

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9629 SENATE LABOR & COMMERCE

**SB**

**319**

# FISCAL NOTE

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO. SB 319**

Revision Date (Note if correction) _____	Dept. Affected _____	Law _____
Title <u>An Act relating to arbitration; amending Rules 57(a)</u>	BRU _____	Civil Division _____
<u>and 77(g), Alaska Rules of Civil Procedure; ...</u>	Component _____	Commercial _____
Sponsor <u>Senator Phillips</u>	_____	
Requester <u>Senate Labor and Commerce Committee</u>	Component Serial No. <u>2211</u>	_____

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

SB 319 amends Title 9, Chapter 43, relating to arbitration. The bill adds a new section requiring that arbitration agreements contain a prominent notice that states that a party has the option to compel arbitration and to bind the other party to the arbitration decision, as well as identifying the rights and remedies available under arbitration, as compared to those available under the law. Failure to comply with the notice agreement would be grounds to stay an arbitration proceeding, or to vacate an award procured through arbitration.

The bill also makes a substantial modification to AS 09.43.010. It leaves intact the requirement of enforcing agreements to arbitrate claims or disputes which arise before the agreement to arbitrate is executed. However, a new subsection (b) is added which prevents consumers from being required to arbitrate certain types of claims, when these claims arise after the execution of the contract which includes the arbitration requirement. Thus, this bill will shelter consumers from form

Prepared by Joan M. Kasson *Joan M. Kasson*  
 Division Attorney General's Office  
 Approved by Commissioner Bruce M. Botelho, Attorney General  
 Agency Department of Law

Phone 465-5370  
 Date 2/10/98  
 Date 2/10/98

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FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SB 319

ANALYSIS CONTINUATION

agreements or other non-negotiated contracts (e.g., adhesion contracts) which include arbitration clauses by making those clauses unenforceable unless the parties agree, after the claim arises, to arbitrate the dispute. The claims covered by this new subsection include, in part, personal injury claims, insurance contract coverage disputes, and property or services purchase agreements valued at less than \$5,000.

This bill will have no fiscal impact on the Department of Law.

CHANGES TO SB 319: Arbitration  
IN SENATE L&C COMMITTEE

At the request of the Department of Law and with the consent of the sponsor, the L&C Committee made the following changes:

- 1) Page 2, lines 21-23: included language stipulating that in any agreement that provides for arbitration, the agreement must also say that the parties do not waive their rights to a judicial determination of whether a dispute is arbitrable.
- 2) The amendment in (1) above is then included in Sec.09.43.015(b) (Page 3, lines 2-5).
- 3) Amended Sec. 09.43.015(b)(8) to say that a person may be limiting or waiving a right to recover punitive damages only if the parties' contract or arbitration agreement expressly excludes a right to recover those damages (Page 3, lines 28-30).
- 4) Because of the changes made above, deleted language relating to waiving a right to obtain judicial determination of whether a dispute under the contract is arbitrable. The Department of Law language in (1-3) above more clearly defines what the sponsor intends. (old language appears in original bill on page 3, lines 12-13).

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 2/16/98

FURTHER: Judiciary

Date of 5-Day Notice: 3-5-98  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 3-13-98

Labor and Commerce Committee considered

SENATE BILL NO. 319

"An Act relating to arbitration; amending Rules 57(a) and 77(g), Alaska Rules of Civil Procedure; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 319 (L.C.)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill: same title
- new title
- House Bill:**
- same title
- technical title
- new: SCK# \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>[Signature]</i>	✓		
		<i>[Signature]</i>	x		
CHAIR:		CHAIR <i>[Signature]</i>	✓		

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
Law	2/16/98	✓	

*FN to CS, also*

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

*adopted 3/12/98  
made*

0-LS1545E  
Bannister  
3/12/98

*See report*

**CS FOR SENATE BILL NO. 319(L&C)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE SENATE LABOR AND COMMERCE COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATOR PHILLIPS**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to arbitration; amending Rules 57(a) and 77(g), Alaska Rules  
2 of Civil Procedure; and providing for an effective date."

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

4 \* **Section 1.** AS 09.43.010 is amended to read:

5           **Sec. 09.43.010. Arbitration agreements valid; application of article.** A  
6 written agreement that complies with AS 09.43.015 to submit a [AN EXISTING]  
7 controversy existing at the time the agreement is entered into to arbitration or a  
8 provision in a written contract to submit to arbitration a subsequent controversy  
9 between the parties is valid, enforceable, and irrevocable, except on [UPON] grounds  
10 that exist at law or in equity for the revocation of a contract. [HOWEVER,  
11 AS 09.43.010 - 09.43.180 DO NOT APPLY TO A LABOR-MANAGEMENT  
12 CONTRACT UNLESS THEY ARE INCORPORATED INTO THE CONTRACT BY  
13 REFERENCE OR THEIR APPLICATION IS PROVIDED FOR BY STATUTE.]

14 \* **Sec. 2.** AS 09.43.010 is amended by adding a new subsection to read:

1 (b) A provision in a written agreement that complies with AS 09.43.015 to  
2 submit to arbitration a controversy between the parties occurring after the agreement  
3 is entered into is valid and enforceable except on grounds that exist at law or in equity  
4 for the revocation of a contract. This subsection does not apply to

5 (1) claims arising out of personal injury, whether based on contract or  
6 tort;

7 (2) a contract by an individual for the acquisition of real or personal  
8 property, services, money, or credit if the total consideration to be paid or furnished  
9 by the individual does not exceed the jurisdictional limit set out in AS 22.15.040 at  
10 the time the controversy arose;

11 (3) an agreement concerning or relating to insurance policies or annuity  
12 contracts, except for contracts between insurance companies; or

13 (4) a labor-management agreement unless AS 09.43.020 - 09.43.180 are  
14 incorporated into the contract by reference or their application is provided for by  
15 statute.

16 \* Sec. 3. AS 09.43 is amended by adding a new section to read:

17 **Sec. 09.43.015. Arbitration agreement requirement.** (a) In order for an  
18 agreement to provide for arbitration, the agreement must contain a notice that states  
19 that a party has the option to compel arbitration and to bind the other party to the  
20 arbitration decision, and that arbitration limits the rights and remedies otherwise  
21 available under the law. The notice must also state that parties to an arbitration  
22 agreement do not waive their rights to obtain a judicial determination of whether a  
23 dispute is arbitrable. This notice must be typed in capital letters within the agreement  
24 or on a separate document. If an agreement fails to contain the notice required by this  
25 subsection, a party may not compel arbitration, an arbitration decision is not binding,  
26 and otherwise available rights and remedies are not limited.

27 (b) Language in substantially the following form satisfies the notice  
28 requirement of (a) of this section:

29 NOTICE: THIS CONTRACT INCLUDES AN ARBITRATION  
30 CLAUSE. IF YOU SIGN THIS CONTRACT, YOU CAN BE  
31 COMPELLED TO SUBMIT ANY DISPUTE UNDER THIS

1 CONTRACT TO MANDATORY BINDING ARBITRATION.  
2 HOWEVER, BY SIGNING THIS CONTRACT, YOU DO NOT  
3 WAIVE YOUR RIGHT TO OBTAIN A JUDICIAL  
4 DETERMINATION OF WHETHER A PARTICULAR  
5 DISPUTE IS ARBITRABLE. BY SIGNING THIS  
6 CONTRACT WITH AN ARBITRATION CLAUSE, YOU  
7 WILL BE OR MAY BE LIMITING OR WAIVING YOUR  
8 RIGHTS TO

- 9 (1) HAVE A DISPUTE UNDER THE CONTRACT RESOLVED  
10 IN A COURT OF LAW, EVEN WHERE THE CONTRACT  
11 WITH THE ARBITRATION CLAUSE IS VOID OR  
12 VOIDABLE DUE TO REPUDIATION, RESCISSION, FRAUD,  
13 DURESS, MISTAKE, OR OTHER GROUNDS;  
14 (2) APPEAL THE ARBITRATOR'S DECISION TO A COURT OF  
15 LAW;  
16 (3) EXERCISE STATUTORY REMEDIES, SUCH AS A LIEN,  
17 INJUNCTION, OR CLAIM FOR DAMAGES;  
18 (4) HAVE THE DISPUTE DECIDED BY A DECISION MAKER  
19 WITH APPROPRIATE TRAINING TO DECIDE THE  
20 DISPUTE;  
21 (5) USE DISCOVERY AND OTHER EVIDENCE-GATHERING  
22 PROCEDURES OTHERWISE AVAILABLE IN AN ACTION  
23 BEFORE A COURT OF LAW;  
24 (6) OBTAIN A DECISION CONSISTENT WITH THE LAW AND  
25 THE FACTS;  
26 (7) OBTAIN A WRITTEN STATEMENT OF THE LEGAL AND  
27 FACTUAL BASES OF THE DECISION;  
28 (8) RECOVER PUNITIVE DAMAGES IF THE PARTIES'  
29 CONTRACT OR ARBITRATION AGREEMENT EXPRESSLY  
30 EXCLUDES A RIGHT TO RECOVER PUNITIVE DAMAGES;  
31 (9) RECOVER ATTORNEY FEES AND COSTS.

1 \* Sec. 4. AS 09.43.020(a) is amended to read:

2 (a) On application of a party showing an agreement described in AS 09.43.010,  
3 and the opposing party's refusal to arbitrate, the court shall order the parties to proceed  
4 with arbitration, but, if the opposing party denies the existence of the agreement to  
5 arbitrate or alleges that the agreement does not comply with AS 09.43.015, the court  
6 shall proceed [SUMMARILY] to determine [THE DETERMINATION OF] the issue  
7 and, if the agreement is found to exist and to comply with AS 09.43.015, shall order  
8 arbitration.

9 \* Sec. 5. AS 09.43.020(b) is amended to read:

10 (b) On application, the court may stay an arbitration proceeding commenced  
11 or threatened on a showing that there is no agreement to arbitrate or that the  
12 agreement does not comply with AS 09.43.015. The issue, when in substantial and  
13 bona fide dispute, shall be determined [IMMEDIATELY AND SUMMARILY  
14 TRIED] and the stay ordered if no agreement is found to exist or if the agreement  
15 does not comply with AS 09.43.015. If found for the opposing party, the court shall  
16 order the parties to proceed to arbitration.

17 \* Sec. 6. AS 09.43.020 is amended by adding a new subsection to read:

18 (f) When a party challenges under (a) or (b) of this section the existence of  
19 an agreement to arbitrate or the compliance of the agreement with AS 09.43.015, the  
20 court shall immediately proceed with an expedited hearing.

21 \* Sec. 7. AS 09.43.120(a) is amended to read:

22 (a) On application of a party, the court shall vacate an award if  
23 (1) the award was procured by fraud or other undue means;  
24 (2) there was evident partiality by an arbitrator appointed as a neutral  
25 or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;  
26 (3) the arbitrators exceeded their powers;  
27 (4) the arbitrators refused to postpone the hearing upon sufficient cause  
28 being shown for postponement or refused to hear evidence material to the controversy  
29 or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as  
30 to prejudice substantially the rights of a party; [OR]  
31 (5) there was no arbitration agreement and the issue was not adversely

1 determined in proceedings under AS 09.43.020 and the party did not participate in the  
2 arbitration hearing without raising the objection; or

3 (6) the arbitration agreement does not comply with AS 09.43.015.

4 \* Sec. 8. AS 09.43.190, 09.43.200, 09.43.210, and 09.43.220 are repealed.

5 \* Sec. 9. COURT RULE CHANGES. The provisions of sec. 6 of this Act have the effect  
6 of changing

7 (1) Rule 77(g), Alaska Rules of Civil Procedure, by changing the requirements  
8 for having an expedited hearing and removing in certain situations the court's discretion  
9 whether to expedite a hearing;

10 (2) Rule 57(a), Alaska Rules of Civil Procedure, by removing in certain  
11 situations, which may include a declaratory judgment, the court's discretion whether to order  
12 a speedy hearing.

13 \* Sec. 10. APPLICABILITY. Sections 1 - 7 of this Act only apply to an arbitration  
14 proceeding that is in progress or begun on or after the effective date of this Act, except that,  
15 if an award has been made by the arbitrator in the proceeding and the time for a request to  
16 modify or vacate the award has expired, secs. 1 - 7 of this Act do not apply to the proceeding.

17 \* Sec. 11. Section 6 of this Act takes effect only if sec. 9 of this Act receives the two-  
18 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of  
19 Alaska.

20 \* Sec. 12. This Act takes effect immediately under AS 01.10.070(c).

# Alaska State Legislature

## Senate



Official Business

State Capitol  
Juneau, AK. 99801-1182

### Senate Labor & Commerce Committee

### Memo

TO: Mike Ford, Legal Counsel  
Legislative Legal and Research Division  
via fax: x 2029 three pages including this page

FROM: Annette Kreitzer, Aide (to *AK*)  
Senate Labor & Commerce Committee  
PH: X 3844

DATE: March 11, 1998 (after 6 p.m.)

RE: CS SB 319 (L&C)

---

Please use the attached two pages to amend Senate Bill 319 into a L&C Committee Substitute for a hearing tomorrow, March 12, at 1:30 p.m..

Please call me if you have questions.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE (907) 269-5100  
FAX (907) 276-3697

KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE (907) 451-2811  
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P.O. BOX 110300-DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
PHONE (907) 465-3600  
FAX (907) 465-6735

March 11, 1998

Honorable Loren Leman  
Alaska Senate  
State Capitol  
Juneau, Alaska 99801-1182

Re: SB 319


Dear Senator Leman:

Pursuant to the request of the Senate Labor and Commerce Committee of March 10, 1998, enclosed is a copy of the Department of Law's proposed amendments to sec. 3 of SB 319.

Please feel free to call me, if you should have any questions or concerns. Thank you.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL



By: Steve DeVries  
Assistant Attorney General

BMB:SD:cw:ng

cc: Hon. Randy Phillips, Senator

Pat Pourchot, Legislative Director  
Office of the Governor

Deborah Behr, Assistant Attorney General  
Chrystal Smith, Legal Administrator  
Department of Law

A M E N D M E N T

OFFERED IN THE SENATE

BY \_\_\_\_\_

TO: SB 319

1 page 2, line 21, following "available under the law."

2 Insert "The notice must also state that parties to an arbitration agreement do not waive  
3 their rights to obtain a judicial determination of whether a dispute is arbitrable."

4 Page 2, line 30:

5 Following "CONTRACT TO MANDATORY BINDING ARBITRATION."

6 Insert "HOWEVER, BY SIGNING THIS CONTRACT, YOU DO NOT WAIVE YOUR  
7 RIGHT TO OBTAIN A JUDICIAL DETERMINATION OF WHETHER A PARTICULAR  
8 DISPUTE IS ARBITRABLE."

9 Page 3, line 12-13:

10 Delete all material.

11 Page 3, line 14:

12 Delete "(5)"

13 Insert "(4)"

14 Page 3, line 17:

15 Delete "(6)"

16 Insert "(5)"

17 Page 3, line 20:

18 Delete "(7)"

19 Insert "(6)"

1 Page 3, line 22:  
2 Delete "(8)"  
3 Insert "(7)"

4 Page 3, line 24:  
5 Delete "(9)"  
6 Insert "(8)"

7 Page 3, line 24, following "RECOVER PUNITIVE DAMAGES"  
8 Insert "IF THE PARTIES' CONTRACT OR ARBITRATION AGREEMENT  
9 EXPRESSLY EXCLUDES A RIGHT TO RECOVER PUNITIVE DAMAGES"

10 Page 3, line 25:  
11 Delete "(10)"  
12 Insert "(9)"

McNall & Associates, P.C.  
Attorneys

William L. McNall  
H. Frank Cahill  
Sandra J. Wicks

Francine D. Harbour  
Of Counsel

921 West Sixth Avenue  
Suite 100  
Anchorage, Alaska 99501-2044  
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Thomas Brown  
Paralegal

September 10, 1997

COPY

Sandy Forrest  
Anchorage Board of Realtors, Inc  
741 Sesame Street, Suite 100  
Anchorage, AK 99501

Re: Mandatory Mediation or Arbitration

Dear Sandy:

As we have discussed the standard arbitration clause as used in the standard form real estate earnest money agreement represents a potential source of unnecessary liability for consumers and agents. Although the parties can contract to participate in arbitration, the courts have held that the only rules about arbitration the parties might wish to use must be included in the contractual clause that mandates the arbitration. In short, if no rules or standards are adopted then, in that event, there are no rules and the arbitrator is allowed to make a "feel good" decision.

The following issues need to be addressed either in the contract form or by statute:

1. What can be arbitrated? For real estate licensees concerns about fiduciary duties, AS 34.70, et seq., fraud, and dual agency may be better left to the courts. Certainly larger dollar claims (above \$7,500 -- the current small claims limit) might be better pursued in court than in arbitration.

2. What are the arbitrator's qualifications? Certainly, someone familiar with real estate agents' duties, obligations of sellers and purchasers, and issues related to listing marketing, selling, and closing would be helpful. Other qualifications would be appropriate depending on the problem.

3. Should mediation always precede arbitration? Obviously some mediation is a waste of time, effort and money.
4. Does the arbitrator always issue a written decision? What should it include?
5. What law will govern? Alaska, Hawaii, Washington, any? Does the arbitrator have to follow any statutory law, administrative regulations, or controlling caselaw?
6. Who is the arbitrator? How many? One, three, five? Someone from AAA? Board of Realtors? Anybody the parties can agree on?
7. Should punitive damages be awarded? Should an arbitrator deal with issues of the breach of standards that lead to such an award? E.g., breach of fiduciary duties (construction fraud), reckless disregard for the rights of others, intentional or outrageous conduct, etc.
8. Where will the arbitration take place? In a neutral place? The broker's office? An attorney's office?
9. Must the arbitrator follow the law? statutes? administrative law? common law? code of ethics-interpretations? any or some?
10. What about judicial review? In the event the arbitrator decides that a seller owes treble damages under AS 34.70, and that the agent and broker improperly advised the client and must reimburse the seller, does the agent and broker have the right to review the treble damages award before a judge? Should small awards not be reviewable and large award to reviewable?
11. What about discovery matters, briefing issues, visual inspection, witness lists, depositions, costs, attorney's fees?
12. What is the limitation on the right to pursue arbitration? One year, two years, six years?

Sincerely yours,

McNALL & ASSOCIATES, P.C.

By: William L. McNall  
William L. McNall

WLM/cb

cc Cardine Lombard



# ALASKA STATE LEGISLATURE

**SENATOR RANDY PHILLIPS**

**SENATE DISTRICT L**

**SESSION**  
State Capitol  
Juneau, AK 99801  
(907) 465-4949  
800-478-4950  
Fax: 465-4979

**INTERIM**  
P.O. Box 142  
Eagle River AK 99577  
(907) 694-4949  
Fax: 694-4948

## SPONSOR STATEMENT

**SENATE BILL 319, "An Act relating to arbitration; amending Rules 57(a) and 77(g), Alaska Rules of Civil Procedure; and providing for an effective date."**

Last year, the Legislature directed the Alaska Judicial Council to propose a program for alternative dispute resolution (arbitration). An arbitration clause is now being used as a standard procedure in contracts. Possibly the most common use, and the one that effects the most people, is in real estate contracts. It is all too easy for anyone purchasing or selling a house to sign a real estate contract that includes this arbitration clause without fully understanding the implications of arbitration. In addition, there are no guidelines established anywhere governing many aspects of an arbitration proceeding. Questions such as what can be arbitrated, and what are the qualifications of the arbitrator and who decides those qualifications remain unanswered. In addition, there is no provision that arbitration be preceded by mediation. The arbitrator does not have to follow state law, or any law, during proceedings or in making a decision. There is no limit on the amount of money requested by a party to arbitration by another, and no limit on the time an arbitration can be pursued after a contract is signed.

Senate Bill 319 requires that in a contract subject to arbitration, language to that effect will be typed in capital letters be within the arbitration agreement or separate document. This language will state clearly that a party to arbitration may be limiting or waiving rights to other remedies, including appeal of an arbitrator's decision to a court of law. It limits the amount that can be arbitrated to \$7,500.

# 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

March 9, 1998

**SUBJECT:** Sectional Summary of SB <sup>317</sup>~~310~~ (Work Order 20-LS1545A)

**TO:** Senator Randy Phillips  
Attn: Caroline

**FROM:** *JB*  
Theresa Bannister  
Legislative Counsel

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

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

**Section 1.** Makes an amendment to conform the section to the new sec. 09.43.015. Clarifies what "existing" means. Deletes a special direction for labor-management contracts.

**Section 2.** Validates and makes enforceable a provision in a written agreement that complies with sec. 09.43.015 to submit to arbitration a controversy occurring after the agreement is entered into, except in certain circumstances. Lists certain claims and agreements that this provision does not apply to.

**Section 3.** Requires that an arbitration agreement contain a notice describing certain effects of the agreement. Establishes certain requirements for the notice. Denies a person certain benefits of the arbitration agreement if the agreement does not contain the notice. Recites language that would satisfy the notice requirement.

**Section 4.** Includes noncompliance with sec. 09.43.015 as a defense to arbitration that the court is to determine.

**Section 5.** Authorizes the court to stay an arbitration proceeding if the agreement does not comply with sec. 09.43.015.

**Section 6.** Directs the court to immediately proceed with an expedited hearing when the existence of an arbitration agreement or noncompliance with sec. 09.43.015 is alleged.

Senator Randy Phillips

March 9, 1998

Page 2

Section 7. Directs the court to vacate an arbitration award if the arbitration agreement does not comply with sec. 09.43.015.

Section 8. Repeals the sections that deal with the arbitration of small claims.

Section 9. Indicates how sec. 6 of the bill changes court rules.

Section 10. Indicates to what arbitration proceedings the bill will apply.

Section 11. Makes sec. 5 (should be sec. 6) conditional on the supra-majority vote described in the section.

Section 12. Gives the Act an immediate effective date.

If I may be of further assistance, please advise.

TLB:jdr:glc

98-145.jdr



# alaska judicial council

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CHAIRMAN, EX OFFICIO  
Allen T. Compton  
Chief Justice  
Supreme Court

COPY

August 14, 1997

Dear Member of the Alaska Bar Association:

The Alaska Legislature has directed the Alaska Judicial Council to propose a program for alternative dispute resolution (defined as mediation, arbitration and early neutral evaluation)<sup>1</sup> within the Alaska Court System. The Council must obtain the approval of the Alaska Court System and make a proposal to the legislature by the end of December, 1997. The Alaska Supreme Court may implement the alternative dispute resolution procedure by July 1, 1998.

We ask for your comments and suggestions on the best design for an ADR program. For example, which of the three alternative dispute resolution processes seems most promising? What cases seem appropriate/inappropriate for ADR and why? Should a pilot project be proposed, and if so, at which court location(s)? How should the ADR providers be chosen and paid? Should referrals be mandatory, voluntary, or something in between (e.g., mandatory referral of all eligible cases with unquestioned opt out)?

Please complete the short survey on the back of this page, or you may submit ideas by separate letter. Send your surveys and letters to Susanne Di Pietro, Judicial Council staff attorney, no later than August 29, 1997. You may e-mail your comments to [susanne@ajc.state.ak.us](mailto:susanne@ajc.state.ak.us).

Very truly yours,

A handwritten signature in cursive script that reads "William T. Cotton".

William T. Cotton  
Executive Director

---

<sup>1</sup> **Arbitration:** an adjudicative process in which a third party other than a judge or jury reviews facts and hears arguments from both sides and then renders a decision. Court-mandated arbitration is *non-binding* unless the parties themselves agree to be bound. **Early Neutral Evaluation:** a third party assesses the suit but does not render a decision; the third party also may discuss with the parties ways to settle or simplify the case. **Mediation:** a neutral third party helps the parties reach their own voluntary settlement of some or all of the issues in the case. Some mediators do not attempt to evaluate the case, while others offer opinions about case value, liability and legal issues.

Citation  
 MT ST 27-5-114  
 MCA 27-5-114

Found Document

Rank 1 of 1

Database  
 MT-ST-ANN

This document has been amended. Use UPDATE.  
 See SCOPE for more information.

TEXT

MONTANA CODE ANNOTATED  
 TITLE 27. CIVIL LIABILITY, REMEDIES, AND LIMITATIONS  
 CHAPTER 5. UNIFORM ARBITRATION ACT  
 PART 1. SUBMISSION TO ARBITRATION

Current through laws passed at the November 5, 1996  
 general election

27-5-114. Validity of arbitration agreement -- exceptions

(1) A written agreement to submit an existing controversy to arbitration is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract.

(2) A written agreement to submit to arbitration any controversy arising between the parties after the agreement is made is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract. Except as permitted under subsection (3), this subsection does not apply to:

- (a) claims arising out of personal injury, whether based on contract or tort;
- (b) any contract by an individual for the acquisition of real or personal property, services, or money or credit where the total consideration to be paid or furnished by the individual is \$5,000 or less;
- (c) any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies; or
- (d) claims for workers' compensation.

(3) A written agreement between members of a trade or professional organization to submit to arbitration any controversies arising between members of the trade or professional organization after the agreement is made is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract.

✕ (4) Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration.

CREDIT

History: En. Sec. 4, Ch. 684, L. 1985; amd. Sec. 1, Ch. 236, L. 1989; amd. Sec. 1, Ch. 611, L. 1989.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

03/10/98 15:54:46 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
MESSAGE FROM: LIOCJEN IN ANCHORAGE

LTN1120  
JNU

RE TCN: 80439 SCHEDULED FOR:03/10/98 15:45 TO 17:15  
SPONSOR: SENATE LABOR & COMMERCE PURPOSE: PUBLIC HEARING

MESSAGE TEXT: BILL MCNALL IS ON LINE TO TESTIFY ON  
SB 319

**S B**

**3 2 9**

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SB 329

Revision Date: March 12, 1998 Department: Commerce and Economic Development  
 Title: An Act establishing an exemption for investment BRU: Occupational Licensing  
clubs from the business license requirement. Component: Operations  
 Sponsor: Senate Labor & Commerce by request  
 Requestor: Senate Labor & Commerce COMPONENT SERIAL NO. 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

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

SB 329 exempts investment clubs from the business license requirement. Information received by the division indicate there are very few, if any, investment clubs that hold business licenses.

Prepared by: Jennifer Strickler, Administrative Manager Phone: 465-2144  
 Division: Occupational Licensing Date: 3/12/98  
 Approved by Commissioner: Deborah B. Sedwick Date: 3/12/98  
 Agency: Commerce and Economic Development

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# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SB 329

Revision Date: \_\_\_\_\_ Department: Commerce and Economic Development  
 Title: An Act establishing an exemption for investment BRU: Occupational Licensing  
clubs from the business license requirement. Component: Operations  
 Sponsor: Senate Labor & Commerce by request  
 Requestor: Senate Labor & Commerce COMPONENT SERIAL NO. 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES</b>	[0.3]	[0.3]	[0.3]	[0.3]	[0.3]	[0.3]

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

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

SB 329 exempts investment clubs from the business license requirement. The division estimates there are very few investment clubs which actually hold a business license. This fiscal note assumes that at least six (6) licensees will fall under the new exemption, therefore reducing business license revenue by \$300 (\$50 fee x 6).

Prepared by: Jennifer Strickler, Administrative Manager  
 Division: Occupational Licensing  
 Approved by Commissioner: Deborah B. Sedwick  
 Agency: Commerce and Economic Development

Phone: 465-2144  
 Date: 2/26/98  
 Date: 3 1 98

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# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 2/19/98

FURTHER: Judiciary

Date of 5-Day Notice: 3-5-98  
~~3-12-98~~  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: 3-12-98

Labor and Commerce Committee considered

SENATE BILL NO. 329

"An Act establishing an exemption for investment clubs from the business license requirement."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>[Signature]</i>	✓		
		<i>[Signature]</i>	x		
CHAIR: <i>[Signature]</i>		CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
C+ED	NEW of fn		
	coming from		
	C+ED		

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

No. 2  
Bill Version: SB 329  
(S) Publish Date: 3-18-98

Revision Date: March 12, 1998  
Title: An Act establishing an exemption for investment clubs from the business license requirement.  
Sponsor: Senate Labor & Commerce by request  
Requestor: Senate Labor & Commerce

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

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
---------------------------	------------	------------	------------	------------	------------	------------

**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY 98) cost: \$ 0.0

**POSITIONS**

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
FULL-TIME						
PART-TIME						
TEMPORARY						

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

SB 329 exempts investment clubs from the business license requirement. Information received by the division indicate there are very few, if any, investment clubs that hold business licenses.

Prepared by: Jennifer Strickler, Administrative Manager  
Division: Occupational Licensing  
Approved by Commissioner: Deborah B. Sedwick  
Agency: Commerce and Economic Development

Phone: 465-2144  
Date: 3/12/98  
Date: 3/12/98

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# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

No. 1  
Bill Version: SB329  
(S) Publish Date: 3/13/98

Revision Date: \_\_\_\_\_ Department: Commerce and Economic Development  
Title: An Act establishing an exemption for investment clubs from the business license requirement. BRU: Occupational Licensing  
Sponsor: Senate Labor & Commerce by request Component: Operations  
Requestor: Senate Labor & Commerce COMPONENT SERIAL NO. 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES</b>	[0.3]	[0.3]	[0.3]	[0.3]	[0.3]	[0.3]

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

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

SB 329 exempts investment clubs from the business license requirement. The division estimates there are very few investment clubs which actually hold a business license. This fiscal note assumes that at least six (6) licensees will fall under the new exemption, therefore reducing business license revenue by \$300 (\$50 fee x 6).

Prepared by: Jennifer Strickler, Administrative Manager Phone: 465-2144  
Division: Occupational Licensing Date: 2/26/98  
Approved by Commissioner: Deborah B. Sedwick Date: 3/13/98  
Agency: Commerce and Economic Development

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CS FOR SENATE BILL NO. 329(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/31/98  
Referred: Finance

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the regulation authority, exemptions, and definitions of the  
2 Alaska Business License Act."

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

4 \* Section 1. AS 16.10.265(d) is amended to read:

*amended to*

5 (d) The commissioner of [COMMERCE AND ECONOMIC DEVELOPMENT  
6 MAY SUSPEND OR REVOKE A BUSINESS LICENSE ISSUED UNDER  
7 AS 43.70.020 AND THE COMMISSIONER OF] revenue may suspend or revoke a  
8 license to engage in the business of processing or buying raw fish if the licensee or  
9 an officer, director, or employee in a policy-making position of the licensee has been  
10 convicted of three offenses under this section. Proceedings to suspend or revoke a  
11 license are governed by AS 44.62 (Administrative Procedure Act).

12 \* Sec. 2. AS 43.70.090 is amended to read:

13 Sec. 43.70.090. Regulations. The department may adopt regulations necessary  
14 to implement [DETERMINE AND COLLECT THE FEES IMPOSED BY] this

1 chapter.

2 \* Sec. 3. AS 43.70 is amended by adding a new section to read:

3 **Sec. 43.70.105. Exemptions.** This chapter does not apply to

- 4 (1) a fisheries business;
- 5 (2) the sale of liquor under a license issued under AS 04.11;
- 6 (3) an insurance business;
- 7 (4) a mining business;
- 8 (5) sales through coin-operated amusement and gaming machines;
- 9 (6) supplying services as an employee;
- 10 (7) furnishing goods or services by a person who does not represent to

11 be regularly engaged in furnishing goods or services;

12 (8) the activities of an investment club; in this paragraph,

13 (A) "investment club" means a group of individuals,  
14 incorporated or otherwise organized, that engages primarily in investing in  
15 securities, that does not sell investment services to another person, and the  
16 primary purpose of which is educational;

17 (B) "security" has the meaning given in AS 45.55.990.

18 \* Sec. 4. AS 43.70.110(1) is repealed and reenacted to read:

19 (1) "business" means engaging or offering to engage in a trade, a  
20 profession, or an activity with the goal of receiving a financial benefit in exchange for  
21 the provision of services or goods or other property;

FLOOR REMARKS (for today, April 27)  
AND Changes to SB 329 in Senate Judiciary:

Section 1:

Drafter was convinced until recently that Section 1 was necessary. After further conversations with Dept. of Commerce drafter now says it is possible that AS 16.10.265(d) may apply **AND SECTION 1 SHOULD BE DELETED FROM THE BILL.**

Section 2:

Gives broader regulatory authority to the Department of Commerce, Division of Occupational Licensing - instead of just determining and collecting fees. It allows the division to specify in regulation (through public hearings) its process for implementing the Alaska Business License Act.

Section 3:

Re-orders the current business license exemptions and adds investment clubs and a definition of security to the exemptions.

Section 4:

Redefines "business". The current definition is so confusing that even employees of the Division of Occupational Licensing give contrary advice to members of the public seeking to know whether they need a business license or not.



Official Business

# Alaska State Legislature

## SENATE

State Capitol  
Juneau, AK 99801-1182

### Senate Labor & Commerce Committee

#### Sponsor Statement House CSSB 329(JUD): Investors Corporations

The Senate Labor & Commerce Committee introduced Senate Bill 329: Investors Corporations, at the request of the Alaska Regional Council, National Association of Investors Corporation.

Current Alaska law defining "business" is so broad, that it is unclear whether nonprofit, educational organizations like investment clubs must apply for a business license. This bill amends AS 43.70.110 to exclude investment clubs members from the business license requirement. An amendment adopted in the Senate and House Judiciary Committees rewrite the definition of "business", so that the exceptions in current law are clear.

There are over 108 investment clubs in Alaska, consisting of on average 15 individuals. These clubs are formed for the purpose of making group investments in a learning atmosphere. The monthly contributions are around \$10 to \$50 per month per student.

Investment clubs do not advertise, offer any product or service to the general public and do not have a place of business since they usually meet in members' homes.

No other state requires a business license fee, according to the National Association of Investors Corporation.

# 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 10, 1998

**SUBJECT:** Bill draft relating to investment clubs (Work Order No. 20-LS1505\A)

**TO:** Senator Loren Leman, Chair  
Senate Labor and Commerce Committee  
Attn: Annette

**FROM:**  Theresa Bannister  
Legislative Counsel

This memo accompanies a draft of the bill you requested to exempt investment clubs from the business license requirement of AS 43.70.110.

1. Coverage of AS 43.70.110(1). It is my understanding that an investment club is primarily for educational purposes and that it does not sell any services or products to third parties. It is unclear whether the definition of "business" in AS 43.70.110(1) covers investment clubs. The definition is broad, covering, with exceptions, "all activities or acts, personal, professional, or corporate." However, this broad coverage may be qualified by the words, "engaging...in a trade, profession, or business," although this is not clear from the language in the definition. However, if this is not the case, the definition would cover any act for profit, including an individual buying stock, and this result is not consistent with the common concept of "business." Applying this criteria, an investment club does not appear to be a profession, because that usually denotes training beforehand, which does not appear to be the case here where the investment club is trying to learn about investing in stock. An investment club does not appear to be a trade or a "business" in the ordinary sense because the club does not sell its services or products to third persons.

Since an investment club attempts to increase the value of its investments, it arguably falls under the phrase, "with the object of financial or pecuniary gain, profit or benefit." However, if the primary goal of an investment club is to educate itself about investing in securities rather than to make a profit, then profit might not be considered to be the "object" of the club. In my opinion, after a quick review, the better reading of this definition is that investment clubs would not be considered businesses because they are not professions, and do not sell to third parties, and because their primary purpose is educational. However, this is not at all clear from the definition.

2. Amendment recommended. Since it is unclear whether or not AS 43.70.110(1) would be interpreted to cover investment clubs, it is safer to amend AS 43.70.110(1) to expressly

Senator Loren Lemman  
February 10, 1998  
Page 2

exclude them than to rely on interpreting the definition. The draft expressly excludes investment clubs from the definition.

3. Other law. I have not been able to find any obvious coverage of investment clubs under Oregon or Washington law.

If I may be of further assistance, please advise.

TLB:jdr  
98.072.jdr

Enclosure

ALASKA REGIONAL COUNCIL  
NATIONAL ASSOCIATION OF INVESTORS CORPORATION  
P. O. Box 141503  
ANCHORAGE, ALASKA 99514-1503

JAN 15 1998

January 10, 1998

Senator Loren Leman  
Chairman, Labor and Commerce Committee  
Alaska State Legislature  
State Capitol MS 3100  
Juneau, AK 99801-1182

Dear Senator Leman:

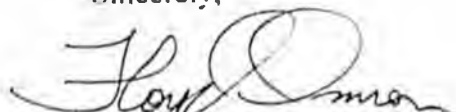
The recently formed Alaska Council of the National Association of Investors Corporation (NAIC), a not-for-profit educational organization, requests that AS 43.70.110 of the Alaska Business License Act be amended to specifically exclude individual investment clubs from the definition of "business" thus eliminating the necessity of obtaining a business license.

The over 108 investment clubs in Alaska (about 1,500 total members) are small groups of from 10 to 20 individuals who join together to learn about investing in the stock market. The members of each club meet usually once a month and pool their monthly contribution of from \$10 to \$50 per month to invest in the stock market. The members pro-rata share of any profits or losses are reported on each member's personal tax return. In essence, the members are learning about and making personal investments from the supportive atmosphere of a club.

Investment clubs do not advertise, they do not offer any product or service to the general public, they usually meet in members' homes and do not have a place of business.

According to the staff at the NAIC headquarters (248-586-6242), no other state requires investment clubs to obtain a business license. Therefore, we respectfully request that an amendment be made to the Statute to exempt individual investment clubs from buying a business license.

Sincerely,



Floyd Damron  
Co-President

cc: Senator Jerry Mackie  
Senator Tim Kelly  
Senator Mike Miller  
Senator Lyman Hoffman

Officers and Directors of the Alaska Regional Council

Michelle Tabler, Co-President

Nancy King, Vice President

Leslie Williams, Treasurer

Bill Mann, Assistant Treasurer

Ellen Schwenne, Secretary

Directors, Gina McBride, Libby McKinney, Janice Baber, Lynne Bettin, Carol  
Connell, Zona Dahlmann, Carol Hatch, Tim Janneck, Roy Daw, Joni Fleetwood,  
Delores Skripps, Jane Ringler, Tim Ryherd, Bonnie Whittier, Sue Jensen, Ruth  
Marcy, Kathy Peterson, Shery Lovell, Yvonne Mull, Lisa May, Jean von Dohrmann,  
Geri DeBoer, Susan Smith, Edwin Franklin

**Damron, Floyd/ANC**

---

**From:** suep@better-investing.org  
**Sent:** Thursday, January 22, 1998 9:25 AM  
**To:** Damron, Floyd/ANC  
**Subject:** Re: Help for Alaska Legislature

January 22, 1998

Mr. Floyd Damron  
Co-President, Alaska Council, NAIC

Dear Mr. Damron:

There is no other state that we know of that charges a fee for a business license. Some partnerships are required to file under the Assumed Names Act in various states, but generally that is once every five years and the fee varies from \$5 up to \$25 for that entire period of time.

An investment club is a group of associates who meet together, usually monthly, to discuss the stock market and make group decisions on investing.

The definition probably does not do an investment club justice. In the 37 years that I have been with NAIC, our surveys have consistently shown that when a new investment club is formed with an average number of members, 16, that only one person has ever had any experience in investing. At the end of five years, the figures are completely reversed and 15 of the 16 members are investing on their own, in addition to their investment club. It serves to point out the educational aspect of an investment club. The club serves as an introduction to the stock market and should be considered an educational organization.

Profits for investment clubs starting out are relatively small. It is not unusual for a new investment club to only have \$5, or \$6 total income per member in the first two, or three years of operation. In many cases, the expenses (dues to NAIC, postage, materials, etc.) exceed income for a number of years.

I hope this information is helpful to you.

Sincerely,

Kenneth S. Janke  
President & CEO

---

Sue Peterman      NAIC

suep@better-investing.org  
248.583.6242x303

---

**S B**

**3 3 0**

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. CS SB330 (Ltc)

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affected None  
 Title Underground utilities BRU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor Senate L+C Committee  
 Requester Senate L+C Committee Component Serial No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: Ø

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

*There is no fiscal impact on any state department.*

Prepared by A. Krcitzer, Committee Aide Phone 465-3844  
 Division \_\_\_\_\_ Date 3-13-98  
 Approved by Senator Loren Leman, Chairman Date \_\_\_\_\_  
 Agency \_\_\_\_\_

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**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 2/24/98

FURTHER: Resources

Date of 5-Day Notice: 3-5-98  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 3-23-98

Labor and Commerce Committee considered SENATE BILL NO. 330

"An Act relating to underground facilities."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 330 (L+C)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**  
 same title  
 new title
- House Bill:**  
 same title  
 technical title  
 new: SCR# \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
<i>[Signature]</i>	X				
CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>	CHAIR:			

**NEW FISCAL NOTE(S):**

Department                      Date      Zero      Fiscal

Department	Date	Zero	Fiscal
Legislature	3/1/98	<input checked="" type="checkbox"/>	

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date      Zero      Fiscal

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# Alaska State Legislature

## Senate



Official Business

Senate Labor & Commerce Committee

State Capitol  
Juneau, AK. 99801-1182

\*expected to be present

\*CHAIRMAN, Senator Leman  
\*VICE CHAIRMAN, Senator Mackie  
\*Senator Miller  
\*Senator Kelly  
\*Senator Hoffman

Agenda  
1:30 p.m.  
Fahrenkamp Room  
Thursday, March 12, 1998

Teleconference Sites: ANC, offnets

**+\*SB 329: Investment Club License Exemption**  
**By Senate Labor & Commerce Committee by Request,**  
**Sponsor**

Expected Witnesses:

Annette Kreitzer, Aide to Senate L&C Committee to present bill  
Floyd Damron, Co-President Alaska Regional Council (offnet 276-6833 X 261)  
Jean VonDorhmann, Secretary, Alaska Regional Council (w/Damron)  
Catherine Reardon, Director, Division of Occupational Licensing/DC&ED

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**+\*SB 330: Underground Utilities**  
**By Senate Labor & Commerce Committee, Sponsor**

Expected Witnesses:

✓Annette Kreitzer, Aide to Senate L&C Committee to present bill  
✓Jim Rowe, Executive Director, Alaska Telephone Association (JNU)  
✓Mike Golat, Public Works Director, City of Unalaska (offnet 581-1260)  
×Dave Goggins, Chairman, Legislative Committee for Alaska Rural Electric Co-Operative Association (offnet 581-1260)

*Engel's Planning*

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*modeled after WA & MN  
most states have locate acts*

**SENATE BILL NO. 330**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE SENATE LABOR AND COMMERCE COMMITTEE**

**Introduced: 2/24/98**

**Referred: Labor and Commerce, Resources**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to underground facilities."**

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

3 **\* Section 1.** AS 42.30 is amended by adding new sections to read:

4 **Article 6. Locating Underground Facilities.**

5 **Sec. 42.30.400. Excavator's notice of proposed excavation.** (a) Before  
6 beginning an excavation, an excavator shall give notice of the proposed excavation to  
7 each underground facility operator who has an underground facility in the area of the  
8 proposed excavation and request the operator to field mark the location of its  
9 underground facility. The excavator shall notify an underground facility operator who  
10 subscribes to a notification center by giving notice to the center. The excavator shall  
11 notify an underground facility operator listed in the applicable telephone directory who  
12 is not a subscriber to a notification center by giving notice directly to the operator.

13 (b) Except in the case of an emergency locate request or a request to locate  
14 in a remote, unstaffed, or inaccessible location, the excavator shall notify an  
15 underground facility operator who may have a facility in the area of a proposed

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education  
State of Alaska

# Alaska State Legislature

## Senate



Official Business

### Senate Labor & Commerce Committee

State Capitol  
Juneau, AK. 99801-1182

\*expected to be present

\*CHAIRMAN, Senator Leman  
\*VICE CHAIRMAN, Senator Mackie  
\*Senator Miller  
\*Senator Kelly  
\*Senator Hoffman

Agenda  
1:30 p.m.  
Fahrenkamp Room  
Thursday, March 12, 1998

Teleconference Sites: ANC, offnets

**+\*SB 329: Investment Club License Exemption**  
**By Senate Labor & Commerce Committee by Request,**  
**Sponsor**

**Expected Witnesses:**

**Annette Kreitzer**, Aide to Senate L&C Committee to present bill  
**Floyd Damron**, Co-President Alaska Regional Council (offnet 276-6833 X 261)  
**Jean VonDorhmann**, Secretary, Alaska Regional Council (w/Damron)  
**Catherine Reardon**, Director, Division of Occupational Licensing/DC&ED

---

**+\*SB 330: Underground Utilities**  
**By Senate Labor & Commerce Committee, Sponsor**

**Expected Witnesses:**

✓ **Annette Kreitzer**, Aide to Senate L&C Committee to present bill  
✓ **Jim Rowe**, Executive Director, Alaska Telephone Association (JNU)  
✓ **Mike Golat**, Public Works Director, City of Unalaska (offnet 581-1260)  
✗ **Dave Goggins**, Chairman, Legislative Committee for Alaska Rural Electric Co-Operative Association (offnet 581-1260)

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*Eng. & Planning*

**+\*SB 233: ABC Board**  
**By Senate Labor & Commerce Committee, Sponsor**

Expected Witnesses:

**Senator Leman**, to present bill  
**Charity Kadow**, Spenard Community Council (offnet: 258-8174)  
**Doug Griffin**, Executive Director, ABC Board (ANC LIO)

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**SB 319: Arbitration**  
**By Senator Phillips, Sponsor**

(cs distributed at the table)

Expected Witnesses:

**Jerry Burnett**, to explain CS and new sponsor statement  
**Steve DeVries**, Assistant Attorney General (available to answer questions)  
(offnet 269-5200)  
**Bill McNall** or **Francine Harbour**, attorney (available to answer questions)  
(ANC LIO)

Next Meeting:

Thursday, March 19:

ADJOURN

*modeled after WA § 12.01  
most states have locate acts*

**SENATE BILL NO. 330**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE SENATE LABOR AND COMMERCE COMMITTEE**

**Introduced: 2/24/98**

**Referred: Labor and Commerce, Resources**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to underground facilities."**

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

3 **\* Section 1.** AS 42.30 is amended by adding new sections to read:

4 **Article 6. Locating Underground Facilities.**

5 **Sec. 42.30.400. Excavator's notice of proposed excavation.** (a) Before  
6 beginning an excavation, an excavator shall give notice of the proposed excavation to  
7 each underground facility operator who has an underground facility in the area of the  
8 proposed excavation and request the operator to field mark the location of its  
9 underground facility. The excavator shall notify an underground facility operator who  
10 subscribes to a notification center by giving notice to the center. The excavator shall  
11 notify an underground facility operator listed in the applicable telephone directory who  
12 is not a subscriber to a notification center by giving notice directly to the operator.

13 (b) Except in the case of an emergency locate request or a request to locate  
14 in a remote, unstaffed, or inaccessible location, the excavator shall notify an  
15 underground facility operator who may have a facility in the area of a proposed

1 excavation at least two but not more than 15 working days before the date scheduled  
2 for beginning the excavation. In the case of a request to locate in a remote or  
3 unstaffed location, the excavator shall notify the operator at least 10 but not more than  
4 20 working days before the scheduled date for beginning excavation.

5 (c) In an emergency, the excavator shall immediately notify each underground  
6 facility operator in the area of the emergency and of the need for the excavation and  
7 request prompt location of underground facilities.

8 **Sec. 42.30.410. Operator's response to request to locate.** (a) An  
9 underground facility operator shall accept requests to locate underground facilities  
10 during the operator's regular business hours. An operator who receives a request to  
11 locate shall maintain for at least three years an accurate record of the request and  
12 responses to the request.

13 (b) When an underground facility operator receives a request to locate, it shall  
14 notify the excavator of the location of the underground facilities that the operator is  
15 able to field mark with reasonable accuracy and field mark those facilities. If the  
16 operator owns, uses, or operates an underground facility that is identified as being in  
17 the area of the proposed excavation but that the operator cannot field mark with  
18 reasonable accuracy, the operator shall provide the excavator with the best information  
19 available to the operator about its location.

20 (c) The field marks for an underground facility buried 10 feet deep or less  
21 must be located within 24 horizontal inches of the outside dimensions of the facility.  
22 For a facility buried deeper than 10 feet, the operator shall locate the field marks  
23 within 30 horizontal inches of the outside dimensions of the facility. The operator  
24 shall use stakes, paint, or other clearly identifiable material to show the field location  
25 of the underground facility. The marker used to designate the approximate location  
26 of an underground facility must follow the current color code standard used by the  
27 American Public Works Association.

28 (d) Except for an underground facility in a remote, unstaffed, or inaccessible  
29 location, an underground facility operator shall respond to a request to locate promptly.  
30 A response is considered to be prompt if it is made within two working days after the  
31 operator receives the request or at a later time so long as the response occurs before

1 the beginning of the excavation. For an underground facility in an accessible remote  
2 or unstaffed location, the operator shall respond within 10 working days after the  
3 operator receives the request or at a later time so long as the response occurs before  
4 the beginning of excavation.

5 (e) After an operator has field marked an underground facility, the excavator  
6 is responsible for maintaining the markings.

7 (f) An excavator may not begin to excavate until each underground facility has  
8 been field marked.

9 (g) When an operator has field marked an underground facility once at the  
10 request of an excavator, the operator has the right to receive compensation from the  
11 excavator for costs incurred in responding to subsequent requests to locate the same  
12 underground facility during the same excavation project if the excavator failed to  
13 maintain the original marking.

14 (h) If an excavator discovers an underground facility that was not field marked  
15 or was inaccurately field marked, the excavator shall immediately stop excavating in  
16 the vicinity of the facility and shall notify the operator of the discovery. The  
17 excavator may notify the operator by means of a notification center. The operator  
18 shall treat the notification as a request to locate in an emergency and shall respond  
19 accordingly.

20 (i) Unless the request to locate is made in response to an emergency, an  
21 underground facility operator has the right to receive compensation for costs incurred  
22 in responding to a request to locate that gives the operator less notice than the  
23 minimum notice required by this section. This subsection may not be interpreted to  
24 require the operator to respond to the request to locate within the time requested in the  
25 notice.

26 **Sec. 42.30.420. Responsibility of construction project owners.** The owner  
27 of a construction project that will require excavation shall indicate in bid documents  
28 or contracts for construction the existence of underground facilities that the project  
29 owner knows are located inside of the proposed area of excavation. This requirement  
30 does not release the excavator from the excavator's responsibility under AS 42.30.400  
31 - 42.30.490.

1           **Sec. 42.30.430. Obligations concerning the conduct of excavations.** (a) An  
2 excavator shall use reasonable care to avoid damaging an underground facility. The  
3 excavator shall

4           (1) determine, without damage to the facility, the precise location of  
5 an underground facility whose location has been marked;

6           (2) plan the excavation to avoid damage to and minimize interference  
7 with an underground facility in or near the excavation area; and

8           (3) to the extent necessary to protect a facility from damage, provide  
9 support for an underground facility in and near the construction area during the  
10 excavation.

11           (b) If an underground facility is damaged by failure to fulfill an obligation  
12 under AS 42.30.400 - 42.30.490, the party failing to perform the obligation is liable  
13 to the other party for damages resulting from the failure to perform. Damages may  
14 include the normal overhead charges that can be allocated to having to respond to the  
15 party's failure to perform.

16           (c) An excavator who, in the course of excavation, contacts or damages an  
17 underground facility shall notify the operator. If the damage causes an emergency, the  
18 excavator shall also alert appropriate local public safety agencies and take reasonable  
19 steps to ensure public safety. A damaged underground facility may not be reburied  
20 until it is repaired or relocated to the satisfaction of the operator. The operator of an  
21 underground facility that was damaged during excavation shall arrange for repair or  
22 relocation of the facility as soon as practical.

23           **Sec. 42.30.440. Penalties.** (a) A person who violates a provision of  
24 AS 42.30.400 - 42.30.490 is subject to a civil penalty of not less than \$50 nor more  
25 than \$1,000 for each offense if the violation results in or significantly contributes to  
26 damage to an underground facility.

27           (b) If the court finds that an excavator is violating or threatening to violate a  
28 provision of AS 42.30.400 - 42.30.490 and the violation may result in damage to an  
29 underground facility, the court may grant injunctive relief to the underground facility  
30 operator.

31           (c) An excavator is liable to the operator of an underground facility for three

1 times the operator's cost in repairing and relocating the facility if the excavator

2 (1) knowingly or intentionally damages a field marked underground  
3 facility; or

4 (2) knows of an underground facility that is near a planned excavation  
5 and the excavator fails to notify the underground facility operator as required by  
6 AS 42.30.400; notification under this paragraph may be made directly to the operator  
7 or, if appropriate, through a notification center.

8 **Sec. 42.30.450. Waiver of requirements by written agreement.** An operator  
9 and an excavator may, by written agreement, waive the requirements of AS 42.30.400  
10 - 42.30.490 that the excavator notify the operator of planned excavations and that the  
11 operator locate underground facilities. The agreement must identify the geographic  
12 areas to which the waiver applies and the time period for which the waiver is valid.

13 **Sec. 42.30.460. Underground facility owner.** If the operator of an  
14 underground facility is not the owner of the facility and if the operator cannot be  
15 identified or has been identified but cannot be reached in a reasonable amount of time,  
16 the excavator may give the notice required by AS 42.30.400 - 42.30.490 to the owner  
17 of the underground facility and the owner shall assume the duties and responsibilities  
18 of the operator under AS 42.30.400 - 42.30.490.

19 **Sec. 42.30.490. Definitions.** In AS 42.30.400 - 42.30.490,

20 (1) "damage" means

21 (A) the substantial weakening of structural or lateral support of  
22 an underground facility;

23 (B) penetration, impairment, or destruction of any underground  
24 protective coating, housing, or other protective device; and

25 (C) the partial or complete severance of an underground facility  
26 to the extent that the project owner or facility operator determines that repairs  
27 are required;

28 (2) "emergency" means

29 (A) a condition that constitutes a clear and present danger to  
30 life, health, or property; or

31 (B) an unplanned service interruption;

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(3) "excavation" means

(A) an activity in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means;

(B) road maintenance that changes the original road grade;

(C) demolition or movement of earth by equipment, tools, or explosive device except tilling of the soil less than 12 inches in depth for agricultural purposes;

(4) "excavator" means a person who conducts excavation in the state;

(5) "inaccessible" means impossible or unreasonably difficult to reach due to conditions beyond the control of the underground facility operator;

(6) "intentionally" has the meaning given in AS 11.81.900(a);

(7) "knowingly" has the meaning given in AS 11.81.900(a);

(8) "notification center" or "center" means a service through which a person is able to call one number to notify member operators of underground facilities that an excavation is proposed and to request the operators to mark facilities located inside of the proposed excavation area;

(9) "operator" means a person who supplies a service for commercial or public use by means of an underground facility;

(10) "person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, partnership, copartnership, association, firm, trust, estate, or any other entity whatsoever;

(11) "remote" means not accessible by road;

(12) "underground facility" means a pipe, sewer, conduit, cable, valve, line, or wire, including attachments and those parts of poles or anchors that are below ground, for use in connection with the storage or conveyance of water, sewage, telecommunications, cable television, electricity, petroleum, petroleum products, hazardous liquids, or flammable, toxic, or corrosive gas;

(13) "unstaffed" means not normally staffed with employees;

(14) "utility" has the meaning given in AS 42.05.990;

(15) "working day" means a day on which an underground facility operator is open for regular business.

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

### ALASKA PUBLIC UTILITIES COMMISSION

**TONY KNOWLES, GOVERNOR**

1016 WEST SOUTH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99501-1963  
PHONE: (907) 276-6222  
FAX: (907) 276-0160  
TTY: (907) 276-4533

March 12, 1998

Honorable Loren Leman  
Chairman  
Senate Labor & Commerce Committee

Via fax 465-3810

Ref: SB 330

Dear Senator Leman:

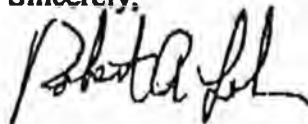
Thank you for asking the view of the Alaska Public Utilities Commission on SB 330 concerning underground locate standards. I have reviewed the bill and see no direct impact on the Commission. It does not mention the APUC. The bill adds a new section to AS 42.30, but as drafted the Department of Law advises us that the Commission lacks authority to enforce provisions in this chapter.

The Commission has not addressed the bill, except to estimate its fiscal impact as zero. It is not the case that the issue of underground locates is a low-priority item for the Commission. Rather, this bill focuses on the conduct of excavators, who lie beyond the scope of APUC authority over public utilities.

The Commission's responsibility to ensure safe, adequate and reliable utility service at just and reasonable rates would be enhanced by a system that encourages excavators to obtain reliable information concerning the location of underground facilities before they dig and penalizing them if they fail to do so.

Please let me know if you have any questions. Again, thanks for the opportunity to comment.

Sincerely,



Robert A. Lohr  
Executive Director

# LOCATE CALL CENTER OF ALASKA, INC.

2221 E. Northern Lights Blvd. Suite 130  
Anchorage, Alaska 99503  
(907) 279-1122 FAX (907) 278-0696

February 6, 1996

James Rowe  
Executive Director  
Alaska Telephone Association  
4341 B Street, Suite 304  
Anchorage, Alaska 99503

Dear Mr. Rowe:

Thank you for sending me the draft of the proposed underground utilities legislation.

I am familiar with the Washington legislation and know it has been well received by the underground utility community in that state.

From a "one-call" standpoint, the only suggestion I have is to change the reference to a "one-number locator service" (on pages 3, 5, and 6) to a "one-number locate notification service." The Alaska one-call center (as with all other centers of this type) receive locate information and transmit this information to other entities who actually perform the locate. By calling this a "locator service" there may be some misunderstanding as to who is actually doing the locate.

The Anchorage Area Utility Association has discussed pursuing this type of legislation for years. Your organization is to be congratulated for taking the steps to move forward.

Please call me if I can be of further assistance.

Sincerely,



Sandy McWilliams  
President





Municipality of Anchorage  
Rick Mystrom, Mayor



## **Municipal Light & Power**

1200 East First Avenue  
Anchorage, Alaska 99501-1685  
Telephone: (907) 279-7671, Telecopiers: (907) 263-5804, 277-9272

10 March 1997

James Rowe, Executive Director  
Alaska Telephone Association  
4341 "B" Street, Suite 304  
Anchorage, AK 99503

Dear Mr. Rowe,

ML& P is supportive of the Alaska Telephone Association's efforts to enact State legislation pertain to underground locates. When the Anchorage utilities initiated the formation of a One-Call within the Municipality in 1986 we opted for a municipal ordinance because we couldn't find a legislator willing to carry the banner to the legislature. ATA's attempt for state legislation is timely since there is a current movement for federal legislation that would dictate to states without such legislation.

The Locate Center of Alaska has worked out well for its 26 members which are primarily located in the Anchorage area, Kenai Peninsula, and Manzanaska-Susitna Borough and some rural utilities. It has virtually eliminated dig-ins caused by excavators that didn't call for locates (historically the largest group of offenders).

Attached is ML&P's detailed analysis of ATA's proposed bill. The language of the proposed bill is in the left hand column and our suggested changes and comments in the right hand column. The portions of the text that is in bold in the right hand column emphasize the changes in intent from the proposed bill. Also attached is a copy of Anchorage's current ordinance.

It would be to ATA's advantage to obtain input from the Anchorage Area Utility Association: they worked closely with the Utility Contractors Association in gaining their support for the Anchorage ordinance.

Sincerely,

Thomas R. Stahr  
General Manager

Attachments: ML&P Comments on proposed legislation

# ~~Alaska Telephone Association~~

4341 B Street, Suite 304  
Anchorage, AK 99503  
(907)563-4000  
FAX (907)582-3778

**Duane C. Durand**  
President

**James Rowe**  
Executive Director

February 3, 1997

Bob Yivisaker  
President  
Anchorage Area Utility Association  
P.O. Box 2929  
Palmer, AK 99645

Dear Mr. Yivisaker:

The Alaska Telephone Association is interested in establishing minimum statewide standards to reduce damages to underground facilities as well as above ground facilities; thereby promoting safety and protecting the public interest. To that end we have produced the enclosed draft legislation -- modeled after legislation in Washington -- and we would appreciate your review and comments.

Sincerely,

James Rowe

enc.

Alaska Telephone Association

**JAMES ROWE**  
Executive Director

201 E. 56th, Suite 114  
Anchorage, AK 99518

907-563-4000  
Fax 907-562-3776  
e-mail: jrowe@ptialaska.net

Telephone Association

201 E. 56th, Suite 114  
Anchorage, AK 99518  
(907) 563-4000  
FAX (907) 562-3776

**James Rowe**  
Executive Director

November 24, 1997

Kimberly Crisafulli  
ENSTAR  
3000 Spenard Road  
Anchorage, AK 99503

Dear Ms. Crisafulli:

Thank you for your help with the number of locates earlier today. I look forward to receiving your year end compilation when it is available.

Enclosed is a draft of the proposed locate legislation we expect to have introduced in January. It has been shared with utilities and contractors and I encourage widespread distribution. Over the past year I have made a number of changes in response to suggestions. I welcome your input.

Sincerely,



James Rowe

# Alaska Telephone Association

201 E. 56th, Suite 114  
Anchorage, AK 99518  
(907) 563-4000  
FAX (907) 562-3776

David Fauske  
President

James Rowe  
Executive Director

December 23, 1997

Pat Wolfe  
Alaska Building Contractors  
720 W. 58th Avenue  
Anchorage, AK 99518

Dear Pat,

The enclosed state locate standards draft has been submitted to the chairs of the Senate and House Labor and Commerce Committees for consideration for introduction during the next session. It's been circulated for comment and modification among a number of utilities and the Associated General Contractors of Alaska. I think it fairly spells out the responsibilities of all parties involved in locating and excavation of underground utilities.

Based on a Washington statute, this draft was initiated by the Alaska Telephone Association's Engineering and Planning Committee which, recognizing that there are stricter municipal standards, believed that a minimum statewide standard for locates would be beneficial for utilities, contractors and the public. As I'm sure you're aware, the telephone industry is experiencing new entities placing facilities in the ground. Timely and accurate locates will only become more important as the building continues.

I'd be pleased to hear any comments or suggestions you have regarding this draft and I expect the respective chairs of the committees, Sen. Loren Leman and Rep. Norman Rokeberg, would also welcome your thoughts. If you'd like to get together to discuss this, please call me at 563-4000.

Happy holidays.

Sincerely,



James Rowe

# Alaska Telephone Association

201 E. 56th, Suite 114  
Anchorage, AK 99518  
(907) 563-4000  
FAX (907) 562-3776

David Fauske  
President

James Rowe  
Executive Director

December 23, 1997

Henry Springer  
Executive Director  
Associated General Contractors of Alaska  
4041 B Street  
Anchorage, AK 99503

Dear Mr. Springer:

Last August I sent you a copy of the enclosed state locate standards draft and solicited your comments. After you distributed it, Ken Smith of Wire Communications and Electrical, Inc. called me with concern regarding the treble damages paragraph (page 7), but he didn't offer any suggestions. I'd think the "willful and malicious" intent that triggers the treble damages would be deemed a benefit by most contractors.

Since (other than Mr. Smith's comment) I've received no adverse reaction, I submitted it without change to the chairs of the Senate and House Labor and Commerce Committees for consideration for introduction during the next session. I think it fairly spells out the responsibilities of all parties involved in locating and excavation of underground utilities.

Based on a Washington statute, this draft was initiated by the Alaska Telephone Association's Engineering and Planning Committee which, recognizing that there are stricter municipal standards, believed that a minimum statewide standard for locates would be beneficial for utilities, contractors and the public. As I'm sure you're aware, the telephone industry is experiencing new entities placing facilities in the ground. Timely and accurate locates will only become more important as the building continues.

I'd still welcome any suggestions you have regarding this draft and I expect the respective chairs of the committees, Sen. Loren Leman and Rep. Norman Rokeberg, would also welcome your thoughts. If you'd like to get together to discuss this, please call me at 563-4000.

Happy holidays.

Sincerely,



James Rowe

# Alaska Telephone Association

201 E. 56th, Suite 114  
Anchorage, AK 99518  
(907) 563-4000  
FAX (907) 562-3776

David Fauske  
President

James Rowe  
Executive Director

December 23, 1997

Doug Askerman  
Anchorage Home Builders Association, Inc.  
8301 Schoon Street, Suite 200  
Anchorage, AK 99518

Dear Mr. Askerman:

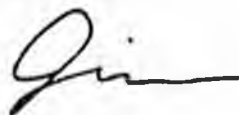
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Based on a Washington statute, this draft was initiated by the Alaska Telephone Association's Engineering and Planning Committee which, recognizing that there are stricter municipal standards, believed that a minimum statewide standard for locates would be beneficial for utilities, contractors and the public. As I'm sure you're aware, the telephone industry is experiencing new entities placing facilities in the ground. Timely and accurate locates will only become more important as the building continues.

I'd be pleased to hear any comments or suggestions you have regarding this draft and I expect the respective chairs of the committees, Sen. Loren Leman and Rep. Norman Rokeberg, would also welcome your thoughts. If you'd like to get together to discuss this, please call me at 563-4000.

Happy holidays.

Sincerely,



James Rowe

# LOCATE CALL CENTER OF ALASKA

## OPERATING GUIDELINES

The Locate Call Center of Alaska and the utilities participating in this Call Center have established the following guidelines for operation:

1. All marking shall be in accordance with the American Public Works Association Uniform Color Codes of:

**Red** electric power lines, conduit, cables and lighting cables.

**Yellow** gas, oil, steam, petroleum and gaseous materials.

**Orange** communication, alarm or signal lines, cables or conduit. (some local TV companies use pink)

**Blue** water, slurry and irrigation lines.

**Green** sewers and drain lines.

2. Some utilities choose to mark their lines using the following abbreviations:

S sanitary sewer	E electric power
ST storm sewer	TV television
W water	T telephone
G gas	POL petroleum oil line

3. A circle will be drawn around pedestals and poles to allow for any loops that might be buried. Hand digging is required within this circle.
4. Hand digging is required within 2 feet of either side of outside dimensions of the underground facility.
5. Clear, visible marks with white paint or staking may be used by the party requesting a locate to denote the area of excavation.
6. After a locate has been performed in an area, it is the responsibility of the party requesting the locate to reference or maintain the locate marks during the construction period. The utilities may charge for lines that need to be remarked.

7. Directions given for locating will be stated as north, south, east, or west, if possible.

8. Site meets are required by Anchorage Water & Wastewater and are available with other utilities, but must be requested at the time of the locate request. Site meets will be scheduled by each utility.

9. The standard locate time for each utility varies from 15-45 minutes of locating per site visit. Addition locating time per site visit may be requested, but must be scheduled in advance by each utility.

10. A utility shall provide a surface mark at the location requested, showing the location of its underground facilities within the excavation site on or before the time of excavation. Anchorage Municipal Ordinance requires the notification of excavation be at least two business days before excavation.

If a utility fails to provide a requested surface mark by the excavation date, the excavator may proceed. If the excavator reveals that a surface mark has been incorrectly provided, or if an

underground facility is found in an unmarked excavation site, the excavator may proceed but only in a manner which avoids damage to such underground facility and must immediately notify the affected utility. (AMO 26.90)

11. Anytime a utility is cut, pulled, or even scraped slightly, the excavator is to call the Locate Call Center and report the incident. The Locate Call Center will then give the excavator further information on reporting this damage. A facility may be damaged when contact is made even though external damage is not visible.
12. Even though a request is made for a specific utility locate, the Call Center will still notify all utilities in the area. The caller will be asked to explain why they requested only a specific utility.
13. If a party requests an emergency locate, states it meets the definition of threat to life and property, and must be located in less than the minimum of two business days required period, and the locator determines this was not so, there may be a charge for this locate.

14. If a short notice or urgent locate request is made (requesting a locate in less than the minimum two business days notification period), the utilities will be notified, but immediate response is not guaranteed. If the requestor is willing to pay the utility standard rates, and if the utility can provide the locate, the locate may be performed prior to the standard time requirements.
15. Lower priority will be given to any request for design purposes. Whenever possible, it is suggested that these requests be made during the "off" (winter) season.

•••••

**THINK SAFETY,  
CALL FIRST !!!!**

**LOCATE CALL CENTER  
OF ALASKA**

•••••



## **LOCATE CALL CENTER OF ALASKA, INC.**

**OPERATING  
GUIDELINES**

**BEFORE YOU DIG...**

**Call to Request an  
Underground Utility Locate!**

•••••

**Anchorage Bowl Area  
278-3121**

**Statewide Toll Free  
800-478-3121**

# **Alaska Telephone Association**

201 E. 56th, Suite 114  
Anchorage, AK 99518  
(907) 563-4000  
FAX (907) 562-3776

**David Fauske**  
President

**James Rowe**  
Executive Director

## **State Underground Locate Standards**

### **Purpose of the Proposed Locate Legislation**

The purpose of this proposed legislation is to provide an understanding of the standards and responsibilities of the locate and excavation of underground utilities throughout the state for utilities and contractors. Adherence to these standards will reduce damage to utilities, decrease outages to customers, promote safety for industry employees and the public, and serve the public interest.

With an ever increasing profusion of utilities being placed underground, the need for cooperation and coordination among contractors and utilities is escalating. This draft assigns accountability in a fair manner to facilitate efficient and safe construction and maintenance of utilities, minimize monetary loss and avoid hazardous conditions.

**S B**

**3 3 5**

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 3/9/98

FURTHER: Finance

Date of 5-Day Notice: 3-19-98  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 4-23-98

Labor and Commerce Committee considered

SENATE BILL NO. 335

"An Act relating to barbers, hairdressers, and cosmetologists."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 335 \_\_\_\_\_ (L.I.C.)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	-DNP	AM
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
		<i>Tim Kelly</i>	<input checked="" type="checkbox"/>		
CHAIR:		CHAIR: <i>Brew N. Jensen</i>	<input checked="" type="checkbox"/>		

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
C+ED	4/2/98		55.2

DEC FN to come

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APP

e

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO. CSSB 335(L&C)**

Revision Date: \_\_\_\_\_ Department: Commerce and Economic Development  
 Title: An Act relating to barbers, hairdressers, manicurists, BRU: Occupational Licensing  
and cosmetologists. Component: Operations  
 Sponsor: Senate Labor and Commerce  
 Requestor: Senate Labor and Commerce COMPONENT SERIAL NO. 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	8.5	8.5	8.5	8.5	8.5	8.5
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	45.7	14.3	14.3	14.3	14.3	14.3
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>55.2</b>	<b>23.8</b>	<b>23.8</b>	<b>23.8</b>	<b>23.8</b>	<b>23.8</b>

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

CHANGE IN REVENUES	79.0	0.0	47.6	0.0	47.6	0.0
--------------------	------	-----	------	-----	------	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	55.2	23.8	23.8	23.8	23.8	23.8
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>55.2</b>	<b>23.8</b>	<b>23.8</b>	<b>23.8</b>	<b>23.8</b>	<b>23.8</b>

Estimate of any current year (FY 98) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

CSSB 335(L&C) establishes a licensing category for manicurists to be regulated by the Board of Barbers and Hairdressers. The number of individuals that would be affected by the bill is not known therefore, a number of assumptions are made in this fiscal note. Information obtained from the Business Licensing files indicate there are approximately 295 manure/pedicure salons licensed to do business. For the purposes of this fiscal note, we have doubled the number (590) assuming that most salons would have more than one manicurist. An explanation of the costs is attached.

Prepared by: Jennifer Strickler, Administrative Manager Phone: 465-2144  
 Division: Occupational Licensing Date: 4/21/98  
 Approved by Commissioner: Deborah B. Sedwick Date: 4/21/98  
 Agency: Commerce and Economic Development

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# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO.: CSSB 335(L&C)

ANALYSIS: (Continued)

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT FISCAL NOTE CALCULATIONS

### PERSONAL SERVICES

Funding to add 2.5 months of time to an existing PPT Occupational Licensing Examiner I position, Range 12, GGU 8.5

The increase time to the existing position will be responsible for the licensing of manicurists.

### TRAVEL

No travel is anticipated 0.0

CONTRACTUAL SERVICES 45.7

Contractual Services are based on the following costs -

Examinations: \$32.5

Examination costs at \$55 per candidate x 590 candidates.  
(Note: Exam candidates pay the State for the cost of the examination. In turn, the State pays the examination agency for use of its examinations. This is considered to be a pass-through cost.) After the first year, the assumption is made that at least 20 applicants will take the examination each year at a cost of \$1.1 (20 x \$55).

Exam Facilities: \$2.8

Examination facility rentals: one day exams at \$125 per site based on:

- 12 exams in Anchorage (\$125 x 12 = \$1,500)
- 6 exams in Fairbanks (\$125 x 6 = \$750)
- 4 exams in Juneau (\$125 x 4 = \$500)

Continuation of CSSB 335(L&C) Fiscal Note

Proctor Fees: \$3.5

Based on one-day exams, 8 hours per day, with at least two proctors at each exam. The proctor fee is \$10 per hour x 8 hrs = \$80 x 2 proctors = \$160 per exam x 22 exams = \$3,520.

Regulations: \$5.2

- One public notice printed in three newspapers, estimated at \$200 per paper x 3 = \$600
- Printing of regulations consisting of 6 pages, back-to-back, at \$12 per 100 x 6 pages = \$72 x 6 (to produce 600 copies) = \$432
- Postage for 600 pieces x .32 = \$192
- Printing and mailing costs to current licensees (3,838) of the new statute and regulation changes, \$4.0

Daily Communication Costs: \$1.0

Printing Costs: \$0.7

Applications and other forms will be needed to implement the licensing requirements. A large supply will be required for the initial mailing and to have forms available in each division office. Assuming application forms are at least 3 pages, back-to-back, at \$12 per 100 x 3 pages = \$36 x 20 (to produce 2,000 copies) = \$720

SUPPLIES \$1.0

**TOTAL:** \$55.2

**REVENUE/FUND SOURCE:**

AS 08.01.065 requires all licensees to pay the costs of regulating their profession. The general fund program receipts from the licensing of manicurists will be expected to cover the direct costs shown in this fiscal note and a share of administrative indirect costs like other licensing programs.

# FISCAL NOTE

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO. SB 335**

Revision Date: \_\_\_\_\_ Department: Commerce and Economic Development  
 Title: An Act relating to barber, hairdressers, and BRU: Occupational Licensing  
cosmetolog Component: Operations  
 Sponsor: Senate Labor and Commerce  
 Requestor: Senate Labor and Commerce COMPONENT SERIAL NO. 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES</b>	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

SB 335 renames Cosmetologist license to "Esthetician" license, and creates a temporary license for applicants who have completed their education without passing the exam. The division anticipates the additional work to be minimal, and therefore, will absorb the additional work created by the temporary license.

Prepared by: Jennifer Strickler, Administrative Manager Phone: 465-2144  
 Division: Occupational Licensing Date: 3/24/98  
 Approved by Commission: Dorothy B. Sedwick Date: 3-24-98  
 Agency: Commerce and Economic Development

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# Alaska State Legislature

## Senate



Official Business

State Capitol  
Juneau, AK. 99801-1182

### Senate Labor & Commerce Committee

#### SPONSOR STATEMENT

#### SENATE BILL 335

Senate Bill 335 changes "cosmetology" and "cosmetologist" to "esthetics" and "esthetician" in the applicable sections of statute to more clearly inform the public of what operations the licensee is trained to perform. It deletes the word "shaving" from the definition of hairdressing to update the definition in line with actual training and practice. Finally, it creates a new, temporary license for those who have successfully completed a course of study or apprenticeship in barbering, hairdressing or esthetics. The temporary license allows them to work under the direct supervision of a practitioner licensed in the field they have been studying while they await their board examination and the subsequent issue of their professional license. The temporary license is valid for 120 days and is non-renewable.

Barbers, hairdressers, and those practicing skin care, who are currently identified as cosmetologists in Alaska, are all required to pass board examinations before they can begin practice as independent professionals. Under the current schedule of examinations, and with the additional waiting time for the actual issuance of a license, a student or apprentice who has completed training for these professions must often wait 90 days or more before they can begin to work as a licensed professional. In the meantime, they can work only under a licensed instructor. Of the approximately 2,600 Alaska professionals licensed in these areas, only 150 are licensed instructors, greatly limiting the opportunities for the student or apprentice to earn income and maintain their skills while awaiting their boards.

In almost all states other than Alaska, those known as "cosmetologists" are licensed to cut, style, and otherwise work on customer's hair. Currently, Alaska defines cosmetology as skin care for the scalp, face, and neck. The Division of Occupational Licensing has recently added the words "skin care only" to the cosmetology license to make this clear to the public.

Currently, the statutory definition of "hairdressing" includes the shaving of beards, but the hairdresser board examination does not include a test of shaving, and school curricula in the state do not include training in shaving for hairdressing students.



Official Business

# Alaska State Legislature

## SENATE

State Capitol  
Juneau, AK 99801-1182

Senate Labor & Commerce Committee

### SPONSOR STATEMENT

#### CS SENATE BILL 335 (L&C)

##### Licensing of Cosmetologists

Senate Bill 335 changes "cosmetology" and "cosmetologist" to "esthetics" and "esthetician" in the applicable sections of statute to more clearly inform the public of what operations a licensee is trained to perform. In almost all states other than Alaska, those known as "cosmetologists" are licensed to cut, style, and otherwise work on customer's hair. Currently, Alaska defines cosmetology as skin care for the scalp, face, and neck. The Division of Occupational Licensing has recently added the words "skin care only" to the cosmetology license to make this clear to the public. SB 335 deletes the word "shaving" from the definition of hairdressing in line with actual training and practice.

SB 335 creates a new, temporary license for those who have successfully completed a course of study or apprenticeship in barbering, hairdressing, esthetics or manicure. The temporary license allows licensees to work under the direct supervision of a practitioner licensed in the field they have been studying while awaiting board examination and the subsequent issue of a professional license. Students or apprentices who have completed training for these professions must often wait 90 days or more before they can begin to work as a licensed professional. In the meantime, they can work only under a licensed instructor. Of the approximately 2,600 Alaska professionals licensed in these areas, only 150 are licensed instructors, greatly limiting the opportunities for the student or apprentice to earn income and maintain their skills while awaiting their boards.

SB 335 licenses manicurists under the same educational and testing requirements as currently apply to cosmetologists (estheticians). Manicurists are licensed in 43 states and the District of Columbia. The increased complexity of operations performed by manicurists, the use of chemicals, and the possibility of disease transmittal are reasons to consider professional training and licensing requirements in Alaska.

Finally, SB 335 allows instructors' licenses to encompass the practitioners' license in the same field.



Official Business

# Alaska State Legislature


## SENATE

State Capitol  
Juneau, AK 99801-1182

### Senate Labor & Commerce Committee

#### Memo

TO: Terri Lauterbach, Legal Counsel  
Legislative Research and Legal Services  
via fax X 2029 this page only

FROM: Annette Kreitzer, Aide to   
Senate Labor & Commerce Committee  
PH: X 3844

DATE: April 22, 1998

RE: Final CS for SB 335 (L&C)

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The Senate Labor & Commerce Committee adopted Work Draft 0-LS1634\E by Utermohle/Lauterbach dated 3/24/98 and Amendment #1 )-LS1634\E.1 by Lauterbach dated 4/21/98 and other amendments described below and moved the bill from committee as a CS. Please prepare a final CS for SB 335 for delivery to Senator Leman's office.

The additional amendments are as follows:

Section 28. Transitional Provision: Rather than forcing people to get their education with 180 days for all occupations, the committee adopted an effective date of September 1, 1999 for the sections of the bill requiring licenses.

They adopted language allowing the Board to immediately begin work to develop regulations to implement the Act (as in Sec. 30 and 31 of CSSSHB 349(FIN)).

Please call me if you have any questions about these amendments.



Official Business

# Alaska State Legislature


## SENATE

State Capitol  
Juneau, AK 99801-1182

### Senate Labor & Commerce Committee

#### Memo

TO: Terri Lauterbach, Legal Counsel  
Legislative Research and Legal Services  
via fax: X 2029 this page only

FROM: Annette Kreitzer, Aide to   
Senate Labor & Commerce Committee  
PH: X 3844

DATE: April 21, 1998

RE: SB 335: Licensing of Cosmetologists (FOR Thurs. 4/23 hearing)

---

Please prepare an amendment to CS )-LS1634E by Utermohle/Lauterbach dated 3/24/98 that incorporates the following:

Some committee members have expressed concern that ins'tructors of barbering, hairdressing, esthetics and manicure (under this bill) would have to hold licenses in each area of practice that they also instruct. The committee has asked for a scheme that would allow instructors to hold a license that incorporates the areas of practice that they are competent to practice - pay a higher fee for that single license and not be bothered with having 2 or more licenses.

The licensing scheme must work both ways, a hairdresser should be able to move up to an instructor license (on renewal, then just purchase the instructor license); and an instructor move back to just doing hair or nail care (on renewal then just purchasing a hairdresser or manicurists license).

Consider the following language to accomplish this:

Amend AS 03.13.100 to add a new section

(e) A person obtaining an instructor's license in the areas of barbering, hairdressing, esthetics, or manicure shall be considered to hold a practitioner's license in that area.

0-LS1634E  
Utermohle/Lauterbach  
3/24/98

CS FOR SENATE BILL NO. 335( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to barbers, hairdressers, manicurists, and cosmetologists."

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

3 \* Section 1. AS 08.13.010(b) is amended to read:

4 (b) The board consists of

5 (1) two persons licensed as barbers under this chapter;

6 (2) two persons licensed as hairdressers under this chapter, one of  
7 whom is also licensed as an esthetician [A COSMETOLOGIST] under this chapter;  
8 and

9 (3) one public member.

10 \* Sec. 2. AS 08.13.030 is amended to read:

11 Sec. 08.13.030. Powers and duties of the board. (a) The board shall  
12 exercise general control over the vocations of barbering, hairdressing, manicuring, and  
13 esthetics [COSMETOLOGY].

14 (b) The board shall

15 (1) examine applicants and approve the issuance of licenses and permits

1 to practice;

2 (2) authorize the issuance of licenses for schools of barbering,  
3 hairdressing, manicuring, and esthetics [COSMETOLOGY].

4 (c) The board may

5 (1) suspend or revoke a license or permit;

6 (2) on its own motion or upon receipt of a written complaint, conduct  
7 hearings and request the Department of Commerce and Economic Development to  
8 investigate the practices of a person, shop, or school involved in the practice or  
9 teaching of barbering, hairdressing, manicuring, or esthetics [COSMETOLOGY];

10 (3) adopt regulations or do any act necessary to carry out the provisions  
11 of this chapter.

12 \* Sec. 3. AS 08.13.040 is amended to read:

13 Sec. 08.13.040. Meetings and examinations. The board shall meet as often  
14 as necessary to conduct its business. It shall conduct separate examinations covering  
15 each field of practice: barbering, hairdressing, manicuring, and esthetics  
16 [COSMETOLOGY]. Examinations shall be given at least twice in every year for each  
17 field of practice for which applications for licensure are pending. An applicant may  
18 take an examination in more than one field during the same testing session.

19 \* Sec. 4. AS 08.13.070 is amended to read:

20 Sec. 08.13.070. License required. A person may not

21 (1) practice barbering, hairdressing, manicuring, or esthetics  
22 [COSMETOLOGY] without a license, temporary permit, temporary license, or student  
23 permit unless exempted under AS 08.13.160(d);

24 (2) practice barbering, hairdressing, manicuring, or esthetics  
25 [COSMETOLOGY] except in a shop or school licensed under this chapter unless  
26 exempted under AS 08.13.160(d) or permitted under AS 08.13.160(e);

27 (3) open or conduct a school of barbering, hairdressing, manicuring,  
28 or esthetics [COSMETOLOGY] without a license;

29 (4) teach in a school of barbering, hairdressing, manicuring, or  
30 esthetics [COSMETOLOGY], or supervise an apprentice without an instructor's  
31 license;

- 1 (5) operate a shop in violation of AS 08.13.120;
- 2 (6) permit an employee or other person being supervised who is not
- 3 exempted under AS 08.13.160(d) to practice barbering, hairdressing, manicuring, or
- 4 esthetics [COSMETOLOGY] without a license, temporary permit, temporary license,
- 5 or student permit;
- 6 (7) permit the use of the person's license, temporary permit, temporary
- 7 license, or student permit by another person;
- 8 (8) obtain or attempt to obtain a license, temporary permit, temporary
- 9 license, or student permit by fraudulent means.

10 \* Sec. 5. AS 08.13.080 is amended to read:

11 **Sec. 08.13.080. Qualifications of applicants.** An applicant for examination

12 must

13 (1) have successfully completed all courses that a school with a

14 curriculum in barbering approved by the board is required to teach in order to be

15 licensed under AS 08.13.110 if applying for a license to practice barbering;

16 (2) have successfully completed all courses that a school with a

17 curriculum in hairdressing approved by the board is required to teach to be licensed

18 under AS 08.13.110 if applying for a license to practice hairdressing;

19 (3) have successfully completed all courses that a school with a

20 curriculum in esthetics [COSMETOLOGY] approved by the board is required to teach

21 in order to be licensed under AS 08.13.110 if applying for a license to practice

22 esthetics [COSMETOLOGY];

23 (4) have successfully completed all courses that a school with a

24 curriculum in manicuring approved by the board is required to teach in order to

25 be licensed under AS 08.13.110 if applying for a license to practice manicuring;

26 (5) have served an apprenticeship under AS 08.13.082;

27 (6) [(5)] specify the field of practice in which the applicant intends to

28 teach and have held a license to practice in the field for three years or have held a

29 license in the field for one year and have completed 600 hours of student training as

30 an instructor in the field of practice from a licensed school with a curriculum approved

31 by the board if applying for a license as an instructor; or

1                   (7) [(6)] have completed a combination of course work and  
2                   apprenticeship acceptable to the board.

3                   \* Sec. 6. AS 08.13.082(c) is amended to read:

4                   (c) The period of apprenticeship required to qualify an applicant for a license  
5                   to practice esthetics [COSMETOLOGY] is 350 hours. The apprenticeship must be  
6                   served in a shop approved by the board. The apprenticeship may not be completed in  
7                   less than six months from the date of its commencement and must be completed in not  
8                   more than one year from the date of its commencement.

9                   \* Sec. 7. AS 08.13.082 is amended by adding a new subsection to read:

10                  (d) The period of apprenticeship required to qualify an applicant for a license  
11                  to practice manicuring is 350 hours. The apprenticeship may only be served in a shop  
12                  approved by the board. The apprenticeship may not be completed in less than six  
13                  months from the date of its commencement and must be completed in not more than  
14                  one year from the date of its commencement.

15                  \* Sec. 8. AS 08.13.100(b) is amended to read:

16                  (b) A license shall state the areas of practice (barbering, hairdressing,  
17                  manicuring, esthetics [COSMETOLOGY], or any combination) that the practitioner  
18                  is qualified to perform.

19                  \* Sec. 9. AS 08.13.100(c) is amended to read:

20                  (c) The board may by regulation create areas of limited professional licensing  
21                  in the field of esthetics [COSMETOLOGY, EXCEPT THAT THE BOARD MAY  
22                  NOT RESTRICT OR OTHERWISE REGULATE THE PRACTICE OF MANICURE  
23                  OR PEDICURE]. Any limitation shall be stated on the license.

24                  \* Sec. 10. AS 08.13.100(d) is amended to read:

25                  (d) A person holding a current valid license from a board of barbering,  
26                  hairdressing, manicuring, or esthetics [COSMETOLOGY] in another state is entitled  
27                  to a license under this chapter without examination in this state. An application must  
28                  include [:]

29                                 (1) proof of a valid license issued by another licensing jurisdiction;

30                                 (2) proof of completed training, testing, and working experience that

31                                 the board finds to meet the minimum requirements of the state; and

1 (3) payment of a credential investigation fee.

2 \* Sec. 11. AS 08.13.110 is amended to read:

3 Sec. 08.13.110. **School license.** The board shall adopt regulations for the  
4 licensing of schools of barbering, hairdressing, manicuring, and esthetics  
5 [COSMETOLOGY]. The regulations must include details of the curriculum, minimum  
6 hours of instruction, physical condition of the facilities, and financial responsibility of  
7 the owner.

8 \* Sec. 12. AS 08.13.130 is amended to read:

9 Sec. 08.13.130. **Display of license or permit.** A practitioner shall display the  
10 practitioner's license in a conspicuous location in the practitioner's place of business.  
11 Each shop owner is responsible for the display of the licenses of employees. A person  
12 holding a student permit, temporary license, or temporary permit shall display the  
13 permit or license in a conspicuous location in the school in which the person is  
14 enrolled or the shop in which the person [APPRENTICE] works. The school or shop  
15 owner is responsible for the display of a permit or license for each enrolled student,  
16 [OR] apprentice, or temporary license holder.

17 \* Sec. 13. AS 08.13.150 is amended to read:

18 Sec. 08.13.150. **Grounds for refusal, suspension, or revocation of a license**  
19 **or permit.** The board may refuse, suspend, or revoke a license, student permit,  
20 temporary license, or temporary permit for failure to comply with this chapter, with  
21 a regulation adopted under this chapter, or with an order of the board.

22 \* Sec. 14. AS 08.13.160(d) is amended to read:

23 (d) The licensing and permit provisions of this chapter do not apply to

24 (1) a person practicing barbering, hairdressing, manicuring, or  
25 esthetics [COSMETOLOGY] in a community having a population of less than 1,000  
26 people that is not within 25 miles of a community of more than 1,000 people and who  
27 uses only chemicals available to the general public;

28 (2) a shampoo person;

29 (3) a licensed health care professional;

30 (4) a person licensed by another licensing jurisdiction in a field of  
31 practice licensed by this chapter while demonstrating techniques or products to persons

1 holding licenses or permits under this chapter.

2 \* Sec. 15. AS 08.13.170 is amended to read:

3 Sec. 08.13.170. **Temporary permits.** The department shall issue a temporary  
4 permit to an applicant for licensing who holds a license to practice as a barber,  
5 hairdresser, manicurist, or esthetician [COSMETOLOGIST] in another state. The  
6 permit is valid until the board either issues a permanent license or rejects the  
7 application. The board shall act on an application within six months.

8 \* Sec. 16. AS 08.13 is amended by adding a new section to read:

9 Sec. 08.13.175. **Temporary license.** A person who meets the requirements  
10 of AS 08.13.080(1), (2), (3), (4), (5), or (7) is entitled to be temporarily licensed after  
11 applying for examination under this chapter if the applicant works under the direct  
12 supervision, and within the physical presence, of a person who is licensed in the area  
13 of practice for which the applicant has applied for examination. A temporary license  
14 issued under this section is valid for 120 days and is nonrenewable. A person may not  
15 receive more than one temporary license for each area of practice licensed under this  
16 chapter. An application for a temporary license must be signed by the supervising  
17 licensee and accompanied by the temporary license fee required under AS 08.13.185.

18 \* Sec. 17. AS 08.13.180 is amended to read:

19 Sec. 08.13.180. **Student permits.** A person attending a licensed school of  
20 barbering, hairdressing, manicuring, or esthetics [COSMETOLOGY,] and a person  
21 apprenticed to a licensed instructor in a shop approved by the board shall obtain a  
22 student permit. A student permit to practice barbering or hairdressing is valid for two  
23 years. A student permit to practice manicuring or esthetics [COSMETOLOGY] is  
24 valid for one year. A student permit may not be renewed, but, upon application, the  
25 board may issue a new permit to the same person [,] or extend an expired permit to  
26 the date of the next scheduled examination. Credit earned under an expired student  
27 permit may be transferred to a new permit as determined by the board.

28 \* Sec. 18. AS 08.13.185(a) is amended to read:

29 (a) The Department of Commerce and Economic Development shall set fees  
30 under AS 08.01.065 for initial licenses and renewals for the following:

31 (1) schools;

- 1 (2) school owners;
- 2 (3) instructor;
- 3 (4) shop owner;
- 4 (5) practitioner of barbering;
- 5 (6) practitioner of hairdressing;
- 6 (7) practitioner of manicuring;
- 7 (8) practitioner of esthetics [COSMETOLOGY];
- 8 (9) [(8)] temporary permit;
- 9 (10) temporary license;
- 10 (11) [(9)] student permit.

11 \* Sec. 19. AS 08.13.190 is amended to read:

12       **Sec. 08.13.190. Failure to possess a license or permit.** A person who  
13 practices barbering, hairdressing, manicuring, or esthetics [COSMETOLOGY], or  
14 operates a shop, or operates a school of barbering, hairdressing, manicuring, or  
15 esthetics [COSMETOLOGY], or teaches in a school of barbering, hairdressing,  
16 manicuring, or esthetics [COSMETOLOGY], without a license, temporary permit,  
17 temporary license, or student permit and who is not exempt under AS 08.13.120 or  
18 under AS 08.13.160(d) is guilty of a class B misdemeanor.

19 \* Sec. 20. AS 08.13.210 is amended to read:

20       **Sec. 08.13.210. Health and sanitary conditions.** Health and sanitary  
21 conditions in shops and schools of barbering, hairdressing, manicuring, and esthetics  
22 [COSMETOLOGY] shall be supervised by the Department of Environmental  
23 Conservation.

24 \* Sec. 21. AS 08.13.220(4) is amended to read:

25       (4) "esthetics" ["COSMETOLOGY"] means the use of the hands,  
26 appliances, cosmetic preparations, antiseptics, or lotions in massaging, cleansing,  
27 stimulating, or similar work on the scalp, face or neck, including skin care, make-up,  
28 and temporary removal of superfluous hair, for cosmetic purposes for a fee;

29 \* Sec. 22. AS 08.13.220(5) is amended to read:

30       (5) "hairdressing" means performing, for a fee, the following services  
31 for cosmetic purposes:

1 (A) [SHAVING,] trimming [,] or cutting the beard of a living  
2 person; and

3 (B) arranging, styling, dressing, curling, temporary waving,  
4 permanent waving, cutting, singeing, bleaching, coloring, cleansing,  
5 conditioning, or similar work on the hair of a living person;

6 \* Sec. 23. AS 08.13.220(6) is amended to read:

7 (6) "instructor" means a person who teaches barbering, hairdressing,  
8 manicuring, or esthetics [COSMETOLOGY] in a school or who supervises an  
9 apprentice;

10 \* Sec. 24. AS 08.13.220(7) is amended to read:

11 (7) "practitioner" means a person licensed to practice barbering,  
12 hairdressing, manicuring, or esthetics [COSMETOLOGY] under this chapter;

13 \* Sec. 25. AS 08.13.220(9) is amended to read:

14 (9) "shop" is an establishment operated for the purpose of engaging in  
15 barbering, hairdressing, manicuring, or esthetics [COSMETOLOGY].

16 \* Sec. 26. AS 08.13.220 is amended by adding a new paragraph to read:

17 (10) "manicuring"

18 (A) means, for a fee, to

19 (i) cut, trim, polish, color, tint, or cleanse a natural or  
20 artificial nail;

21 (ii) affix material by artificial means to a natural nail for  
22 the addition to or extension of the natural nail;

23 (iii) cleanse, treat, or beautify the hands or feet for  
24 cosmetic purposes; or

25 (iv) otherwise treat the nails of the hand or foot except  
26 as provided in (B) of this paragraph;

27 (B) notwithstanding (A) of this paragraph, does not include

28 (i) massage treatment; or

29 (ii) cleansing, treating, or beautifying the hands or feet  
30 solely for the treatment of disease or physical or mental ailments.

31 \* Sec. 27. AS 44.46.020 is amended to read:

1           **Sec. 44.46.020. Duties of department.** The Department of Environmental  
2 Conservation shall

3                   (1) have primary responsibility for coordination and development of  
4 policies, programs, and planning related to the environment of the state and of the  
5 various regions of the state;

6                   (2) have primary responsibility for the adoption and enforcement of  
7 regulations setting standards for the prevention and abatement of all water, land,  
8 subsurface land, and air pollution, and other sources or potential sources of pollution  
9 of the environment, including by way of example only, petroleum and natural gas  
10 pipelines;

11                   (3) promote and develop programs for the protection and control of the  
12 environment of the state;

13                   (4) take actions that are necessary and proper to further the policy  
14 declared in AS 46.03.010;

15                   (5) adopt regulations for

16                           (A) the prevention and control of public health nuisances;

17                           (B) the regulation of sanitation and sanitary practices in the  
18 interest of public health;

19                           (C) standards of cleanliness and sanitation in connection with  
20 the construction, operation, and maintenance of a camp, cannery, food handling  
21 establishment, food manufacturing plant, mattress manufacturing establishment,  
22 industrial plant, school, barbershop, hairdressing, manicuring, or esthetics  
23 [COSMETOLOGY] establishment, soft drink establishment, beer and wine  
24 dispensaries, and for other similar establishments in which lack of sanitation  
25 may create a condition that causes disease;

26                           (D) the regulation of quality and purity of commercially  
27 compressed air sold for human respiration.

28 \* **Sec. 28. TRANSITIONAL PROVISION.** (a) Notwithstanding other provisions of this  
29 Act, a person who, on the effective date of this Act, holds a valid

30                   (1) instructor's license issued under AS 08.13 may teach manicuring or supervise  
31 an apprentice manicurist without an instructor's license in the field of manicuring until 180 days

1 after the effective date of this Act;

2           (2) license to practice barbering, hairdressing, cosmetology, or esthetics issued  
3 under AS 08.13 may practice manicuring without a license to practice manicuring until 180 days  
4 after the effective date of this Act.

5           (b) Notwithstanding other provisions of this Act, a person may practice manicuring  
6 without a license issued under AS 08.13 until 180 days after the effective date of this Act if the  
7 person files with the Board of Barbers and Hairdressers, within 30 days after the effective date  
8 of this Act, a written notice of intent to apply for a license under (a) of this section.