

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9635 SENATE LABOR & COMMERCE



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March 19, 1998

TO: SENATOR LOREN LEMAN, Chair
Senate Labor and Commerce Committee
((907) 465-3810

FROM: Sallie Nickerson, Realtor

RE: CSHB 33 (FIN)

I urge your support of CSHB 33. Passage of this bill means necessary changes in the current statute, protection of consumers from unlicensed individuals receiving real estate fees, and protecting the future of AHFC.

We as an industry, including bankers, appraisers, surveyors and inspectors need your support and help. Hundreds of people have participated in consensus on the bill and it's necessary for our industry.

Thank you for your support.

A handwritten signature in cursive script that reads "Sallie Nickerson".



Just the FAX...from

Sallie Nickerson, CRS
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To: Conette Krieger
Fax: for Loun Lemman
of pages total including cover: _____

If there are any problems with this transmission, please call: 907-562-2378

Comments:

Urgent to get this
to Senator Lemman.
Thank you. -

ALASKA STATE LEGISLATURE

House of Representatives

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Representative Norman Rokeberg

CSHB 33 (FIN) am – Real Estate Licensees
Sectional Analysis
By Representative Norman Rokeberg

Date: March 3, 1998

Title: An Act relating to real estate licensees and to the real estate surety fund; relating to the Real Estate Commission; and providing for an effective date.

Section 1: **Registration of mobile home dealers:** Exempts a real estate licensee who buys or sells mobile homes from licensing as a mobile home dealer. *What are the purposes of your registration? (907) 258-8191*
exceptions effective date?

Section 2: **Commission meetings and officers.** Amends to provide that the Real Estate Commission ("Commission") is to elect officers at the first meeting of each fiscal year.

Section 3. **Assistants.** Amends to permit the Commission to assign certain duties to assistants. New duties include: issuing licenses, administering examinations, certifying educational courses, approving instructors of educational courses, and negotiating terms and payment of fines and other money due.
Note: AS 08.01.050, referenced in first line, concerns administrative duties of the Department.

Section 4. **Duties of the Commission.** Sets out the specific duties of the Commission. Adds duties to include: issuing temporary permits to personal representative of estate of deceased real estate broker or legally incompetent real estate broker, revising the form of a seller's property disclosure statement, levying civil fines, revoking license of broker or associate broker convicted of forgery, theft, extortion, conspiracy to defraud creditors, or a felony involving moral turpitude committed while licensed.

Section 5. **Education of applicants and licensees.** Amends to provide Commission may not prohibit completion of educational requirement within a two-day period.

Section 6. **Education of applicants and licensees.** Amends so that, with certain exceptions in Section 7, in order to be an approved course for education under this chapter, the course must have been approved prior to the time the course was conducted. A course outline or instructor will be considered approved if the commission does not disapprove same within 45 days after the date of receipt of a complete application.

Section 7. **Education of applicants and licensees.** New. Commission is to establish core curricula for licenses issued. Courses to be allowed include courses developed by national organizations who specialize in real estate, technology courses related to real estate practice, courses offered at accredited college or university as part of real estate curriculum. Sets forth the areas for which Commission should establish continuing education: real estate sales, property management, community association management, commercial sales. A licensee shall complete at least one of the four core curricula during each biennial licensing period.

Section 8. **License required.** Sets forth when a real estate license is required. Major additions are in subsections (4) through (6) concerning property management and community association management.

Section 9. **Civil penalty for unlicensed or unauthorized practice.** New section. Civil penalty for such activities may not exceed \$5,000 or the amount of gain realized plus \$5,000, whichever is greater. Before entering fine, commission must send written notice of the proposed order to licensee and grant 30-day time period in which licensee may request hearing. Commission may issue subpoenas to compel attendance and testimony of witnesses and disclosure of evidence. Person aggrieved by levy of civil penalty may file an appeal with superior court. If person does not pay fine within 30 days after entry of order or within 10 days after court enters final judgement, Commission may initiate other action to recover amount of the penalty.

Section 10. **Entitlement to license.**

- (a) Amended to provide that a natural person, only, not a business entity, can be licensed. The person applies within six months after passing examination, and has at least 24 months of active and continuous experience as licensed real estate salesperson within 36 months immediately preceding application, and is owner of real

estate business or employed as a real estate broker by a foreign or domestic corporation, partnership, limited partnership, or limited liability company.

- (b) Amended to provide that a natural person, only, not a business entity, can be licensed. The person applies within six months after passing brokers examination and has at least 24 months of active and continuous experience as a licensed real estate salesperson within 36 months immediately preceding application. Adds a foreign or domestic corporation, partnership, limited partnership, or limited liability company as additional forms of business entities that can employ an associate broker as a broker.
- (c) Amended to provide that a natural person, only, not a business entity, can be licensed. The person applies within six months after passing salesperson examination.

Section 11. **Entitlement to license.** New section concerning community association management. Sets forth qualifications for limited license to practice community association management: applies by January 1, 1999; pays required fees; demonstrates to Commission that has been engaged in practice of community association management for at least 24 months before January 1, 1999; and meets other requirements established by the Commission. Person issued a limited community association management license may not use the term "broker", "associate broker", or "salesperson" for any business purpose unless person licensed appropriately under other provisions of this chapter.

If employed by broker, will be issued associate broker license. If qualifies for broker license and is owner of community association management business or employed as a community association manager by a foreign or domestic corporation, partnership, limited partnership, or limited liability company will be issued broker license. After initial licensing, a person is subject to same requirements existing for other brokers and associate brokers; however, person may practice only community association management and does not qualify as a broker or associate broker for the purpose of engaging in other types of real estate transactions.

Section 12. **Fidelity bond for community association managers.** New section. Requires that if a broker exercises some control over community association funds that the broker must provide evidence of coverage by blanket fidelity insurance. Bond may be in name of broker with association as additional insured or may be in name of association with broker as an additional insured. Bond must cover maximum funds within control of community association manager. Commission may grant exemptions from this section.

Owners' association is only entity allowed to file claim with surety fund against a community association manager. Surety fund will be in first position on these claims.

Limitations on community association managers. Community association managers may not exercise control over reserve or investment accounts and may only exercise control over operating accounts under a contract approved by the association's board and duplicate statements must be sent by the licensee and the association.

Section 13. **Content and purpose of examination.** Amends language concerning real estate examinations to add additional topics to be covered

Section 14. **Administration of examination.** Amends to provide that examination fee payment shall be made by applicant directly to national testing service's designated representative before exam taken.

Section 15. **Reexamination.** Minor language change to current law.

Section 16. **Fees.** Adds language covering fees or courses offered by the commission, reinstatement of lapsed license, changes to registered office, course certification and recertification, and instructor approval and renewal of approval.

Section 17. **Reinstatement of lapsed license.** Repeals and reenacts this section. If license has lapsed less than 24 months is eligible for reinstatement when person provides application, license fee and proof of continuing education. If license has lapsed more than 24 months, not eligible for reinstatement and must meet initial licensure requirements.

Section 18. **Inactive license.** Amends by providing that a licensee who wants to become inactive shall complete an inactivation form along with applicable fees. Inactive licensees may receive commissions or other payments for services performed while actively licensed.

Section 19. **Real estate surety fund.** Minor language change.

Section 20. **Location.** Amends. Broker must register with the commission a principal office and branch office(s) and include information as to which licensees practice where.

Section 21. **Change of location.** Amends. Before a broker changes principal office or branch office, broker must notify commission, and pay a fee.

Section 22. **Branch offices.** Allows an associate broker whose principal place of business is at the branch office to directly supervise that branch office and may only supervise one branch office. All branch offices shall be advertised only

in the name of the principal office but indication may be made that it is a branch office.

Section 23. **Possession and display of license certificates.** Repealed and reenacted. Broker must display license at broker's principal office. License of each licensee working in broker's principal office must be displayed in principal office. Designated associate broker who is in charge of branch office and certificate of each licensee working in branch office must be displayed in branch office. Such display of license certificates must be in such a manner that they are available for public to view.

Section 24. **Making of transactions.** Amends to provide that an active sales person or associate broker may perform real estate activities only through broker who employs (which includes contracts) that licensee. All money or other proceeds must be turned over to broker or broker's authorized representative.

Section 25. **Listing or management contracts.** Amends to provide all listings or management contracts must be in writing signed by broker or licensee of broker and client or authorized representative.

Section 26. **Accounts; record of transaction.** Amends to provide that a broker needs to keep a complete record, for three years, of all real estate transactions in which broker or employed licensee of broker engaged; provide upon request to any principal in a transaction an accounting for money or other property collected or held; keep a separate trust account in a bank into which broker will deposit all earnest money deposits, purchase money, security deposits, contingency funds, collected rental money, rental receipts, or other money collected in trust; if authorized by board of directors of a community association to collect, control, or disburse association funds, keep a separate account in a financial institution for the funds; make available to commission, on request, records under this section; ensure that records are kept for a minimum of three years even if delivered to another entity.

Section 27. **Accounts; record of transaction.** New. A real estate licensee shall keep, for a minimum of three years, complete record of all real estate transactions in which licensee was principal; if the licensee maintains records concerning management or sale of licensee's own properties or client properties separate from the broker's file, these shall also be retained for a minimum of three years; licensee shall make available to the commission these records as requested; licensee shall promptly deposit community association funds or proceeds; licensee may not commingle funds of community association with funds of another community association or with licensee's funds.

Establishes the three-year requirement for records maintenance as beginning at the initiation of a transaction and continues until three years after the date a listing agreement ends, a sales transaction costs or otherwise ends, a management contract ends, or another contract or fiduciary obligation ends.

Section 28. **Signs.** Amends. Provides that signs must be maintained at each registered real estate office. Signs must prominently show real estate business name as registered with Commission. If office located in premises with more restrictive sign requirements than those adopted by the Commission, the premise restrictions will control.

Section 29. **Conflict of interest.** Amends. Describes when a real estate licensee has conflict of interest. Provides that conflict must be disclosed at the time of initial substantive contact with principals or agents of the principals and confirm the conflict in writing to principals or agents of the principals as soon as possible after initial substantive contact.

Section 30. **Conflict of interest.** New subsections. New subsection (b) indicates that the failure of a licensee to disclose the conflict as required under this section does not give rise to a cause of action by private person. The Commission may impose a disciplinary sanction. A private person who has a cause under the surety fund for fraud, misrepresentation, or deceit may file against the surety fund. No common law remedies are prohibited by this subsection.

Subsection (c) describes "conflict of interest" as: having a present ownership or leasehold interest in property which is subject of transactions; being a whole or part owner of business interest in the subject property; representing a relative or person with whom licensee has financial relationship if the relative or person has a present financial interest in the property being marketed or considered for purchase or lease; receiving compensation from someone other than a party to the contract or another party having a financial interest in the transaction; or receiving compensation for community association management while simultaneously engaged as a property manager for a unit within the community association.

Section 31. **Disclosure of agency to prospective buyers and sellers.** Makes minor language changes (i.e., "person's" to "licensee"). Adds reference to "dual agency".

Section 32. **Licensed assistants.** New section. Permits a salesperson or associate broker to act as a licensed assistant to a real estate licensee other than the broker who employs that licensee, and allows direct compensation by employment contract.

Section 33. **Prohibited conduct.** Amended. Licensee may not falsely represent to be a member of a franchise or other business association in addition to current provisions. Associate broker or salesperson may accept fee or commission only from employing broker except when acting as a licensed assistant.

Section 34. **Prohibited conduct.** New subsections. Licensee may not knowingly pay any part of fee, commission, or other compensation: to a person not licensed under this chapter except under certain circumstances; to another licensee except through that licensee's broker; or to another licensee knowing that the other licensee intends to pay all or portion of that fee or commission to an unlicensed person. This prohibition does not apply to payment by a licensee to a person licensed to perform real estate activities in another jurisdiction if that person has assisted in something for which a license is required under this act, or payment from a licensee to a principal as part of a resolution of dispute regarding terms of transaction or property transferred.

Person may not use or attempt to use a license issued under this chapter that was issued to another person, give false or forged evidence to the commission, impersonate an applicant, knowingly use or attempt to use expired or suspended or revoke or nonexistent license or falsely claim to be licensed.

Section 35. **Real estate surety fund.** Minor language changes (i.e., "brokers and salesmen" to "licensees").

Section 36. **Payments by real estate licensee.** Minor language changes.

Section 37. **Claim for payment.** Amended. Adds reference to community association manager. Adds "licensee" language. Adds requirement that claim for payment must be filed within two years after event. Adds reference to "or the conversion of community association accounts under the control of a community association manager". Adds the principal and any other licensee involved in the transaction to list of recipients of copy of the claim.

Section 38. **Claim of payment.** New subsection. Only owners' associations are permitted to file claims with the surety funds for claims against a community association manager.

Section 39. **Consideration of application.** Minor language changes. Adds "or the conversion of community association accounts under the control of a community association manager". The word "trust" is added in reference to the type of funds in the "conversion" language.

Section 40. **Consideration of application.** Minor language changes.

Section 41. **Consideration of application.** Minor language changes including the "or the conversion of community association accounts under the control of a community association manager" language.

Section 42. **Findings and payment.** Amends with minor language changes. Same as Section 41.

Section 43. **Hearing costs.** Amends to provide that Commission may charge surety fund for costs of hearing on claim for reimbursement. Mandates that the Commission deposit into the surety fund any amounts recovered for these costs from the licensee.

Section 44. **Payment of small claims judgment.** Amends to provide that Commission shall make an award from the fund of any outstanding portion of a small claims judgment on receipt of a copy of the final judgment, an affidavit from the claimant stating that more than 30 days have elapsed since the judgment became final and that the responsible licensee has not yet satisfied the judgment.

Section 45. **Maximum liability.** Minor language changes.

Section 46. **Right to subrogation.** Minor language changes.

Section 47. **Exceptions:** Amends and adds new exceptions in (a). Provisions of this chapter that require licensure do not apply to:

- (1) AMENDED: person may manage or make real estate transaction on with respect to real estate person owns or is seeking to own so long as the compensation the person receives does not include any portion of the commission or other compensation paid to a real estate licensee in the transaction.
- (2) attorney in fact under power of attorney may accomplish a specific real estate transaction; may not act as such for more than two transactions in a calendar year (current law);
- (3) Lawyer performing duties as lawyer (current);
- (4) Public official in conduct of official duties (current);
- (5) Person acting as receiver, trustee, administrator, executor, or guardian (current);
- (6) Person acting under court order (current);
- (7) Person acting under authority of a will or trust (current);
- (8) Person dealing in mineral rights transactions (current);
- (9) AMENDED: an employee of domestic or foreign corporation, general or limited partnership, or limited liability company, when performing duties incidental to regular course of business when act relates to the management, sale, or other disposition of real estate owned by listed entities; does not apply to person employed by these entities who performs either as a vocation or for compensation if the amount of such compensation is dependent upon or related to value of real estate.
- (10) AMENDED: person performing duties as a resident manager;

- (11) NEW: bookkeeper or accountant performing bookkeeping or accounting functions;
- (12) NEW: secretary or receptionist in real estate office accepting rent or association fees and providing written receipt for same;
- (13) NEW: tradesmen or vendors of services performing maintenance and repair functions;
- (14) NEW: employee of real estate firm or property owner delivering or accepting a real estate contract or application, or related amendment, to or from another person;
- (15) NEW: individual assisting in performance of real estate activities by carrying out administration, clerical, or maintenance tasks;
- (16) NEW: management of a total of four or fewer residential units by a natural person for other persons;
- (17) NEW: community association management for property organized under AS 34.07 or 34.08 by resident owner if owner is member of a self-managed community association for the property;
- (18) NEW: community association management by a developer of property organized under AS 34.07 or AS 34.08 while that developer owns at least 51 percent of association;
- (19) NEW: attorney in fact acting for a relative under a power of attorney. Relative means: spouse, great grandparent, grandparent, parent, uncle, aunt, sibling, child, nephew, niece, grandchild, or great grandchild by the whole or half blood or by marriage but does not include a relative who is only related through a step relationship such as a stepbrother or the child of a step brother but does include a stepchild;
- (20) NEW: mobile home dealer licensed under AS 08.67 performing within the scope of the dealer's license; or
- (21) NEW: management by natural person of property for another person without a fee other than reimbursement of expenses.

Section 48. **Exceptions.** New subsection (b) indicating that while a person may be exempt from this chapter, AS 08.88.401(e)(1) [SEE: Section 34] prohibits a licensee from knowingly paying to that person any part of a fee, commission, or other compensation received by the licensee in buying, selling, exchanging, leasing, auctioning, or renting real estate.

Section 49. **Application to independent contractors.** New section. Provisions of this chapter that apply to employment relationships and employees also apply to contracting relationships and independent contractors.

Section 50. **Definitions:** Amends definition of "commission" to mean Real Estate Commission except where the context indicates that it refers to a fee paid for personal services.

Section 51. **Definitions.** Amends definition of "real estate" to state that such term does not include a unit in a hotel, motel, boarding house, rooming house, or other transient lodging facility, or a unit in a warehouse, mini-storage facility or other facility the function of which is limited to warehousing purposes.

Section 52. **Definitions:** Amends definition of "resident manager" to indicate that a resident manager resides on rented or leased real property or contiguous property owned by the same owner, manages the property for the benefit of another person, and is either employed by the owner of the real estate or employed by, or under contract with, a real estate licensee.

Section 53. **Definitions.** Adds new definitions for:

"Community association management": activity undertaken for an owners' association with regard to property organized under AS 34.07 or 34.08 under an agreement in exchange for a fee, commission or other valuable consideration.

"community association operating account": an account in a financial institution maintained in the name of a specific community association that contains money used for day-to-day operation and not for other uses;

"community association reserve account": an account in a financial institution maintained in name of specific community association that contains money reserved for expected replacement cost of improvements within the community association or for other future uses.

"Knowingly" means same as AS 11.81.900(a).

"Property management": activity undertaken for another with regard to real property under an agreement in exchange for a fee, commission or other valuable consideration.

"Real estate licensee": Person who holds license under this chapter; includes broker unless context clearly excludes brokers

"Real estate transaction:" (1) sales means transfer or attempted transfer of interest in real property, an act conducted as result of or in pursuit of a contract to transfer interest a unit of real property, or act conducted in attempt to obtain a contract to market real property.

(2) property manager: lease or rental of a unit of real property including collect of rent from a tenant of a unit of rented or

leased property, attempt to rent or lease a unit of real property, an attempt to collect rent from tenant of rented or leased real property, or an act conducted as a result of or in pursuit of a contract to manage a unit of leased or rented real property.

(3) community association management: collection or attempted collection of dues from unit owner or an activity conducted as a result of or in pursuit of a contract with a community association to manage the affairs of that association.

Section 54. **Form of disclosure statement.** New language added that indicates the disclosure statement must include a provision that notifies transferees (1) that they are responsible for determining whether a convicted sex offender resides in the vicinity of the property that is the subject of the transferee's potential real estate transaction; and (2) where information on convicted sex offenders may be obtained.

Section 55. Repeals AS 08.88.111 (Commission regulations with regard to examinations).

Section 56. **Transitional provision.** Person may practice community association management without a license under this chapter until January 1, 1999.

Section 57. **Regulations.** Permits Commission to adopt regulations before the effective date of Section 7.

Section 58. **Revisor's instruction:** Wherever "salesman" appears, it shall be read as "salesperson".

Section 59. **Effective date** for 08.88.091(f) and (g). See section 7.

Section 60. **Effective date** for all other sections. Immediate.

ALASKA STATE LEGISLATURE

House of Representatives

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Representative Norman Rokeberg

FREQUENTLY ASKED QUESTIONS

CSHB 33 (FIN) am Real Estate Licensing
By Representative Rokeberg

1. **Does HB 33 restrict the ability of an individual or business from managing or selling their own property?**

No. The bill clarifies current law and provides numerous exceptions to required licensing.

2. **Can a person have a relative or friend manage and rent their rental property or properties?**

Yes. The bill allows a relative to perform the same activities as an owner. Also, anyone can do this and be reimbursed for expenses only, but cannot collect a fee. Moreover, there are no restrictions on four (4) units or less.

3. **Is a person free to negotiate the amount of the fee or commission?**

Yes. A person has every right to bargain with a real estate licensee on the amount of compensation.

4. **Why license community association managers?**

To ensure that anyone entering this business is subject to regulation, thus affording protection to consumers. Currently anyone can enter into this business without any regulation or any consumer protection.

5. **Can a community association be self-managed?**

Yes. The association board can do it. Also, a resident unit owner is allowed to manage for a fee.

6. **My subdivision has a homeowner's association. Is that covered by this bill?**

No. Only condominium and townhouse community associations established under AS 34.07 (Old Horizontal Regime Act) or AS 34.08 (New Alaska Common Interest Ownership Act) are covered by this bill.

7. Will the Real Estate Commission ("REC") be overburdened with individual complaints from community association members?

No. Only complaints received from the community association board of directors will have standing with the REC.

8. What benefits will a community association receive from this bill?

Several: the right to make a claim against the surety fund; mandated fidelity bonds for community association managers; restricted access to association funds by community association managers; a grievance process; increased competence with mandatory continuing education; and more.

9. How will the strengthened licensing provisions of HB 33 help protect Alaskan consumers?

Alaska law has always required a license to practice real estate in Alaska. But our licensing statutes are more than twenty-five years old, and according to the assistant attorney general, do not adequately cover recent developments in the real estate industry. New "kick-back" marketing schemes have emerged which attempt to circumvent the consumer protections provided by state licensure requirements.

Under these schemes, non-licensed entities procure buyers or sellers of real estate in return for a percentage of the commission or other compensation. Because such entities are not licensed, the state has no authority to regulate the activity to protect the consumer.

The schemes also threaten to channel millions of dollars of Alaska real estate activity outside. To participate, consumers must agree to "package" transactions that are facilitated by a central "clearinghouse" processor outside of Alaska who then arranges for all aspects of the transaction. Alaska consumers would be denied the opportunity to pick the agent, lender, appraiser or title company of their choosing. Since the loan financing is referred to outside lenders, Alaska consumers would also be deprived of the opportunity to participate in unique and beneficial Alaska financing programs like AHFC that require the use of in-state lenders.

10. Wouldn't prohibiting these "kickbacks" amount to "protectionism" or "restraint of trade"?

No. The law would simply create a level playing field by requiring that all entities that engage in real estate transactions be *licensed*. That has always been the intent and interpretation of Alaska law. Any marketing company would be free to do business in Alaska as long as they were licensed here and followed the regulations established by Alaska's real estate commission.

11. Is there a precedent for such provisions?

Yes. The provisions contained in HB 33 are modeled after a Mississippi statute that recently withstood federal court challenge. The provisions also have the strong support of Alaska's Real Estate Commission which has stated that it is imperative that Alaska's licensure statutes be updated.

ALASKA STATE LEGISLATURE

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Representative Norman Rokeberg

SPONSOR SUMMARY OF CSHE 33 (FIN) arn Real Estate Licensing, AS 08.88

- I. REQUIRES COMMUNITY ASSOCIATION MANAGERS TO BE REAL ESTATE LICENSEES TO PROTECT CONSUMERS
 - A. Results from theft of \$570,000 from 18 associations
 - B. Creates limited/grandfathered licensees for current community association managers minimizing transition problem
 - C. Establishes fidelity bonds/account procedures
 - D. Allows surety fund claims
- II. CLARIFIES AND EMPOWERS THE REAL ESTATE COMMISSION ("REC") STATUTORY AUTHORITY. For example:
 - A. Staff delegation to speed up workload
 - B. Grants authority to levy civil fines
 - C. Expands disciplinary powers of REC
 - D. Increases authority to charge fees to licensees
- III. EXPANDS AND CLARIFIES EDUCATIONAL REQUIREMENTS AND COURSES
 - A. Provides that determination on courses submitted for approval/disapproval must be accomplished within 45 days
 - B. Establishes core curricula for continuing education in real estate sales, property management, community association management, and commercial sales.
 - C. Grants credit for nationally recognized professional designations, technology courses, and college courses.
- IV. LICENSED REQUIRED
 - A. Activities are clarified and expanded to include community association management

V. PROHIBITED CONDUCT

- A. Existing law clarified and strengthened to strictly prohibit a licensee from entering into a "marketing kickback" scheme with a marketing company that promises kickbacks to unlicensed persons.
- B. In spite of conflicting legal opinions (including legislative counsel), the Attorney General has recommended a statutory remedy. (See Section 34, page 23.)

VI. CONFLICT OF INTEREST

- A. Disclosure is clarified with new definitions
- B. Disclosure is expanded to protect consumers and meet the recommendations of a 1995 Legislative Audit.

VII. EXCEPTIONS

- A. Current 10 exceptions to real estate activity requiring a license expanded to 21. Exceptions include:
 - 1. Administrative activities
 - 2. Self-management of community association
 - 3. Management for a fee of 4 or less units
 - 4. Management by relatives
 - 5. Management for expenses, but not a fee
 - 6. Exempts real estate licensees from mobile home dealer license requirements
 - 7. Property management jurisdiction of the REC is not expanded in HB 33 and the new property management clarifying exceptions are to current law

VIII. MISCELLANEOUS PROVISIONS

- A. Allows licensed assistants to be employed (not currently allowed)
- B. Adds several definitions
- C. Calls for immediate effective date except for certain educational changes which will require regulations to be implemented.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 33(FIN) am

1 Page 12, lines 1 - 30:

2 Delete all material.

3 Renumber the following bill sections accordingly.

4 Page 18, lines 7 - 10:

5 Delete "if authorized by the board of directors of a community association to
6 collect, control, or disburse association funds, keep a separate account in a financial
7 institution for the funds:

8 (5)"

9 Page 18, line 14:

10 Delete "(6)"

11 Insert "(5)"

12 Page 18, line 27:

13 Delete ";

14 Insert ";

15 Page 18, line 28, through page 19, line 5:

16 Delete all material.

17 Page 19, following line 12:

18 Insert a new bill section to read:

19 "* Sec. 27. AS 08.88 is amended by adding new sections to read:

1 **Sec. 08.88.353. Limitations, duties of community association managers.**

2 A real estate licensee who practices community association management

3 (1) shall, if authorized by the board of directors of a community
4 association to collect, control, or disburse association funds, keep a separate account
5 in a financial institution for the funds;

6 (2) shall promptly deposit community association funds or proceeds
7 from periodic community association assessments into either a community association
8 reserve account or a community association operating account; if, at any time, the
9 community association operating account contains more money than is estimated to
10 be needed for budgeted expenditures for the subsequent three months, the licensee
11 shall transfer the excess funds to the community association reserve account as soon
12 as practicable;

13 (3) may not commingle funds of a community association with funds
14 of another community association or with the licensee's funds;

15 (4) may not, within the practice of community association
16 management, exercise control over the reserves or investment accounts of a
17 community association;

18 (5) may not, within the practice of community association
19 management, exercise control over the operating account of a community association
20 unless

21 (A) allowed under a contract that has been approved by the
22 association's board of directors; and

23 (B) duplicate financial statements concerning the account are
24 sent by the institution holding the account to the licensee and the association's
25 board of directors at separate addresses.

26 **Sec. 08.88.355. Fidelity bond for community association managers. (a)**

27 If the board of directors of a community association allows a broker to exercise
28 control over community association fees or other community association funds, the
29 broker must provide evidence to the commission that the broker is covered by a
30 blanket fidelity insurance bond. The bond may be in the name of the broker with the
31 association as an additional insured or in the name of the association with the broker
32 as an additional insured. The bond must cover the maximum funds that will be within

1 the control of the community association manager at any time while the bond is in
2 force. The commission may grant an exemption from the bonding requirement of this
3 subsection if the commission determines that the community association manager has
4 equivalent comparable coverage or that coverage is unavailable. The commission may
5 adopt regulations to implement this subsection, including regulations concerning the
6 minimum coverage and terms of coverage that are required and proof of bond and the
7 granting of exemptions.

8 (b) If a loss covered by the fidelity bond required under this section is also
9 reimbursable from the real estate surety fund, the owners' association that suffered the
10 loss may not recover under the bond until the association has filed a claim for
11 reimbursement under AS 03.88.460 and proceedings relating to the claim are
12 concluded."

13 Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 33(FIN) am

1 Page 21, line 31:

2 Delete "a new section"

3 Insert "new sections"

4 Page 21, following line 31:

5 Insert a new section to read:

6 "Sec. 08.88.397. No duty to disclose certain matters. (a) A criminal, civil,
7 or administrative action may not be brought against a licensee for failing to disclose
8 a suspicion or knowledge that the property being transferred in a real estate
9 transaction is

10 (1) or has been the site of a natural death, suicide, homicide, or crime
11 classified as a felony;

12 (2) or has been owned or occupied by a person who has been exposed
13 to the human immunodeficiency virus or by a person who is or has been diagnosed
14 as having the acquired immune deficiency syndrome or another disease that is known
15 to be transmitted through common occupancy of real estate; or

16 (3) located in the vicinity of a person who has been convicted of a sex
17 offense, as defined in AS 12.63.100.

18 (b) Failure by a licensee to disclose knowledge or suspicion of a matter
19 described in (a) of this section is not grounds for termination or rescission of a real
20 estate transaction."

HB

41

FISCAL NOTE

Bill Version: CSHB 41 (L&C)
 (H) Publish Date: 1/24/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL

Revision Date: _____
 Title: Impairment rating guides for
Workers' Comp
 Sponsor: Representative Rokeberg
 Requestor: House L&C

Department Affected: Labor
 BRU: Workers' Compensation
 Component: Workers' Compensation

COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES:

(Thousands of Dollars)

| OPERATING | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|------------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUE FUND SOURCE # | | | | | | |
|------------------------------------|--|--|--|--|--|--|

FUNDING:

(Thousands of Dollars)

| | | | | | | |
|-------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipt | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

Estimate of current year (FY97) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

This bill proposes amending AS 23.30.190(b) to use the most recent published editions of the American Medical Association Guides, including supplementary materials, for the Evaluation of Permanent Impairment. This bill results in a zero fiscal note for the Workers' Compensation Division.

Prepared by: Paul Grossl, Director *Paul Grossl* Phone: 465-2790
 Division: Workers' Compensation Date: 1/16/97
 Approved by Commissioner: Tom Cashen, Commissioner *Tom Cashen*
 Agency: Department of Labor Date: 1/16/97

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FISCAL NOTE

No. 2
 Bill Version: CSHB 41 (L&C)
 (H) Publish Date: 1/24/97

STATE OF ALASKA
 '97 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to impairment rating guides used in evaluation of certain workers' compensation claims."
 Sponsor: Rokeburg
 Requestor: (H) L&C

Department Affected: Administration
 BRU: Risk Management
 Component: Risk Management
 COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

FUND SOURCE: (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY 97) cost: \$ None

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill requires the use of the most recently published edition (including supplements) of the American Medical Association Guides to the Evaluation of Permanent Impairment — when determining the existence and degree of permanent impairment compensable under the workers' compensation act.

Agency "Cost of Risk" premium allocations (inter-agency receipts collected by Risk Management) reflect average of 5 prior years of actual claims costs. Any incremental cost increase realized by applying newer rating guideline will be included in the claims experience - and reflected in future workers' compensation premium allocations to each agency.

There is no direct fiscal impact on the Division of Risk Management.

Prepared by: J. Brad Thompson, Director
 Division: Risk Management

Phone: 465-5723
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 1/14/97

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SENATE COMMITTEE REPORT

DATE: 2/6/97

FURTHER:

DATE TURNED
IN TO OFFICE: 2-20-97

Labor and Commerce Committee considered

CS FOR HOUSE BILL NO. 41(L&C)

"An Act relating to impairment rating guides used in evaluation of certain workers' compensation claims."

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 change
 - new: SCR^o _____

| SIGNING DO PASS | DP | OTHER RECOMMENDATIONS | NR | DNP | AM |
|-------------------------------------|----|-----------------------|----|-----|----|
| <i>Jim Kelly</i> | ✓ | | | | |
| <i>Jim Mal...</i> | ✓ | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| CHAIR: <i>Loren A. Lewan</i> | ✓ | CHAIR: | | | |

NEW FISCAL NOTE(S):

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

PREVIOUS FISCAL NOTE(S):*

| Department | Date | Zero | Fiscal |
|------------------------|----------------|------|--------|
| <i>Labor</i> | <i>1/24/97</i> | ✓ | |
| <i>indian/air mgmt</i> | <i>1/24/97</i> | ✓ | |
| | | | |
| | | | |
| | | | |

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

American Medical Association

Physicians dedicated to the health of America



Guides to the
Evaluation of
Permanent
Impairment

Chapter 1

Impairment Evaluation

Is it possible to improve estimates of the severity of human impairments, basing them on accepted medical standards? Can those estimates be used in comparing, evaluating, and adjudicating claims of ill health and impairment arising in workers' compensation cases, Social Security Administration cases, and other types of cases?

This book, *Guides to the Evaluation of Permanent Impairment (Guides)*, began to take form during the 1950s under the premise that the answer to the first question is "yes." An ad hoc committee appointed by the Board of Trustees of the American Medical Association (AMA) gave impetus to the effort. The first edition of the *Guides* was published in 1971, and those involved with succeeding editions have sought to improve and refine it, to the end that it could be useful anywhere when questions arise about people's physical and mental functioning and capabilities.

The *Guides* provides a standard framework and method of analysis through which physicians can evaluate, report on, and communicate information about the impairments of any human organ system. The book uses up-to-date information on impairment and illness provided by knowledgeable clinicians and scholars. In the physician's office, the book can be an aid to making the diagnosis of an impairment and following the course of therapy.

1.1 Impairment, Disability, Handicap

Impairment is defined in the *Guides* as an alteration of an individual's health status. Impairment, according to the *Guides*, is assessed by medical means and is a medical issue. An impairment is a deviation from normal in a body part or organ system and its functioning. The *Guides* defines "permanent impairment" as one that has become static or stabilized during a period of time sufficient to allow optimal tissue repair, and one that is unlikely to change in spite of further medical or surgical therapy.

The *Guides* definition of an impairment closely parallels that of the World Health Organization (WHO), which has defined an impairment as "any loss or abnormality of psychological, physiological, or anatomical structure or function."¹

In the *Guides*, impairments are defined as conditions that interfere with an individual's "activities of daily living," some of which are listed in the Glossary (p. 315). Activities of daily living include, but are not limited to, self-care and personal hygiene; eating and preparing food; communication, speaking, and writing; maintaining one's posture, standing, and sitting; caring for the home and personal finances; walking, traveling, and moving about; recreational and social activities; and work activities.

An impairment percentage derived by means of the *Guides* is intended, among other purposes, to represent an informed estimate of the degree to which an individual's capacity to carry out daily activities has been diminished.

The *Guides* recognizes that "normal" is not a fine point or an absolute in terms of physical and mental functioning and good health. More often, normality is a range or a zone, as with vision and hearing. The normal can vary with age, sex, and other factors. For example, the physical abilities and the visual capabilities of a 21-year-old almost certainly will differ from those of a 75-year-old person. An interpretation of normal that is too strict can result in an overestimation or underestimation of impairment. What is normal must be determined by sufficient studies of representative populations carried out with valid methods.

Disability may be defined as an alteration of an individual's capacity to meet personal, social, or occupational demands, or statutory or regulatory requirements, because of an impairment. Disability refers to an activity or task the individual cannot accomplish.² A disability arises out of the interaction between impairment and external requirements, especially those of a person's occupation. Disability may be thought of as the gap between what a person *can* do and what the person *needs or wants* to do.

The WHO defines a disability as "any restriction or lack [resulting from an impairment] of ability to perform an activity in the manner or within the range considered normal for a human being."¹

An "impaired" individual is not necessarily "disabled." For example, loss of the distal phalanx of the little finger of the right hand will impair the functioning of the digit and hand of both a concert pianist and a bank president. However, the bank president is less likely to be disabled than the pianist. A surgeon who loses a hand will be impaired and will be disabled in terms of the ability to operate; but the surgeon may be fully capable of being the chief of a hospital medical staff and may not be at all disabled with respect to that occupation.

Millions of people have slight hearing losses that deviate from the normal and can be classified as impairments. However, this does not mean all of those individuals are disabled. An individual who is able to meet life's demands is not disabled, even if a medical examination discloses an impairment. An impaired individual may or may not have sufficient ability or capacity to meet the demands or requirements of a particular position or occupation.¹

A recent review of disability in the U.S. indicated that about 7.1 million persons living in the community at large and in long-term care institutions, about 3% of the nation's population, have disabilities in

performing daily activities. About 60% of the disabled are older than 65 years, and the prevalence is substantially higher among women.⁴

The concept of "handicap" is related to but different from the concepts of disability and impairment. Under federal law, an individual is handicapped if he or she has an impairment that substantially limits one or more of life's activities, has a record of such impairment, or is regarded as having such an impairment. This definition is so broad that, under it, almost any person may be considered to be handicapped.

For the purposes of the *Guides*, when an impairment is associated with an obstacle to useful activity, a handicap may exist. An impaired individual is handicapped if there are obstacles to accomplishing life's basic activities that can be overcome only by compensating in some way for the effects of the impairment. Such compensation or accommodation often entails the use of assistive devices, such as crutches, wheelchairs, elevators, hearing aids, optical magnifiers, prostheses, or special tools or equipment. Accommodation may include modification of the environment.

If an impaired individual is not able to accomplish a specific task or activity despite accommodation, or if no accommodation exists that will enable completion of the task, then that individual is both handicapped and disabled. However, an impaired individual who is able to accomplish a specific task with or without accommodation is neither handicapped nor disabled with regard to that task.

In general, it is a physician's responsibility to evaluate a patient's health status and determine the presence or absence of an impairment. The physician may work in one of several settings, including a clinic or hospital, in the workplace as an occupational medicine specialist, or as an independent medical examiner. If the physician is well acquainted with the patient's activities and needs, he or she may also express an opinion about the presence or absence of a disability or handicap. Some physicians in occupational medicine, for example, have acquired enough experience and knowledge about workers and workplaces that they can provide useful insights on workers' disabilities and handicaps.

1.2 Structure and Use of the *Guides*

Using the *Guides* requires integrating previously gathered medical information with the results of a current medical evaluation. The evaluation should be carried out in accordance with the directions in the *Guides*, and it should be based on three components.

First, certain types of information, described in Chapter 2, are needed to document the nature of an impairment and its consequences. Chapter 2 specifies how to acquire information and defines a format for analyzing, recording, and reporting the information. Second, the *Guides* chapters on the organ systems contain protocols or descriptions of ways to evaluate a particular body part, function, or system. Third, the chapters contain tables relating to the evaluation protocols. If the physician has followed the protocols and tables, then the reported findings will be congruent with the *Guides* criteria.

In practice, the first key to effecting an accurate impairment evaluation is a review of office and hospital records maintained by the physicians who have cared for the patient since the onset of the medical condition. Such records include clinical notes, medical consultation reports, hospital records, admission and discharge summaries, notes on operations, pathology and laboratory test reports, and reports on special tests and diagnostic procedures. Using multiple sources of information and attempting to ensure that the sources are objective can help eliminate bias, an error introduced by selecting or encouraging one outcome over another.

Before judgments according to the *Guides* are accepted, the history and course of the medical condition must be analyzed. This analysis should include findings from previous examinations, the treatment and responses to treatment, and the impact of the condition on the patient's activities. Before a judgment regarding impairment is made, it must be shown that the problem has been present for a period of time, is stable, and is unlikely to change in future months in spite of treatment.

In evaluating an impairment, it is important to obtain enough clinical information to characterize it in accordance with the *Guides* requirements. Once this task is accomplished, the evaluator's findings may be compared with the clinical information already available about the individual. If the evaluator's findings are consistent with the results of previous clinical studies, the findings may be compared with the *Guides* criteria to estimate the impairment. If the findings are not consistent with those of earlier studies, there should be communication between the involved physicians and clinical studies as needed to resolve any disparities.

1.3 Are the *Guides* Criteria Objective and Authoritative?

The contributors to the *Guides* understand the importance of having objective data on the functioning of normal persons' organ systems in order to evaluate those of impaired individuals. For many systems (eg, the respiratory, cardiovascular, visual, auditory, endocrine, hematologic, and digestive systems), medically accepted and scientifically derived data on normal functioning are available. The *Guides* generally makes use of these data and references their sources.

If the *Guides* contributors have been unable to identify objective data on the normal functioning of an organ system, they have estimated the extent of impairments on the basis of clinical experience, judgment, and consensus. The estimates of the well qualified persons contributing to this book, most of them physicians, would be more convincing than those of most others in estimating the severity of people's impairments.

It should be understood that the *Guides* does not and cannot provide answers about every type and degree of impairment, because of the considerations noted above and the infinite variety of human disease, and because the field of medicine and medical practice is characterized by constant change in understanding disease and its manifestations, diagnosis, and treatment. Further, human functioning in everyday life is a highly dynamic process, one that presents a great challenge to those attempting to evaluate impairment.

The physician's judgment and his or her experience, training, skill, and thoroughness in examining the patient and applying the findings to *Guides* criteria will be factors in estimating the degree of the patient's impairment. These attributes compose part of the "art" of medicine, which, together with a foundation in science, constitute the essence of medical practice. The evaluator should understand that other considerations will also apply, such as the sensitivity, specificity, accuracy, reproducibility, and interpretation of laboratory tests and clinical procedures, and variability among observers' interpretations of the tests and procedures.

1.4 Is the *Guides* Widely Used?

In a word, yes. Recently compiled data from a 1991 AMA survey indicate that in 40 of 53 jurisdictions (38 states and two territories), use of the *Guides* is *mandated* or *recommended* by law in workers' compensation cases, or the book is frequently used in such

cases. In the survey, the chief executives of the 50 state workers' compensation agencies and those of two trust territories (Puerto Rico and the Virgin Islands) and the District of Columbia received letter questionnaires asking whether use of the *Guides* was (1) mandated by state laws or regulations; (2) recommended by state laws or regulations; (3) not mentioned in state laws or regulations; or (4) usual or frequent. More than one response was permissible.

The results of the survey are shown below in the Table. It may be seen that use of the *Guides* is mandated or recommended by laws or regulations in 29 (55%) of 53 workers' compensation jurisdictions. In 11 jurisdictions (21%) that do not mention the *Guides* in their laws, the book is frequently used. In 13 jurisdictions (24%), the book was reported *not* to be used frequently or mentioned in the statutes. These were Alabama, California, the District of Columbia, Illinois, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Pennsylvania, West Virginia, and Wisconsin. In Texas, mandatory use of the book was in litigation.

Table. Status of *Guides to the Evaluation of Permanent Impairment (Guides)* According to 53 Workers' Compensation Agencies.

| Use of <i>Guides</i> | No. of states and territories |
|-------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Mandated by state or territory's law | 19 |
| Recommended by state or territory's law | 10 |
| Not mentioned in state or territory's law | 21* |
| Usual or frequent in workers' compensation cases | 19 |
| Not mentioned in state or territory's law, and use is <i>not</i> usual or frequent in workers' compensation cases | 13 |

*Eleven states in this category are included also in the "usual or frequent" category of the table.

1.5 Impairment and Workers' Compensation

In general, state and federal workers' compensation laws are based on the concept that a worker who either sustains an injury or incurs an illness arising during and because of employment is entitled to protection against financial loss without being required to sue the employer. In exchange for workers' having lost the right to sue, state workers' compensation systems guarantee benefits to the covered workers who meet the law's requirements.

The types of payments that may be made when a claim is approved fall into three categories: payments

to the claimant to compensate for lost wages due to temporary total disability; payment of medical bills; and payment of an award for permanent partial, or total, disability. Under the workers' compensation laws, disability, whether temporary or permanent, is equivalent to economic loss for which the individual is to be compensated. Temporary partial disability occurs when the individual with impairment returns to work but earns less than before.

Normally, a permanent disability associated with a permanent medical impairment is independent of an individual's capacity to work and is formulated in terms of expected long-term economic loss. The award may be paid according to a schedule that associates impairments of certain body parts, functions, or systems with specific awards. Examples are amputations, loss of sight, and loss of hearing. Usually, a schedule in the workers' compensation law equates the disability with a maximum number of weeks for which benefits are to be paid at a rate based on average weekly wages.

Rating permanent partial disability is necessary when the law, in recognition that the loss of the body part, function, or system may be less than total, requires a determination of the proportion or percentage of loss. Many states stipulate, for example, that if a worker has incurred partial amputation or loss of the use of a part, the Workers' Compensation Commission must allow compensation in proportion to the number of weeks' compensation allowed for total amputation or loss of use of the part.

Because schedules usually do not cover all conditions arising out of injuries, there is likely to be a provision in the law that, in cases of permanent disability other than those that are specifically listed, the Workers' Compensation Commission must determine the percentage by which the "industrial use" of the employee's body was impaired. The Commission also must consider the nature of the injury and the employee's occupation, experience, training, and age and then award proportional compensation. Medical information is essential for the decision process in all of these cases, and a critical problem arises in the interpretation and use of the medical information.

The critical problem is that no formula is known by which knowledge about a medical condition can be combined with knowledge about other factors to calculate the percentage by which the employee's industrial use of the body is impaired. Accordingly, each commissioner or hearing official must come to a conclusion on the basis of assessment of the available medical and nonmedical information. The *Guides* may help resolve such a situation, but it cannot provide complete and definitive answers. Each administrative or legal system that uses permanent impairment as a basis for disability ratings should define its own means for translating knowledge about

an impairment into an estimate of the degree to which the impairment limits the individual's capacity to meet personal, social, occupational, and other demands or to meet statutory requirements.

It must be emphasized and clearly understood that impairment percentages derived according to *Guides* criteria should not be used to make direct financial awards or direct estimates of disabilities.

The physician performing an impairment evaluation must provide more than a number or percentage. The physician should provide as comprehensive a medical picture of the patient as possible, using the Report of Medical Evaluation form (p. 11) as an outline. If this is done, the person receiving the evaluation will be able to determine how the medical information fits with the nonmedical information and will have the basis for an improved understanding of how the impairment may affect the patient's employability and daily activities.

The American Medical Association strongly discourages the use of any but the most recent edition of the *Guides*, because the information in it would not be based on the most recent and up-to-date material.

The Minnesota Medical Association prepared a guide to conditions that may cause "temporary disability," that is, disability lasting less than 52 weeks. The guide estimated the durations of short-term conditions for persons performing clerical or administrative, light manual, or heavy manual work.³

1.6 Railroad and Maritime Workers' Compensation

State workers' compensation laws are not the only means by which employees are compensated for injuries or illnesses. In 1908, Congress provided for railroad workers, passing the Federal Employer's Liability Act (FELA), which put in place a comprehensive injury compensation system. The FELA is an exclusive remedy for injured railroad workers, and it supercedes state workers' compensation laws. The Jones Act, passed in 1920, covers compensation for maritime workers who are injured because of a ship owner's negligence. That law provides for the same rights and remedies that were extended through FELA.

A lawsuit under FELA must be based on the negligence of the railroad in failing to provide the employee with a safe workplace. An injured employee must prove that the railroad should have foreseen that a condition or activity might have caused the injury or disease. The test used is to determine whether the employer's negligence played any part in producing the injury. Recoverable amounts include those for necessary medical expenses, pain and suf-

fering, loss of past earnings, and future losses due to diminished earning capacity. An important stipulation is that the effects of the injury must be diagnosed by a physician.

Under FELA, all cases must go before a jury or judge, and there are no limits to the amounts of awards. This is in contrast to awards under state workers' compensation systems, which are fixed and limited. Under FELA the jury decides on the degree of the injured person's disability and handicap. In a case under FELA, as in any workers' compensation case, the physician has the obligation of obtaining a reliable history and accurately determining the extent of the worker's impairment. The physician should confirm past employment by obtaining others' records and should collect all available medical information.

1.7 Usefulness of the *Guides* for Claims and Litigation

The growing emphasis on workers' compensation claims and litigation makes it increasingly important to use the *Guides* extensively and properly. Even though rating or estimating impairments cannot be totally objective, use of the *Guides* increases objectivity and enables physicians to evaluate and report medical impairment in a standardized manner, so that reports from different observers are more likely to be comparable in content and completeness. The *Guides* helps minimize abuses and unrealistic verdicts that may arise from unjustified claims.

In recent years, workers' claims involving hearing losses or exposures to asbestos have reached the tens of thousands. Judges would be able to render decisions in the cases more expeditiously and equitably, if physicians prepared impairment evaluations according to the methods and criteria of the *Guides*.

Compensation claims may be adjudicated by referees, commissioners, or court judges if the claims fall within state workers' compensation laws; or they may be decided by a judge or jury in federal or state courts. Occasionally, decisions are made by administrators, as with the Social Security Administration, U.S. Department of Veterans Affairs, and some insurance companies. Most individuals making these decisions have specialized training in evaluating and deciding claims. In some instances the claims are evaluated by one or more arbitrators, who may be attorneys or others with special training. The backgrounds and work experience of the adjudicators vary widely; following the *Guides* might improve the quality and equity of their decisions.

Among the many factors that contribute to inequities in workers' compensation cases are inaccurate or incomplete responses from patients, especially

with regard to medical and work histories. Frequently the information in the medical report differs from that in a deposition taken during the legal proceedings. Physicians will save time in the long run by gathering adequate, accurate information about the onset, duration, symptoms, and treatment of illnesses; work histories and workplaces; and the usual activities of patients.

1.8 Employability: Management and Administrative Considerations

The concept of employability deserves special attention, especially since physicians, and particularly occupational physicians, are frequently called on to determine whether an individual can be employed or should be allowed to continue the job. If an individual with a medical abnormality has the capacity, with or without accommodation, to meet job demands and the conditions of employment as defined by the employer, the individual is employable and is not necessarily disabled.

Employability is critically related to an individual's capacity to travel to and from work, be at work, and perform assigned tasks and duties for which the employer is willing to pay wages. If the individual has that capacity, even in the presence of impairment, he or she is not disabled for those tasks. Disability results when the individual lacks, among other capabilities, the prerequisites of employability. Emphasis in the United States on hiring the handicapped and making it possible for individuals with impairments and disabilities to continue their work satisfactorily should receive sensitive and sympathetic attention from physicians. Information from the physician's standpoint on the recently passed Americans with Disabilities Act appears in the Glossary (p. 315).

In determining the employability of individuals with impairments, it is important to establish their status as safety risks to themselves or other employees. The first step in carrying out a medical determination related to employability is to learn about the job, including the employer's expectations with respect to performance, physical activity, reliability, availability, productivity, expected duration of useful service, and any other criteria associated with job qualification and suitability. A sufficiently detailed job analysis can provide the basis on which a physician can determine the kinds of medical information needed to assess an individual's health with respect to the job's demands.

Quite often an individual who alleges disability may already be under the care of a physician, espe-

cially if the medical condition is interfering with workplace activities. The physician's medical records are important in the determination of employability. During the assessment of employability, the physician and other responsible persons should keep in mind the potential for aggravation of an impairment and the possibility of changing an individual's job responsibilities.

With respect to employability, the medical questions to be answered are whether or not the documentation supports the conclusion that the individual's medical condition precludes travel to and from work, being at work, and performing assigned tasks and duties, and, in the case of a deficiency in service at work, whether or not the medical condition has contributed to the deficiency. It is important to verify all of the clinical findings and history to be sure they are reliable and valid.

In general, two physicians who are given the same information gathered from previous records and who examine the same patient for employment under the same protocol should obtain approximately the same findings. The results of their evaluations then may be compared with the criteria for the position. When approached in this way, the physician's participation in an employability determination will be independent of the individual's motivation to work.

References

1. World Health Organization. *International Classification of Impairments, Disabilities, and Handicaps*. Geneva, Switzerland: World Health Organization; 1980.
2. Luck JV Jr, Florence DW. A brief history and comparative analysis of disability systems and impairment rating guides. *Orthop Clin North Am*. 1988;19:839-844.
3. Battista ME. Assessing work capacity. *J Insurance Med*. 1988;20:16-22.
4. LaPlante MP. *Disability in Basic Life Activities Across the Life Span*. Washington, DC: National Institute on Disability and Rehabilitation Research, U.S. Department of Education; 1991.
5. Minnesota Medical Association. *Revised Temporary Disability Duration Guide*. Minneapolis, Minn: Minnesota Medical Association; 1984.

For information on this subject contact the Minnesota Department of Labor and Industry, 443 Lafayette Rd., St. Paul, MN 55155; tel. no. (612) 296-6107.

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE, CHAIRMAN
JUDICIARY, MEMBER
OIL AND GAS, MEMBER




INTERIM:
718 WEST 4TH AVENUE, SUITE 640
ANCHORAGE, AK 99501
PHONE: (907) 258-8191
FAX: (907) 258-2918

SESSION:
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

MEMORANDUM

TO: Senator Loren Leman, Chairman
Senate Labor & Commerce Committee

FROM: Representative Norman Rokeberg 

RE: CSHB 41 (L&C) Hearing, February 20, 1997

DATE: February 18, 1997

Attached are fourteen copies of each of the following for committee files:

- a. Letter of support from the Alaska State Medical Association.
- b. Letter of support from the Alaska State Hospital & Nursing Home Association.
- c. Letter from Alaska National Insurance.

Individuals who will be available to testify in support of this bill:

Representative Norman Rokeberg
Paul Grossi, Division of Worker's Compensation
Dwight Perkins, Department of Labor

The following individual may testify in support of this bill:

Garrey Peska, Alaska State Hospital & Nursing Home Association

I know of no one who is planning to appear to testify in opposition to the legislation.

Thank you for scheduling this matter for hearing. If you have any questions, please do not hesitate to contact me.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE, CHAIRMAN
JUDICIARY, MEMBER
OIL AND GAS, MEMBER



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Representative Norman Rokeberg

SPONSOR STATEMENT REPRESENTATIVE NORMAN ROKEBERG COMMITTEE SUBSTITUTE HOUSE BILL 41 (L&C)

CS HB 41 (L&C) - "AN ACT RELATING TO IMPAIRMENT RATING GUIDES USED IN EVALUATION OF CERTAIN WORKERS' COMPENSATION CLAIMS"

CSHB 41 (L&C) provides that the most recently published edition of the American Medical Association Guides to the Evaluation of Permanent Impairment ("Guides") shall be used in determining eligibility for benefits under the Alaska Worker's Compensation Act. It provides that the Board shall begin using the new edition not later than 90 days after the last day of the month in which the new edition is published and that the Board, at an open meeting, will select a date within that time frame for use to begin

Reasons for adopting this legislature are:

- **Cost of Adopting Regulations –**
Decrease both the hard and soft costs of adopting regulations.
- **Reduce Time Lag –**
Fourth edition published June 1993; regulation approved in April 1996.
New edition published; older editions hard to come by.
- **New Science –**
Adopting the latest "state of medical arts".

This bill will not change the current process used but will make it more efficient and less costly. The vote on the House floor on this legislation was 38-0.

I would encourage your support of this legislation.

Ed3.1:2/6/97

STATE OF ALASKA

DEPARTMENT OF LABOR
WORKERS' COMPENSATION DIVISION

TONY KNOWLES, GOVERNOR

3301 EAGLE STREET, SUITE 304
P.O. BOX 107019
ANCHORAGE, ALASKA 99510-7019
PHONE: (907) 269-4980
FAX: (907) 269-4975

February 7, 1997

The Honorable Norm Rokeberg
Alaska House of Representatives
Room 110
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

Thank you for introducing House Bill 41, and its recent substitute, CSHB 41, which amends AS 23.30.190, a section of the Alaska Workers' Compensation Act. We have reviewed the bill and support it wholeheartedly.

Your proposal would streamline the process of implementing new editions of the American Medical Association Guides to the Evaluation of Permanent Impairment, which must be used in rating injured workers' permanent impairments. Currently, new editions must be addressed via the regulatory process, a much more time-consuming and costly process than the provision you have proposed. Under CSHB 41, new editions would be in use by the Alaska Workers' Compensation Board soon after the American Medical Association changed editions, and the public would be well informed of the Board's use of the new editions under the open meeting and public notice provisions.

Once again, thank you for introducing this legislative proposal. We believe your legislation furthers the goal of providing a quick, efficient, fair, and predictable delivery of workers' compensation benefits to injured workers at a reasonable cost to Alaska's employers.

We hope you are successful in your efforts to enact this legislative change.



FEB-05-97 WED 09:52 WORKERS' COMP. ANCH

FAX NO. 2694975

P. 02/02

FEB-05-97 WED 10:03
FEB 05 '97 10:03AM BETHEL NATIVE CORP
ANCH FRIDBANKS OFFICE

FAX NO. 907 451 2828
FAX NO. 907 455 2191
FAX NO. 2694975

FEB-05-97 WED 09:40
FEB-04-97 TUE 16:21
WORKERS COMP. ANCH

P. 03
P. 02

Representative NORA ROKEBERG
Alaska House of Representatives
20th Alaska Legislature

2

February 7, 1997

Sincerely,

The Alaska Workers' Compensation Board

Tom Cashen
Tom Cashen, Chairman

Valeria Barione
Valeria Barione, Member

Dorothy Bradshaw
Dorothy Bradshaw, Member

John Guichon
John Guichon, Member

S.F. Hegadorn
S.F. Hegadorn, Member

Harriet Fowler
Harriet Fowler, Member

Shawn Pierce
Shawn Pierce, Member

Dorothy Riddley
Dorothy Riddley, Member

Flora Rooney
Flora Rooney, Member

Mare Stump
Mare Stump, Member

Phil Clark
Phil Clark, Member

Patricia Vollendorf
Patricia Vollendorf, Member

Jim Williams
Jim Williams, Member

FEB 14 1997

Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-2662 • (907) 561-2063 (fax)

February 11, 1997

Norman Rokeberg
State Representative
House District 11
State Capitol
Juneau, Alaska 99801-1182

Subject: CSHB 41

Dear Representative Rokeberg:

Last night (2/10/97) Alaska State Medical Association's standing Legislative Committee met. As part of its deliberations CSHB41 was discussed and a support position was adopted. As you know the similar measure which you sponsored last year was also supported by ASMA.

The timely utilization of the latest American Medical Association Guides as published was endorsed. Let me know if I may be of any further assistance.

Sincerely,



James J. Jordan
Executive Director

cc: ASMA Board of Trustees
Legislative Committee Co-Chairs:
Peter Cannava, MD
Joe Chandler, MD
Lydia Eastburn, MD

ALASKA STATE

FEB 17 1997

HOSPITAL & NURSING HOME

ASSOCIATION

Representative Norman Rokeberg
Room 414, Capitol Building
Juneau, Alaska 99811

February 15, 1997

Dear Representative Rokeberg:

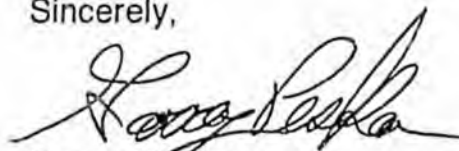
The members of the Alaska State Hospital and Nursing Home Association support Committee Substitute for House Bill 41 (L&C).

The intent of this bill is to clarify and streamline the process for using new editions of the American Medical Association Guides to the Evaluation of Permanent Impairment. The Guides are used to determine the existence and degree of permanent impairment in evaluation of workers' compensation claims.

Currently the Workers' Compensation Board must adopt new regulations to identify the Guides each time they are updated. That is a lengthy and time consuming process. We believe the process set forth in CSHB 41 will work better.

Thank you for your interest in this issue. I would be happy to testify in favor of the bill if requested.

Sincerely,



Garrey M. Peska
Financial Consultant



Alaska National

INSURANCE COMPANY

February 18, 1997

VIA FAX AND MAIL

Representative Norman Rokeberg
State Capitol
Room 110
Juneau, AK 99801-1182

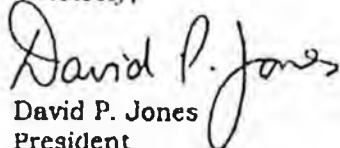
Dear Rep. Rokeberg:

You asked that we give our opinion on HB41.

If this bill is passed, the lengthy regulatory process currently required to adopt the latest AMA Guide will be avoided. It is difficult to envisage any circumstances under which the latest version should not be adopted. It seems logical to apply without delay the latest medical standards in the administration of workers' compensation claims. The AMA Guide itself states that it should no longer be used when an updated version has been published.

Thank you for the opportunity to provide some input.

Sincerely,


David P. Jones
President

Sec. 23.30.190. Compensation for permanent partial impairment.

(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$135,000 multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations.

(b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent. The board shall adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides.

(c) The impairment rating determined under (a) of this section shall be reduced by a permanent impairment that existed before the compensable injury. If the combination of a prior impairment rating and a rating under (a) of this section would result in the employee being considered permanently totally disabled, the prior rating does not negate a finding of permanent total disability.

History -

(sec. 7(3) ch 193 SLA 1959; am sec. 5 - 10 ch 46 SLA 1964; am sec. 1 ch 24 SLA 1965; am sec. 1 ch 102 SLA 1965; am sec. 1 ch 174 SLA 1968; am sec. 1 ch 119 SLA 1970; am sec. 1 ch 10 SLA 1972; am sec. 1 ch 54 SLA 1974; am sec. 5 ch 83 SLA 1975; am sec. 4 ch 75 SLA 1977; am sec. 7 ch 70 SLA 1983; am sec. 34 ch 79 SLA 1988)

Editors Notes -

Section 48, ch. 79, SLA 1988 provides that the amendments to this section by ch. 79, SLA 1988 apply only to injuries sustained on or after July 1, 1988.

Decisions -

Annotators notes. Some of the cases cited below were decided under prior statutes but have been retained for aid in construing present law.

This section governs compensation for permanent partial disability. - *Hewing v. Alaska Workmen's Comp. Bd.*, 512 P.2d 896 (Alaska 1973).

Section controls permanent impairment under AS 23.30.041. - Because subsection (b)'s rule for evaluating permanent impairments, which requires use of the American Medical Association's "Guides to the Evaluation of Permanent Impairment," controls the determination of a permanent impairment worker AS 23.30.041 (f)(3), and because under received a rating of zero permanent impairment under the AMA Guides, the superior court correctly found her ineligible for reemployment benefits. *Rydwell v. Anchorage Sch. Dist.*, 864 P.2d 526 (Alaska 1993).

Premise for concept of disability compensation. - The concept of disability compensation rests on the premise that the primary consideration is not medical impairment as such, but rather loss of earning capacity related to that impairment. *Vetter v. Alaska Workmen's Comp. Bd.*, 524 P.2d 264 (Alaska 1974); *Hewing v. Peter Kiewit & Sons*, 586 P.2d 182 (Alaska 1978).

No retroactive effect unless clear legislative intent shown. - Workmen's compensation acts should be liberally construed in favor of the employee, but statutes are presumed to operate prospectively and will not be given a retroactive effect, unless by express terms or necessary implication, it clearly appears that that was the legislative intent. *Hood v. State, Workmen's*

Comp. Bd., 574 P.2d 811 (Alaska 1978).

There were four basic types of disability compensation - payable under the Alaska Workmen's Compensation Act: (1) temporary total disability, (2) temporary partial disability, (3) permanent total disability and (4) permanent partial disability. Hood v. State, Workmen's Comp. Bd., 574 P.2d 811 (Alaska 1978).

Distinction between temporary total disability and permanent partial disability. - The period of temporary total disability is defined as: the healing period or the time during which the worker is wholly disabled and unable by reason of his injury to work. It is, therefore, a separate and unitary period of compensation, and as such is distinguished from a permanent partial disability. Phillips Petroleum Co. v. Alaska Indus. Bd., 17 Alaska 658 (1958).

Permanent partial disability includes temporary disability. - The very fixing of a rate for a permanent partial disability indicates that the applicant will permanently thereafter suffer disability. Certainly this would include within its terms temporary disability from time to time. Keehn v. Alaska Indus. Bd., 16 Alaska 101, 230 F.2d 712 (9th Cir. 1956).

And no further award should be granted for temporary disability. - Where the permanent award is made, no further awards should be granted for temporary disability, whether total or partial. Keehn v. Alaska Indus. Bd., 16 Alaska 101, 230 F.2d 712 (9th Cir. 1956).

Award for compensation must be supported by a finding that claimant suffered a compensable disability - or, more precisely, a decrease in earning capacity due to a work-connected injury or illness. Vetter v. Alaska Workmen's Comp. Bd., 524 P.2d 264 (Alaska 1974); Hewing v. Peter Kiewit & Sons, 586 P.2d 182 (Alaska 1978).

Consideration of retirement in determining award. - In calculating a lump sum award for a permanent partial disability, the employee's total future loss equals the total payments the employee would receive for his normal life expectancy, without considering actual or possible retirement. Bailey v. Litwin Corp., 780 P.2d 1007 (Alaska 1989).

Post-injury earning capacity. - The determination of lost earning capacity is not limited to an examination of those losses that appear immediately after claimant's injury stabilizes, but it requires the board to use all "available clues" to forecast the losses that the disabled claimant will incur over the course of her work life. Fairbanks N. Star Borough Sch. Dist. v. Crider, 736 P.2d 770 (Alaska 1987).

To fairly measure the difference between pre- and post-injury earning capacity, the board must first eliminate substantial differences caused by inflation. Where there is a substantial difference in wage levels, the post-injury earnings should be corrected to correspond with the general wage level in force at the time that pre-injury earnings were calculated, or the pre-injury earnings should be recomputed at the scale in effect at the time of the post-injury earnings. Fairbanks N. Star Borough Sch. Dist. v. Crider, 736 P.2d 770 (Alaska 1987).

Basis for finding of decrease in earning capacity. - In permanent partial disability situations, the ultimate finding of decrease in earning capacity must be based upon basic fact findings which relate to inability to earn wages, as evidenced by proof of a disparity between wages earned before and after the injury was sustained, and to the claimant's physical condition. Hewing v. Alaska Workmen's Comp. Bd., 512 P.2d 896 (Alaska 1973).

What is necessary is to compare the earnings made prior to the injury with the earnings likely to be made in the future. - Hewing v. Peter Kiewit & Sons, 586 P.2d 182 (Alaska 1978).

Award not to be delayed. - Although it is impossible to predict an employee's earnings in the future, an award must nevertheless be made without waiting until the end of the employee's worklife. Hewing v. Peter Kiewit & Sons, 586 P.2d 182 (Alaska 1978).

Where there is a substantial difference in wage levels, - the post-injury earnings should be corrected to correspond with the general wage level in force at the time that pre-injury earnings were calculated, or the pre-injury earnings should be recomputed at the scale in effect at the time of the post-injury earnings. *Hewing v. Peter Kiewit & Sons*, 586 P.2d 182 (Alaska 1978).

Availability of work is determinant of earning capacity. - The availability of work in the employee's community which he can perform in his injured condition is an important determinant of earning capacity. *Hewing v. Alaska Workmen's Comp. Bd.*, 512 P.2d 896 (Alaska 1973).

Serious conceptual differences exist between the "whole man" and "earning capacity" theories of disability. - *Hewing v. Alaska Workmen's Comp. Bd.*, 512 P.2d 896 (Alaska 1973).

Under the whole man theory, the primary criteria governing disability awards are physiological and psychiatric. This theory challenges the concept, basic to Alaska's workmen's compensation law, that unscheduled partial disability awards should be made for economic loss, not for physical injury as such. *Hewing v. Alaska Workmen's Comp. Bd.*, 512 P.2d 896 (Alaska 1973).

Where the loss of a leg is total in the statutory sense - and the question of the pyramiding of claims is not involved, the employee is entitled to the compensation fixed for the loss of a leg. *Alaska Packers Ass'n v. Alaska Indus. Bd.*, 12 Alaska 465 (1949).

Condition of leg before loss. - In providing payment for the loss of a leg the statute does not require that it be shown that the leg was whole before the injury. *Alaska Packers Ass'n v. Alaska Indus. Bd.*, 12 Alaska 465 (1949).

"Unscheduled" loss. - Fact that economic impairment from injury exceeded the benefits provided for in the schedule did not enable the employee to have his injury classified as "unscheduled," so that he can obtain benefits reflecting this greater economic impairment. *Ratliff v. Alaska Workers' Comp. Bd.*, 721 P.2d 1138 (Alaska 1986).

In a case where the loss was unscheduled there was no fixed number of weeks during which compensation shall be paid. *Absher v. State, Dep't of Hwys.*, 500 P.2d 1004 (Alaska 1972), overruled on other grounds, *Bailey v. Litwin Corp.*, 713 P.2d 249 (Alaska 1986).

It may be inferred that computation was left to discretion of board. - While the legislature did not adopt a formula for computing lump-sum payments, it could reasonably be inferred that this was left to the discretion of the Workmen's Compensation Board. *Absher v. State, Dep't of Hwys.*, 500 P.2d 1004 (Alaska 1972), overruled on other grounds, *Bailey v. Litwin Corp.*, 713 P.2d 249 (Alaska 1986).

Law prior to enactment of former subsection (b). - See *Sherman v. Holiday Constr. Co.*, 435 P.2d 16 (Alaska 1967).

Amendment of benefit schedule between time of injury and time condition rated. - For a discussion of the application of repealed provision AS 23.30.172 to a case where the former benefit schedule of this section was increased by amendment between the time of injury and the time the condition was rated, and a resolution of which schedule applied, see *Hood v. State, Workmen's Comp. Bd.*, 574 P.2d 811 (Alaska 1978).

Where the law (AS 23.30.172, repealed) pertaining to compensation at the time of the employee's injury provided that compensation would be paid at the rates effective at the time the injury was rated, that statutory scheme was incorporated into the workers' compensation insurance contract. In view of this, an increase in compensation rates made after the injury but prior to its rating cannot have impaired the contract. *State Workmen's Comp. Bd. v. Delaney*, 615 P.2d 5 (Alaska 1980).

Time period for payment. - The time periods in AS 23.30.155(b) and (e), providing for

installment payments within 14 days and penalties if the payment is over 7 days late, are - applicable to a case involving permanent partial injury payments under this section. *Sumner v. Eagle Nest Hotel*, 894 P.2d 628 (Alaska 1995).

Criteria for judicial review. - While the Alaska Workmen's Compensation Board is a quasi-judicial agency, the same criteria for judicial review of any administrative action should apply. *Hood v. State, Workmen's Comp. Bd.*, 574 P.2d 811 (Alaska 1978).

Award upheld. - Since provisions limiting recovery for permanent partial and temporary total disability to \$30,000 were repealed at the time of rating of appellee's injury, his employer's liability was not limited by those provisions and the Alaska Worker's Compensation Board's decision awarding appellee an increase of benefits over and above \$30,000 payable by the employer was upheld. *Arctic Structures v. Hardcastle*, 660 P.2d 449 (Alaska 1983).

Lump sum payment not merited. - A lump sum award is not merited because claimant is receiving benefits at a weekly rate substantially smaller than her rate of loss nor because inflation creates a financial need for a lump sum. *Fairbanks N. Star Borough Sch. Dist. v. Crider*, 736 P.2d 770 (Alaska 1987).

Applied in *J.B. Warrack Co. v. Roan*, 418 P.2d 986 (Alaska 1966); *Haman v. Allied Concrete Prods., Inc.*, 495 P.2d 531 (Alaska 1972); *Bignell v. Wise Mechanical Contractors*, 651 P.2d 1163 (Alaska 1982); *Bailey v. Litwin Corp.*, 713 P.2d 249 (Alaska 1986).

Quoted in *Foster v. Wright-Schuchart-Harbor*, 644 P.2d 221 (Alaska 1982).

Stated in *Wilson v. Erickson*, 477 P.2d 998 (Alaska 1970).

Cited in *Alaska Pac. Assurance Co. v. Brown*, 687 P.2d 264 (Alaska 1984); *Municipality of Anchorage v. Leigh*, 823 P.2d 1241 (Alaska 1992); *Sulkosky v. Morrison-Knudsen*, Sup. Ct. Op. No. 4363 (File No. S-6317), P.2d (1996).

08 AAC 045.0122

RATING PERMANENT IMPAIRMENT.

(a) Permanent impairment ratings must be based upon the American Medical Association Guides to the Evaluation of Permanent Impairment, Fourth Edition (1994), and it is presumed that the AMA Guides address the injury. If the board finds the presumption is overcome by clear and convincing evidence and if the permanent impairment cannot, in the board's opinion, be determined under the AMA Guides, then the impairment rating must be based on American Academy of Orthopedic Surgeons Manual for Evaluating Permanent Physical Impairments (AAOS), First Edition (1965). If a rating under the AAOS is not of the whole person, the rating must be converted to a whole person rating under the AMA Guides.

(b) A rating of zero impairment under the AMA Guides is a permanent impairment determination and no determination may be made under the AAOS Manual.

History -

Eff. 12/14/86, Register 100; am 3/16/90, Register 113; am 4/21/96, Register 138

Authority -

AS 23.30.005

AS 23.30.095

AS 23.30.190

Editor's Notes -

Copies of the publications mentioned in 8 AAC 45.122 are available for reference at the offices of the division of workers' compensation.

HB

73

Revision Date: January 16, 1998 Dept. Affected: Revenue
 Title: Salmon Marketing Assessment & ASMI BRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: Rep. Hudson
 Requestor: (H) FSH COMPONENT SERIAL NO. 113

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 | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| | | | | | | |
| CAPITAL EXPENDITURES | | | | | | |
| | | | | | | |
| CHANGE IN REVENUES (GF) | 3,000.0 | 3,000.0 | 3,000.0 | 3,000.0 | 3,000.0 | 375.0 |

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year cost \$ 0.0

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: Paul E. Dick
 Division: Income and Excise Audit
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 465-3691
 Date: January 16, 1998
 Date: January 16, 1998

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

111 the Governor's Legislative Office

FISCAL NOTE

Bill Version: HB 73

(H) Publish Date: 1/23/98

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

Revision Date: _____ Department: Commerce and Economic Development
 Title: An Act extending the termination dates of the BRU: Alaska Seafood Marketing Institute
salmon marketing program of the Alaska Seafood Marketing Institute Component: Alaska Seafood Marketing Institute
 Sponsor: HUDSON, Grussendorf, Elton
 Requester: House Finance COMPONENT SERIAL NO. 393

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| PERSONAL SERVICES | 500.0 | 500.0 | 500.0 | 500.0 | 500.0 | 500.0 |
| TRAVEL | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| CONTRACTUAL | 3,518.0 | 3,518.0 | 3,918.0 | 4,118.0 | 4,118.0 | 4,118.0 |
| SUPPLIES | 75.0 | 75.0 | 75.0 | 75.0 | 75.0 | 75.0 |
| EQUIPMENT | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL OPERATING | 4,200.0 | 4,200.0 | 4,600.0 | 4,800.0 | 4,800.0 | 4,800.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|---------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES | | | | | | |
|---------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 General Fund | | | | | | |
| 1005 GF/Program Receipts | 4,200.0 | 4,200.0 | 4,600.0 | 4,800.0 | 4,800.0 | 4,800.0 |
| 1006 GF/MHTIA | | | | | | |
| 1091 Designated PR | | | | | | |
| TOTAL | 4,200.0 | 4,200.0 | 4,600.0 | 4,800.0 | 4,800.0 | 4,800.0 |

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

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 7 | 7 | 7 | 7 | 7 | 7 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

The salmon marketing assessment is levied at 1% of the ex-vessel value on all salmon harvested in Alaska. The assessment generates revenue in a range from a high of \$4.8 million to a low of \$3.5 million. In FY98 the revenues are at a low point due to the decline in harvest and value of the 1997 salmon season. The market value of the salmon harvest is anticipated to gradually increase over the next three years to \$4.8 million. Revenues for the marketing assessment are reflected in the Department of Revenue Fiscal Note.

Prepared by: Cecile M. Rider Phone: 465-5560
 Division: Alaska Seafood Marketing Institute Date: January 20, 1998
 Approved by Commissioner: Debby Sedwick Date: _____
 Agency: Commerce and Economic Development

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SENATE COMMITTEE REPORT

DATE: 2/10/98

FURTHER: Resources
Finance

DATE TURNED
IN TO OFFICE: 3-3-98

Labor and Commerce Committee considered

HOUSE BILL NO. 73

"An Act extending the termination dates of the salmon marketing programs of the Alaska Seafood Marketing Institute and the salmon marketing assessment; and providing for an effective date."

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 <u>DO</u> PASS | DP | OTHER RECOMMENDATIONS | NR | DNP | AM |
|---------------------------|----|-----------------------|----|-----|----|
| | | <i>T. Kelly</i> | ✓ | | |
| | | <i>[Signature]</i> | ✓ | | |
| | | <i>Mike Hillpell</i> | ✓ | | |
| | | <i>Sydney Hoffman</i> | X | | |
| | | | | | |
| | | | | | |
| CHAIR: <i>Low A. Pema</i> | ✓ | CHAIR: | | | |

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

| Department | Date | Zero | Fiscal |
|----------------|----------------|------|----------------|
| <i>(+ED)</i> | <i>7/23/98</i> | | <i>4,200.0</i> |
| <i>Revenue</i> | <i>7/24/98</i> | ✓ | |
| | | | |
| | | | |
| | | | |
| | | | |

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

02/24/98
13:33:17

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)
TCN:80343 SCHEDULED FOR:02/24/98 13:30 TO 15:00
PUBLIC HEARING SENATE LABOR & COMMERCE

LTN1150
BY:PSG
FOR:PSG

LOCATION:PETERSBURG

BB 73

MS.

LIZ

CABRERA

PVO 99833

TESTIFY

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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

January 22, 1997

SUBJECT: Sectional Summary of HB 73; An Act extending the termination dates of the salmon marketing programs of the Alaska Seafood Marketing Institute and the salmon marketing assessment. (HB 73)

TO: Representative Bill Hudson

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of HB 73; An Act extending the termination dates of the salmon marketing programs of the Alaska Seafood Marketing Institute and the salmon marketing assessment.

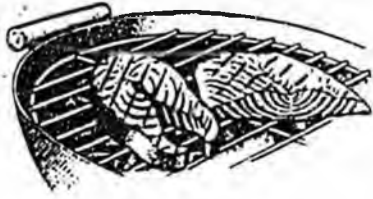
As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends sec. 9, ch. 55, SLA 1993 in order to provide that the salmon marketing assessment established by AS 43.76.110 - 43.76.130 is not repealed until June 30, 2003.

Section 2 of the bill amends sec. 10, ch. 55, SLA 1993 in order to provide that the salmon marketing programs of the Alaska Seafood Marketing Institute (ASMI) under AS 16.51.100(7)-(9) are not repealed until June 30, 2004. The salmon marketing assessment provides revenue to offset the cost of the salmon marketing programs of ASMI.

Section 3 of the bill provides that the bill takes effect immediately.

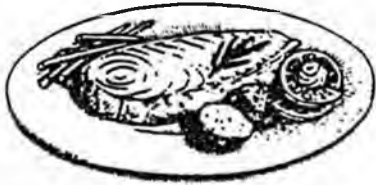
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ASMI'S U.S. MARKETING PROGRAMS FACT SHEET
Alaska Seafood Marketing Institute

THE ASMI RETAIL MARKETING PROGRAM:

- Increases awareness and trial usage of Alaska seafood products.
- Develops distribution and brand (Alaska) identity programs for Alaska seafood at the wholesale/distributor, retail and consumer levels. "Buy Alaska salmon!"
- Jointly funds newspaper ads for Alaska seafood products with grocery store chains during key sales periods: Fall/National Seafood Month, Spring/Lent, Summer/fresh salmon, and other time periods as the budget allows. Salmon must be the lead item in the ads.
- Through extensive research, identifies key retail and consumer obstacles to the purchase, usage and distribution of Alaska seafood products and develops strategies to successfully overcome these obstacles.



THE ASMI FOODSERVICE PROGRAM:

- Targets growing segments of the foodservice industry with the greatest potential for Alaska seafood usage (commercial chain restaurants, hotel chains, foodservice management firms).
- Increases sales of Alaska seafood throughout the year by obtaining promotions and permanent menu placements in targeted, high-volume foodservice chains. For example, Denny's menus now have the word "Alaska" with its salmon dinners.
- Builds and strengthens the Alaska brand to pre-empt further competition from farm-raised products (i.e., "Wild Alaska Salmon", "Natural Salmon from Alaska", "pristine waters of Alaska").
- Establishes a leadership position for ASMI in the areas of seafood education and promotions with the goal of building brand loyalty within the foodservice marketplace.
- Communicates promotion results to the industry.
- Encourages the use of new value-added salmon products in the nation's foodservice industry.

Article 2. Salmon Marketing Tax.

Section

- 110. Salmon marketing tax
- 120. Collection of tax
- 130. Definition

Effective date of article. — Section 11, ch. 55, SLA 1993 makes this article effective July 1, 1993.

Delayed repeal of article. — Section 9, ch. 55, SLA 1993 repeals this article effective June 30, 1998.

Sec. 43.76.110. Salmon marketing tax. A person holding a limited entry permit or interim-use permit under AS 16.43 shall pay a salmon marketing tax at the rate of one percent of the value, as defined in AS 43.75.290, of salmon that the person removes from the state or transfers to a buyer in the state. The buyer shall collect the salmon marketing tax at the time the salmon is acquired by the buyer. (§ 7 ch 55 SLA 1993)

Sec. 43.76.120. Collection of tax. (a) A buyer who acquires salmon that is subject to a salmon marketing tax imposed by AS 43.76.110 shall collect the salmon marketing tax at the time of purchase and shall remit the total salmon marketing tax collected during each month to the Department of Revenue by the last day of the next month.

(b) A buyer who collects the salmon marketing tax shall

- (1) maintain records of the value of salmon purchased in the state;
- (2) report to the Department of Revenue by March 1 of each year the total value, as defined in AS 43.75.290, of the salmon that the buyer has acquired during the preceding year.

(c) The owner of salmon removed from the state is liable for payment of a salmon marketing tax imposed by AS 43.76.110 if, at the time the salmon is removed from the state, the tax payable on the salmon has not been collected by a buyer. If the owner of the salmon is liable for payment of the salmon marketing tax under this subsection, the owner shall comply with the requirements under (a) and (b) of this section to remit the tax to the Department of Revenue, to maintain records, and to report to the Department of Revenue.

(d) The salmon marketing tax collected under this section shall be deposited in the general fund. The legislature may appropriate revenue generated by the salmon marketing tax to the Alaska Seafood Marketing Institute for the purpose of supporting the institute's salmon marketing program under AS 16.51.100(7) — (9) and the institute's domestic salmon marketing program. Except as otherwise provided in an appropriation by the legislature, the amount of the allocation made to the institute's salmon marketing program under AS 16.51.100(7) and (8) should not exceed 10 percent of the total amount of salmon marketing tax revenue appropriated for the institute. (§ 7 ch 55 SLA 1993)

Sec. 43.76.130. Definition. In AS 43.76.110 — 43.76.130, "buyer" means a person who acquires possession of salmon from the person who caught the salmon regardless of whether there is an actual sale of the salmon, but does not include a person engaged solely in interstate transportation of goods for hire. (§ 7 ch 55 SLA 1993)

Chapter 77. Fishery Resource Landing Tax.

Section

- 40. Landing tax
- 45. Filing return and payment of tax
- 50. Credit for other taxes paid
- 60. Tax credit for scholarship contributions

Section

- 40. Credit for approved contributions
- 45. Fisheries resource landing tax education credit
- 50. Separate accounting
- 60. Revenue sharing

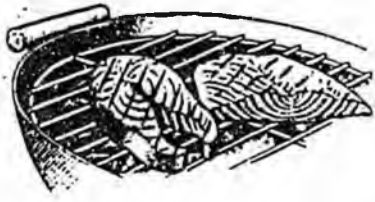
CORRECTION

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Department of Education
State of Alaska



ASMI'S U.S. MARKETING PROGRAMS FACT SHEET
Alaska Seafood Marketing Institute

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- Establishes a leadership position for ASMI in the areas of seafood education and promotions with the goal of building brand loyalty within the foodservice marketplace.
- Communicates promotion results to the industry.
- Encourages the use of new value-added salmon products in the nation's foodservice industry.



The Tax:

- The Salmon Marketing Tax legislation (Chapter 76, Sec. 43.76.110) was enacted July 1, 1993, and requires that salmon permit holders pay a salmon marketing tax at the rate of 1% of the value of salmon that the person removes from the state or transfers to a buyer in the state. The tax will be repealed June 30, 1998 unless it is extended.
- Representative Bill Hudson has introduced House Bill No. 73 that will extend the 1% salmon tax an additional five years until June 30, 2003.

Changes the tax brought to the ASMI organization:

- The number of harvesters on the Board of Directors changed from five to twelve. ASMI's board has 12 processors, 12 harvesters, and one public member.
- A seven member salmon marketing committee (4 harvesters, 3 processors) was established to assist and advise the board in administering the salmon marketing program funded through the tax.
- The Salmon Market Bulletin was established by ASMI and contracted to the University of Alaska to collect, organize, distribute and make available to the public information on salmon prices and market conditions.
- ASMI cooperates with other fishing, seafood and state/federal entities on new value-added salmon products.

The increase in funds for salmon marketing enabled ASMI to:

- Move 10.7 million pounds of Alaska salmon from the summer of 1995 to the fall of 1996 as a result of ASMI store promotions
- Contract with three marketing representatives to cover the midwest, central south and southwest, south and southeast regions of the United States, who:
 - Establish relationships between ASMI/Alaska salmon and the major retail chains
 - "Sell in" ASMI's customized salmon promotions and set up in-store demonstrations
 - Keep Alaska seafood in front of seafood buyers
 - Provide ASMI's educational literature (recipes, quality guidelines, fact sheets on different species, etc.)
- Increase the sales of canned salmon by 7% through in-store demonstrations and ASMI programs.
- Bring a group of five major seafood purchasers from national grocery store chains to Alaska to see the catching and processing of salmon for themselves.
- Hire ASMI's first Foodservice Program Director in March 1995 to work exclusively with the nation's restaurants, hotels, and non-commercial buyers (company cafeterias, university cafeterias, care centers).
- Through ASMI foodservice promotions, 5 million pounds of Alaska seafood were sold in restaurants and hotels around the country in FY96. Salmon is always the "lead item" in the promotions.
- Train the chefs and product development executives from 24 restaurant chains, 4 major foodservice distributors and the editors from 6 food magazines at ASMI seafood training seminars. Through them, ASMI has been able to influence the seafood purchasing in 11,242 restaurants with sales of over \$16 billion.
- Send 156 fishers from all gear types and regions into grocery stores in cities in the midwest, south, southeast and northeast to do in-store demonstrations of wild Alaska salmon. Over 3 million pounds of seafood were sold in one season, and stores routinely sold out of product whenever the fishers were used.

For more information, please call ASMI at 907-465-5560 or 1-800-278-2903.

Article 2. Salmon Marketing Tax.

Section

- 110. Salmon marketing tax
- 120. Collection of tax
- 130. Definition

Effective date of article. — Section 11, ch. 55, SLA 1993 makes this article effective July 1, 1993.

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Sec. 43.76.120. Collection of tax. (a) A buyer who acquires salmon that is subject to a salmon marketing tax imposed by AS 43.76.110 shall collect the salmon marketing tax at the time of purchase and shall remit the total salmon marketing tax collected during each month to the Department of Revenue by the last day of the next month.

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- (2) report to the Department of Revenue by March 1 of each year the total value, as defined in AS 43.75.290, of the salmon that the buyer has acquired during the preceding year.

(c) The owner of salmon removed from the state is liable for payment of a salmon marketing tax imposed by AS 43.76.110 if, at the time the salmon is removed from the state, the tax payable on the salmon has not been collected by a buyer. If the owner of the salmon is liable for payment of the salmon marketing tax under this subsection, the owner shall comply with the requirements under (a) and (b) of this section to remit the tax to the Department of Revenue, to maintain records, and to report to the Department of Revenue.

(d) The salmon marketing tax collected under this section shall be deposited in the general fund. The legislature may appropriate revenue generated by the salmon marketing tax to the Alaska Seafood Marketing Institute for the purpose of supporting the institute's salmon marketing program under AS 16.51.100(7) — (9) and the institute's domestic salmon marketing program. Except as otherwise provided in an appropriation by the legislature, the amount of the allocation made to the institute's salmon marketing program under AS 16.51.100(7) and (8) should not exceed 10 percent of the total amount of salmon marketing tax revenue appropriated for the institute. (§ 7 ch 55 SLA 1993)

Sec. 43.76.130. Definition. In AS 43.76.110 — 43.76.130, "buyer" means a person who acquires possession of salmon from the person who caught the salmon regardless of whether there is an actual sale of the salmon, but does not include a person engaged solely in interstate transportation of goods for hire. (§ 7 ch 55 SLA 1993)

Chapter 77. Fishery Resource Landing Tax.

Section

- 10. Landing tax
- 20. Filing return and payment of tax
- 30. Credit for other taxes paid
- 40. Tax credit for scholarship contributions

Section

- 40. Credit for approved contributions
- 45. Fisheries resource landing tax education credit
- 50. Separate accounting
- 60. Revenue sharing

- (7) receive contributions of money from persons;
- (8) establish offices in the state and otherwise incur expenses incidental to the performance of its duties;
- (9) appear on behalf of the institute before boards, commissions, departments, or other agencies of municipal, state, or federal government;
- (10) acquire, hold, lease, sell, or otherwise dispose of property, but such property limited to that which is necessary to the administrative functioning of the office of the institute;
- (11) establish and maintain one or more bank accounts for the transaction of the institute's business;
- (12) prepare market research and product development plans for the promotion of any species of seafood and their by-products that may be harvested in the state and processed for sale;
- (13) establish committees related to the marketing of salmon and salmon products; the board shall, to the extent practicable, appoint equal numbers of seafood processors and persons engaged in commercial fishing to the committees. (§ 3 ch 106 SLA 1981; am § 5 ch 55 SLA 1993)

Effect of amendments. — The 1993 amendment, effective September 1, 1993, added paragraph (13).

Sec. 16.51.095. Executive Budget Act. The operating budget of the institute shall be prepared and submitted in accordance with AS 37.07 (Executive Budget Act). (§ 3 ch 106 SLA 1981)

Sec. 16.51.100. Duties of board. The board shall

- (1) conduct programs of education, research, advertising, or sales promotion designed to accomplish the purposes of this chapter;
- (2) promote all species of seafood and their by-products that are harvested in the state and processed for sale;
- (3) develop market-oriented quality specifications for Alaska seafoods to be used in developing a high quality image for Alaska seafood in domestic and world markets, and adopt and distribute recommendations regarding the handling of seafood from the moment of capture to final distribution;
- (4) prepare market research and product development plans for the promotion of all species of seafood and their by-products that are harvested in the state and processed for sale;
- (5) submit an annual report to the governor describing the activities of the institute and notify the legislature that the report is available;
- (6) develop marketing programs based on the "inspection" and "premium quality" seals designed under AS 03.05.026 and use the seals in advertising and promotion efforts of the institute;
- (7) collect, organize, distribute, and make available to the public information on prices paid and market conditions for raw salmon and salmon products and provide this information on a regular and timely basis to all salmon fishermen who hold permits under AS 16.43 and to all nonprofit salmon enhancement organizations that hold a permit under AS 16.10.400;
- (8) cooperate with commercial salmon fishermen, fishermen's organizations, seafood processors, the Alaska Fisheries Development Foundation, the Fisheries Industrial Technology Center, state and federal agencies, and other relevant persons and entities to investigate market reception to new salmon product forms and develop commodity standards and future markets for salmon products;
- (9) establish a salmon marketing committee to assist and advise the board in administering the domestic salmon marketing program that is funded through the tax

collected under AS 43.76.110 — 43.76.130; the committee shall consist of seven persons selected by the board, as follows:

(A) four persons shall be engaged in commercial salmon fishing and hold salmon permits under AS 16.43, of whom

(i) one person shall be a member of the board of directors of the institute; and

(ii) three persons shall be Alaska residents from different salmon administrative areas established by the Alaska Commercial Fisheries Entry Commission; and

(B) three persons shall be engaged in processing of salmon, of whom

(i) one person shall be a member of the board of directors of the institute;

(ii) one person shall be a salmon processor who is not on the board of directors of the institute and who has an annual payroll in the state of more than \$2,500,000; and

(iii) one person shall be a salmon processor who is not on the board of directors of the institute and who has an annual payroll in the state of \$50,000 — \$2,500,000. (§ 3 ch 106 SLA 1981; am § 5 ch 57 SLA 1982; am § 6 ch 55 SLA 1993; am § 24 ch 21 SLA 1995)

Delayed repeal of paragraphs (7)-(9). — Under § 10, ch. 55, SLA 1993, effective June 30, 1999, paragraphs (7)-(9) are repealed.

Effect of amendments. — The 1993 amendment, effective September 1, 1993, inserted in paragraph (3)

"domestic and" and added present paragraphs (7)-(9).

The 1995 amendment, effective August 8, 1995, in paragraph (5), deleted "and the legislature" following "to the governor" and added "and notify the legislature that the report is available" at the end.

Sec. 16.51.110. Prohibited promotions. The board may not promote or make a contract that promotes seafood by

- (1) geographic origin other than from the state generally;
- (2) geographic region of the state; or
- (3) specific brand name. (§ 3 ch 106 SLA 1981)

Sec. 16.51.120. Seafood marketing assessment. (a) A seafood marketing assessment shall be levied on the value of seafood products produced in Alaska as provided in (b), (c), (d), or (e) of this section if an election is held under AS 16.51.140 at which the assessment is approved by eligible processors who together produce at least 51 percent of the value of seafood products produced in Alaska in the calendar year.

(b) Each processor shall pay a seafood marketing assessment of .1 percent of the value of seafood products produced in Alaska by the processor.

(c) Each processor shall pay a seafood marketing assessment of .2 percent of the value of seafood products produced in Alaska by the processor.

(d) Each processor shall pay a seafood marketing assessment of .3 percent of the value of seafood products produced in Alaska by the processor.

(e) Each processor shall pay a seafood marketing assessment of .4 percent of the value of seafood products produced in Alaska by the processor.

(f) An election under (a) of this section shall be held if the proposed election for the levying of an assessment under (b), (c), (d), or (e) of this section is approved by a majority of the whole membership of the board at a regularly scheduled meeting.

(g) Notwithstanding (a) — (e) of this section and AS 16.51.150(c), a processor is not subject to, or liable for payment of, an assessment under this section on the value of the seafood products produced in Alaska if the value of seafood products produced in Alaska by the processor is less than \$50,000 in a calendar year. This subsection does not exempt a processor from liability for payment of taxes imposed under AS 43.75 or AS 43.77. (§ 3 ch 106 SLA 1981; am §§ 2 — 7 ch 81 SLA 1996)

Cross references. — For legislative findings, intent, and purpose relating to the 1996 amendments to subsections (a)-(e) and to the enactment of subsection (g) by ch. 81, SLA 1996, see § 1, ch. 81, SLA 1996 in the Temporary and Special Acts.

Effect of amendments. — The 1996 amendment,

effective June 21, 1996, rewrote subsection (a); in subsections (b)-(e), deleted "who purchases at least \$50,000 or more of seafood products in Alaska" following "Each processor" and substituted "value of seafood products produced in Alaska" for "value paid", and added subsection (g).

Alaska State Legislature

REPRESENTATIVE BILL HUDSON

State Capitol
Juneau, Alaska
99801-1182
(907) 465-3744
Fax (907) 465-2273

COMMITTEES

CO-CHAIR
Resources Committee

MEMBER
Transportation Committee
Labor & Commerce Committee

SPONSOR STATEMENT

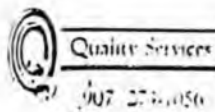
HB 73, "An Act extending the termination dates of the salmon marketing programs of the Alaska Seafood Marketing Institute and the salmon marketing assessment; and providing for an effective date."

HB 73, if enacted, would extend the current 1% domestic salmon marketing assessment when the law will sunset on June 30, 1998. Additionally, enactment of HB 73 would authorize Alaska Seafood Marketing Institute (ASMI) to continue to expend those revenues on salmon marketing programs.

In 1981, seafood processors elected to tax themselves in order to form a single marketing voice for Alaska seafood. Each processor who purchases at least \$50,000 of seafood products in Alaska pays a .3% marketing assessment. From 1981-1993 this tax, along with the state's general fund appropriations were the basis for ASMI's domestic market funding. As marketing pressure grew from the heavily subsidized farmed salmon industry, it became apparent that Alaska needed to increase its domestic marketing efforts. In 1993, in order to provide additional funding for this effort, a 1% salmon marketing tax was enacted by the legislature, stipulating that limited entry permit holders shall pay a market tax at the rate of 1% of the value of salmon that is either removed from the state or transferred to a buyer within the state. Current law will be repealed on June 30, 1998 unless legislation is passed to extend the tax.

ASMI's domestic salmon marketing program is paying off in more sales in the Lower 48. Salmon consumption has increased 27% nationwide according to National Marine Fisheries Service. Salmon orders by diners in over 900 restaurants increased almost 60% in 1995 compared to 1994. Additionally, sales in grocery stores increased significantly from 1995 to 1996. At a time when Alaska salmon harvests are at all time highs, and foreign produced salmon are threatening Alaska's traditional markets, it is especially important to increase our markets. Alaska salmon prices are a product of supply, demand and consistency in marketing. HB 73 will enable harvesters to continue underwriting this valuable marketing program.





Date NOV 23 1996

Ketchikan
Daily News

Client No. 225

Editorial

Encourage innovation

225 501

Alaska Seafood Marketing Institute says its salmon promotion is paying off in more sales in the Lower 48.

Salmon consumption has increased 27 percent nationwide, according to National Marine Fisheries Service.

Salmon orders by diners in 900 restaurants and hotels increased almost 60 percent in 1995 compared to 1994.

NMFS also says more fish sold in grocery stores from summer of 1995 to this past summer.

That's good news and points to the value of thoughtful promotion of Alaska products.

The newest marketing effort is paid for with a 1 percent tax of fish sold to processors.

We hope ASMI's success discourages lawmakers from cutting the institute's budget. Funding should be continued, perhaps expanded, to encourage ASMI to extend its marketing of other Alaska seafoods. Alaska's high-quality pollock, specialty seafoods and shellfish would satisfy domestic consumers who want healthful eating.

Efforts to make products from fish, such as salmon ham and surimi and fish sticks from pollock, should be encouraged and new products tested.

ASMI's promotion has been innovative, including sending Alaska fishermen to Midwest markets. That look at Alaskans has increased salmon consumption there.

It's especially important to market the bumper crops of salmon Alaska fishermen are harvesting. The abundance makes prices drop, but if more fish is sold, there's still a chance to make profit. The healthy aspects, as well as its superior taste, are natural qualities to market.

Alaska needs to capitalize on its wild salmon population. Other countries are focusing on farmed salmon, good enough in that category, but not as tasty as the wild Alaska stocks.

We are encouraged by ASMI's efforts and think its continued success should be supported.

CECELIA A. ANGASAN
P.O. BOX 1389
DILLINGHAM, ALASKA 99576
PHONE (907) 842-5503
FAX (907) 842-1538

February 18, 1997

Representative Bill Hudson
HOUSE OF REPRESENTATIVES
Juneau, Alaska 99801

Dear Representative Hudson:

My name is Cecelia A. Angasan, ASMI Board Member. I first became involved with ASMI in the '80's as a Canned Salmon Committee Member, and later was appointed to the Board.

I have watched with great anxiety what is happening to the salmon industry and the frustration of getting appropriate funds to market our wild salmon with direct competition of farmed salmon.

I have some great concerns about how our State Government views the salmon industry and why it seems to put it on the back burner of priorities.

I'd like to share an experience I had when I was in Juneau last year for an ASMI meeting. I met a man in the lounge who was with a large oil group coming to Juneau to lobby their cause, and what he said, was "its a piece of cake, you just have to have the right connections politically," I sat there and thought about this for a long time, and asked myself what does ASMI, fishermen, processors and Alaskan workers need to do to wake up the legislature to the fact that we have and are losing ground in getting our salmon to the domestic and foreign markets with little or no money to properly advertise our product effectively?

The 1% that is taken from the fishermen to help advertise our salmon in the domestic market has been a great help, but that is still not enough. The beef, poultry, and other commodities in the U.S. get such a large sum of money to market their product, and the results tell the story.

I would like to ask that you support House Bill 73 for another 5 years. Further I would like to ask you to consider a Bill to have the State of Alaska match the 1% that is currently being taken from Fishermen to help ASMI get the much needed funds for marketing in the foreign and domestic markets.

Leroy L. Cabana
6100 Andover Cir.
Anchorage, AK 99516
Ph 907-345-5827
fax 907-345-2190

Representative Bill Hudson
February 13, 1997

Mr Hudson, I recently received a memorandum on HB 73 extending the 1% marketing assessment to June 30, 2003. I would like to thank you for your time and interest in sponsoring HB 73. The salmon industry, indeed all commercial fisheries in Alaska are more dependent now on ASMI's marketing effort than ever before. As a salmon fisherman with 18 years experience as an owner/operator of a seiner, I have witnessed a complete reversal of salmon harvest and marketing opportunities. In the 70's, we had few fish and more markets than we could fill. With farmed salmon production increasing every year and the record harvest of Alaska salmon in recent years, existing markets cannot absorb available production. It is unlikely we as a salmon industry will remain economically viable in the long term if farmed salmon continues to aggressively market and increase production and our reaction is to discontinue ASMI's funding. I know prices are at record lows and a more reasonable reaction would be increasing our marketing assessment, not eliminating our marketing program. I strongly support the marketing assessment and appreciate your time and effort on HB 73.

Sincerely,

Leroy Cabana

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

CECELIA A. ANGASAN
P.O. BOX 1389
DILLINGHAM, ALASKA 99576
PHONE (907) 842-5503
FAX (907) 842-1538

February 18, 1997

Representative Bill Hudson
HOUSE OF REPRESENTATIVES
Juneau, Alaska 99801

Dear Representative Hudson:

My name is Cecelia A. Angasan, ASMI Board Member. I first became involved with ASMI in the '80's as a Canned Salmon Committee Member, and later was appointed to the Board.

I have watched with great anxiety what is happening to the salmon industry and the frustration of getting appropriate funds to market our wild salmon with direct competition of farmed salmon.

I have some great concerns about how our State Government views the salmon industry and why it seems to put it on the back burner of priorities.

I'd like to share an experience I had when I was in Juneau last year for an ASMI meeting. I met a man in the lounge who was with a large oil group coming to Juneau to lobby their cause, and what he said, was "its a piece of cake, you just have to have the right connections politically," I sat there and thought about this for a long time, and asked myself what does ASMI, fishermen, processors and Alaskan workers need to do to wake up the legislature to the fact that we have and are losing ground in getting our salmon to the domestic and foreign markets with little or no money to properly advertise our product effectively?

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I would like to ask that you support House Bill 73 for another 5 years. Further I would like to ask you to consider a Bill to have the State of Alaska match the 1% that is currently being taken from Fishermen to help ASMI get the much needed funds for marketing in the foreign and domestic markets.

February 18, 1997

Representative Bill Hudson
c/o House Resources Committee
State Capital, Juneau, Alaska 99801

Dear Representative Hudson,

I would like this letter to show my support to the efforts you and Rep. Grussendorf have made in the introduction of House Bill No. 73. You have a very solid base of sometimes "quiet" support from the commercial fishermen in the Southeast Alaska region. Please, keep up the good work!

I am a life-long resident of Alaska and a full-time commercial fisherman. My family has been in the seafood industry in Alaska for over 65 years and we hope to continue well into the future in this dynamic industry. Many fishermen sometimes wonder as to the best use of the assessments or whether there should be an assessment at all? My experience and judgment clearly indicate that marketing is the key to getting a stable demand for our resource.

I shudder to think of the consequences that would suffocate our already stressed industry if the assessments are not continued into the future and our sole marketing ability is severed. Without trying to dramatize the future without a marketing assessment, I surely feel the salmon industry may collapse from within. Our industry collectively has some substantial obstacles to hurdle, but without the marketing presence of an organization such as ASMI, (in the words of my 8 yr. old) *we are doomed!*

I feel the successes that ASMI has made on behalf of our industry are beyond dispute. It probably is the one entity capable of keeping our processing and harvesting working together toward a market-driven industry which is the only premise that our industry can survive under.

Any way, the vast majority of commercial fishermen in this community definitely realize the importance of marketing and the future positive impact it will have on our livelihoods and the value of our industry to the entire state of Alaska.

Again, thank you for your support of our industry needs.

Regards,



John R. Swanson F/V Logan T (Salmon Seine, Halibut, Sablefish, Roc Herring)
PO Box 1546 F/V Ruthie (Bristol Bay Salmon)
Petersburg, Alaska 99833
Ph. & fax #(907) 772-3501

cc: Co-sponsor Representative Ben Grussendorf fax #907-465-2278
Senator Robin Taylor, fax #907-465-3922
Barbara Belknap, fax #907-465-5572

Leroy L. Cabana
6100 Andover Cir.
Anchorage, AK 99516
Ph 907-345-5827
fax 907-345-2190

Representative Bill Hudson
February 13, 1997

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Sincerely,

Leroy Cabana

Representative Hudson
State Legislator Office
Juneau, Alaska
Fax: 4652273

Dear Representative Hudson,

Thank you for submitting House Bill 73, the ASMI 1% renewal to 2003. The renewal this year will save money, time and energy. The salmon industry needs the efforts of ASMI.

I am a 20+ year harvester and have not been making much money lately but feel without ASMI's efforts, it would be even less.

Earlier this month at the Salmon Forum it became very obvious that ASMI is the only body the industry has in common. Every time there was an assignment or a need ASMI was the only entity that people thought of that could accomplish the goals. The industry is going through tough times but without ASMI we would be crippled!

Thank you again for your support.

Kathy Halgren
Box 784
Cordova, Alaska 99574-0784



Alaska Fisheries Development Foundation, Inc.

Rep. Bill Hudson
State Capitol Room 108
Juneau, Alaska 99801-1182

February 6, 1998

Dear Rep. Hudson,

The Alaska Seafood Marketing Institute's activities have directly resulted in millions of dollars of sales of Alaska salmon and other seafood that probably would not otherwise have taken place.

ASMI's programs open doors into seafood markets that many individual companies could not gain access to on their own.

For example: ASMI was a key player in gaining a contract with the USDA to purchase \$14 million worth of salmon products including nuggets and pouches for the school lunch program. ASMI single-handedly negotiated deals with several major hotel chains including Hilton, Hyatt and Westin, to serve Alaska seafood in their hotel restaurants throughout the country.

They also have negotiated similar deals with large restaurant chains like Skipper's. This kind of grand-scale market development can only be accomplished by an organization like ASMI that represents the whole industry *and* the interests of the citizens of Alaska, who are owners and stewards of the fish.

ASMI has held training seminars for top executive chefs at the Culinary Institute of America, and for three years has been training the nation's domestic chefs with their "Fishermen in the Stores" program. These efforts have eased Alaska salmon over one major hurdle: lots of people would eat more salmon if they just knew how to cook it.

ASMI's international market development efforts have increased exports to Europe and Asia, and most recently opened doors into markets in Spain, Taiwan and China.

Most importantly, ASMI has established a presence for Alaska seafood in the highly competitive world market. Without ASMI's efforts in this regard, producers of Alaska seafood would find it exceedingly difficult to gain visibility for their own products, and would be competing against each other for space in the world's grocery stores.

I urge you most strongly to fully fund the Alaska Seafood Marketing Institute, and to extend the 1% salmon assessment for salmon marketing. Failure to extend the assessment will only provide a greater opportunity for our competitors to wallop us on the market.

Sincerely yours,

Chris Mitchell
Executive Director



January 21, 1997

The Honorable Bill Hudson
Alaska House of Representatives
Room 108 State Capitol
Juneau, Alaska 998011182

JAN 27 1997

Dear Representative Hudson:

Attached are the following resolutions passed for submission to the Alaska State Legislature by the Alaska Municipal League at its recent annual meeting:

- **Resolution 97-01**, Urging the Adoption of the "Safe Communities" Program and Urging Support of Revenue Sharing Programs for Municipalities.
- **Resolution 97-02**, Urging Legislative Action on a Solution for Title 47.
- **Resolution 97-03**, Urging Full Support for the Alaska Regional Development Organization (ARDOR) Program.
- **Resolution 97-04**, Supporting Passage of a Bill Increasing State Taxes on Tobacco products.
- **Resolution 97-06**, In Support of Full Funding for the University of Alaska for Fiscal Year 1998.
- **Resolution 97-07**, Supporting Adequate Funding for Each Extended Campus of the University of Alaska.
- **Resolution 97-08**, Urging the Legislature and Governor to Support a Statutory Change Allowing the Department of Revenue to Collect Alcohol Use Taxes on Behalf of "Damp" Communities.
- **Resolution 97-09**, Supporting the Alaska State Waters Cod Fishing Program.
- **Resolution 97-10**, Urging the State of Alaska to Increase Salmon Marketing Efforts.
- **Resolution 97-11**, Supporting Legislation to provide for the Conveyance of isolated Tracts of State Land to Boroughs and Unified Municipalities.
- **Resolution 97-12**, Urging Governor Knowles and the Legislature of the State of Alaska to Support the Earliest Possible Development of an Economically Viable Alaskan North Slope Gas Export Project.
- **Resolution 97-14**, Requesting the Governor, Legislature, and the Alaska State Department of Natural Resources to Continue Adjudication of Water Rights, Continue as the Custodian of the Program, and to Continue Maintenance of the Historical Water Rights Data Base.
- **Resolution 97-15**, Supporting Changes to the Power Cost Equalization Program.

January 22, 1997

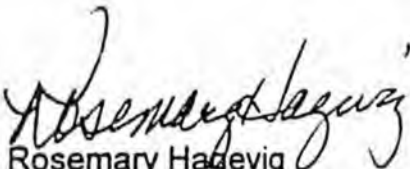
Page two

- **Resolution 97-15**, Supporting Changes to the Power Cost Equalization Program.
- **Resolution 97-17**, Urging Full Support of the Alaska Marine Highway Operation and Continued Progress Toward Construction of the Ocean Class Vessel.
- **Resolution 97-18**, Urging the State of Alaska to Develop a State Highway System.

I hope we can count on your support on these issues; I assure you that members of the Alaska Municipal League are ready to help in any way we can. If you have questions, you may contact me directly at 364-2154 or through the Alaska Municipal League at 586-1325.

Thank you.

Sincerely,


Rosemary Hagevig
President

Enclosure as stated

D ct.res.statelegisl



Alaska Fisheries Development Foundation, Inc.

Rep. Bill Hudson
State Capitol Room 108
Juneau, Alaska 99801-1182

February 6, 1998

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Sincerely yours,

Chris Mitchell
Executive Director

**ALASKA MARINE
TRUCKING**

Alaska Marine Trucking, LLC
700 Mt. Roberts Street
Juneau, Alaska 99801
(907) 586-3700
Fax: (907) 463-2994

February 9, 1998

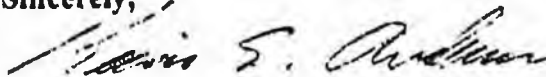
**Representative Bill Hudson
State Capitol Room 108
Juneau, AK, 99801-1182**

Dear Representative Hudson,

I am writing concerning the importance of the contributions given to the Alaskan Seafood Industry by Alaska Seafood Marketing Institute (ASMI). We at Alaska Marine Trucking recognize the value of marketing. We feel the ASMI effort accomplishes goals vital to the development of new seafood commodities, along with continued support of well established seafood standards. As you know the seafood industry in Alaska has seen a great many changes in the effort to remain competitive in a world market that is driven by complex equations. The seafood industry, along with the industries that support them, need the help of ASMI to define the potential direction of consumer need, which in hand allows us the opportunity to focus our energy in the proper direction.

Representative Hudson, please feel free to forward this letter to whomever you feel needs to recognize the importance of ASMI as a vital marketing gauge in one of Alaska's most important economic basis.

Sincerely,



**Kevin Anderson
General Manager
Alaska Marine Trucking**

January 27, 1997

JAN 31 1997

Dear Representative Hudson:

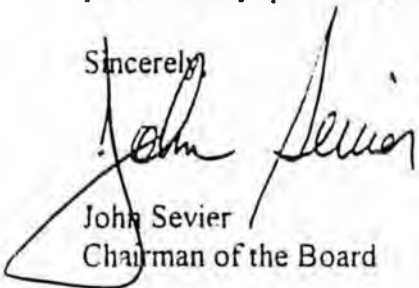
On behalf of the Alaska Seafood Marketing Institute, I extend to you our best wishes for a productive 20th session. We hope you enjoy the Alaska seafood samples enclosed, and that you take a few minutes to read the information provided to you about ASMI and the Alaska seafood industry.

The successful marketing of Alaska seafood in the United States is crucial to the economy of this state. The harvesting and processing of seafood is the number one private employer in Alaska, and contributes approximately \$1.3 billion to the Alaska economy each year. Not only do the state's small coastal communities benefit from seafood harvesting and processing, but it is also a \$100 million industry in Anchorage. In addition to harvesting, processing, transportation and agency support, Anchorage is home to more farmers than any other area in the state.

The seafood industry (harvester and shore-based processor assessments) supports ASMI's marketing in the United States. Last year, the harvesters contributed \$4.8 million and the processors contributed \$3.2 million. ASMI's overseas marketing is funded by a federal grant of \$3.9 million from the federal government. This grant was leveraged by a General Fund cash match from the state. A fact sheet on our export program is enclosed for your information, and we've also included a copy of *MarketLine*, which is our version of ASMI 101. We hope you'll find both helpful in understanding our relationship with the state.

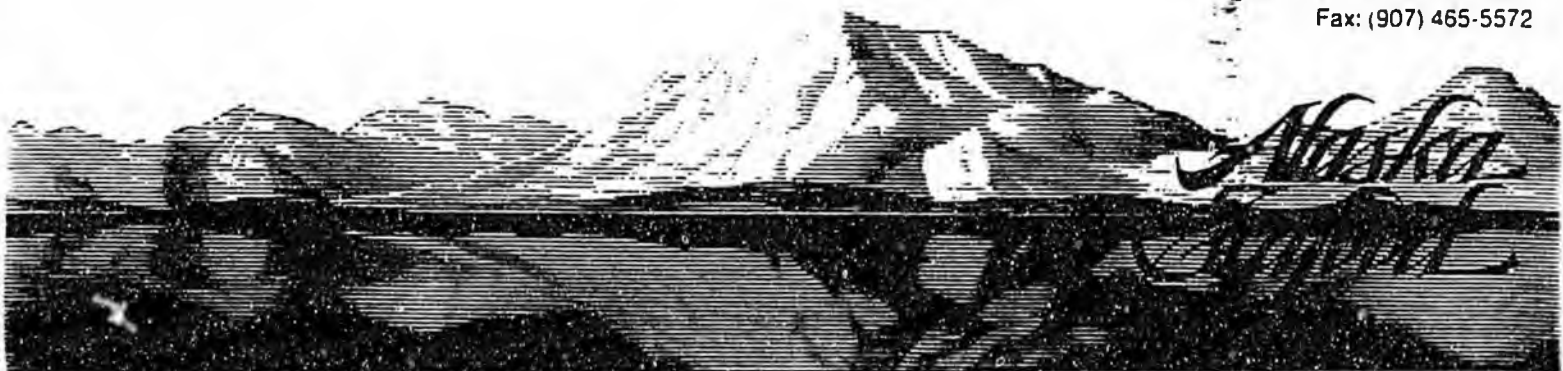
As the newly appointed chairman, I look forward to meeting you. Again, best wishes for a productive session. Please call me or Art Scheunemann, ASMI's Executive Director, if you have any questions about our marketing programs or ASMI itself.

Sincerely,


John Sevier
Chairman of the Board

cc: ASMI Board
Art Scheunemann, Executive Director

Alaska Seafood Marketing Institute
1114 West 8th Street, Room 100
Juneau, Alaska 99801-1855
Tel: (907) 465-5560
In Alaska: 1-800-478-2903
Fax: (907) 465-5572



ALASKA SEAFOOD CO.
5434 Shaune Dr. 8-B Juneau, AK 99801

(907) 780-5111

8 Feb 98

To: Rep.. Bill Hudson
Fm: Dick Hand

Dear Bill:

I am writing this letter in support of ASMI. Currently I am aware that HB 73 is under attack so that ASMI may not get it's 1% funding.

ASMI is many things to many people. In todays market place the price and volume of Alaska fish is under attack as we have not seen before. To stop funding of our single best advocate for the seafood industry would be suicidal.

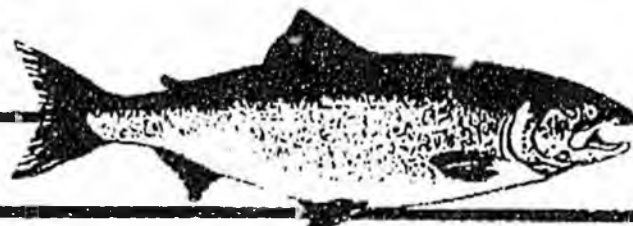
Thank you for your support and time on this bill.

Best regards



Dick Hand

cc: Barbara Belknap





L A K E A N D P E N I N S U L A A I R L I N E S

February 17, 1997

House Special Committee on Fisheries
ATTN: Sponsor Representative Bill Hudson

Re: House Bill 73 - 1% renewal to 2003

Dear Rep. Hudson:

As a fisherman in Bristol Bay for the last 30 years and with all of our immediate and extended family involved in both the salmon fishery and herring fishery, I (we) have real concern regarding our future.

Like any other industry we must market aggressively if we are to protect the Alaska industry from encroachment by every other protein source, especially farmed salmon.

Marketing is mostly a long term effort and results come only as we are consistent and aggressive, industry wide, in presenting our products.

Over the last three years ASMI has become an exceptional organization in the marketing arena. ASMI has a marketing plan and works the plan very aggressively.

On behalf of the many members of my family who are fishers in Bristol Bay and on behalf of many fishers in the "Lake Country" who may never contact you, I urge you to support H.B. #73. Please allow us as an industry to do what the Legislature must eventually expect of every other industry in the state. Assess ourselves 1% to market and promote the well being of the Alaska Seafood Industry.

Thank you for your consideration of my voice vote.

Sincerely,

David Wilder

Dear Art,

We sure do appreciate the letter you sent to Rebecca and myself. ²¹⁷¹⁹⁷ Even though we didn't get a chance to speak at the board meeting in Girdwood; hopefully, by expressing our views to Barbara and Ron Sparks our message made it to the rest of the board.

We are very passionate and committed to the state of Alaska, my profession (a 10 yr. commercial fisherman), our salmon and our seafood. We welcome and request the opportunity to speak to anyone who will listen; be it the public, the legislature, or the fishermen. As a fisherman and someone who is on the street in the lower 48, we listen to the public's cares, concerns, and perceptions. We can convey and produce a positive attitude towards wild Alaskan seafood.

ASMI needs to stay alive and the return from the state's funding and the 1% tax on fishermen will come to fruition. Anything short of this is nearsighted and impatient reasoning, which will cost the state and the fishermen money in the end.

Again we at Wild Alaskan Seafood Co. thank you for your help and response to our efforts and desires. One day I hope to sit on that Board or possibly as the legislator to fight for what I care very deeply for.

Thank you
 Michael Sundquist
 and
 Rebecca Weir

Wild Alaskan

SEAFOOD CO.



Taste The Wild...Taste The Difference

GUARANTEED

Michael Sundquist

PO Box 1131
 Girdwood, AK 99587-1131

Bus/Fax 907-783-1380

Dear Art,

We sure do appreciate the letter you sent to Rebecca and myself. Even though we didn't get a chance to speak at the board meeting in Girdwood; hopefully, by expressing our views to Barbara and Ron Sparks our message made it to the rest of the board. 217197

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ASMI needs to stay alive and the return from the state's funding and the 17% tax on fishermen will come to fruition. Anything short of this is nearsighted and impatient reasoning, which will cost the state and the fishermen money in the end.

Again we at Wild Alaskan Seafood Co. thank you for your help and response to our efforts and desires. One day I hope to sit on that Board or possibly as the legislator to fight for what I care very deeply for.

Thank you
 Michael Sundquist
 and
 Rebecca Weir

Wild Alaskan
 SEAFOOD CO.



Taste The Wild...Taste The Difference

GUARANTEED

Michael Sundquist

PO Box 1131
 Girdwood, AK 99587-1131

Bus/Fax 907-783-1380



3300 Arctic Boulevard, Suite 203
Anchorage, Alaska 99503
Phone (907) 562-7380
Fax (907) 562-0438
Email: swamc@alaska.net

October 2, 1996

Representative Alan Austerman
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Representative Austerman:

The Southwest Alaska Municipal Conference (SWAMC) is a regional membership organization representing over 130 member communities and businesses in Southwest Alaska. We are concerned about many issues, including economic development, fisheries management, tourism, transportation, small business development, education, and provision of adequate services to the communities in our region.

Our mission is to advance the collective interests of Southwest Alaska people, businesses, and communities and help promote economic opportunities to improve the quality of life and influence long-term, responsible development. During our 1996 Fall Meeting in Dillingham the enclosed resolutions concerning key statewide and regional issues were passed.

Here is the list of resolutions and their subject matter, with complete copies enclosed:

RESOLUTION 96-15 A resolution regarding the use of lands on Adak

RESOLUTION 96-16 A resolution supporting changes to the Power Cost Equalization Program.

RESOLUTION 96-17 A resolution urging the adoption of the "Safe Communities" Program and urging support of revenue sharing programs for municipalities.

RESOLUTION 96-18 A resolution in support of full funding for the University of Alaska for Fiscal Year 1998.

RESOLUTION 96-19 A resolution urging full support of the Alaska Marine Highway operation and continues progress toward the construction of the ocean class vessel.

g:\fallconf.96\resolut.hr

RESOLUTION 96-20 A resolution urging full support for the Alaska Regional Development Organization (ARDOR) Program.

RESOLUTION 96-21 A resolution urging legislative action on a solution for Title 47.

RESOLUTION 96-22 A resolution supporting the State of Alaska state waters cod fishing program.


RESOLUTION 96-23 A resolution requesting the development of a Southwest Alaska Regional Transportation Plan.

RESOLUTION 96-24 A resolution urging the State of Alaska to develop a State Highway System.

RESOLUTION 96-25 A resolution urging the State of Alaska to increase salmon marketing efforts.

We encourage you to give these issues serious consideration. The economies and health of rural and urban Alaska are interdependent. A strong, healthy, rural Alaska means a strong, healthy Alaska statewide. Thank you for consideration of our views. Should you have any questions about these resolutions, please contact me at 562-7380. We look forward to working with you in the future.

Sincerely,


Mary S. Stadum
Executive Director

Enclosures

Rose Heyano
PO Box 1409
Dillingham, Ak. 99576
907-842-1053
fax # 907-842-1355

February 9, 1997

Representative Bill Hudson
Alaska State Legislature
State Capitol
Juneau, Ak. 99801-1182

via fax @465-2273

Dear Representative Hudson:

Thank you for introducing HB 73 that would extend the 1% assessment for marketing programs initiated by the Alaska Seafood Marketing Institute. Governor Tony Knowles appointed me to the board of directors of ASMI in October 1996. The two meetings I've attended since appointed has clearly shown me the importance of marketing Alaska salmon. Alaska's wild salmon is facing very stiff competition with farmed salmon in domestic as well as world-wide markets. We must continue our efforts to keep the market share we currently have and strive to increase our salmon markets both domestically and internationally.

I have been a commercial drift fisherperson in Bristol Bay for the past 20 years. We are experiencing declining salmon prices which is directly attributed to the influx of farmed salmon. The days of our wild salmon selling itself is no longer. We must continue to design marketing programs to help us compete in this rapidly evolving market place.

The Alaska Seafood Marketing Institute is the marketing agency that needs to represent fisherpersons in the State of Alaska. ASMI needs fishermen's support as well as the State's. The State of Alaska needs to support the salmon industry by continuing to provide the 20% match that ASMI needs to receive the US Dept. of Agriculture's export grant. Without the 1% fisher assessment and the State of Alaska's match ASMI's marketing efforts would be sharply curtailed.

In the Bristol Bay region most fisherpersons feel that the 1% assessment helps them very little since it can only be used for promoting and increasing domestic markets. Bristol Bay contributes close to 37% of the entire assessment and their product is sold primarily in Japan. Realizing any benefit of the 1% assessment is not forthcoming. If you can add into HB 73 the change in the wording that would allow the 1% assessment to be used nationally as well as internationally many fishermen would support the continuation of it.

Alaska's salmon industry is vital to Alaska's economy. We are the largest employer in the State and provide revenue from the raw fish tax that pays for all aspects of the State government. In order for the salmon industry to continue to play such a vital role in Alaska we must all continue to support and promote the marketing of the product.

page 2

Again I would like to ask what you can do to emphasize the need for matching funds from the State to increase the ASMI Budget. What ASMI has accomplished with such a small budget is a miracle, but miracles don't last forever. The State of Alaska really needs to focus its attention on what can be done for the survival of our fisheries.

Thank you for your dedicated hard work that you are doing in Juneau and your support for House Bill No. 73.

Sincerely,



Cecelia A. Angasan
ASMI Board Member