

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8686 HOUSE LABOR & COMMERCE

HB

450

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 450

Revision Date: _____
Title: An Act Relating to Trademarks

Department: Commerce and Economic Development
BRU: Banking, Securities and Corporations
Component: Banking, Securities and Corporations

Sponsor: Representative Theriault
Requestor: _____

COMPONENT SERIAL NO. _____ 1233

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	4.0	11.3	12.4	13.6	14.9	16.4
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 General Fund	4.0	11.3	12.4	13.6	14.9	16.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	4.0	11.3	12.4	13.6	14.9	16.4

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 450 will remove fees from the statute and give the Commissioner authority to promulgate fees by regulation. The current fee for new registration and renewals is \$10.00 per application. The current fee for assignment is \$2.00. The current fees have not increased in 30 years. The increase in revenue is based on an anticipated fee for new registrations and renewals of \$50.00 and an assignment fee of \$50.00.

Prepared by: Willis F. Kirkpatrick, Director *Willis Kirkpatrick* Phone: 465-2521
 Division: Banking, Securities and Corporations Date: 1-29-96
 Approved by Commissioner: William L. Hensley *William L. Hensley* Date: 1-29-96
 Agency: Commerce and Economic Development

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(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 26, 1996

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 2-19-96

The LABOR AND COMMERCE Committee considered:

HB 450

HOUSE BILL NO. 450

ALASKA TRADEMARK ACT

"An Act relating to trademarks; amending Alaska Rule of Appellate Procedure 609; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 450 (L&C) [] the same title [X] a new title

[] additional referral to _____ Committee

[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[X] fiscal note(s) CED (BSC)

[] fiscal note(s) _____

[] zero fiscal note(s) _____

[] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>John Kott</i>	✓			
<i>John P. Kelly</i>			✓	
<i>Gene Koppen</i>			✓	
<i>Brian D. Horne</i>	✓			
<i>Kerby Masek</i>			✓	
<i>John Sanders</i>			✓	

CHAIR'S SIGNATURE *John Kott*

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1029 WEST THIRD AVENUE, SUITE 300 · ANCHORAGE, ALASKA 99501-1970
TELEPHONE: (907) 279-8561 · FACSIMILE: (907) 276-3108

February 12, 1996

The Honorable Pete Kott
Chair, Committee on Labor and Commerce
Alaska House of Representatives
Room 432 State Capitol
Juneau, AK 99801-1182

Re: House Bill No. 450, an Act Relating to Trademarks

Dear Representative Kott:

I am writing to express my support for House Bill 450, entitled "An Act Relating to Trademarks; Amending Alaska Rule of Appellate Procedure 609; and Providing for An Effective Date." This legislation is based on the revised Model State Trademark Bill, a document drafted in 1992 by the International Trademark Association (INTA), the world's leading organization of trademark owners and practitioners. My firm, Perkins Coie, is a member of INTA.

House Bill 450 reflects, in part, recent amendments made to the Lanham Act, the federal trademark statute that has effectively protected the interests of consumers and the business community over a period of fifty years. It also promotes consistency with new changes to the trademark laws of other states.

The enactment of this legislation will improve the functioning of Alaska's trademark system. It will allow our firm to better defend our clients' marks against infringement and improve the quality of trademark searches undertaken by the Department of Commerce and Economic Development. The promotion of trademarks and the recognition of the important role they play in commerce will also be greatly enhanced.

Thank you for your assistance.

Very truly yours,


James N. Leik

JNL:dln

[/AA960430.009]

Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT

P.O. Box 55326
North Pole, Alaska 99705
(907) 488-0862

House District 33



While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797

House Of Representatives

HB 450 "An act relating to trademarks; amending Alaska Rule of Appellate Procedure 609; and providing for an effective date."

Sponsor: Representative Gene Therriault

Sponsor Statement:

This legislation is intended to update the State Trademark Act. Alaska's current law is modeled upon the 1964 Lanham Act. The proposed revision is to bring Alaska's trademark law current with the changes to the Lanham Act over the past 30 years, and is modeled closely to the Model State Trademark Bill written by the International Trademark Association. This revision will allow the registration of marks that currently cannot be registered under state law, such as service marks, certification marks and collective marks. The legislation was introduced at the request of the Division of Banking, Securities and Corporations. Passage of the legislation is needed to strengthen the intellectual property rights for Alaska's business community.

Sponsor

2/5/96

Sectional Analysis

House Bill 450, "An act relating to trademarks; amending Alaska Rule of Appellate Procedure 609; and providing for an effective date."

The revisions to this bill are based on the Model State Trademark Bill, promulgated by the International Trademark Association.

- Section 1** INTENT. The legislation is intended to make Alaska's system of state trademark registration consistent with the federal system.
- Section 2** Replaces the term "trademark" with the term "marks" as they relate to the income the state derives from rentals or royalties for using the marks. A trademark refers only to a word, name or symbol placed on a product to identify who made it. "Mark" includes a "certification mark," "collective mark," "service mark," and "trademark." A certification mark is used by someone other than the registrant to certify characteristics of the product or that the product was made by a union; a collective mark is used by members of a cooperative or association to indicate membership in a union; a service mark is used to identify the services of a person. This change is made throughout the bill.
- Section 3** AS 45.50.010 (1) - (5) Contains clarification and grammatical changes, including addition of the words "when used on or in connection with" to describe how a mark must be used. This change is made throughout the bill.
AS 45.50.010 (6) States that a mark cannot resemble another mark registered with the United States Patent and Trademark Office. The current law states the mark cannot resemble another mark registered in the state.
- Section 4** Adds definitions for "descriptive" and "misdescriptive" by stating that when words describing goods or services become accepted as identifying the goods or services, the words are no longer merely descriptive. Defines "misdescriptive" as words that falsely describe goods or services.
- Section 5** Changes the entity with whom a mark must be registered from the department to the commissioner, and makes technical changes.
(1) (B) Adds the following to the information that must be included when registering a trademark:

Sectional

-- the partnership, the state in which the partnership is organized and the names of the general partners.

-- a statement that to the best of the applicant's knowledge, no other person has previously registered a confusingly similar mark.

-- a statement as to whether an application to register a mark has been filed with the United States Patent and Trademark Office by the applicant or a predecessor and, if registration was refused, why. The change is in response to comments from state trademark administrators who want to benefit from any prior federal examinations.

- Section 6** Adds a new section regarding the application procedure. This section clarifies the commissioner's authority to accept or reject an application, based on the registrability of the proposed mark. Current law gives the commissioner no direction on the procedure for examining applications.
- Section 7** Adds partnership to the list of groups that can apply to register a mark and requires three examples showing use of the mark on or in connection with the goods.
- Section 8** Takes the filing fee out of statute and allows it to be set by the department. This is to allow greater flexibility.
- Section 9** Adds the following to the information to be shown on the certificate:
- if a corporation, the state of incorporation
 - if a partnership, the state in which the partnership is organized and the names of the general partners.
- Makes various other technical revisions, such as adding "services" to the definition of products that can be registered. This change is made throughout the bill.
- Section 10** Changes "department" to "commissioner" as the party that issues certificates. Similar changes are made throughout the bill.
- Section 11** Changes the duration of regular registration from 10 years to five years to reduce the number of "deadwood" registrations. "Deadwood" refers to marks that have not been used in commerce for an extended period of time.
- Section 12** Adds a subsection stating that renewal applications must include a verified statement that the mark has been and still is in use.

- Section 13** Takes the renewal fee out of statute and allows it to be set by the department.
- Section 14** Reduces the renewal time from 10 successive years to five successive years.
- Section 15** Changes the time the commissioner must notify registrants of the need to renew from one year to six months before the mark expires.
- Section 16** Makes technical changes consistent with the rest of the bill.
- Section 17** Adds a new section regarding name changes and other filings. Under previous versions of the Model Bill, assignments of trademark registrations and applications are recordable. This section was revised to allow the recording of name changes as well.
45.50.125(b) Allows the recording of other instruments that relate to state trademark registrations such as licenses, security interests or mortgages.
- Section 18** Technical amendments to reflect other changes.
- Section 19** Provides that the commissioner can cancel registrations that expire and are not renewed under AS 45.50.070 - 45.50.090. Currently, the commissioner can cancel a mark that was registered under previous law, is more than five years old and has not been renewed.
45.50.140 (f) Provides that a registration may be canceled if the mark has become generic.
- Section 20** Adds a new section stating that a mark is abandoned when use of the mark has been discontinued and the registrant has no intent to resume its use, or when the mark loses its significance as a mark due to action or failure to act. No use of a mark for two years is sufficient to prove that registration has been abandoned.
- Section 21** This section affects classification of goods and services. Some states have adopted the old U.S. classification system while others have converted to the International classification system. The bill removes direct delineation and states that to the extent practical, the classification of goods and services should conform to the classification adopted by the United States Patent and Trademark Office.
- Section 22** Makes technical amendments.

Section 23 Makes technical amendments.

Section 24 Makes technical amendments.

Section 25 Provides remedies for cases involving infringement, in the form of a judgment for punitive damages not to exceed three times the profits, damages, and reasonable attorney fees of the prevailing party.

Section 26 Adds new sections regarding dilution of a mark. Dilution is the lessening of the capacity of a mark to identify and distinguish goods or services. Often the distinctiveness of a famous mark is diluted when it is used without the owner's consent on dissimilar products over a period of time, gradually chipping away the famous mark's foundation. 45.50.180 (d) gives a registrant the right to file an injunction against another's dilution of a famous mark, and to collect damages if the dilution was intentional. It lists factors to be considered when determining if a mark is famous.

Section 27 Provides definitions.

45.50.200 (10) Adds a new definition for "use" or "used." The word "use" has been revised according to the standards of the Trademark Law Revision Act and to cover only "use in the state." The requirement of intrastate use eliminates possible ambiguities created by alternate references to "use" or "used."
45.50.200 (11) Adds a new definition for "verified."

Section 28 Makes technical amendments

Section 29 Makes technical amendments

Section 30 Makes technical amendments

Section 31 Provides a transition period, stating that the amendments do not apply to an application or proceeding pending on the effective date of the act, and that a registration or renewal of a registration that is in effect on the effective date of the Act remains in effect despite the Act.

Proposed amendment.

Sec. 32 **TRANSITION: REGULATIONS.** Notwithstanding Sec. 33 of this Act, the state agencies affected by this Act may proceed to adopt regulations necessary to implement changes in law enacted by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the respective effective date of the change in law in this Act.

Sec. 33 This Act takes effect January 1, 1997.


— *Proposed Amendment* —

Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT
P.O. Box 55326
North Pole, Alaska 99705
(907) 488-0862



While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797

House District 33

House Of Representatives

To: Representative Pete Kott
Chairman, House Labor & Commerce Committee

From: Representative Gene Therriault *Gene*

Date: February 6, 1996

Re: Hearing request for House Bill 450

I would like to request a hearing for House Bill 450, "An act relating to trademarks; amending Alaska Rule of Appellate Procedure 609; and providing for an effective date."

This legislation is intended to update the State Trademark Act, which has not been changed since the mid-60s. The bill is modeled closely to the Model State Trademark Bill, written by the International Trademark Association. It would allow the registration of marks that currently cannot be registered under state law, such as service marks, certification marks and collective marks. The legislation was introduced at the request of the Division of Banking, Securities and Corporations.

As requested in your memorandum of January 18, 1995, attached to this request are:

1. Sponsor statement
2. Sectional analyses
3. Current fiscal notes
4. Position statement
5. Background materials

We are not requesting a teleconference at this time.

I am also submitting an amendment for the committee's consideration that would allow the agencies affected by the Act to proceed with regulations necessary to implement the changes enacted by the new law prior to the effective date of the bill. This is necessary so that regulations are in place when the bill goes into effect.

— Background —

Passage of the legislation is needed to strengthen the intellectual property rights for Alaska's business community. I would appreciate consideration of this bill at the Committee's earliest convenience. Thank you.

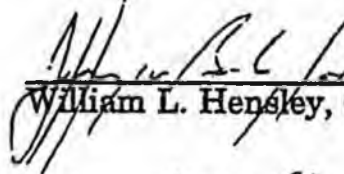
HB 450

The department supports the passage of HB 450. Passage of this bill will make the Alaska Trademark Act substantially consistent with the federal system of trademark registration, and will strengthen "intellectual property" (various types of trademark forms) rights for Alaskan businesses.

The major improvements to the Alaska Trademark Act, proposed by HB 450, include broadening trademark protection to service providers, adding additional remedies to trademark owners for infringement, and providing anti-dilution provisions for "intellectual property" owners whose trademark has become famous in this state.

The department endorses the intent of this bill to update the Alaska Trademark Act, and strengthen "intellectual property" rights for Alaskan businesses.

The department expects no additional cost will be incurred by this legislation.



William L. Hensley, Commissioner

Date: 1-31-96



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Commerce & Economic Dev.	DIVISION Banking, Securities & Corp.	BILL NUMBER HB 450	SPONSOR Representative Gene Therriault
SHORT TITLE OF BILL Alaska Trademark Act			
DEPARTMENT POSITION The department supports passage of HB 450.			
PREPARED BY Willis F. Kirkpatrick, Director	DATE 1/30/96	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 1-31-96

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUP(S) AFFECTED BY BILL Any type of business owners in Alaska who use words or logos to identify their goods and services. Legal practitioners in intellectual property.
ORGANIZATIONAL SUPPORT FOR BILL The International Trademark Association, Intellectual Property Attorneys	ORGANIZATIONAL OPPOSITION TO BILL None

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
HB 450 was patterned to be substantially consistent with the federal system of trademark registration under the Lanham Act of 1946, as amended.

ANALYSIS OF BILL/PROGRAM EFFECTS
The current Act is modeled after a pre 1964 version of the Model State Trademark Bill, and has not kept pace with changes to the Lanham Act which have occurred over the past 30 years. The proposed legislation is based upon a revision to the MSTB which was adopted by the International Trademark Association, the International Association of Corporation Administrators, and the National Association of Secretaries of State. HB 450 will make the State Trademark Act more consistent with the Lanham Act, and will strengthen intellectual property rights for Alaskan businesses.

AMENDMENTS PROPOSED
Sec. 32. TRANSITION: REGULATIONS. Notwithstanding Sec. 33 of this Act, the state agencies affected by this Act may proceed to adopt regulations necessary to implement changes in law enacted by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the respective effective date of the change in law in this Act.

Sec. 33. This Act takes effect January 1, 1997.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS



FAX

To: Representative Theriault
Alaska State Legislature
Room 421, State Capitol
Juneau, Alaska 99801-1182

From: Don and Rose Harris
Cookhouse, Inc.
dba: Red Dog Saloon
Juneau, Alaska
FAX: 541-347-4061
pages 1 of 2

Re: Revision of the Alaska Trademark Act

Dear Representative Theriault:

With much enthusiasm, we want you to "forge ahead" to update Alaska's State Trademark Act. Over the past several years, our well known Alaska landmark, the Red Dog Saloon, has been infringed upon, diluted and identified with as major in-state/out-of-state business concerns attempt to do business in Alaska. Each time our corporation has "rallied to the cause" to defend our registered trademark. And, each time this procedure has cost many dollars and expended undue time and energies away from our business activities.

We learned that the existing system of state trademark registration and protection is vague at best and almost impossible to defend. One of the major obstacles is Alaska's inconsistency with the federal system of trademark registration.

You have our support for your efforts to sponsor legislation to update Alaska's State Trademark Act. We can swap "horror stories", show you examples of large companies attempting to use our trademark, or simply talk with you as you make progress. If we can be of assistance, contact us.

Don and Rose Harris
Cookhouse, Inc.
200 Admiral Way
Gunnear, Alaska
FAX: 541 347 4061

HB

456

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 30, 1996

FURTHER REFERRALS:

Finance

Date of Committee Action: 2-19-96

The LABOR AND COMMERCE Committee considered:

HB 456

HOUSE BILL NO. 456

BOARD OF STORAGE TANK ASSISTANCE

"An Act relating to the Board of Storage Tank Assistance; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 456 (L&C) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

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

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) DEC

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
Brian Porter	✓			
Beverly Marshall			✓	
John Sanders			✓	
Ellen Gott	✓			

CHAIR'S SIGNATURE *[Signature]*

House Labor & Commerce Committee

State Capitol
Juneau, Alaska 99801-1182
907-465-4954

SPONSOR STATEMENT HB 456

The Board of Storage Tank Assistance is scheduled to sunset on June 30, 1996 unless it is statutorily extended. This board, as stated by a recent Legislative Audit Report:

"... works in conjunction with the State's Department of Environmental Conservation (DEC) to carry out the various requirements of the UST (underground storage tank) statutes. The board is involved in the making of regulations pertaining to USTs and DEC is responsible for administering the UST program. "

HB 456, as sponsored by the House Labor and Commerce Committee, would extend the Board of Storage Tank Assistance to June 30, 2000, as recommended by the Legislative Audit Report. In addition, also as recommended by the auditors, HB 456 would add a public member to the Board who has no financial or commercial interest in retrofitting or replacing underground storage tanks.

I urge your support.

Sponsor

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH 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 6, 1996

SUBJECT: Sectional Summary of HB 456. (An Act relating to the Board of Storage Tank Assistance)

TO: Representative Pete Kott
Attn: George Dozier

FROM: Terri Lauterbach
Legislative Counsel *TLauterbach*

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. Extends the life of the board to June 30, 2000.

Section 2. Adds a member of the public to the board.

Section 3. Provides a July 1, 1996, effective date.

TML:klb
96-070.klb

Sectional

Board of Storage Tank Assistance



- 1 The Board is a seven member board comprised of two Commissioners and five citizens from the private sector.
- 2 Board members serve without compensation and have one employee.
- 3 The Board is a judicial appeal board that resolves disputes between the regulated community and the Department of Environmental Conservation thereby saving the state thousands of dollars in potential legal costs.
- 4 The Board mediates disputes regarding eligibility for financial assistance, eligible costs, priority ranking positions and contaminated site cleanup plans.
- 5 The Board provides technical and educational assistance to petroleum storage tank owners and operators throughout Alaska
- 6 There are over 800 unfunded requests for assistance currently on file. The total amount requested is presently over \$50 million. Limited annual funding requires applications to be priority ranked annually using a Board scoring system that emphasizes imminent threats to public health. Additional criteria including size of business, proximity to alternate fuel, rural or urban location and other factors determined relevant to the Board.

Board of Storage Tank Assistance

The 1990 Legislature established the seven-member Board of Storage Tank Assistance with two government members and five public members. The commissioners of the Departments of Environmental Conservation and Transportation and Public Facilities are the government members. Each of the five public members are required to have special knowledge pertaining to underground storage tanks. A registered engineer familiar with tank cleanups, a general contractor familiar with tank installations and closures, a person from the insurance industry that is knowledgeable about pollution liability insurance for underground storage tanks, a owner of more than 10 tanks, and an owner of 10 or less tanks. Former Governor Cowper appointed the original seven board members on September 5, 1990. Members serve without compensation other than per diem and expenses when traveling. They have an Executive Director, who is their sole employee.

The Board of Storage Tank Assistance is an Appeal Board to mediate disputes between the Department of Environmental Conservation and regulated underground petroleum storage tank owners and operators. In regard to disputes arising over eligibility, priority rankings and eligible costs, the Board's decisions are binding upon the department and the owner or operator. For corrective action plan disputes, or denials for payment under the retroactive reimbursement program (sec. 7, ch.96, SLA 1990), the board may only issue recommendations. In addition, the Board works directly with the legislature on funding issues and determines the program distribution of the annual legislative appropriations.

The first duty of the Board was to write regulations relating to financial assistance for UST owners and operators. The Board also jointly developed regulations with DEC pertaining to cleanup standards and allowable technologies to be used in the cleanup of contamination resulting from leaking tanks. The Department of Environmental Conservation is responsible for administering the Storage Tank Assistance Fund. The Department is tasked with advertising the application periods, receiving the applications, processing the requests, administering the grants and auditing project costs. The Division of Investments in the Department of Commerce and Economic Development works in partnership with the DEC to provide cleanup loans for eligible UST owners and operators.

Although the Board developed the financial assistance regulations, the Department of Environmental Conservation actually implements those regulations by physically processing each applicant's request for financial assistance. This enables the Board to remain objective and unbiased when a dispute arises. The Board is then tasked with resolving the matter in a prompt and conscientious manner.

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

OF: A Sunset Report on the Department of Environmental Conservation, Board
of Storage Tank Assistance, September 19, 1995.

SCOPE OF THE REPORT

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 Storage Tank Assistance. In assessing the operations and performance of the board, we utilized the criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the board.

As required by statute, this report shall be considered during the legislative oversight process followed in determining if the board should be reestablished. The law currently specifies that the Board of Storage Tank Assistance will terminate on June 30, 1996 and will have one year from that date to conclude its affairs.

BACKGROUND INFORMATION

Underground tanks often contain petroleum and other hazardous substances. Typically, these tanks invariably develop leaks which allow the substances stored in them to leak into the surrounding soil, contaminating the groundwater, which in turn could contaminate a drinking water source. The U.S. Congress directed the Environmental Protection Agency to develop regulations for the design, construction, and installation of new tanks. Additionally, new stricter standards were established for the retrofitting of existing tanks. Tanks will be required to be upgraded to provide for leak detection, corrosion prevention, and spill and overflow protection.

In 1990, the legislature created a program to provide both financial and technical advisory assistance to the owners and operators of underground petroleum storage tanks (UST). The assistance was to help UST owners and operators comply with current and prospective state and federal regulations. These regulatory requirements address numerous design and operational aspects of USTs. In addition, UST owners are required to demonstrate they are capable of assuming financial responsibility for the costs involved in taking corrective action and cleaning up releases from their tanks.

The 1990 legislation also established the Board of Storage Tank Assistance. The board works in conjunction with the State's Department of Environmental Conservation (DEC) to

carry out the various requirements of the UST statutes. The board is involved in the making of regulations pertaining to USTs and DEC is responsible for administering the UST program.

REPORT CONCLUSION

In our opinion, the Board of Storage Tank Assistance should be reestablished. The board plays an integral role in the State's underground storage tank program. The board acts as a mediator, sets regulations, and acts as a sounding board for owners and operators of USTs.

The board acts as an independent body in settling disputes between DEC and owners and operators of USTs. Since the board's inception, they have mediated over 11 formal appeal cases. The board has been involved in numerous cases on an informal basis. Owners and operators can call on board staff to informally discuss the applicability of state statutes and regulations to their specific situation.

The board actively participates in the making of statutes and regulations pertaining to USTs. The board is statutorily required to adopt regulations to be used by DEC to administer the UST program. Regulations originally adopted have been amended and are currently in the process of being revised. The board also reviews all regulations pertaining to USTs that are proposed by DEC.

We believe the board should continue until June 30, 2000. The intent of legislation establishing the board was to assist owners and operators of USTs to comply with federal and state laws and regulations. U.S. Environmental Protection Agency (EPA) regulations require USTs to meet new, stricter federal standards by December 22, 1998. The "need" or demand for funding to bring operating USTs into compliance has far outstripped the appropriations made to date.

Prospectively, it is unlikely that the amount of the appropriations will substantially increase over the next few fiscal years. Additionally, it is currently unclear what enforcement actions EPA will take in Alaska against UST owners that are not in compliance with the new regulations. Given these circumstances, we foresee there may be an ongoing public policy role for the board beyond the EPA implementation deadline. Extending the board to June 30, 2000, would result in a reevaluation of board activities and operations through the summer of 1999. A review conducted at that time could evaluate the continuing necessity for the board in the context of how the stricter federal UST regulations are being imposed and enforced.

FINDINGS AND RECOMMENDATION

1. The legislature should consider changing the statute to require the appointment of one public member to the Board of Storage Tank Assistance to provide commercial or financial assistance to the appointment and reformation of underground storage tanks.

HEB

478

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 478

Revision Date: _____ Department: Commerce and Economic Development
 Title: An Act allowing licensed real estate brokers,.... BRU: Occupational Licensing
.... to prepare certain documents;.... Component: Operations
 Sponsor: Representative Rokeberg
 Requestor: Representative Rokeberg COMPONENT SERIAL NO. 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
 HB 478 amends the scope of work that may be performed by real estate licensees. New funds are not required to implement this provision.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: February 13, 1996
 Approved by Commissioner: William L. Hensley Date: 2-13-96
 Agency: Commerce and Economic Development

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HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 7, 1996

FURTHER REFERRALS:

Date of Committee Action: 2-19-96

The LABOR AND COMMERCE Committee considered:

HB 478

HOUSE BILL NO. 478

REALTORS MAY PREPARE CERTAIN LEGAL DOCS

"An Act allowing licensed real estate brokers, associate real estate brokers, and real estate salespersons to prepare certain documents; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ [] the same title
 [] a new title

[] additional referral to _____ Committee
 [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 [] fiscal note(s) _____ [] fiscal note(s) _____
 [X] zero fiscal note(s) CEC(OL) [] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>John Bost</i>	✓			
<i>Kevin Ketchum</i>	✓			
<i>Ken ...</i>			✓	
<i>Gene Kubierna</i>	✓			
<i>Bruce Horter</i>	✓			
<i>Karely Masek</i>	✓			
<i>Jerry Sanderson</i>			✓	

CHAIR'S SIGNATURE: *John Bost*

MLS

BEST IN THE LAND



REALTY & INSURANCE

1015 CHEEK STREET
WASILLA, ALASKA 99654-8047
(907) 376-2555
FAX (907) 373-3290

FAX TRANSMITTAL

DATE: 2-16-96

TIME: 1

TO: House Labor & Commerce Committee

NUMBER OF PAGES 1
INCLUDING THIS
COVER SHEET

ATTN: REP. Pete Kott

FROM: Dean R. Beaulieu

IF YOU DID NOT RECEIVE ANY OF THE ABOVE MENTIONED PAGES, PLEASE CALL OUR OFFICE.

COMMENTS:

Please pass NB 478 allowing Brokers and associates to continue
working as we have in the past. It would be LUDICROUS to
have only Lawers do what we have ben doing for years. If
only Lawers wrote earnest money agreements, where would it
stop. Only lawers could write earnest money agreements for
cars? Boats? Only lawyer's could write rental agreements for
every apartment?

Thank You for your time,

Respectfully,

Dean R. Beaulieu, Broker



P. O. Box 32646
Juneau, Alaska 99803-2646

Southeast Board of Realtors®



Board of Directors

Jim Wakefield - President
"Duch" Knight - Vice President
Barbara Craig - Secretary
Larry Teltier - Treasurer
Carole Winton - Director at Large
Gene Whiting - Director at Large

February 16, 1996

Dear Representative Kott:

It is my understanding that HB 478 "An Act allowing licensed real estate brokers, and real estate salespersons to prepare certain documents" is going to be before House Labor & Commerce on Monday. The Southeast Board of Realtors and its 65 members are seeking legislation to negate the Alaska Bar Association's Proposed Rule 33.3 which would restrict the preparation of printed money agreements to attorneys.

There are approximately 2200 licensed real estate brokers and salespersons in the State of Alaska. This proposed bar rule change represents a direct challenge to our right to prepare earnest money agreements in connection with the sale of real property, an activity in which we have historically have participated as part of the lawful pursuit of our business.

HB 478 is intended to clarify the rights of members of the real estate community. The preparations of deeds of trust, mortgages, real property contracts, earnest money agreements, leases and other documents that have been traditionally prepared by real estate practitioners in the normal conduct of their business.

Earnest money agreements are prepared by brokers only as an incident of their business in connection with transactions negotiated by them and no fee is charged for their preparation. Substantially all of the agreements prepared by brokers involve the use of preprinted forms that have been drafted and approved by attorneys. Brokers typically fill in the blanks on these forms.

Article 13 of the Realtors Code of Ethics, to which all members subscribe provides: Realtors shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party of the transaction requires it.

If Brokers are prohibited from preparing earnest money agreements, the negotiation process will inevitably become more complicated. Parties will be obliged either to prepare their own agreements, conduct oral negotiations or involve an attorney at every stage of the negotiation, with the unavoidable increase in expense and delay.

Please support HB 478.

Thank You,

James R. Wakefield
President

ASSOCIATED ISLAND BROKERS218 CENTER AVENUE, SUITE 200
KODIAK, ALASKA 99615

(907) 488-2000

TO:

Pete Kott / House Labor Comm.

FX: 907-465-2819

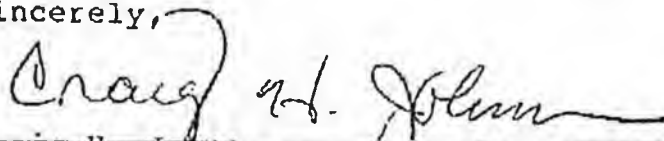
DATE Feb. 16, 1996

SUBJECT HB 478

Honorable Pete Kott:

Please accept this as written to support HB 478. Thanks for this opportunity to be a part of the process. I am a part of the Kodiak Board of Realtors & a former Board member for the Alaska Assn. of Realtors. I have held my license as a Salesperson, Associate Broker, or Broker in Alaska since 1983. It seems that attorneys preparing contracts such as our purchase agreements raises its ugly head from time to time & we are always in a rush to thwart it. Passing this legislation will enable licensed real estate agents to prepare purchase agreements. Attorneys have their place in the contract process but writing every agreement & every addendum is a hindrance & a complication to the process that is overly burdensome, unnecessary, & difficult. I hope your Committee will assist with the passage of HB 478.

Sincerely,



Assoc. Broker / AIBI Owner

REORDER ITEM #ML72T
FOLD AT (-) TO FIT DRAWING BOARD ENVELOPE #EW90W



FREEDOM REALTY

170 N. Birch Street
 Soldotna, Alaska 99669
 (907) 262-1770 FAX 262-7166
 1-800-554-1770

REALTOR®

DATE: 2/19/96

TO: MEMBERS OF THE HOUSE LABOR & COMMERCE COMMITTEE

Pete Kott
 Norman Rokeberg
 Brian Porter
 Jerry Sanders
 Beverly Masek
 Kim Elton
 Gene Kubina

I support HB 478. Clarification for the rights of members of the Real Estate Community has been a long time coming. There are enough grey areas in the law, causing complications for everyone. I for one applaud the Sponsors of this Bill! To clarify is to help everyone of us, real estate agent, consumer, and the court system.

Respectfully,

Esther M. Chambers
 P.O. Box 3386
 Soldotna, AK 99669
 (907) 262-5282 / 262-1770



Post-It™ brand fax transmittal memo 7671		# of pages 1	
To: <i>CLYSON</i>	From: <i>ESTHER</i>		
Co: <i>LIO</i>	Co: <i>FREEDOM RE</i>		
Dept:	Phone# <i>262-1770</i>		
Fax# <i>283-3075</i>	Fax# <i>262-7166</i>		



FREEDOM REALTY


170 N. Birch Street
Soldotna, Alaska 99669
(907) 262-1770 FAX 262-7166
1-800-554-1770

REALTOR®

February 19, 1996

This letter is to inform you that I am in favor of HB 478. The proposed Rule 33.3 from Alaska Bar Association is an unreasonable expense to homebuyers and sellers.

Respectfully,



Myla A. McFarland GRI, CRS
Associate Broker
Freedom Realty





9040 Glacier Highway, Juneau, AK 99801 TELEPHONE (907) 789-3888
FAX (907) 789-7038

February 16, 1996

Representative Pete Kott
House Labor and Commerce Committee
Alaska House of Representatives

via Fax # 465-2819

Re: House Bill No. 478

"An Act allowing licensed real estate brokers, associate real estate brokers, and real estate salespersons to prepare certain documents; and providing for an effective date."

This bill would put in to law what is now common practice of the real estate profession. It would allow real estate professionals to continue to provide professional services to the public at a reasonable cost.

I am supporting this bill passing. Please feel free to contact me at any time for any further discussion on this.

Respectfully submitted,

A handwritten signature in cursive script that reads "Ruth".

Ruth Blackwell
Associate Broker

Barbara Craig Realty
P.O. Box 02-0422
Juneau, Alaska 99802
907-586-9091
(fax 586-9093)

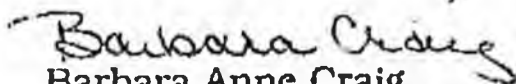
Feb. 16, 1996

Ref: HB 478

Dear Representative Kott,

I urge your support of HB 478. Realtors have always had the right to assist buyers and sellers with filling out standard real estate forms. Any change to this current system of doing business would cost the real estate industry and consumers more money--I urge your **support of HB 478.**

Respectfully,


Barbara Anne Craig
Owner, Broker

February 17, 1996

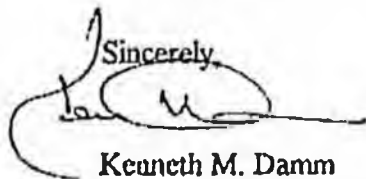
Pete Kott Fax #465-2819
House labor and Commerce Committee

RE: HB478

Dear Pete,

Please support HB478 so as to allow state licenced Realtors to continue to prepare documents that have been traditionally prepared in the normal course of the realty business.
Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ken Damm', with a large, sweeping flourish extending to the left.

Keuneth M. Damm
Sales Associate Chelsea Realty &
Legislative Affairs Officer
Kodiak Board of Realtors



Edgar W. Smoot

February 19, 1996

To Representative Pete Kott.
Ref: House Bill 478

I strongly support and urge passage of House Bill 478. This legislation is crucial to the health and well being of the real estate industry in the State of Alaska. Without this legislation, the cost to property owners, both in time and money, would dramatically increase as well. Again, I strongly support this legislation.

Edgar W Smoot
Associate Broker.



RE/MAX of Eagle River, Inc.

16600 Centerfield Dr., #201
Eagle River, Alaska 99577
Office: (907) 694-4200
Fax: (907) 696-0214

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 456

Revision Date: 30-Jan-96
 Title: Board of Storage Tank Assistance
 Sponsor: Labor and Commerce
 Requestor: House Labor and Commerce

Department Affected: Environmental Conservation
 BRU: Spill Prevention and Response
 Component: Storage Tanks

COMPONENT SERIAL NO. 2063

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

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 Receipt	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
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Lynn J. Tomich Kent
 Division: Spill Prevention and Response

Phone: 465-5390
 Date: 2/9/96

Approved by Commissioner: *Ken T. ...*
 Agency: Department of Environmental Conservation

Date: 2/9/96

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2/19/96

To: Representative Pete Kott

Re: House Bill No. 478

Dear Representative Kott;

I strongly support passage of the referenced bill. To deviate from the procedures as outlined in this bill would create an unnecessary burden on the general public, especially those that are in the process of purchasing or selling a home. The burden would be in the form of longer transaction times and higher costs.

I would certainly appreciate your endeavors on getting this bill passed.

Sincerely;

A handwritten signature in dark ink, appearing to read 'Al Romaszewski', written over a horizontal line.

Al Romaszewski
Broker

RE/MAX of Eagle River, Inc.

16600 Centerfield Dr., Suite 201
Eagle River, Alaska 99577
Office: (907) 694-4200
Fax: (907) 696-0214

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CCIM, BA, Associate Broker

March 1, 1996

Honorable Representative Pete Kott:

I am in support of House Bill 478 which allows *licensed real estate brokers and real estate salespersons* to do the job the public expects us to do; ie, prepare documents while providing real estate services. I have been essentially doing this for the twenty years I have been in real estate, and now I can breathe a little deeper that the very essence of my occupation isn't as threatened by an illogical claim that I didn't "...just fill in the blanks". Many times the careful, sentient protection of one's client that doesn't allow a real estate professional to "just fill in the blanks".

Thank you for your time and consideration of this important issue.

Respectfully submitted,

April K. Lee, CCIM
Associate Broker

AKL/jt

RE/MAX Properties, Inc.2600 Cordova, Ste #100
Anchorage, Alaska 99503
Office: (907) 257-0149 Direct, 276-2761 (Main)
Fax: (907) 276-4429, Mobile: 242-5053

Each Office Independently Owned and Operated





REALTOR®

ALASKA ASSOCIATION OF REALTORS, INC.

741 Sesame Street, Suite 100 - Anchorage, Alaska 99503

Telephone 907-563-7133 • Fax 907-561-1779

March 1, 1996

Dear Representative;

As 1996 President of the Alaska Association of REALTORS®, representing the over 1100 members statewide; I urge you to support the passage of HB 478.

Sincerely,

Joan Sheppard

President, Alaska Association of REALTORS®

The Voice for Real Estate™ in Alaska

REALTOR® is a registered mark which identifies a professional in real estate who subscribes to a strict Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS®



BROKER

Michael V. Morris

ASSOCIATE BROKERS

*Karen R. Berg-Forrester
Dick Synhorst*

OFFICE MANAGER

Julie Neff

BAY REALTY INC.

331 E. PIONEER AVENUE

SUITE A

HOMER, ALASKA 99603

PHONE: 907-235-6183

FAX: 907-235-4031



ASSOCIATES

*Tom Hall
Debra Leisek
Terry Yuger*

PROPERTY MANAGER

Teri Stephens

28 February, 1996

To Representatives Norm Rokoberg, Brian Porter, Sean Parnell, Mark Hamley, David Finkelstein, Ramona Barnes, Beverly Masck, Pete Kott, Gail Phillips, Mike Navarre

RE: House Bill 478

I support HB478 in full, especially in its intent to clarify the rights of members of the Real Estate Community. The preparations of earnest money agreements, real property contracts, leases deeds of trust, mortgages and other documents that have traditionally been prepared by real estate business practitioners in the normal conduct of their business. While many of our pre-printed forms have been drawn up by attorneys and there is the need to protect all parties legally, it would seem a little over the top, to make attorneys an intricate part of our daily lives.

We always advise clients and customers to seek legal advice and we give them a service agency list with the names and phone numbers of all attorneys in our area. It is their choice to hire an attorney, but many consumers do not want anything at all to do with attorneys, or the extra charges and fees this would incur. Selling or buying a house has many costs involved and to tack on the cost of required attorney fees would not be popular with the majority of the voting public. As licensed members of our profession we take great care to protect our clients and customers rights and interests.

Thank You for you attention in this matter.

Debra Leisek

Associate

Bay Realty

331 E Pioneer Ave.

Homer, Alaska 99603

907-235-6183

debral@ptialaska.net

BROKER*Michael V. Morris***ASSOCIATE BROKERS***Karen R. Berg-Forrester**Dick Synhorst***OFFICE MANAGER***Julie Neff***BAY REALTY INC.***331 E. PIONEER AVENUE**SUITE A**HOMER, ALASKA 99603**PHONE: 907-235-6183**FAX: 907-235-4031***ASSOCIATES***Tom Hall**Debra Leisek**Terry Yager***PROPERTY MANAGER***Teri Stephens***FAX MEMO 907-694-8945****February 28, 1996****Dear Representative Pete Kott:****Please be aware that I support the HB478.**

The additional cost and time, should attorneys be involved on a daily basis would be overwhelming.

We always advise our clients and customers to contact attorneys for their input, as well as accountants, engineers etc. It makes more sense to review all documents with their attorney than us, agents, reviewing all the work we do with our attorney.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael V. Morris".

Michael V. Morris**Broker****Bay Realty Inc.****MVM/jn**

ASSOCIATED ISLAND BROKERS, INC.

218 CENTER AVENUE, SUITE 200
KODIAK, ALASKA 99615

Post-it® Fax Note	7671	Date	2/27	# of pages	1
To	Pete Kroll	From	C. JOHNSON		
Co./Dept.		Co.			
Phone #	465-2819	Phone #			
Fax #	465-8945	Fax #			

DATE Feb. 27, 1996

SUBJECT HB 478

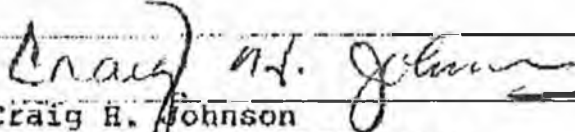
Norm. Pete Kroll -

Dear Rep. Norm Rokeberg:

Please receive this as written to express support for HB 478. I am a licensed real estate salesperson in Kodiak.

Now in my 12th year I feel this legislation is important to all the people of Alaska. It has direct benefits to Buyers, Sellers, & Brokers alleviating costs. Everyone still has the choice of consulting with an attorney in the process of contractual negotiations.

Sincerely,



Craig H. Johnson
Assoc. Broker / AIB owner



ERA COUNTRY HOMES

Date February 28, 1996

Dear Representative,

As a Realtor for twenty-two years, both Agent and Broker, I whole heartedly support passage of HB 478.

Thank you

A handwritten signature in cursive script, appearing to read 'Dee Reekie'.

Dee Reekie
Broker

Representative Norm Rokeberg	Fax	907-258-2916
Representative Brian Porter	Fax	907-258-5510
Representative Sean Pamell	Fax	907-258-8171
Representative Mark Hanley	Fax	907-258-8171
Representative David Finkelstein	Fax	907-258-1261
Representative Ramona Barnes	Fax	907-258-4051
Representative Beverly Masck	Fax	907-376-6180
Representative Pete Kott	Fax	907-694-8945
Representative Gail Phillips	Fax	907-465-3472
Representative Mike Navarre	Fax	907-283-3075

165 E. PARKS HWY #106 • WASILLA, AK 99654 • (907)376-4555 • FAX (907)376-4468

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MEMORANDUM

DATE: February 27, 1996

TO: Representative Pete Kott
Fax 907 ~~581-8945~~
465-2819

FROM: Sharlene Sullivan, Broker
Associated Island Brokers, Inc.
218 Center Ave., Suite 200
Kodiak, AK 99615

RE: HB 478

Please accept this correspondence in favor of HB 478.

I am a real estate broker in Kodiak. I have had an active license since 1977.

To require attorney drawn documents for all real estate transactions would be, in my opinion, a financial hardship for most, if not all, buyers and sellers.

Please review this bill carefully and vote to support HB 478.

Thank you for your time and interest.

Sincerely



Sharlene Sullivan

February 17, 1996

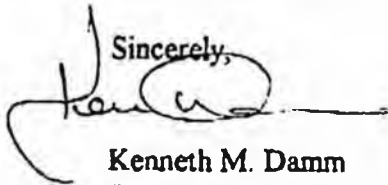
Norman Rokeberg Fax#465-2040
House labor and Commerce Committee

RE: HB478

Dear Pete,

Please support HB478 so as to allow state licenced Realtors to continue to prepare documents that have been traditionally prepared in the normal course of the realty business.
Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Kenneth M. Damm', written over a horizontal line.

Kenneth M. Damm
Sales Associate Chelsea Realty &
Legislative Affairs Officer
Kodiak Board of Realtors

FAX

ALASKA COASTAL HOMES

8363 Old Dairy Road
Juneau, Alaska 99801-8041

Date 02/16/96

Number of pages including cover sheet 1

To:

Rep. Pete Kott
Rep. Brian Porter
Rep. Jerry Sanders
Rep. Beverly Masek
Rep. Kim Elton
Rep. Gene Kubina

Re: HB 478

Fax Phone _____

CC: file / Rep. Norman Rokeberg

From:


Peggy Ann
McConnochie, Broker

Phone (907) 789-3540

Fax Phone (907) 789-3456

Urgent For your review Reply ASAP Please comment

Just a quick note to encourage your endorsement of **HB 478** which allows real estate agents and brokers to continue preparing documents vital to the practice of our profession.

The Alaska Bar Association is currently reviewing a proposal that would drastically change the way that real estate is bought, sold, leased through real estate agents. Their proposal would in effect increase the time involved in a real estate transaction of all types; increase the **cost** of a transaction for buyers, sellers and landlords; and increase the possibility of **failure** of a real estate transaction.

I have been in this business since 1982 and I am extremely active in the Alaska Association of Realtors® and the National Association of Realtors®. In my view, **HB 478** will benefit the general buying, selling and renting community. It will also allow real estate professionals to continue to provide a valuable service to our customers and clients.

Thank you for your support.

**PROPOSED BAR RULE 33.3
DEFINING THE PRACTICE OF LAW IN ALASKA /ON
THE INJUNCTIVE PURPOSES OF AS 08.08.210**

**Approved for publication by
Board of Governors at May 1995 Meeting**

Section 1. UNAUTHORIZED PRACTICE OF LAW PROHIBITED.

No person may practice law in the State of Alaska, unless that person is an active member in good standing of the Alaska Bar Association.

Section 2. "PRACTICE OF LAW" DEFINED.

For the purposes of AS 08.08.210, the practice of law includes any act, other than that excluded by Section 3 of this Rule, whether performed in court, an office or elsewhere, which attorneys or the courts customarily identify as the practice of law, including but not limited to:

- (a) holding oneself out as an attorney or lawyer admitted to practice in Alaska;
- (b) providing advice, for compensation, as to the legal rights and duties applicable to the specific circumstances of any person;
- (c) appearance in or conduct of litigation or performance of any act in connection with proceedings, pending or prospective, before any court or any governmental body constituted by law in this state which is operating in its adjudicative capacity;
- (d) preparation of pleadings and other documents, for compensation, to be used in legal proceedings;
- (e) preparation of documents and contracts, for compensation, by which legal rights are affected; or,

- (f) engaging in any act or practice determined by any court of this state to constitute the practice of law.

Section 3. EXCEPTIONS TO DEFINITION OF PRACTICE OF LAW.

The following acts shall not constitute the practice of law for the purposes of Section 2 of this Rule:

- (a) acts performed for and on behalf of oneself as an individual;
- (b) acts performed by a paralegal or other non-lawyer assistant under the supervision and control of an attorney, and who is both legally and ethically responsible for the acts of the paralegal or nonlawyer assistant and who is (i) admitted to practice in this state or (ii) excepted from the operation of this rule by 3(j) of this rule;
- (c) acts performed pursuant to the authority and in accord with the provisions of Alaska Civil Rule 81(a)(2) and Alaska Bar Rules 43, 43.1, 44, and 44.1;
- (d) acts described in 2(d) of this rule when performed in the regular course of a business or non-profit organization having a primary purpose other than the performance of those acts, provided the acts are limited to the completion of forms adopted by the court system for use by nonattorneys or standardized forms prepared or reviewed by counsel;
- (e) acts described in 2 (b) and (e) of this rule when performed in the regular course of a business, association, labor organization or non-profit organization having a primary purpose other than the performance of those acts;

- (f) acts described in 2(c) and (d) before administrative agencies when they are specifically authorized by Supreme Court rule, statute, administrative regulation, or ordinance;
- (g) acts performed by a court-appointed guardian, conservator or guardian ad litem or a governmental employee provided that such acts are part of the duties of such person and such employee is designated to perform such acts by the Commissioner or Executive Director of the agency to which such employee is assigned;
- (h) acts performed by a public official as part of the duties of that official;
- (i) acts described in 2(b) and (d) when performed without compensation by an incarcerated person for another incarcerated person.
- (j) subject to Alaska Civil Rule 81, acts described in 2(a) - (f) when performed by an attorney authorized to practice law in another jurisdiction provided that such attorney (i) does not represent himself or herself to be a member of the Alaska Bar Association and (ii) does not have his or her principal place of business in Alaska.

Section 4. REMEDIES FOR UNAUTHORIZED PRACTICE OF LAW.

The Attorney General, the Alaska Bar Association or any affected person may maintain an action for injunctive relief in the superior court against any person who performs any act consisting or which may constitute the unauthorized practice of law within the provisions of this Rule. The superior courts may issue temporary, preliminary or permanent orders and injunctions to prevent and restrain violations of this Rule, without bond.

Section 5. DEFINITION.

The term "person" as used in this Rule includes a corporation, company, partnership, firm, association, organization, labor union, business trust, banks, governmental entity, society, or any other type of organization, as well as a natural person.

DISC2:3027(6-13-95)
10/16/95

G:\DS\RULES\ABR33-3.DOC

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

OIL & GAS, CHAIRMAN
LABOR & COMMERCE, VICE CHAIRMAN
ADMINISTRATIVE REGULATION REVIEW, VICE CHAIRMAN
HEALTH, EDUCATION & SOCIAL SERVICES, MEMBER
ECONOMIC DEVELOPMENT, MEMBER



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Representative Norman Rokeberg

SPONSOR STATEMENT

The Alaska Bar Association has submitted proposed Bar Rule 33.3 to "fill a gap" in the current rules concerning the definition of the practice of law.

The current definition of the practice of law as set forth in Rule of the Alaska Bar Rules, and AS 08.08.230, make it a misdemeanor to "(a) representing oneself by word or conduct to be an attorney...; and (b) ... (ii), for compensation, providing advice or prepare documents (italics added) for another which effect legal rights."

The "gap" the Alaska Bar Association has designed in Rule 33.3 appears to be a net to include a broad base from which to prohibit persons from conducting legal activities for the benefit of others.

This bill is intended to clarify the rights of members of the real estate community. The preparations of deeds of trust, mortgages, real property contracts, earnest money agreements, leases and other document that have been traditionally prepared by real estate practitioners in the normal conduct of their business. Any prohibition in expanded bar rules could be interpreted as prohibiting these activities and would have the following effects:

1. Be a restraint of trade;
2. Increase the cost of real estate transactions for both buyers and sellers;
3. Increase the amount of time required to transact real estate business;
4. Be an intrusion in the real estate bargaining process;
5. Increase the possibility of the failure of a real estate transactions.

As an example, if each document of the bargaining process, e.g., the earnest money offer and counteroffer amendments had to be scrutinized by an attorney, then real estate industry would be impeded to the point of collapse, costs would escalate and economy of the state and nation would suffer.

Real estate practitioners should and do advise clients to seek counsel for legal advice, but that choice lays with the consumer.

Moreover, real estate practitioners are licensed by the State of Alaska. They are required to attend mandated continuing education courses and are subject to a major body of common law, statutes and regulations. Individuals active in the real estate field are also subject to a surety bond system and a Code of Ethics. All of these safeguards provide protection to the real estate consumer.

Real estate practitioners have an old adage which says: **"KEEP THE LAWYERS OUT OF A DEAL BECAUSE THEY'LL JUST SCREW IT UP."**

Sponsor

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

OIL & GAS, CHAIRMAN
LABOR & COMMERCE, VICE CHAIRMAN
ADMINISTRATIVE REGULATION REVIEW, VICE CHAIRMAN
HEALTH, EDUCATION & SOCIAL SERVICES, MEMBER
ECONOMIC DEVELOPMENT, MEMBER



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Representative Norman Rokeberg

MEMORANDUM

TO: Representative Pete Kott, Chairman
House Labor & Commerce Committee

FROM: Representative Norman Rokeberg *NOR*

DATE: February 16, 1996

SUBJECT: HB 478 - Allows Real Estate Persons To Prepare Certain Legal Documents

Thankyou for your adding HB 478 to your schedule for next week. Attached is a packet of information for the members of the House Labor & Commerce Committee. In addition a copy of the zero fiscal note from the Department of Commerce and Economic Development has also been included.

If you have any questions please contact myself or my staff person, Shirley Armstrong at 465-4968.

Background



REALTOR®

ALASKA ASSOCIATION OF REALTORS, INC.

741 Sesame Street, Suite 100 - Anchorage, Alaska 99503

Telephone 907-563-7133 - Fax 907-561-1779

February 16, 1996

House Labor & Commerce
Rep. Pete Kott, Chairman

Ref: HB 478

Dear Rep. Kott and Members of the Committee,

The Alaska Bar Association in July of 1995 began circulating among members of the Bar, a proposed rule change to 33.3. Defining the Practice of Law in Alaska. The over 2200 licensed real estate agents in Alaska feel this proposed bar rule change is a direct challenge to their ability to conduct real estate transactions, an activity in which they historically have participated in as part of the lawful pursuit of their business.

This bill (HB 478) would allow brokers, associate brokers and sales persons to continue to complete earnest money contracts, real estate contracts, leases and other documents necessary to the day-to-day conduct of their business. No fee is charged for their preparation. Substantially all of the agreements prepared by brokers involve preprinted forms that have been drafted and approved by attorneys.

On behalf of the Alaska Association of REALTORS®, I urge that your Committee passes HB 478.

Sincerely,

Dea Turner
Executive Vice President
Alaska Association of REALTORS®



ALASKA ASSOCIATION OF REALTORS, INC.
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503
Telephone 907-563-7133 • Fax 907-561-1779

January 15, 1996

Re: Unauthorized Practice of Law
Proposed Rule 33.3 From Alaska Bar Association

The Alaska Association of REALTORS® and its over 1100 members are seeking legislation to negate the opportunity for the Alaska Bar Associations' unreasonable attempt to restrict the preparation of printed earnest money agreements to attorneys.

There are approximately 2200 licensed real estate brokers and salespersons in the State of Alaska. This proposed bar rule change represents a direct challenge to their right to prepare earnest money agreements in connection with the sale of real property, an activity in which they historically have participated as part of the lawful pursuit of their business.

Earnest money agreements are prepared by brokers only as an incident of their business in connection with transactions negotiated by them and no fee is charged for their preparation. Substantially all of the agreements prepared by brokers involve the use of preprinted forms that have been drafted and approved by attorneys. Brokers typically fill in the blanks on these forms.

Brokers do not hold themselves out to be lawyers and do not claim legal expertise. More over, Brokers do not discourage buyers and sellers from retaining lawyers to draft the earnest money agreement.

Article 13 of the Realtors Code of Ethics, to which all members subscribe provides: Realtors shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

If Brokers are prohibited from preparing earnest money agreements, the negotiation process will inevitably become more complicated. Parties will be obliged either to prepare their own agreements, conduct oral negotiations or involve an attorney at every stage of the negotiation, with the unavoidable increase in expense and delay.

* [Therefore, the Alaska Association of REALTORS® is seeking legislation to preclude this unreasonable restriction at the expense of homebuyers and sellers.] *



FEB 06 1996

ALASKA BAR

A S S O C I A T I O N

February 5, 1996

VIA FAX 1-907-465-2040, 2 PAGES & FIRST CLASS MAIL

Representative Norman Rokeberg
State Capitol
Juneau, AK 99801-1182

RE: Proposed Bar Rule 33.3

Dear Representative Rokeberg:

I spoke with Shirley Armstrong of your office today regarding a concern expressed to you from real estate professionals about the impact of proposed Bar Rule 33.3 defining the unauthorized practice of law.

Proposed Bar Rule 33.3 provides specific exceptions for the work currently being done by real estate professionals. The proposed rule divides that work into two categories: (1) work done outside of a court and (2) work which would be used in a legal proceeding.

(1) For work done outside of a court, Section 3(e) would permit a real estate professional to provide advice for compensation concerning the legal rights and duties of a person and to prepare documents and contracts for compensation by which legal rights are affected when those acts are performed in the regular course of the real estate business because that business has a primary purpose (selling real property, property management, etc.) other than the performance of those acts.

(2) For work which would be used in a legal proceeding, Section 3(d), would permit the real estate professional to complete forms, adopted by the court system or prepared or approved by counsel, in the regular course of the real estate business because that business has a primary purpose (selling real property, property management) other than the completion of these forms.

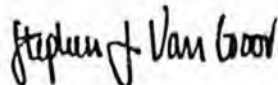
In other words, this rule is *not* designed to interfere with real estate professionals doing their job. Rather it is designed to protect the public from untrained, unlicensed and unaccountable persons who are currently taking money from vulnerable people for legal services they are not equipped to provide.

Representative Norman Rokeberg
February 5, 1996
Page 2 of 2

Please feel free to contact me at your convenience with any other questions you may have concerning the purpose or intent of this proposed rule.

Sincerely,

ALASKA BAR ASSOCIATION



Stephen J. Van Goor
Bar Counsel

cc: Deborah O'Regan, Executive Director

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Code of Ethics and Standards of Practice

of the

NATIONAL ASSOCIATION OF REALTORS®

Effective January 1, 1996

Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATE®s.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

Preamble...

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession.

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule. "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities and to conduct their business in accordance with the tenets set forth below.

Duties to Clients and Customers

Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation of absolute fidelity to the client's interests is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. *(Amended 1/93)*

• Standard of Practice 1-1

REALTORS®, when acting as principals in a real estate transaction remain obligated by the duties imposed by the Code of Ethics. *(Amended 1/93)*

• Standard of Practice 1-2

The duties the Code of Ethics imposes on agents/representatives are applicable to REALTORS® acting as agents, transaction brokers, facilitators, or in any other recognized capacity except for any duty specifically exempted by law or regulation. *(Adopted 1/95)*

• Standard of Practice 1-3

REALTORS®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

• Standard of Practice 1-4

REALTORS®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR®'s services. *(Amended 1/93)*

• Standard of Practice 1-5

REALTORS® may represent the seller/landlord and buyer/tenant in the same transaction only after full disclosure to and with informed consent of both parties. *(Adopted 1/93)*

• Standard of Practice 1-6

REALTORS® shall submit offers and counter-offers objectively and as quickly as possible. *(Adopted 1/93, Amended 1/95)*

• Standard of Practice 1-7

When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. *(Amended 1/93)*

• **Standard of Practice 1-8**

REALTORS® acting as agents of buyers/tenants shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. REALTORS® acting as agents of buyers/tenants shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. *(Adopted 1/93)*

• **Standard of Practice 1-9**

The obligation of REALTORS® to preserve confidential information provided by their clients continues after the termination of the agency relationship. REALTORS® shall not knowingly, during or following the termination of a professional relationship with their client:

- 1) reveal confidential information of the client; or
- 2) use confidential information of the client to the disadvantage of the client; or
- 3) use confidential information of the client for the REALTOR®'s advantage or the advantage of a third party unless the client consents after full disclosure except where the REALTOR® is:
 - a) required by court order; or
 - b) it is the intention of the client to commit a crime and the information is necessary to prevent the crime; or
 - c) necessary to defend the REALTOR® or the REALTOR®'s employees or associates against an accusation of wrongful conduct. *(Adopted 1/93, Amended 1/95)*

• **Standard of Practice 1-10**

REALTORS® shall, consistent with the terms and conditions of their property management agreement, competently manage the property of clients with due regard for the rights, responsibilities, benefits, safety and health of tenants and others lawfully on the premises. *(Adopted 1/95)*

• **Standard of Practice 1-11**

REALTORS® who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. *(Adopted 1/95)*

Article 2

REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency duties owed to their clients. *(Amended 1/93)*

• **Standard of Practice 2-1**

REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines. *(Amended 1/96)*

• **Standard of Practice 2-2**

When entering into listing contracts, REALTORS® must advise sellers/landlords of:

- 1) the REALTOR®'s general company policies regarding cooperation with subagents, buyer/tenant agents, or both;
- 2) the fact that buyer/tenant agents, even if compensated by the listing broker, or by the seller/landlord will represent the interests of buyers/tenants; and
- 3) any potential for the listing broker to act as a disclosed dual agent, e.g. buyer/tenant agent. *(Adopted 1/93)*

• **Standard of Practice 2-3**

When entering into contracts to represent buyers/tenants, REALTORS® must advise potential clients of:

- 1) the REALTOR®'s general company policies regarding cooperation with other firms; and
- 2) any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g. listing broker, subagent, landlord's agent, etc. *(Adopted 1/93)*

• **Standard of Practice 2-4**

REALTORS® shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

• **Standard of Practice 2-5**

Factors defined as "non-material" by law or regulation or which are expressly referenced in law or regulation as not being subject to disclosure are considered not "pertinent" for purposes of Article 2. *(Adopted 1/93)*

Article 3

REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. *(Amended 1/95)*

• **Standard of Practice 3-1**

REALTORS®, acting as exclusive agents of sellers/landlords, establish the terms and conditions of offers to cooperate. Unless expressly indicated in offers to cooperate, cooperating brokers may not assume that the offer of cooperation includes an offer of compensation. Terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation. *(Amended 1/94)*

• **Standard of Practice 3-2**

REALTORS® shall, with respect to offers of compensation to another REALTOR®, timely communicate any change of compensation for cooperative services to the other REALTOR® prior to the time such REALTOR® produces an offer to purchase/lease the property. *(Amended 1/94)*

• **Standard of Practice 3-3**

Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. *(Adopted 1/94)*

• **Standard of Practice 3-4**

REALTORS®, acting as listing brokers, have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements (i.e., listings where one amount of commission is payable if the listing broker's firm is the procuring cause of sale/lease and a different amount of commission is payable if the sale/lease results through the

efforts of the seller/landlord or a cooperating broker). The listing broker shall, as soon as practical, disclose the existence of such arrangements to potential cooperating brokers and shall, in response to inquiries from cooperating brokers, disclose the differential that would result in a cooperative transaction or in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client. *(Amended 1/94)*

- **Standard of Practice 3-5**

It is the obligation of subagents to promptly disclose all pertinent facts to the principal's agent prior to as well as after a purchase or lease agreement is executed. *(Amended 1/93)*

- **Standard of Practice 3-6**

REALTORS® shall disclose the existence of an accepted offer to any broker seeking cooperation. *(Adopted 5/86)*

- **Standard of Practice 3-7**

When seeking information from another REALTOR® concerning property under a management or listing agreement, REALTORS® shall disclose their REALTOR® status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their representational status. *(Amended 1/95)*

- **Standard of Practice 3-8**

REALTORS® shall not misrepresent the availability of access to show or inspect a listed property. *(Amended 11/87)*

Article 4

REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative. *(Amended 1/91)*

- **Standard of Practice 4-1**

For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by REALTORS® prior to the signing of any contract. *(Adopted 2/86)*

Article 5

REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 6

When acting as agents, REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their principal, without the principal's knowledge and consent. *(Amended 1/92)*

- **Standard of Practice 6-1**

REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. *(Amended 5/88)*

- **Standard of Practice 6-2**

When acting as agents or subagents, REALTORS® shall disclose to a client or customer if there is any financial benefit or fee the REALTOR® or the REALTOR®'s firm may receive as a direct result of having recommended real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.) other than real estate referral fees. *(Adopted 5/88)*

Article 7

In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR®'s client or clients. *(Amended 1/93)*

Article 8

REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

Article 9

REALTORS®, for the protection of all parties, shall assure whenever possible that agreements shall be in writing, and shall be in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party upon their signing or initialing. *(Amended 1/95)*

- **Standard of Practice 9-1**

For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. *(Amended 1/93)*

Duties to the Public

Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, or national origin. *(Amended 1/90)*

- **Standard of Practice 10-1**

REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood and shall not engage in any activity which may result in panic selling. REALTORS® shall not print, display or circulate any statement or advertisement with respect to the selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status or national origin. *(Adopted 1/94)*

Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and

industrial real estate brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. *(Amended 1/95)*

• **Standard of Practice 11-1**

The obligations of the Code of Ethics shall be supplemented by and construed in a manner consistent with the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation.

The obligations of the Code of Ethics shall not be supplemented by the USPAP where an opinion or recommendation of price or pricing is provided in pursuit of a listing, to assist a potential purchaser in formulating a purchase offer, or to provide a broker's price opinion, whether for a fee or not. *(Amended 1/96)*

• **Standard of Practice 11-2**

The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR® is an agent or subagent, the obligations of a fiduciary. *(Adopted 1/95)*

• **Standard of Practice 11-3**

When REALTORS® provide consultative services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultative services, a separate compensation may be paid with prior agreement between the client and REALTOR®. *(Adopted 1/96)*

Article 12

REALTORS® shall be careful at all times to present a true picture in their advertising and representations to the public. REALTORS® shall also ensure that their professional status (e.g., broker, appraiser, property manager, etc.) or status as REALTORS® is clearly identifiable in any such advertising. *(Amended 1/93)*

• **Standard of Practice 12-1**

REALTORS® shall not offer a service described as "free of charge" when the rendering of a service is contingent on the obtaining of a benefit such as a listing or commission.

• **Standard of Practice 12-2**

REALTORS® shall not represent that their services are free or without cost if they expect to receive compensation from any source other than their client. *(Adopted 1/95)*

• **Standard of Practice 12-3**

The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR® making the offer. However, REALTORS® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the REALTOR®'s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice. *(Amended 1/95)*

• **Standard of Practice 12-4**

REALTORS® shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, REALTORS® shall not quote a price different from that agreed upon with the seller/landlord. *(Amended 1/93)*

• **Standard of Practice 12-5**

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise listed property without disclosing the name of the firm. *(Adopted 11/86)*

• **Standard of Practice 12-6**

REALTORS®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTORS® or real estate licensees. *(Amended 1/93)*

• **Standard of Practice 12-7**

Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have "sold" the property. Prior to closing, a cooperating broker may post a "sold" sign only with the consent of the listing broker. *(Amended 1/96)*

Article 13

REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 14

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any disciplinary proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes. *(Amended 1/90)*

• **Standard of Practice 14-1**

REALTORS® shall not be subject to disciplinary proceedings in more than one Board of REALTORS® or affiliated institute, society or council in which they hold membership with respect to alleged violations of the Code of Ethics relating to the same transaction or event. *(Amended 1/95)*

• **Standard of Practice 14-2**

REALTORS® shall not make any unauthorized disclosure or dissemination of the allegations, findings, or decision

developed in connection with an ethics hearing or appeal or in connection with an arbitration hearing or procedural review. (Amended 1/92)

- **Standard of Practice 14-3**

REALTORS® shall not obstruct the Board's investigative or disciplinary proceedings by instituting or threatening to institute actions for libel, slander or defamation against any party to a professional standards proceeding or their witnesses. (Adopted 11/87)

- **Standard of Practice 14-4**

REALTORS® shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. (Adopted 11/88)

Duties to REALTORS®

Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices. (Amended 1/92)

Article 16

REALTORS® shall not engage in any practice or take any action inconsistent with the agency of other REALTORS®.

- **Standard of Practice 16-1**

Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS® involving commission, fees, compensation or other forms of payment or expenses. (Adopted 1/93, Amended 1/95)

- **Standard of Practice 16-2**

Article 16 does not preclude REALTORS® from making general announcements to prospective clients describing their services and the terms of their availability even though some recipients may have entered into agency agreements with another REALTOR®. A general telephone canvass, general mailing or distribution addressed to all prospective clients in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed "general" for purposes of this standard.

Article 16 is intended to recognize as unethical two basic types of solicitations:

First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR®; and

Second, mail or other forms of written solicitations of prospective clients whose properties are exclusively listed with another REALTOR® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, "for sale" or "for rent" signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS® under offers of subagency or cooperation. (Amended 1/93)

- **Standard of Practice 16-3**

Article 16 does not preclude REALTORS® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage). However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS® to whom such offers to provide services may be made. (Amended 1/93)

- **Standard of Practice 16-4**

REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration date and nature of such listing; i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR® may contact the owner to secure such information and may discuss the terms upon which the REALTOR® might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing. (Amended 1/94)

- **Standard of Practice 16-5**

REALTORS® shall not solicit buyer/tenant agency agreements from buyers/tenants who are subject to exclusive buyer/tenant agency agreements. However, if a buyer/tenant agent, when asked by a REALTOR®, refuses to disclose the expiration date of the exclusive buyer/tenant agency agreement, the REALTOR® may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR® might enter into a future buyer/tenant agency agreement or, alternatively, may enter into a buyer/tenant agency agreement to become effective upon the expiration of any existing exclusive buyer/tenant agency agreement. (Adopted 1/94)

- **Standard of Practice 16-6**

When REALTORS® are contacted by the client of another REALTOR® regarding the creation of an agency relationship to provide the same type of service, and REALTORS® have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agency agreement or, alternatively, may enter into an agency agreement which becomes effective upon expiration of any existing exclusive agreement. (Amended 1/93)

- **Standard of Practice 16-7**

The fact that a client has retained a REALTOR® as an agent in one or more past transactions does not preclude other REALTORS® from seeking such former client's future business. (Amended 1/93)

- **Standard of Practice 16-8**

The fact that an agency agreement has been entered into with a REALTOR® shall not preclude or inhibit any other REALTOR® from entering into a similar agreement after the expiration of the prior agreement. (Amended 1/93)

- **Standard of Practice 16-9**

REALTORS®, prior to entering into an agency agreement, have an affirmative obligation to make reasonable efforts to

determine whether the client is subject to a current, valid exclusive agreement to provide the same type of real estate service. (Amended 1/93)

• **Standard of Practice 16-10**

REALTORS[®], acting as agents of buyers or tenants, shall disclose that relationship to the seller/landlord's agent at first contact and shall provide written confirmation of that disclosure to the seller/landlord's agent not later than execution of a purchase agreement or lease. (Amended 1/93)

• **Standard of Practice 16-11**

On unlisted property, REALTORS[®] acting as buyer/tenant agents shall disclose that relationship to the seller/landlord at first contact for that client and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement.

REALTORS[®] shall make any request for anticipated compensation from the seller/landlord at first contact. (Amended 1/93)

• **Standard of Practice 16-12**

REALTORS[®], acting as agents of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. (Amended 1/93)

• **Standard of Practice 16-13**

All dealings concerning property exclusively listed, or with buyer/tenants who are exclusively represented shall be carried on with the client's agent, and not with the client, except with the consent of the client's agent. (Adopted 1/93)

• **Standard of Practice 16-14**

REALTORS[®] are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not represented by an exclusive agent but shall not knowingly obligate them to pay more than one commission except with their informed consent. (Amended 1/94)

• **Standard of Practice 16-15**

In cooperative transactions REALTORS[®] shall compensate cooperating REALTORS[®] (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other REALTORS[®] without the prior express knowledge and consent of the cooperating broker.

• **Standard of Practice 16-16**

REALTORS[®], acting as subagents or buyer/tenant agents, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer's agents nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation. (Amended 1/93)

• **Standard of Practice 16-17**

REALTORS[®] acting as subagents or as buyer/tenant agents, shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker. (Amended 1/93)

• **Standard of Practice 16-18**

REALTORS[®] shall not use information obtained by them from

the listing broker, through offers to cooperate received through Multiple Listing Services or other sources authorized by the listing broker, for the purpose of creating a referral prospect to a third broker, or for creating a buyer/tenant prospect unless such use is authorized by the listing broker. (Amended 1/93)

• **Standard of Practice 16-19**

Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord. (Amended 1/93)

Article 17

In the event of a contractual dispute between REALTORS[®] associated with different firms, arising out of their relationship as REALTORS[®], the REALTORS[®] shall submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter.

In the event clients of REALTORS[®] wish to arbitrate contractual disputes arising out of real estate transactions, REALTORS[®] shall arbitrate those disputes in accordance with the regulations of their Board, provided the clients agree to be bound by the decision. (Amended 1/94)

• **Standard of Practice 17-1**

The filing of litigation and refusal to withdraw from it by REALTORS[®] in an arbitrable matter constitutes a refusal to arbitrate. (Adopted 2/86)

• **Standard of Practice 17-2**

Article 17 does not require REALTORS[®] to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. (Amended 1/93)

• **Standard of Practice 17-3**

REALTORS[®], when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS[®] absent a specific written agreement to the contrary. (Adopted 1/96)

The Code of Ethics was adopted in 1913. Amended at the Annual Convention in 1924, 1928, 1950, 1951, 1952, 1955, 1956, 1961, 1962, 1974, 1982, 1986, 1987, 1989, 1990, 1991, 1992, 1993, 1994 and 1995.

Explanatory Notes

The reader should be aware of the following policies which have been approved by the Board of Directors of the National Association:

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR[®], the charge must read as an alleged violation of one or more Articles of the Code. Standards of Practice may be cited in support of the charge.

The Standards of Practice serve to clarify the ethical obligations imposed by the various Articles and supplement, and do not substitute for, the Case Interpretations in Interpretations of the Code of Ethics.

Modifications to existing Standards of Practice and additional new Standards of Practice are approved from time to time. Readers are cautioned to ensure that the most recent publications are utilized.



HB

479

Alaska State Legislature

Interim:
145 Main Street Loop #223
Kenai, Alaska 99611
(907) 283-7095
(907) 283-3075 (fax)
(907) 262-7574 (h)



Session:
State Capitol
Juneau, Alaska 99801
(907) 465-2693
(fax) (907) 465-3835

Representative Gary L. Davis

MEMORANDUM

To: Labor and Commerce Committee
From: Rep. Gary Davis
Re: proposed amendments for CS for HB 479
Date: March 5, 1996

	<u>page</u>	<u>line</u>	<u>amendment</u>
1).	2	12&13	delete [or of a person who engages in an equine activity but does not ride, train, or drive an equine;]
2).	2	6	a)change to read, " <u>faulty</u> or <u>defective</u> equipment, tack or <u>product</u> provided by the equine activity sponsor..."
3).	2	14	delete entire line
4).	2	23	change to read, "for instructing during an equine activity, <u>for sponsoring an equine activity</u> , or for the use of an equine."
5).	2	30	change to read, "collisions with other equines, objects <u>or persons</u> :"

Representing House District 8
Soldotna, Sterling, Funny River, Cooper Landing, Hope, Moose Pass, Seward

- 6). 2 20 change to read, "a person who provides an equine, land or facilities for an equine activity;"
- 7). 1 9 change to read, "equine activity sponsor, an equine professional, or an equine owner"

"Equine owner" is being included to cover those people who own equines for personal use but do not provide them for an equine activity as defined under "equine activity sponsor."

STATE EQUINE LAWS

STATE	LAW PASSED	SIGNS POSTED	RELEASE W/WARNING	SPECIAL REQUIREMENTS
Alabama	Yes	Yes	Yes	
Alaska	No			
Arizona	Yes	No	Yes	
Arkansas	Yes	Yes	No	
California	Pending			
Colorado	Yes	Yes	Yes	
Connecticut	Yes	No	No	
Delaware	Yes			
Florida	Yes	Yes	Yes	
Georgia	Yes	Yes	Yes	
Hawaii	Yes	No	No	
Idaho	Yes	No	No	
Illinois	Yes	Yes	Yes	
Indiana	Yes	Yes	Yes	
Iowa	No			
Kansas	Yes	Yes	Yes	
Kentucky	Pending			
Louisiana	Yes	Yes	Yes	
Maine	Yes	No	Yes	
Maryland	No			
Massachusetts	Yes	Yes	Yes	
Michigan	Yes	Yes	Yes	
Minnesota	Yes	Yes	No	<i>Non-Profit entities only</i>
Mississippi	Yes	Yes	Yes	<i>Also creates volunteer immunities</i>
Missouri	Yes	Yes	Yes	
Montana	Yes	No	No	
Nebraska	Pending			
Nevada	No			
New Hampshire	No			
New Jersey	Pending			
New Mexico	Yes	Yes	No	
New York	Pending			
North Carolina	Pending			

STATE EQUINE LAWS

STATE	LAW PASSED	SIGNS POSTED	RELEASE W/WARNING	SPECIAL REQUIREMENTS
North Dakota	Yes	No	No	
Ohio	No			
Oklahoma	Pending			
Oregon	Yes	No	Yes	Immunities apply to adult participants
Pennsylvania	Pending			
Rhode Island	Yes	Yes	Yes	
South Carolina	Yes	Yes	Yes	
South Dakota	Yes	Yes	No	
Tennessee	Yes	Yes	Yes	
Texas	Yes	Yes	Yes	
Utah	Yes	No	No	
Vermont	Pending			
Virginia	Yes	No	Yes	
Washington	Yes	No	No	
West Virginia	Yes	No	*No	Participants must sign statement.
Wisconsin	Yes	No	No	
Wyoming	Yes	No	No	
TOTALS	PASSED: 35	PENDING: 9	NO: 6	

FROM : KAY JAY INC BUTCH SCHOLLEBERG PHONE NO. : 907 567 3467

P01

February 28, 1996

To: House Labor and Commerce Committee

Dear Sirs:

I regret that I am unable to attend the scheduled teleconference hearing on proposed House Bill #479. I strongly support this bill.

We own a riding facility/farm on the Kenai Peninsula. A good portion of our farm income comes from giving riding lessons or renting our horses. Our farm is often visited by local school children who always want to top off their visit with a horse ride. I also have been a 4-H Horse Leader for 14 years.

In addition to the economic value of our business, through my continued work with 4-H and other kids, I constantly see the benefits they receive by having something constructive to do, caring for and learning about horses. I have helped kids successfully compete at a State level in equine events.

Although we run a very professional business and I am constantly upgrading my education to stay abreast of new training methods and products, the fear of a 'trivouous' lawsuit creates incredible mental stress. I often find myself realizing how much risk I am putting myself and my family in due to the 'sue happy' public.

We also sell hay from the farm and all of our hay sales for the last several years has gone to people that raise horses. I don't know if there are any accurate numbers on how many horses are in the State but they play an important part in the diversity of the economy. This is an important bill because it will make it easier for others to get into the horse business.

As stated in HB #479, even the most docile horse can be unpredictable. I feel that if the instructor or horse owner has done their best to educate the potential rider of the possible accidents, and the rider chooses to ride anyway, they should shoulder the responsibility for what might happen after that.

Sincerely,



Shirley Schollenberg

HC 67 Box 250

Anchor Point, Alaska 99556

(907)567-3467

Alaska Legislative Information Office
600 East Railroad Ave
Wasilla, AK 99654

Re: House Bill No. 479

To Whom it may concern:

I respectfully request that you support House Bill No. 479 "Immunity for injuries resulting from Equine Activities." This is a much needed addition to Alaska Law to protect an industry that has a propensity for the unpredictability of an animal.

However, I should like to suggest that a few amendments be considered:

Line 6 page 2 and line 14 page 2 appear to be able to be combined to something like
the failure of equipment or tack that is in poor repair or known to be defective provided by the equine activity sponsor or equine professional.

Line 13 add at the end
unless the injury or death is caused by that persons own negligence

Line 23 change wording to include
or sponsoring after the word during

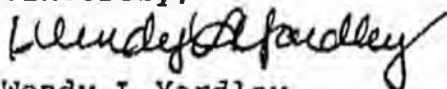
Line 30 add at the end of line
persons

Also somewhere in this bill should be something about Farriers and Veterinarians.

Someone may wish to examine the similar laws of the states of Washington and Colorado and I believe Idaho and Oregon and California have them also.

Thank you for taking the time to read my concerns and I hope to be able to follow this bill through the process.

Sincerely,



Wendy L Yardley
PO Box 874581
Wasilla, AK 99687

HOUSE BILL NO. 479

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE G.DAVIS

Introduced: 2/7/96

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to civil liability for injuries or death resulting from equine**
2 **activities."**

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

4 *** Section 1. AS 09.65 is amended by adding a new section to read:**

5 **Sec. 09.65.145. IMMUNITY FOR INJURIES RESULTING FROM EQUINE**
6 **ACTIVITIES. (a) Except as provided in (b) of this section, a person, and the personal**
7 **representative of a person, who suffers an injury or death resulting from an inherent**
8 **risk of an equine activity may not recover civil damages from an equine activity**
9 **sponsor or an equine professional.**

10 **(b) This section does not affect a civil action for damages resulting from**

11 **(1) reckless or intentional misconduct of the equine activity sponsor or**
12 **equine professional or agents or employees of the equine activity sponsor or equine**
13 **professional; for purposes of this paragraph, "reckless" does not include gross**
14 **negligence;**

1 (2) a dangerous latent condition that is known or should have been
2 known to the equine activity sponsor or equine professional and for which warning
3 signs have not been conspicuously posted if the equine activity sponsor or equine
4 professional owns, leases, rents, or is otherwise in lawful possession and control of the
5 land or facilities where the injury or injuries resulting in death occurred;

6 (3) ^{defective product,} equipment or tack provided by the equine activity sponsor or equine
7 professional;

8 (4) the failure of the equine activity sponsor or equine professional who
9 provided the equine to make reasonable efforts to determine the ability of the injured
10 person to participate safely in the equine activity and to safely manage the equine
11 involved in the equine activity;

12 (5) injury or death of a spectator, or of a person who engages in an
13 equine activity but does not ride, train, or drive an equine;

14 ~~(6) a defective product.~~

15 (c) In this section,

16 (1) "equine" means a horse, pony, mule, donkey, or hinny;

17 (2) "equine activity" means a show, fair, competition, performance, or
18 parade involving an equine, equine riding, inspecting, evaluating, boarding, training,
19 or teaching;

20 (3) "equine activity sponsor" means a person who provides land or
21 facilities for an equine activity;

22 (4) "equine professional" means a person who receives compensation
23 for instructing during an equine activity or compensation for the use of an equine;

24 (5) "inherent risk of an equine activity" means a danger or condition
25 that is an integral part of an equine activity, including

26 (A) the propensity of an equine to behave in a way that may
27 result in injury, harm, or death to a person on or around the equine;

28 (B) the unpredictability of an equine's reaction to a sound,
29 sudden movement, or unfamiliar object, person, or other animal;

30 (C) collisions with other equines or objects; or

31 (D) the potential of a person to act in a negligent manner that

1 may contribute to injury to the person or others.

2 * Sec. 2. This Act applies to a civil action that accrues on or after the effective date of this

3 Act.

Alaska State Legislature

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145 Main Street Loop #223
Kenai, Alaska 99611
(907) 283-7095
(907) 283-3075 (fax)
(907) 262-7574 (h)



Session:

State Capitol
Juneau, Alaska 99801
(907) 465-2693
(fax) (907) 465-3835

Representative Gary L. Davis

SECTIONAL ANALYSIS OF HB 479 A BILL FOR AN ACT ENTITLED

"An Act relating to civil liability for injuries or death resulting from equine activities."

Section 1 is an addition to AS 09.65 stating that a sponsor or professional of equine activity is not liable for civil damages that arise from the injury or death resulting from equine activities.

This section also outlines the exceptions to this act. If an equine activity sponsor or professional is guilty of reckless or intentional misconduct, he/she can still be held liable for damages. Other exceptions are the failure to provide adequate warning signs for a dangerous condition, faulty equipment, allowing an unskilled participant to become engaged in a risky activity and the injury or death of a spectator.

In the latter part of section 1, the key terms are defined in order to provide clarity.

Section 2 states that this act would apply to all civil actions that occur on or after the effective date, which is 90 days after the bill becomes law.

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State Capitol
Juneau, Alaska 99801
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(fax) (907) 465-3835

Representative Gary L. Davis

SPONSOR STATEMENT

HB 479

"An Act relating to civil liability for injuries or death resulting from equine activities."

HB 479 is intended to provide owners and handlers in the equine profession extra protection from civil liability lawsuits. The reasoning behind this proposition is that horses and related animals can be unpredictable in their behavior. This unpredictability is an inherent characteristic of some domestic animals, especially equines because of their size and specific utilization for human activities.

A horse that is carrying a rider can be easily spooked by a number of events. If the rider is subsequently thrown from the horse, the owner or trainer may not be directly responsible for the accident. This would be true as long as the owner or trainer has cared for and trained the equine in the best possible manner.

Obviously, there are a number of exceptions to this piece of legislation. If the owner or trainer is negligent in properly caring for the horse or uses faulty equipment (such as the saddle), they would not be immune to civil liability. This bill also recognizes other exceptions, such as placing an obviously inexperienced rider on a high-spirited horse known for demonstrating unpredictable behavior.

People who participate in equine activities are aware beforehand of the risks involved. Many of the resulting unfortunate accidents are intrinsic in nature. Therefore, innocent parties should not be held accountable simply for compensation.

Representing House District 8

Seldovia, Sterling, Egan, River, Cooper Landing, Hoonah, Moose Pass, Seward

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 479

Revision Date: _____
 Title: Immunity for Equine Activities

Department: Commerce and Economic Development

BRU: Insurance

Component: Operations

Sponsor: Representative G. Davis

Requestor: Representative G. Davis

COMPONENT SERIAL NO. #354

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES

CHANGE IN REVENUES

FUND SOURCE

(Thousands of Dollars)

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

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Joan Brown, Administrative Officer

Division: Insurance

Phone: 465-2597

Date: 2/13/96

Approved by Commissioner: William L. Henstle

Agency: Commerce and Economic Development

Date: 2-13-96

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a feed store"*

FEBRUARY 23, 1996

TO Rep. Gary Davis
Re: HB 479

I support HB 479 which limits civil liability in equine activities.

When one deals with animals anything can happen, even when every precaution is taken

People have to take responsibility for their own participation if they want horse owners to share their talents and their horses.

I, and others, have specifically curtailed horse riding lessons, boarding, and general neighborly horse activity because of fear of lawsuits. Therefore, the possibility of frivolous suits definitely affects direct equine business and related markets like feed and tack.

Support HB 479.

Yours,

Dianna Toplin
Dianna Toplin
President



BOARDING, LESSONS
TACK SHOP, FEED STORE
STABLE SUPPLIES

8791 CAMERON ST.
ANCHORAGE, ALASKA 99507
(907) 349-2051

February 26, 1996

Rep. Gary Davis,

Fax # 1(907) 465-3835

Dear Sir:

We at M-Bar support H.B.479
Concerning equine liabilities.

This bill will be good for
business, families, young people as it
will encourage more equine related
activities.

Thanks for your consideration,
Marge Seidler,
(owner: M-Bar)