6790

*Honorable Bill Hudson,  
Alaska State Legislature,  
State Capitol [MS 3100]  
Juneau, AK 99801-1182*

*February 21st, 1994.*

*Dear Representative Hudson,*

*We request that you schedule HB 300 for hearings and move it out of your committee. Alaska's multitude of small "Mom & Pop" businesses are already under tremendous financial burdens to maintain both quality and all legal permits, insurances, etc. and we would like our Alaskan legislators to be more on our side as Wisconsin & Colorado legislators have helped their constituents.*

*Many thanks, in advance, for your consideration.*

*Cordially,*



*Roy & Shannon Randall,  
Afognak Wilderness Lodge.*

Printed On Recycled Paper



Dear Representative Hudson -

Fax - 465-6790

We urge you to schedule HB300 regarding civil liability for commercial recreation.

The bill would serve to reduce insurance costs for operators, a very high cost for us all. Other states have passed similar legislation with good results.

Having the bill out of committee would do great service to small tourism companies in Alaska.

Thanks for listening,  
Karl Thorne President

Sugar Leaf Packing's Transport.

2-13-94

line

P.O. Box 10

Healy, AK 99743-00

Jeanette James  
Alaska State Legislature  
MS 31100  
Juneau, AK 99801-1182

Ms. James,

I implore you to please help get Bill  
HB 300 Civil Liabilities for Commercial  
Recreational Activities before the House  
Judiciary and passed.

We give horseback tours beside  
Denali Park line on the Healy side,  
milepost 245. We gave over 2600 rides  
last summer for one and two hours.  
We paid \$8700<sup>00</sup> for liability coverage  
from Cathcart Insurance.

Still we are "always on guard"  
for that one frivolous lawsuit that  
could ultimately wipe us out of  
business.

We have a very good safety record  
still one person has sent all their  
medical bills, for 6 months, to be  
paid by our insurance. She fell  
off a horse that bolted from the scent of  
a bear. She was riding Comp (free)  
from Greysine to learn about the trail  
ride. She was a rail car manager.  
She broke 2 fingers in the fall. They  
healed & she crushed them later  
doing something else. The matter  
is pending at this time. She  
was 38 yrs old.

another lady client mounted a horse and was waiting for her guide to mount along with 3 other members of her family. She was 65 yrs. She was going to ride because the other members wanted to ride. Her horse moved a step, she panicked, in spite of being asked to let up on the reins, she pulled back hard, continuing to pull. She caused the horse to back up until he tripped one foot on a bush. This caused that hip to drop on the horse unbalancing the lady, she slipped off & onto the ground upon her hip.

She was helped up and asked for a different horse. We obliged. She made the one hour ride. State by pen "this was the only way to see Alaska" up close. By the time she had returned home by rail, cruise ship & plane to Iowa she was unable to walk without a walker & was suing us for a gardener housekeeper, pain medication all due to the one hour ride, falling off the horse. She was a gardener, writer & seminar gardener. She had a condition that had deteriorated. Our insurance is handling the matter.

She had become unable to do  
seminars. She said the horses  
were in poor condition, poor manners,  
and she had been poorly treated  
by Sugar Loaf employees and Princess  
Tour. We are lucky we had  
gotten the horses vet checked,  
and their condition was very good.  
The amount of riders testified to  
the quality of rides and guest  
treatment. Safety is number  
one in our company. We have  
been in business 5 yrs with  
Princess. And in horse business  
for 9 yrs. We are a reputable  
business.

We give safety and information  
talks prior to each ride for inform-  
ation, horsemanship and to give  
each guest a chance to "back"  
out gracefully should they choose to  
do so.

Generally, we are treated fairly  
by most customers. We like  
"showing off" Alaska by horseback  
but still we feel threatened  
by "frivolous" suits by a few "bad  
Apples".

We feel we have to watch our  
backs all the time.

We employ 8 1/2 employees  
every summer, May to September  
approximately \$23,000<sup>00</sup> payroll.

it costs \$1,141<sup>00</sup> for workmens  
comp, \$1,261<sup>00</sup> for liability for  
Clients in our vehicles, and  
this summer our liability for  
Client riders will be about  
\$12,000<sup>00</sup> or more for coverage.

Horse feed \$15,000<sup>00</sup>

Horses - 15 22,000<sup>00</sup>

Land Use + CD 1360<sup>00</sup>

licenses 500<sup>00</sup> (transporters,  
business, land use  
fee)

all of this before we open  
the door for business ... a business  
that could be closed instantly  
by one large suit  
we work 16 hrs a day  
every day and have yet to  
Profit but this could be the year  
we do. We've incorporated  
the business.

We would greatly appreciate  
your help with \$300. At  
least there would be a lite  
at the end of the tunnel.

This has been like Russian  
Roulette still now.

Sincerely

Phyllis A. Stickle

Office manager  
Rick Stickle Jr.

Any Questions? - 907-683-2402  
Owner

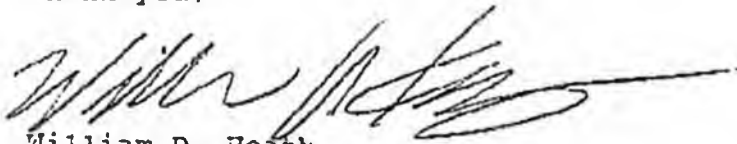
Kenai Peninsula Hike'n'Lunch Tours  
 203 Pamela Ct.  
 Kenai, AK 99611  
 (907) 283-8010

February 21, 1994

Dear Representative Bill Hudson, Chairman House Labor and  
 Commerce Committee:

It has recently been brought to my attention HB 300 Civil  
 Liability for Commercial Recreation Activities is in the  
 committee you chair and furthermore I learn it will be going  
 up for a hearing on February 24th. I wish to say I strongly  
 support this bill because it clarifies my obligations to my  
 clients and will probably reduce my liability insurance  
 cost. Please help the Tourism Industry's small businesses  
 by moving this bill through your committee.

Thank-you,



William D. Heath  
 owner, Hike'n'Lunch Tours

Post-It™ brand fax transmittal memo 7871		pages: 1	
To: <i>NLHC</i>	From: <i>Joh Lio</i>		
C: <i>Written testimony</i>	Co: <i>of HB 300</i>		
Dept.	Phone #		
Fax #	Fax #		



GLACIER BAY SEA KAYAKS

P.O. Box 26  
GUSTAVUS, ALASKA 99826  
(907) 697-2257

15 February 1994

Representative Bill Hudson  
Alaska State Legislature  
State Capitol  
MS 3100  
Juneau, AK 99801-1182

Dear Representative Hudson:

I am writing on behalf of HB 300 Civil Liability for Commercial Recreation Activities, and to let you know that our company supports this bill.

It's my understanding that this bill will help establish the responsibilities of both the people who operate the commercial activity and those that participate in it. In so doing, it's the intent of this bill to reduce uncertainty regarding the legal responsibility for injuries that may result from participation in such activities.

The passage of this bill could dramatically reduce insurance premiums for recreation businesses in Alaska, where profit margins are often borderline anyway due to the seasonal nature of the recreation industry in this state. Further, this bill would help to mitigate the effects that out-of-state accidents have on our insurance premiums. It would clearly reduce the number and amounts of out-of-court settlements.

I urge you give this bill high priority and to schedule a hearing to move this bill out of committee and on to the House Judiciary.

Thank you for your swift attention on this matter.

Sincerely,

Kara Berg  
Glacier Bay Sea Kayaks, Inc.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 5101

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

MEMORANDUM

February 16, 1994

SUBJECT: Sectional Summary of HB 300  
TO: Representative Bill Hudson  
FROM: Michael F. Ford *MF*  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Purpose.

Section 2.

Sec. 05.45.010. Establishes that participation in a commercial recreational activity constitutes acceptance of that activity's inherent risks that are apparent to an ordinarily prudent person.

Sec. 05.45.020. Provides that a person who accepts an inherent risk of a recreational activity is contributorily negligent to the extent the inherent risk causes injury, death, or property damage. Requires a reduction in compensatory damages for any contributory negligence.

Sec. 05.45.030. Establishes the responsibilities of participants in a recreational activities.

Sec. 05.45.040. Establishes responsibilities of operators of recreational activities.

Sec. 05.45.050. Provides that AS 05.45 does not affect immunity provided under AS 09.45.795 or AS 09:65.135.

Sec. 05.45.100. Definitions.

SECTIONAL

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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

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

MEMORANDUM

February 23, 1994

**SUBJECT:** Civil liability for commercial recreational activities - (HB 300)

**TO:** Representative Bili Hudson

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

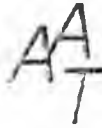
You have asked for a general explanation of the effects of HB 300. The bill would, in my opinion, have its most significant effect in fixing the responsibilities of participants in recreational activities and operators of recreational activities. In sec. 05.45.030 and sec. 05.45.040 the bill lists these responsibilities. This should in some measure reduce the uncertainty regarding the legal responsibility for injuries resulting from recreational activities. While the bill also addresses inherent risks (in sec. 05.45.010) and contributory negligence (in sec. 05.45.020) these provisions are not significantly different from the existing system for allocating fault described under AS 09.17.

This bill will not immunize operators of recreational activities or eliminate litigation over injuries or property damage that occurs during a recreational activity. However, this bill may reduce the time spent in litigation by clearly indicating the responsibilities of each party when an accident occurs during a recreational activity.

Please contact me if you have further questions.

MFF:gc:pl  
94-154.glc

*- LEGAL OPINION ON EFFECTS  
OF HB 300*



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: Senator Kelly, Chairman  
Senator Rieger, Vice-Chairman  
Senator Sharp  
Senator Lincoln  
Senator Salo  
  
Members of Senate Labor & Commerce Committee  
  
FROM: Debra C. Gravo, Executive Director  
Alaska Action Trust/Alaska Academy of Trial Lawyers  
  
DATE: April 5, 1994  
  
RE: HB 300, immunity for commercial recreational activities

\*\*\*\*\*

Alaska trial lawyers oppose HB 300. This bill is extremely unfair to Alaskans as well as the tourists who come to visit our fine state. If passed in its present form it will cut a wide swath across a wide assortment of "recreational activity" performed "outdoors".

The net effect of the bill is to confer immunity on commercial recreational activity operators, provided they merely "inform" participants of the "inherent risks" associated with that activity. The commercial operators are not required to be competent. They are not required to be safe. They are not required to be well trained. They are not required to be experienced. They are not required to act prudently.

Rather, they are merely required to "inform" participants of the "inherent risks" of the activity. The participant, on the other hand, is required to learn about the activity -- which in many cases will be virtually impossible.

I will attempt to set forth some major faults of the bill in its present form.

I. Present Legal Standard

Presently in Alaska, a commercial operator is required to operate in a prudent manner -- just as all of us are required to act prudently. There are no special exceptions or immunities for commercial operators. Given a particular activity that is being operated, they are assumed to be operating in a safe manner,

- TRIAL LAWYERS' LETTER

consistent with how such operations are performed elsewhere. Further, they are assumed to have superior knowledge and expertise in relation to their operations compared to that of their customers. This is the same standard which is applied against any person who holds himself out to have a particular expertise for which he charges money -- whether it be a physician, lawyer, a store owner or otherwise.

The participant is required to have the normal, prudent judgment of the normal, prudent person. This does not generally apply to children, who are only required to have the normal judgment of a child and not the judgment of an adult. This bill makes no exception for children.

## II. This Bill Reverses The Responsibilities

This bill reverses the responsibilities in its attempt to immunize commercial operators. Here, the only duty of an operator is to "inform" participants of the "inherent risks" and to further have a minimal degree of first aid training and knowledge of emergency medical services available in the area. The operator is also required to maintain his recreational equipment and facilities in good repair. Again, the operator is not required to act prudently or safely or to have safe, trained and competent personnel or operators.

On the other hand, the participant is required to learn about the risks, act within the limits of his abilities, heed all warnings and maintain control of his person and his children, equipment, etc. An examination of these duties placed upon the participants will demonstrate the lack of reality here.

## III. Duties of Participants

This bill assumes that it should grant immunity because a participant can learn about the "risks" of the activities. Indeed the participant is required to. However, how can a layman possibly learn in a very short period of time the risks associated with flying a small aircraft, operating a boat, driving a tour bus, operating a lodge, operating a hot air balloon or the many other activities which are obviously covered by this bill? Many of these activities take literally years to learn to perform competently. Many of these activities require specialized licenses because indeed they are specialties, operated by persons who hold themselves out to be professionals.

What would we think of a bill which stated that the average patient must learn all he can about the medical profession before he enters the hospital? What would we think of a bill that said the average person must learn all he can about the legal profession before he undertakes legal representation or a lawsuit. However, exactly the same sort of procedure is being promoted here. It is nonsense to

reverse the responsibility for having superior knowledge and put this "risk" upon the non-knowledgeable participant who cannot possibly learn about the "risks".

#### IV. The Risks

This points out a major defect in this bill. The "inherent risks" are not defined in the bill. The only language that I am readily familiar with defining "inherent risk" comes from the case of Hiibshman v. City of Valdez, 821 P.2d 1354 (Alaska 1991). In that case involving a ski area, the Alaska Supreme Court stated that an "inherent risk" is a risk which cannot be mitigated or eliminated. However, this bill does not define such risks.

The problem with this is that the potential definition for "inherent risks" is so wide as to virtually immunize commercial operators, which apparently is the intent of this bill. For instance, since the breath of "outdoor activity" is also undefined, it certainly could be argued that "inherent risk" of an activity might begin the moment a participant signs up or pays for such activity. As an example, many Alaskans and tourists fly out of Lake Hood on air charters or air tours for the purpose of sightseeing, fishing, hiking, hunting, rafting, canoeing or kyaking. Certainly, any defense lawyer for a commercial operator who crashed a charter aircraft would argue that the flight to the sight of the activity was an inherent risk. In the case of a sightseeing tour to Mt. McKinley, the air charter operator would argue that his "outdoor activity" at least began on take-off and the entire flight was therefore an inherent risk.

The same argument could be made in relationship to a tour boat operator who negligently sank his vessel killing scores of people in Prince William Sound or Kachemak Bay. He would argue that this outdoor activity began once the boat separated from the dock and therefore all risks from that point on were assumed by the now dead tourists in spite of the operator's clear negligence.

There is indeed no limit to this argument. The same argument could be made by tour bus operators, charter fishing operators, outfitters, guides, water taxi operators, lodge operators, and private school operators.

As the bill presently stands, once a person is "outside", that person could be argued to have assumed any and all risks of being outside. Thus, no matter how negligent the operator has been this risk would be assumed. Indeed, for instance, an air charter operator who negligently crashes his aircraft could argue that indeed his own negligence is one of the "inherent risks". This is appalling, to say the least.

V. This Bill Will Completely Compromise Safety Obligations of Operators

As it presently stands, many of the activities that would be effected by this bill are not regulated or are minimally regulated, so that the only incentive for such operators to be safe is to avoid insurance claims. For instance, in lodge operations the pilots for such lodges are not regulated under the Federal Aviation Regulations. They do not receive regular inspections nor do their aircraft. They are not required to have regular examinations nor are their aircraft. Water taxis such as those on the Copper River, charter fishing operations and tour boats are very minimally regulated. They are required to have minimal safety devices aboard such as flares and flotation equipment. Generally they do have licensed pilots or masters. However, the main regulating factor is their desire to avoid higher insurance rates by avoiding insurance claims. This bill will virtually eliminate the need for insurance provided the operator provides either written or oral information regarding the "risks". Suffice it to say that virtually all operators will provide a small card to warn of the risks. Indeed, this "warning" will in actuality be a disguised, unsigned and agreed to release of liability.

In fact, the participants are not even required to be warned by this bill that they are assuming virtually total liability including even the negligence of the operator. This is terribly unfair.

VI. No Necessity For This Bill

The stated purpose of this bill is to encourage continued availability of businesses that offer "recreational activities". However, there is certainly no shortage of such business. Indeed, they continue to proliferate at a virtually alarming rate, as anyone who travels in the less populated areas of Alaska will acknowledge. A mere glance at the yellow pages will quickly verify this. Anyone who has visited Lake Hood will not notice any lack of air charter activity. Anyone who has been to Homer, Seward, Whittier or any of the other Alaska seaports will not notice any dying off of commercial enterprises. Further, there is no shortage of insurance available for commercial operators.

Nor is there is no shortage of tourists. The latest figures from the Alaska State Department of Tourism indicate that tourism was up 10% in 1992 and up 4% in 1993.

VII. Unconstitutional

In line with the recent Assistant Attorney General's opinion regarding HB 292, I would suggest that this bill is also unconstitutional. This bill would establish negligence against a participant merely on the basis of being informed of "risks"

without requiring that the participant be in any way negligent. It is irrational to hold that someone is "negligent" when in fact they have done nothing wrong. There is a real paradox here. The bill would require a person to act prudently to learn about risks and to act within his capabilities -- and when he does he is therefore contributorily negligent.

#### Conclusion

This bill is a disaster for Alaskans and for tourists. It is irrational and unnecessary. It is most probably unconstitutional. Its intent to immunize commercial operators is not only unnecessary but is extremely harmful. I would think that if tourists learn that Alaska has this draconian "no liability" for commercial operators, this will not induce tourists to come but will rather induce them to stay away.

No other state in the union has a law that is anything like this. The wholesale elimination of responsibility on the part of commercial operators can only harm the citizens of Alaska, let alone the tourist industry.

## Wavetamer Kayaking

KAYAK KODIAK TOURS - KAYAK KATMAI ADVENTURES  
FEATHERCRAFT FOLDING KAYAKS - NECKY KAYAKS - ACCESSORIES  
POB 228, Kodiak, Alaska 99615 - PH & FAX: 907-486-2604

April 14, 1994

Senator Tim Kelly  
Alaska State Senate  
Juneau, AK

Dear Senator Kelly,

HB300 (*.....civil liabilities for commercial recreational activities.....*) is a good first step in assuring that safety standards will be maintained by those of us who operate high-risk adventure activities. It is as important for the industry as for the clients to have standards that define the level of responsibility a company should maintain for the benefit of its clients. Equally important, in light of the increase in soft adventure activity within Alaska, is the awareness and acceptance of responsibility clients have in regard to the potential risks faced in their participation in high-risk commercial adventure activities.

I also believe that such standards will positively affect the insurance premiums many of us now face. I know that my dedication to safety (ETT, CPR, organizational affiliations) all have had a positive affect on my insurance company's willingness to have me as a client.

HB300 is on track with at least one national effort - that of the *Trade Association of Sea Kayaking* - who is currently developing a list of guidelines to use throughout the sea kayaking industry (manufacturers, retailers, tour operators, etc.) to standardize the level of safety among industry members and to offer assurances to potential clients that the quality and level of safety, service, instruction and product are of high standard as well.

I personally feel that this legislation will positively affect the development of adventure-oriented businesses by lowering insurance premiums to more affordable levels and by presenting a level of responsible business operations and user experiences so as to entice visitors to Alaska.

Clearly the safety of participants, responsibilities of participants and the economic incentives for businesses are the strong points towards passing this bill.

Thank you for this opportunity to speak on behalf of HB300, I would appreciate it if you would include my comments into the record and I encourage you to pass this legislation for the benefit of Alaskan operators and clients alike,

Sincerely,



Tom Watson, Owner

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

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



## SPONSOR STATEMENT CS HB 300(JUD)am

### **An Act Relating to Civil Liability for Commercial Recreational Activities**

The Adventure Travel Society estimates that adventure travel and ecotourism segments of the travel industry are growing at a rate of 20% a year. The economic contributions of Alaska's wilderness based tourism, while undocumented, are undoubtedly important. AWRTA estimates that there are over 2,000 natural resource dependent tourism businesses in Alaska. Although few of these businesses employ upwards of 50 people, many are small, supporting or contributing to the income of only a few families. They are, however, Alaskan-based and vital to local employment. Unlike larger recreational outfits, these businesses keep their dollars in Alaska. They purchase their goods here, employ local residents, remain in-state, and spend the dollars they make here, thus providing both economic diversity and stability to many communities.

Many of these small businesses, however, are facing an uncertain future due to the high costs associated with insurance premiums and operation of such businesses. In order to encourage the continuance and survival of increasingly popular outdoor recreational activities, some kind of structure is needed to assure that both operators and participants become knowledgeable of, and assume, responsibility for inherent risks. House Bill 300 was introduced to establish the responsibilities of persons who operate and participate in commercial recreational activities. HB 300 in no way relieves recreational businesses/operators from liability. It simply establishes a framework that may help in the litigation process by stating that the state has recognized responsibilities of operators and participants and sends the message that steps have been taken to educate both the operator and participant as to these responsibilities. While insurance premiums are based on many factors, including one's history of claims, similar legislation in Colorado has had the effect of lowering insurance premiums 15 to 20 percent.

HB 300 establishes a balance of responsibility between operators and participants, without diminishing the responsibility of either party. HB 300 does not immunize operators of recreational activities from liability nor will it eliminate litigation over injuries.

HB 300 has a zero fiscal note.

HB 300 also has the support of the ALASKA VISITORS ASSOCIATION and THE ALASKA WILDERNESS RECREATION AND TOURISM ASSOCIATION that represents 230 business members statewide, among others.

**FISCAL NOTE**

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**BILL NO. CSHB 300(JUD) am**

Revision Date: \_\_\_\_\_  
 Title: 'An Act relating to civil liability for  
commercial recreational activities. . .  
 Sponsor: House Labor and Commerce Committee  
 Requestor: \_\_\_\_\_

Department Affected: Administration  
 BRU: Risk Management  
 Component: Risk Management  
 COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

Estimate of any 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.)

Prepared by: J. Brad Thompson, Director  
 Division: Risk Management  
 Approved by Commissioner: Nancy Bear Usura  
 Agency: Department of Administration

Phone: 465-5723  
 Date: \_\_\_\_\_  
 Date: 4/7/96

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 For further distribution information call the Governor's Legislative Office

**- FISCAL NOTES -**

FISCAL NOTE

No. 3  
 Bill Version: CSHB 300(JUD)  
 (H) Publish Date: 3/25/94

STATE OF ALASKA  
 1994 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: Civil Liability for Commercial  
Recreational Activities  
 Sponsor: House 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
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL EXPENDITURES	0	0	0	0	0	0
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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
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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: 3/7/94

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

Date: 3-7-94

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