

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9643 SENATE LABOR & COMMERCE

HB

214

SENATE COMMITTEE REPORT

DATE: 4/14/97

FURTHER:

DATE TURNED
IN TO OFFICE: 4-24-97

Labor and Commerce Committee considered

HOUSE BILL NO. 214

WORKERS COMP: TEMP. ASSISTANCE/MED. CONDITION

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# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Tim Kelly</i>	<input checked="" type="checkbox"/>		
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Greg J. Leman</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>LABOR</i>	<i>4/7/97</i>	<input checked="" type="checkbox"/>	
<i>LABOR</i>	<i>4/7/97</i>	<input checked="" type="checkbox"/>	
<i>HSS</i>	<i>4/7/97</i>	<input checked="" type="checkbox"/>	
<i>ADMIN.</i>		<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaska State Legislature House of Representatives

Committees

Rules Committee, Chair
Legislative Council
International Trade & Tourism
Military & Veterans Affairs
World Trade & State/Federal Relations



Interim:
10928 Eagle River Rd. Suite 141
Eagle River, AK 99577

Session:
Alaska State Capitol
Juneau, AK 99801

SPONSOR STATEMENT AND SECTIONAL ANALYSIS HB 214

HB 214, which is supported by the Department of Labor, makes two important adjustments to Title 23 pertaining to workers' compensation. Sections 1 and 2 amend AS 23.30 to comport with federal law. Sections 3 and 4 amend Alaska workers' compensation law to reflect changes made to public assistance eligibility.

Section 1:

This section aligns AS 23.30.022 with 42 U.S.C. 12101-12213 (Americans with Disabilities Act). It amends AS 23.30.022 to provide that an employee who, following a conditional offer of employment, makes a false representation during a medical inquiry or examination regarding the employee's physical condition, may be barred from receiving workers' compensation for an injury causally connected to the false representation. Currently, AS 23.30.022 refers to false representations of physical condition in an "employment application or preemployment questionnaire".

The ADA prohibits many employers from making inquiries designed to obtain information regarding disabilities prior to a conditional offer of employment, including inquiries made in the employment application and preemployment questionnaire. An employer subject to the ADA could not comply with the ADA and benefit from AS 23.30.022, while an employer who did not comply with the ADA might benefit at the expense of an employee's rights under the ADA. Section 1 of HB 214 replaces the "employment application or preemployment questionnaire" language of the current statute with the ADA permitted examinations or inquiries after a conditional offer of employment. The employer who complies with the ADA will be able to benefit from AS 23.30.022, and employment candidates will not be asked to choose between exercising their rights under the ADA and potentially losing their workers' compensation benefits.

Section 2:

Under existing law, before an employer can benefit from the Second Injury Fund, the employee must either have been hired or retained in employment after the employer learns of a permanent physical impairment. This section deletes the option that an employer, to benefit from the Second Injury Fund, acquire knowledge of a qualifying impairment before hiring an

Representative Pete Kott

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employee. As amended, in order to obtain Second Injury Fund reimbursement, it will be sufficient for an employer to have "retained" an employee in employment after acquiring knowledge of the employee's impairment.

Section 3:

The Alaska temporary assistance program, AS 47.27, was enacted in 1996 as part of welfare reform. One of its provisions, AS 47.27.035, requires that, unless exempt under that statute, participants in the Alaska Temporary Assistance Program participate in "work activities". "Work activities", as defined in AS 47.27.900, includes paid employment and paid on-the-job training, as well as unpaid activities such as community work service and job search and preparation activities. Section 3 of HB 214 would amend AS 23.30.230(a), which contains the current list of persons excluded from workers' compensation coverage, to add Alaska Temporary Assistance participants who are engaged in an unpaid work activity. This amendment ensures that workers' compensation coverage is provided only to those who are involved in a wage earning activity.

Section 4:

Defines "on-the-job training", as that phrase is used in Section 3 of this bill.

Section 5:

Because the amendments contained in sections 3 and 4 are linked to the new AS 47.27.035, Section 5 of this bill ties the effective date of Sections 3 and 4 to the effective date of AS 47.27.035.

Section 6:

Establishes an immediate effective date, except as provided in Section 5.

HB 214 will make Alaska law consistent with Federal ADA law and will clarify an area of legal uncertainty created with the passage of welfare reform. I urge your support.

Alaska State Legislature
House of Representatives

COL-128
JUNEAU

MAY 08 1995

COMMITTEE ASSIGNMENTS:

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MILITARY & VETERANS AFFAIRS, CHAIRMAN
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May 5, 1995

Mr. Paul Grossi
Director

Division of Workers' Compensation
PO Box 25512
Juneau, Alaska 99811-5512

Re: Draft Workers Compensation Pamphlet

Dear Mr. Grossi:

Thank you for providing me a draft copy of the Workers' Compensation pamphlet. I have had an opportunity to review it and have a few comments for your consideration.

I urge you to request an opinion from the Attorney General concerning the current viability of AS 23.30.022. It has been alleged that this statute conflicts with the Americans With Disabilities Act. If so, I would suspect that it is preempted under the Supremacy Clause of the United States Constitution. Should that prove to be the case, I request that you delete references to it in the pamphlet.

I note that the draft contains language that does not reflect the Gilmora decision. I recommend that you await the final status of HB 237 and if it becomes law incorporate its changes into the pamphlet. Should it not become law, the pamphlet should reflect the Gilmora decision.

Should you have any questions, or if I may be of any assistance, please do not hesitate to contact me.

Sincerely,

Pete Kott
District 14

cc House Labor and Commerce Committee members
Representative Bettye Davis

Representative Pete Kott

A

MEMORANDUM

STATE OF ALASKA
DEPARTMENT OF LABOR
Office of the Commissioner

TO: The Honorable Bruce Botelho
Attorney General
Department of Law

THRU: David Ramseur
Acting Chief of Staff
Office of the Governor

FROM: *Tom Cashen*
Tom Cashen
Commissioner

DATE: May 12, 1995

FILE: OM 1-3 B

PHONE: 465-2700

SUBJECT: Request for
Attorney General
Opinion Regarding
AS 23.30.022 and
AS 23.30.205(c) as
Related to ADA

X AG Opinion Binder

The Department of Labor's Workers' Compensation Division is requesting a formal Attorney General's opinion concerning AS 23.30.022 and AS 23.30.205 (c). It is alleged that AS 23.30.022 and AS 23.30.205 (c) are in direct conflict with the Americans with Disabilities Act (ADA). If that is the case, are these statutes preempted under the Supremacy Clause Act of the United States Constitution?

The Workers' Compensation Division provides every injured worker in Alaska an informative pamphlet regarding the workers' compensation system and process. AS 23.30.022 is referenced in the current pamphlet. An insert advising injured workers to contact the Equal Employment Opportunity Commission with any questions regarding their injury as related to ADA is included with the pamphlet. The insert is a temporary measure until language acknowledging the potential conflict is published in a new pamphlet. Is the language found in the insert sufficient?

Attached is a copy of a letter from Representative Kott requesting an Attorney General opinion, the current Workers' Compensation pamphlet, and a pamphlet insert.

Attachments (3)

cc: Representative Pete Kott
Dwight Perkins, Legislative Liaison, DOL
Paul Grossi, Director, WC
Jaka Sanders, Admin Officer, WC

FISCAL NOTE

No. 4
 Bill Version: HB 214
 (H) Publish Date: 4/7/97

**STATE OF ALASKA
 1997 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Department of Law
 Title: ... employer's knowledge of an employee's BRU: Civil Division
physical condition ... purposes of the Alaska Worker's Compensation . . Component: General Legal Services
 Sponsor: House Rules Committee
 Requester: House Labor and Commerce Committee COMPONENT SERIAL NO. 2087

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						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 214 amends AS 23.30.022, relating to false statements by an employee as to the employee's physical condition, and AS 23.30.205(c), relating to injury combined with preexisting impairment, to bring Alaska's workers' compensation laws into conformance with the federal Americans with Disabilities Act.

The Alaska temporary assistance program (the successor to the Aid to Families with Dependent Children program), AS 47.27, was enacted in 1996 as part of welfare reform. One of its provisions, AS 47.27.035, requires that, unless exempt under that statute, participants in the Alaska temporary assistance program must participate in "work activities" in order to receive assistance or services under the program. "Work activities" includes paid employment and paid on-the-job training, as well as unpaid activities such as community work service and job search and preparation activities. HB 214 would also amend AS 23.30.230(a), the list of persons excluded from workers' compensation coverage, to add to that list Alaska temporary assistance program participants who are engaged in unpaid work activity. The amendment would draw the distinction that ensures

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 4/1/97

Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 4/1/97
 Agency: Department of Law

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ANALYSIS CONTINUATION:

that workers' compensation coverage is provided only to those who are involved in a wage earning activity.

Passage of this legislation would have no fiscal impact on the Department of Law.

FISCAL NOTE

No. 3
 Bill Version: HB 214
 (H) Publish Date: 4/7/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

BILL NO. _____

Revision Date: _____
 Title: Workers Comp: Temp Assistance/
 Med Condit
 Sponsor: House Rules
 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						
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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)

Sections 1 and 2 of this proposed bill amend the current workers' compensation provisions so that they correspond with 42 U.S.C. 12101 - 12213 Americans with Disabilities Act, also know as the ADA. Section 3 establishes an exclusion from coverage under the Alaska Workers' Compensation Act for participants in certain work activities required under the Alaska temporary assistance program so that only those participants who are involved in wage earning activities will be subject to workers' compensation coverage.

Prepared by: Paul Grossl, Director *Paul Grossl* Phone: 465-2790
 Division: Workers' Compensation Date: 3/28/97

Approved by Commissioner: Tom Cashen, Commissioner *Tom Cashen*
 Agency: Department of Labor Date: 3/28/97

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FISCAL NOTE

No. 2
 Bill Version: HB 214
 (H) Publish Date: 4/7/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: An Act relating to an employer's knowledge
of an employee's physical condition...
 Sponsor: Rules Committee
 Requestor: House Labor and Commerce

Dept. Affected: Health and Social Services
 BRU: Public Assistance
 Component: ATAP
 COMPONENT SERIAL NO. 220
 See also (SN#): _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

This legislation provides includes ATAP participants, except for those engaged in subsidized and unsubsidized employment or on-the-job training, in the list of persons who are not covered by worker's compensation. It has no fiscal impact.

Prepared by: Jim Nordlund Phone: 465-2680
 Division: Public Assistance Date: 04/03/97

Approved by Commissioner: Karen Perdue, Commissioner Date: 4-3-97
 Agency: Department of Health & Social Services

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FISCAL NOTE

No. 1
 Bill Version HB 214
 (H) Publish Date: 4/7/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to an employer's knowledge of an employee's physical condition for purposes of the Alaska Workers' Compensation Act ..."
 Sponsor: Rules Committee
 Requestor: (H) Labor and Commerce Committee

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
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 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.)
 There is no fiscal impact on the Division of Risk Management.

Prepared by: J. Brad Thompson, Director Phone: 465-5723
 Division: Risk Management Date: _____

Approved by Commissioner: Mark Boyer Date: 4/2/97
 Agency: Department of Administration

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protects the Fund against spurious or collusive claims.

Sea-Land Services, 737 P.2d at 795, citing U.S. Pipe & Foundry Co. v. Caraway, 546 S.W.2d 215, 219 (Tenn. 1977). The written record requirement also serves to reduce litigation on the question of whether the employer had knowledge of the pre-existing impairment. Sea-Land Services, *supra*; Ketchikan Gateway Borough v. Saling, 604 P.2d 590 (Alaska 1979); A. Larson, Workmen's Compensation Law, Sec. 59.33(f), Vol.2, p. 10-523 (1992).

2. False Statement Exclusion

As part of a general reconstruction of the workers' compensation laws in 1988, AS 23.30.022 was adopted. § 5 ch 79 SLA 1988. It provides:

An employee who knowingly makes a false statement as to the employee's physical condition on an employment application or preemployment questionnaire may not receive benefits under this chapter if

(1) the employer relied upon the false representation and this reliance was a substantial factor in the hiring; and

(2) there was a causal connection between the false representation and the injury to the employee.

This provision protects the employer from compensation liability where the employee misrepresents his physical condition, the employer relies on the false representation to the extent that it was a substantial factor in hiring, and the employee incurs an injury which is causally connected to the false representation. Unlike AS 23.30.250, which imposes a criminal penalty for willful misrepresentation in the workers' compensation process, this provision addresses knowing misrepresentation prior to the injury and protects the employer as well as excludes the employee. It complements the Second Injury Fund mechanism. If the employee divulged the information, the employer had a "written record" and could file a claim for Fund protection if an injury resulted in significant disability. On the other hand, if the employee knowingly concealed the information, the employer would not have access to Fund reimbursement in the event of injury, but in certain cases' the employer would be able to avoid liability altogether.

'The misrepresentation exclusion applies only where the employee's misrepresentation is causally related to the injury; e.g., in those cases where the employer could have provided

The reasoning behind these restrictions was set forth at length in the House Education and Labor Committee:

Historically, employment application forms and employment interviews requested information concerning an applicant's physical or mental condition. This information was often used to exclude applicants with disabilities -- particularly those with so-called hidden disabilities such as epilepsy, diabetes, emotional illness, heart disease and cancer -- before their ability to perform the job was even evaluated.

In order to assure that misconceptions do not bias the employment selection process, the legislation sets forth a process which begins with a prohibition on pre-offer medical examinations or inquiries. . . . This prohibition against inquiries regarding disability is critical to assure that bias does not enter the selection process.

H.R. Rep. No. 485, 101 Cong., 2d Sess., pt. 2, at 72-73 (1990).

The ADA provides that state and local governments may not exclude a qualified person with a disability from participation in government services, benefits or programs, nor deny benefits of government services, benefits or programs by reason of such disability. 42 U.S.C. § 12132. Such programs include services of the workers' compensation division and eligibility for workers' compensation benefits.

While concern was expressed in Congress regarding ADA conflicts with OSHA workplace safety standards or other state health regulations, no explicit discussion of conflicts with second injury funds or workers' compensation laws is contained in committee reports.⁵ Regarding potential conflict with workplace safety laws, the United States Attorney General was directed to "exercise coordinating authority to avoid and eliminate such conflicts." H.R. Rep. No. 485, 101st Cong. 2d Sess., pt.2, at 136 (1990).

4. Federal Preemption

Article VI of the Constitution of the United States

⁵There was testimony relating "myths about job performance, safety, insurance costs" as a barrier to employment. H.R. Rep. No. 485, 101st Cong., 2d Sess., pt 2 at 33 (1990).

While courts are not to seek out conflicts between state and federal regulation where none clearly exist, Huron Portland Cement Co. v. Detroit, 362 U.S. 440, 446 (1960), "under the Supremacy Clause, from which our pre-emption doctrine is derived, any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." Gade v. National Solid Wastes Management Ass'n, 505 U.S. at 108, 112 S.Ct. 2388; quoting in part Felder v. Casey, 487 U.S. at 138; 108 S.Ct., at 2307.

Congress did not express a clear and manifest intent to preempt state workers' compensation laws in enacting the ADA. The ADA is designed to prevent discrimination on the basis of disability; not to compensate those who suffer disability as a result of work-related injury. Congress disclaimed any intent to occupy the field of disability law, stating that the ADA is not to be construed to "invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State . . . that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act." Sec. 501(b). Moreover, the EEOC's interpretive guidance to the federal regulations enforcing the ADA's restrictions on employer medical inquiries provide that state workers' compensation laws are not preempted by the ADA. 29 CFR 1630, App. 1630.14(b). However, the EEOC also states that "ADA requirements supersede any conflicting state workers' compensation laws." EEOC Technical Assistance Manual, Sec. 9.6(b), Part IX, p.6 (1992). In this instance, federal preemption by the ADA of the state's workers' compensation laws must rest on the existence of a conflict between the ADA and the state law.

5. Preemption of Second Injury Fund Written Record Requirement

AS 23.30.205(c) requires an employer to have written knowledge of a permanent physical impairment before the injury and that "the employee was hired or retained in employment after the employer acquired that knowledge". The ADA, on the other hand, strictly prohibits any pre-employment inquiries into the existence of a "disability or the nature or severity of a disability". 42 U.S.C. § 12112(c)(2)(A). The ADA definition of disability is sufficiently broad⁶ to encompass many of the Second Injury Fund's

⁶The ADA defines "disability" as

- (a) a physical or mental impairment that substantially limits one or more of the major life functions of such individual;
- (b) a record of such impairment; or
- (c) being regarded as having such an impairment.

42 U.S.C. 12102(2). Not all of the listed conditions would

1630.14(b), and inquiries to current employees are limited to those "job-related and consistent with business necessity." 42 U.S.C. § 12112(c)(4)(A).⁸ With regard to entrance examinations, the EEOC cautions that, although inquiries that are not job-related are permitted:

employers may, as a practical matter, find it desirable to avoid requiring such examination/inquiries. This is so because an employer's obtaining information unrelated to the job can be probative of an employer's knowledge of an individual's disability if discrimination is alleged at a later time.

EEOC Guidance on Pre-Employment Disability-Related Inquiries and Medical Examinations under the ADA (No. 915.002, May 19, 1994) at n.59. Thus, while an ADA covered employer has a window of opportunity to make broad inquiry into the existence of listed conditions, and the EEOC acknowledges the role of second injury funds in limiting the cost of injury to an employer, the EEOC cautions that the employer may find it more advantageous not to make such inquiries.

It is the position of the EEOC that:
the ADA does not prohibit employers from obtaining information about pre-existing injuries and providing needed information to second injury funds. . . . [A]n employer may make such medical inquiries and require a medical examination after a conditional offer of employment and before a person starts work, so long as the examination or inquiry is made of all applicants in the same job category.

EEOC Technical Assistance Manual, Sec. 9.5, Part IX, p.6 (1992). The Manual makes no statement about information acquired after hire. After the employment entrance inquiries, inquiries must be "job related and consistent with business necessity". It could be argued that broad inquiries after the employment entrance window are "consistent with business necessity", but it is more difficult to tie such inquiries to the specific employee's job, even solely for Second Injury Fund purposes.

⁸It could be argued that it is consistent with business necessity for an employer to make sufficient record to claim Fund protection in the event of a future serious work-related injury, particularly as the existence of the record is necessary for Fund reimbursement.

The federal agency charged with enforcement of the ADA has approved transmission of information properly obtained to second injury funds, 28 C.F.R. 1630, App. 1630.14(b). Since the employer must obtain the knowledge and record it to send to a second injury fund, the EEOC evidently does not view a requirement that an employer establish by written record that the employee was retained in employment after the employer had knowledge of the listed impairment as having direct and substantial effect on implementation of the ADA. Such a written record requirement may or may not induce some employers to evade the ADA. However, speculation that an employer may be tempted to violate the ADA to obtain a state benefit does not render the state statute invalid. An otherwise valid state statute will not be struck down "merely because the public reacts to it in a manner inconsistent with federal law." Kosikowski v. Bourne 659 F.2d 100, 105 (9th Cir. 1981) (dismissing argument that local ordinance was preempted because it induced unsafe practices and caused pilots to attempt to violate federal regulations). Compare, Tellis v. United States Fidelity and Guar. Co., 625 F. Supp. 92, 95 (N.D.Ill. 1985) (in claim against employer based on scheme to defraud worker of benefits by false statement that he would be returned to work, RICO does not preempt state workers' compensation exclusive remedy rule), aff'd, 805 F.2d 741 (7th Cir. 1986), cert. granted and vacated on other grounds, 483 U.S. 1015, 107 S.Ct. 3255 (1987), aff'd on other grounds, 826 F.2d 477 (7th Cir. 1986).

6. False Statement Exclusion

AS 23.30.022 provides that an employee who "knowingly makes a false statement as to the employee's physical condition on an employment application or preemployment questionnaire" may not receive workers' compensation benefits if the employer substantially relies on the false statement "in hiring" and the employee's injury is causally related to the false statement.

The ADA prohibits preemployment inquiries as to physical condition prior to a job offer. Therefore, an employer with more than 15 employees cannot comply with the ADA and obtain relief from liability under this statute. Since the statute does not exclude employees from coverage based on post-offer misrepresentations, as in an entrance examination or a legitimate job-related inquiry, the employer cannot obtain relief under this statute in other circumstances when the information is obtained in compliance with the ADA.¹⁰ The statute also requires the employer to demonstrate

¹⁰If the "pre-employment questionnaire" in A23.30.022 is defined as a "post-offer entrance questionnaire" which complies with the ADA, an employer could avoid conflict. However, a preemployment questionnaire is not generally meant as being completed after an offer of employment. Also, taken in

Christopher G. Bell, "Integrating the Americans with Disabilities Act into the Workers' Compensation System", Disability Law Reporter, Vol.2, No.6, p.3, 13 (June 1993). The EEOC takes the position that under the ADA an employer may withdraw an offer to, or fire, a person who knowingly provides a false answer to a lawful inquiry about their physical condition or workers' compensation history. EEOC Technical Assistance Manual, supra.

7. Effect of Federal Preemption.

A state statute that actually conflicts with federal law is void to the extent that the conflict exists. Edgar v. MITE Corp., 457 U.S. 624, 102 S.Ct. 2629 (1982). In those cases where Congress did not intend to occupy the whole field, the state statute is invalid or void only to the extent of the actual conflict; Planned Parenthood of Billings v. State of Montana, 648 F. Supp. 47 (D.C. Mont. 1986); Consolidated Rail Corp. v. City of Bayonne, 724 F. Supp. 320 (D.C. N.J. 1989); and inconsistent provisions only of state law may be preempted. Matter of Baby K., 16 F.3d 590 (4th Cir. 1994). The extent of the preemption depends on the extent of the conflict. Boyle v. United Tech Corp., 487 U.S. 500, 512, 108 S.Ct. 2510, 2518 (1988).

Federal preemption may invalidate otherwise valid state law "as it is applied", Hankin v. Finnel, 964 F.2d 853 (8th Cir. 1992) (invalidating application of state's incarceration reimbursement lien against judgment paid by state in inmate's 1983 action against state prison guard); Texas Employers' Ins. Ass'n v. U.S., 569 F.2d 874, 875 (5th Cir. 1978) (application of state workmen's compensation anti-assignment statute against V.A. hospital invalid); or specific provisions of state law, Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 101 S.Ct. 1895 (1981) (invalidating state law prohibiting pension benefit offsets of workmen's compensation benefits); or specific operation of state law. Employee Benefits Committee, Etc. v. Pascoe, 679 F.2d 1319, 1322-23, (9th Cir. 1982) (invalidating operation of Hawaii workers' compensation law barring any rule to relieve the employer from liability). Thus while specific operation or provision of state law may be invalid, the remaining applications or provisions are not preempted. District of Columbia v. Greater Wash. Bd. of Trade, 506 U.S. 125, 113 S.Ct. 580 121 L.Ed.2d 513 (1992).

A finding of federal preemption in this instance would invalidate only those specific offending parts of the state workers' compensation law, since neither the operation of second injury funds in general nor false statement exclusions are barred by the ADA. Specifically, in AS 23.30.205(c), the words "hired or" and, in AS 23.30.022, the words "on an employment application or preemployment questionnaire" and "this reliance was a substantial factor in the hiring" are the portions of the statutes that present

Tom Cashen
Department of Labor
AGO 661-95-0748

September 3, 1996
Page 15

Since the ADA bars inquiry into physical conditions in employment applications or pre-employment questionnaires, an employer may not require an employee to divulge such conditions at the risk of losing future workers' compensation under AS 23.30.022.

Because it is impossible to comply with conflicting provisions of the ADA (federal law) and the specific offending provisions of AS 23.30.205(c) and AS 23.30.022, identified more specifically above, the federal law (the ADA) would preempt the state law provisions regarding the Second Injury Fund (reimbursement based on hire after acquiring written knowledge of impairment) and the false statement exclusion (concealment of conditions on employment applications or pre-employment questionnaires). These provisions could be deemed void.¹¹ The insert provided does not give notice of the effect of preemption by the ADA.

We hope this memorandum answers your questions.

KSK:lea

Attachment

¹¹There has been no published ruling from any court on this precise issue to date.

NOTICE

At page 3, the following is added to the section "WHAT IF YOU DON'T TELL THE TRUTH."
Alaska Statute 23.30.022 states:

An employee who knowingly makes a false statement as to the employee's physical condition on an employment application or preemployment questionnaire may not receive benefits under this chapter if

(1) the employer relied upon the false representation and this reliance was a substantial factor in the hiring; and

(2) there was a causal connection between the false representation and the injury.

A federal law, the Americans with Disabilities Act (ADA), may limit your employer's right to ask you about your physical condition (health). You can get information about the ADA as it relates to employment by calling the federal Equal Employment Opportunity Commission at 1-800-663-4000, or writing the Commission at 907 First Avenue, Suite 400, Seattle, Washington 98104-1061.

(See Reverse for More Information)

HB

231

FISCAL NOTE

No: 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO: Bill Version: CSHB 231 (JUD)
 (H) Publish Date: 2/6/98

Revision Date: 2/2/98 Dept. Affected: Administration
 Title: "An Act relating to the regulation of
Snowmachines..." BRU: Motor Vehicles
 Component: Administration
 Sponsor: Representative Masek
 Requestor: H. JUD COMPONENT SERIAL NO. 2149

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	43.0	43.0	43.0	43.0	43.0	43.0
TRAVEL	5.0	2.5	2.5	2.5	2.5	2.5
CONTRACTUAL	18.0	3.0	7.7	7.7	10.9	10.9
SUPPLIES	5	5	5	5	5	5
EQUIPMENT	10.0					
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	76.5	49.0	53.7	53.7	56.9	56.9

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

CHANGE IN REVENUES (1005)						
Revenue Code	100.0	100.0	200.0	200.0	300.0	300.0

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts	76.5	49.0	53.7	53.7	56.9	56.9
1006 GE/MHTIA						
Other						
TOTAL						

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

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED

Prepared By: Juanita M. Hensley Phone: 465-5648
 Division: Motor Vehicles Date: 2/3/98
 Approved by Commissioner: Mark Boyer Date: 2/5/98
 Agency: Department of Administration

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

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COMMITTEE COPY

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO: CSHB 231(JUD)

Revision Date: 02/3/98 Dept. Affected: Administration

ANALYSIS CONTINUED:

This bill moves the registration requirement for snowmachines from Title 5 to Title 28 and requires dealers to have purchases complete applications prior to leaving the dealership with the snowmachine. The bill also authorizes the dealers to act as agents for DMV and issue the registrations and decals for snowmachines.

Snowmachines are currently required to be registered if they are operated on public land. There are 14,642 snowmachines registered but the estimates from dealers and snowmachine organizations indicate there are 70,000 snowmachines in the state. Not all of these machines will be registered under this bill even if the law requires it and the primary reason is a lack of effective enforcement.

For the purpose of this fiscal note the following projection will be used:

FY99	FY00	FY01	FY02	FY03	FY04
10,000	10,000	20,000	20,000	30,000	30,000

The increase of 10,000 registrations every two years is based on the number of machines estimated to be registered a year and those that must renew the registration on a biennial basis. Mail-in renewal of registrations will increase 10,000 to 20,000 a year. A Motor Vehicle Customer Service Representative III will be required to manage the contracts negotiated with the snowmobile dealers; train the dealer personnel, audit the program and maintain the security of the forms and decals.

COST SUMMARY		FY 99
PERSONAL SERVICES		
1 PFT MVCSR III, Rage 14		\$43.0
TRAVEL to train and audit dealer work		\$ 5.0
CONTRACTUAL		
Forms and tabs		\$3.0
Computer Programming		\$15.0
EQUIPMENT		
1 computer workstation —one time cost (this includes PC, desk, chair, file cabinet)		\$10.0
TOTAL		\$76.5

REVENUE

It is estimated 10,000 registrations at \$10 for the biennial period. Assuming even distribution with 10,000 in each year after the startup, there will be an increase of revenue from registration fees.

FY00	FY01	FY02	FY03	FY04
\$ 0.0	\$100.0	\$200.0	\$200.0	\$300.0

SENATE COMMITTEE REPORT

DATE: 3/20/98

FURTHER: Finance

DATE TURNED IN TO OFFICE: 4-1-98

Labor and Commerce Committee considered

CS FOR HOUSE BILL NO. 231(FIN)

"An Act relating to regulation of snowmobiles."

and recommends:

- be replaced with Sen CS HB 231 (L+C)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by Committee
- further referral to the Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR*

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tom Kelly</i>	✓	<i>Mike Miller</i>	✓		
		<i>[Signature]</i>	X		
CHAIR:		CHAIR: <i>[Signature]</i>	✓		

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

to
L+C CS
also

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Administration	2/6/98		\$76.5

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaska State Legislature

Senate



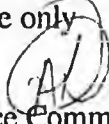
Official Business

State Capitol
Juneau, AK. 99801-1182

Senate Labor & Commerce Committee

Memo

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

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

DATE: March 31, 1998

RE: FINAL SCS HB 231(L&C)

The Senate Labor & Commerce Committee moved HB 231 from committee today with the following changes (using CSHB 231(FIN) as the source document):

- 1) Amendment LS0501\L.1 by Ford dated 3/23/98 allowing a two, four or six year registration. No changes to the amendment.
- 2) Amendment #2:
Page 2, line 12:
DELETE [SHALL]
insert may
- 3) Amendment #3:
Page 1, line 8 following "United States":
The committee wants a sentence that makes failure to register a snowmobile a violation, and subject to AS 26.40.050(c). Apparently, it is currently a misdemeanor to fail to register.

Call if you have questions.

#1
AMENDMENT

Kelly moved
no objection

OFFERED IN THE SENATE

TO: CSHB 231(FIN)

ADOPTED

- 1 Page 2, line 10, following "AS 28.10.421":
- 2 Insert ", except that the fee shall be multiplied by two for a four-year registration and
- 3 multiplied by three for a six-year registration"

- 4 Page 2, line 30:
- 5 Delete "biennial"

- 6 Page 3, line 15:
- 7 Following "(h)":
- 8 Insert "A snowmobile may be registered for two, four, or six years."
- 9 Delete "second"
- 10 Insert "last"

Alaska State Legislature

SENATE DISTRICT 1

Bayshore	Arbost Loop
Campbell	Bear Valley
Diamond	Cardwood
Independence Park	Green Alps
Slatt	Hillside
Old Seward	Huffman O'Malley
Southport	Indian
Lake	Portage
	Rabbit Creek



70 WEST THIRD AVENUE, SUITE 517
ANCHORAGE, ALASKA 99501
(907) 258-6164
WWW.ALASKA.GOV
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-2905 Fax: (907) 465-2905

SENATOR SEAN PARNELL

Sponsor Statement SB 232

"An Act relating to electronic signatures, electronic records, requirements for records, and the production of public records."

At the request of the Lieutenant Governor, Chair of the Telecommunications Information Council, I have introduced SB 232 to allow both the public and private sectors of Alaska to operate quickly, securely and efficiently in the electronic age. Electronic signatures are increasingly used as this new technology is quickly adapted into the ever-changing world of electronic commerce. Currently two states, Utah and Washington, have adopted statutes to standardize the practice of electronic signatures and legislation is pending in most other states. SB 232 will help continue Alaska's interstate, intrastate and global economic growth, by providing legal framework for use of electronic signatures commerce.

Specifically, SB 232 establishes electronic signatures as a legal practice with the same standing as a standard signature. This act allows the Lt. Governor's office or other state agencies to develop regulations for using electronic signatures by private or public entities and establishes criteria for electronic signature regulations. Lastly, this act repeals some state agencies' selected notarization requirements to better utilize the efficiencies of electronic signatures.

SB 232 is an important component in keeping Alaska competitive and efficient in both public and private business practices. I appreciate your support of this act.



Alaska State Legislature

Representative Beverly Masek

Chair, Military & Veterans Affairs

Vice Chair, Transportation

Vice Chair, Resources

Legislative Council

During Interim:

600 East Railroad Avenue
Wasilla, AK 99654
907-376-2679
907-376-6180 (fax)

During Session:

State Capitol
Juneau, Ak. 99801-1182
(907) 465-2679
(907) 465-4822 FAX
(800) 505-2678

SPONSOR STATEMENT HB 231

HB 231 was the result of several years of effort on the part of Alaska's organized snowmobile associations. The need for viable wintertime economic opportunities prompted my involvement in this issue. I view this legislation as an important tool in promoting those opportunities. I also believe the development of trails will help protect snowmobiling opportunities throughout Alaska.

There has been a statutory requirement for registering snowmobiles since 1968; however, few Alaskans participated in registration of their snowmobiles. This is primarily due to the problems that existed in the registration process. When somebody purchased a new snowmobile they had to take the title to the Division of Motor Vehicles and wait in line to get the five-dollar registration. Also, since the Division was not been able to implement a mail in system for registration renewal, individuals have to repeat that performance every two years.

By allowing dealers to handle registrations at time of purchase, HB 231 will create a better process for people to comply with current statutes. This legislation will also allow dealers and other agents to handle renewal of registrations.

It is important to snowmobile enthusiasts to have a good system in place for the purpose of providing a good accounting of the number of machines in Alaska. This information is an integral part of the formula for acquiring trail moneys available from the National Trails Fund. The National Trails Fund was established to provide

needed funding for trail construction, trailheads, trail signing, and grooming equipment. The importance of being able to acquire funds through this system cannot be stressed enough. The establishment and maintenance of good trail systems throughout Alaska will provide Alaskans a place to ride, and more importantly provide us with an opportunity to expand winter recreation and tourism.

I believe HB 231 is a good first step toward developing an important facet of winter tourism. I further believe now is the time to identify and allocate trail systems so that future Alaskans will always have a place to recreate. I feel this is important, as some trails have already been lost due to population growth without any forethought given to protecting these types of uses. HB 231 provides us with the tools to better plan for future growth and its associated problems.

03/31/98
13:26:27

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)
TCN:80551 SCHEDULED FOR:03/31/98 13:30 TO 15:00
PUBLIC HEARING SENATE LABOR & COMMERCE

LTN1150
BY:MAT
FOR:MAT

LOCATION:MATSU
HB 231

MR BILL EASTHAM

TESTIFY

03/31/98
13:31:35

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)
TCN:80551 SCHEDULED FOR:03/31/98 13:30 TO 15:00
PUBLIC HEARING SENATE LABOR & COMMERCE

LTN1150
BY:HOM
FOR:HOM

LOCATION:HOMER
HB 231

MR MICHAEL EASTHAM SNOMADS

TESTIFY



Alaska State Legislature

Representative Beverly Masek
Chair, Military & Veterans Affairs
Vice Chair, Transportation
Vice Chair, Resources
Legislative Council

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600 East Railroad Avenue
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During Session:
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(907) 465-4822 FAX
(800) 505-2678

Mar. 30, 1998

Sectional Analysis – HB 231 – Point of Sale Registration of Snowmobiles

Sec. 1. Amends AS 28 by adding a new chapter providing for the mandatory registration of snowmobiles. This new section also allows for snowmobile dealers to register snowmobiles at the time of sale.

Sec. 28.39.010 – States who must register

Sec. 28.39.020 – Outlines the authority of the Department of Administration to authorize snowmobile dealers as agents for issuing registrations and the manner in which it shall be done.

Sec. 28.39.030 – Provides for proof of ownership before registering

Sec. 28.39.040 – Describes the Department's responsibility for recording a registration, assigning a registration number, who they may issue a registration to, and how often the registration must be renewed. This section further sets requirements for the display of the registration number, carrying the registration while operating the snowmobile, procedures for changing ownership, and the replacement of a lost, mutilated, or destroyed registration.

Sec. 28.39.050 – Provides guidelines for termination of ownership or use.

Sec. 28.39.060 – Authorizes the commissioner to adopt regulations for registering snowmobiles

Sec. 28.39.250 - Definition of terms

Section 2. – Repeals AS 05.30



TELEPHONE (907) 694-4702

FAX (907) 694-1205

Chugiak-Eagle River Chamber of Commerce

P.O. BOX 770353
EAGLE RIVER, ALASKA 99577

11401 OLD GLENN HIGHWAY, SUITE 110A
EAGLE RIVER, ALASKA 99577

"Place of Many Places"

February 27, 1998

Senator Loren Leman
State Capitol
Juneau, AK 99801

Dear Senator Leman

The Chugiak-Eagle River Chamber of Commerce supports HB 231, Point of Sale Snowmobile Registration. The Chamber wants to see this recreational industry developed with appropriate planning, public safety and regulation. We support user fees and matching grants as the means to do this. Point of Sale Registration is absolutely necessary in order to accomplish this goal.

If you have questions, please feel free to contact me at 694-4200 or the Chamber at 694-4702.

Sincerely,

Ai Romaszewski

Ai Romaszewski
Snowmobile Task Force Committee Chair
Chugiak-Eagle River Chamber of Commerce
Board of Directors

MAR 02 1998



Alaska State Legislature

Please enter into the record my testimony to the STRA.
 committee name

committee on HB231, dated 3-19-98
 bill # / subject

Written testimony for Senate Transportation Committee hearing 3/19/98

HB231-

The Caribou Hills Cabin Hoppers with a membership of over 200 families, strongly supports HB231. Alaska only received approximately \$85000.00 in SYMMS money this year because we have so few snowmachines registered. Please pass this bill so we can get registrations up and receive our share of SYMMS money for trails.

Mr. Howard T. Davis,
 Caribou Hills Cabin Hoppers
 PO Box 395 Clam Gulch, Alaska 99568

Signed: _____
 Testifier

Representing (Optional)

Address

Phone number



From the desk of the President:

Mr. Carlson,

It has come to my attention that you are in Juneau this week in order to help with the initialization of the legislation concerning Point of Sale Registration of snowmobiles in Alaska.

As the elected representative of thousands of snowmobilers statewide, I would like to offer our wholehearted support of this legislation and extend to you any and all means of assistance at our disposal. It is time that the organized sportspersons of Alaska spoke in unison on a critical crossroad of our recreational choice.

Any information that we can provide that has bearing on this subject will be made readily available to yourself or any other interested persons upon request. The Anchorage Snowmobile Club can be reached at (907) 566-0272. The Alaska State Snowmobile Association can be reached at (907) 566-0212.

Kevin E. Hite
kevin_hite@fmc.com

FAX

To: Ted Carlson
Of: Municipal League
Pages: 3, including this cover sheet.
Date: January 27, 1998

The following are the supporters thus far of the statewide trail system. They know in order to accomplish the establishment of a statewide trail system that Point of sale legislation is the critical funding component for success. As the future unfolds, it also may become necessary to implement a user pay system as well. All other snowbelt states with organized snowmobile trail systems have implemented both. Alaska is the last state that does not have mandatory point of sale registration for recreational vehicles, specifically snowmobiles. Without accurate registration or recorded snowmobile sales numbers Alaska loses out on hundreds of thousands of dollars every year in federal funds for trail development and maintenance. We do know there were 15817 new snowmobiles sold just in the last two winters and yet the most accurate data the Dept. Of Motor Vehicles can supply is that there are approximately only 11000 registered machines in the state. This is aggregate over the course of time since registration is strictly voluntary although state law requires registration. Point of Sale registration is the only solution to this mounting problem. Also, point of sale may help to alleviate another serious problem of snowmobile theft which is running rampant across Alaska. This legislation is a strong deterrent and protects dealers from servicing and selling used stolen snowmobiles. The most accurate estimate comes from Alaska State Parks indicating there may be as many as 70,000 unregistered snowmobiles in Alaska. The following is a partial list of supporters and does not reflect the growing list of support from private enterprise through out the state.

Alaska Snowmobile Representatives Alliance (ASKA)
Alaska State Snowmobile Association (ASSA)
Anchorage Snowmobile Club (ASC)
Anchorage Economic Development Corporation (AEDC)
Mayor Rick Mystrom, Municipality of Anchorage
Mayor Sarah Palin, City of Wasilla
State of Alaska, Division of Parks and Outdoor Recreation
International Snowmobile Manufacturers Association (ISMA)
Bombardier Motor Corporation (Includes 16 statewide dealers)
Polaris Industries Inc. (Includes 62 statewide dealers)
Yamaha Motor Corporation (Includes 23 statewide dealers)
Arctic Recreational Distributors Inc. (Includes 40 statewide dealers)
Iron Dog Gold Rush Classic
Muldoon Community Council
Eagle River Community Council

Eagle River Chamber of Commerce
Wasilla Chamber of Commerce
Big Lake Chamber of Commerce
Anchorage Convention and Visitors Bureau (ACVB)
Alaska Visitors Association (AVA)
Governor Tony Knowles, State of Alaska
Anchorage Trails and Greenways Coalition (ATCG)
Alyeska Resort
Anchorage Hilton Hotel
Regal Alaskan Hotel
Chilkoot Charlies
Days Inn Anchorage
Klondike Mikes Adventures
Alaska Sales and Service
Anchorage Hotel/Rumrunners Bar & Grill
Bovey Trophies
Alaska Regional Hospital
E&A Enterprises
Golden North Van Lines
Grizzley's Inc.
Linford of Alaska
Almost Home Accomodations
Anchorage Daily News
Best Western Barratt Inn
Comfort Inn
Food Services of America
Holland America
MACTel Inc
Mat-Su Resort
Sheraton Anchorage Hotel
Windy Creek
National Bank of Alaska
Ship Creek Hotel
The Rusty Harpoon
PIP Printing
Thrifty Car Rental of Alaska
Westmark Anchorage Hotel
~~Mat-Su Motor Musers~~
Caribou Hills Cabin Hoppers
Alaska Motor Musers

Ted, if you need anything further please do not hesitate to call. While in Juneau see if you can find out where the registraion money over the years has gone and why motorized recreational users have never recieved any benefits from all the fuel taxes they have paid.

Thanks,

Tim



ANCHORAGE
Convention &
Visitors Bureau

April 30, 1997

The Honorable Beverly Masek
Alaska House of Representatives
State Capital
Juneau AK 99801-1182

Dear Representative Masek:

The Anchorage Convention & Visitors Bureau (ACVB) representing more than 1,300 business members remains in support of HB 231. We view this legislation as an important tool in promoting a genuinely Alaskan activity, as well as creating greater opportunities for winter recreation in many areas of the state.

There has been a statutory requirement for registering snowmobiles since 1968; however few Alaskans participated in registration of their snowmobiles. This is primarily due to the problems that exist in the registration process. Currently when somebody purchases a new snowmobile, they have to take the title to the Division of Motor Vehicles and wait in line to get the five dollar registration. Also, since the Division has not been able to implement a mail-in system for registration renewal, individuals have to repeat that performance every year.

By allowing dealers to handle registrations at time of purchase, HB 231 will create a better process for people to comply with current statutes. This legislation will also allow dealers and other agents to handle renewal of registrations.

It is important to snowmobile enthusiasts to have a good system in place for the purpose of providing a good accounting of the number of machines in Alaska. This information is an integral part of the formula for acquiring trail moneys that are available from the National Trails Fund. The National Trails Fund was established to provide needed funding for trail construction, trail heads, trail signing, and grooming equipment. The importance of being able to acquire funds through this system cannot be stressed enough. The establishment and maintenance of good trail systems throughout Alaska will provide Alaskans a place to ride, and more importantly provide us with an opportunity to expand winter recreation and tourism.

524 W. Fourth Avenue
Anchorage, Alaska
90501-2212

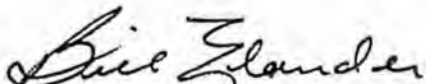
907-276-4118
Fax 907-278-8550
tomb@chb.state.ak.us

Page 2

Representative Beverly Masek
April 30, 1997

We believe HB 231 is a good first step toward developing an important facet of winter tourism. It will quite likely need input and work from the public and the Legislature. I look forward to developing a good system to provide for snowmobile registration and the resultant benefits to the state's economy and am hopeful HB 231 will receive the timely support of this Legislature.

Sincerely,

A handwritten signature in cursive script that reads "Bill Elander".

Bill Elander
President & CEO



ALASKA OUTDOOR COUNCIL

211 4th St. #302A
Juneau, AK. 99801
(907) 463-3830

Feb. 1, 1998

The Honorable Jerry Ward, Chair
Senate Transportation Committee
Alaska State Capitol
Juneau, Ak. 99801

Dear Sentor Ward:

The Alaska Outdoor Council and its member organizations strongly support SB 231 and would appreciate your assistance in moving this piece of legislation this session.

The AOC is an umbrella organization of outdoor user groups covering a broad spectrum of uses. Currently there are four snowmobile clubs affiliated with the AOC, including the Alaska State Snowmobile Association which represents clubs from all over the state. HB 231 is their number one priority. Also, trails and access is one of the AOC's primary areas of concern and we feel this bill is a good step toward insuring trails will be available for future generations of Alaskans.

We would like to recognize the support our issues have received in the Twentieth State Legislature and hope you will once again give us your assistance on this important piece of legislation. If there is something further we can do to assist you in this effort, please feel free to contact us.

Sincerely,

Rod Arno
President

cc: Rep. Beverly Masek
Sen. Lyda Green
Senator Rick Halford
Senator Gary Wilken
Senator Georgianna Lincoln



TELEPHONE (907) 694-1200

FAX (907) 694-1205

Chugiak-Eagle River Chamber of Commerce

PO BOX 770353
EAGLE RIVER, ALASKA 99577

11401 OLD GLENN HIGHWAY SUITE 1102
EAGLE RIVER, ALASKA 99577

"Place of Many Places"

February 27, 1998

Representative Beverly Masek
State Capitol
Juneau, AK 99801

Dear Representative Masek

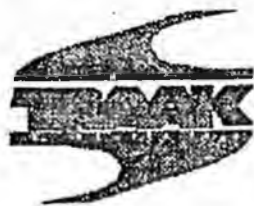
The Chugiak-Eagle River Chamber of Commerce supports HB 231, Point of Sale Snowmobile Registration. The Chamber wants to see this recreational industry developed with appropriate planning, public safety and regulation. We support user fees and matching grants as the means to do this. Point of Sale Registration is absolutely necessary in order to accomplish this goal.

If you have questions, please feel free to contact me at 694-4200 or the Chamber at 694-4702.

Sincerely,

Al Romaszewski

Al Romaszewski
Snowmobile Task Force Committee Chair
Chugiak-Eagle River Chamber of Commerce
Board of Directors



Trails & Recreational Access for Alaska Citizens Advisory Board

Department of Natural Resources
Division of Parks & Outdoor Recreation
3061 C Street, Suite 1200
Anchorage, AK 99503-3921

Department of Transportation & Public Facilities
Division of Statewide Planning
3132 Channel Drive, Room 200
Juneau, AK 99801-7898

Members

HELEN NIENHUESER, CHAIR
Anchorage 277-9330

MITZI BARKER
Eagle River 343-4881

CHIP DENNERLEIN
Anchorage 277-6722

KATHERINE ENINGOWUK
Nome 443-4336

LANE FLEISCHER
Anchorage 274-2453

AUSTIN HELMERS
Palmer 376-2050

E. J. HILKER
Juneau 789-6172

KIRK HOESSEL
Girdwood 783-2928

ROSE ISAAC
Tok 883-5181

PETER E. RICE
Ketchikan 225-3383

GINNY H. WOOD
Fairbanks 479-2754

LEE JOHNSON
Fairbanks 452-2897

JIM VORDERSTRASSE
Barrow 852-5211

SUE SHERMAN
Glennallen 822-3476

EX-OFFICIO MEMBERS
JIM STRAITON, ADNR
Anchorage 269-8703

TOM BRIGHAM, ADOT&PF
Juneau 465-6978

Staff
ODIN BRUDIE, ADOT&PF
Juneau 465-8769

FAX TRANSMITTAL

March 3, 1998

TO: Representative Beverly Masek

FAX: 465-~~8828~~ 4822

PAGES: 2

FROM: Odin Brudie, DOT&PF TRAAK Board Staff
PHONE: 465-8769
FAX: 465-6984

I am transmitting Resolution No. 98-4 on behalf of the Trails and Recreational Access for Alaska - TRAAK Citizens Advisory Board, who passed the resolution at a meeting in Juneau on February 20 & 21. TRAAK brings together the state agencies that deal with recreation in order to make the best possible use of the limited resources available for community and recreational access improvements. The TRAAK Citizens Advisory Board advises the Departments of Transportation & Public Facilities and Natural Resources on matters relating to TRAAK. Please do not hesitate to give me a call if you have any questions about the TRAAK program or this resolution.

TRAAK Citizens Advisory Board

RESOLUTION 98 - 4

In Support of Snowmobile Point of Sale Registration Legislation, HB 231

At a meeting of the Trails and Recreational Access for Alaska (TRAAK) Citizens Advisory Board held on the 20th and 21st of February, 1998 in Juneau, the following resolution was duly adopted:

WHEREAS, the Governor of the State of Alaska has appointed the TRAAK Citizens Advisory Board to review state policy regarding trails and recreational access;

WHEREAS, snowmobiles are recognized as an important form of transportation as well as important for recreation;

WHEREAS, snowmobile theft is a problem in many areas;

WHEREAS, Alaska is in need of a snowmobile safety and education program throughout the state;

WHEREAS, there is a continuing need for trail staking and trail shelters in rural and bush areas;

WHEREAS, federal grant money is available for construction and maintenance of both motorized and non-motorized trails and trail facilities based on the number of registered off-road vehicles, including snowmobiles, in a state;

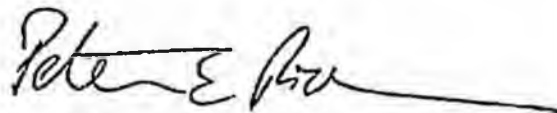
WHEREAS, legislation currently being considered by the Alaska State Legislature can provide the means for securing funding to provide for these needs; and

WHEREAS, due to the inefficiency of the current registration program, a large percent of snowmobiles in Alaska are not registered, resulting in a significant loss of federal grant funds to meet safety and trail needs;

NOW THEREFORE, BE IT RESOLVED:

1. That the TRAAK Citizens Advisory Board supports HB 231 legislation requiring point of sale registration of snowmobiles; and
2. That this resolution be distributed to Governor Tony Knowles, Senator Drue Pearce, and Representative Beverly Masck.

Adopted on the 21st. day of February, 1998



Peter Rice, Acting Chairperson

February 11, 1998

Alaska State Capitol
Juneau AK 99801

Dear Representative Therriault, Chair, House Finance Committee

I would like you to know that I fully support HB 231 and that many of the snowmobilers I meet with across the state fully support it. I currently represent trail users as a member of the following organizations. Alaska State Parks Citizens Advisory Board, Fairbanks Snow Travelers Inc., Fairbanks North Star Borough Trails Advisory Commission, past member of the Governors TRAAK CAB and I am currently working on two winter trail projects for Alaska State Parks. For the past ten years I have studied the winter trail programs of many snowbelt states and focused this attention on what parts of their programs were successful and what programs were less successful. This research has taught me several things but one of the most important is that all successful snowmobile programs started with registration fees and gas tax funds being spent on the people that pay them. HB 231 is a great start for Alaska and I hope we can see past the usual complaints and view the long range potential for this the first step in statewide snowmobile trail program development.

What follows are a few thoughts on the positive attributes of HB 231. The current statute does not provide for the same conveniences of initial registration and renewal that currently apply to my snowmobile trailer. This new statute will keep me from taking time off work to wait in lines at DMV and that will make me very happy.

As for the registration fee, I think the current level of \$5.00 is more than adequate to fund the fiscal note associated with point of sale requirements. If however, funds are left over after processing I would encourage the legislature to make those funds available to an agency for snowmobile trail programming. As a matter of fact most snowmobilers I know would gladly pay \$40.00 every two years just to have groomed trails with good signing. Any funding in support of snowmobiling will help preserve existing access and promote additional access which according to the recent SCORP survey is exactly what snowmobilers wanted.

Point of sale registration will also help all interested parties quantify the numbers of snowmobiles used statewide which in turn enhances our understanding of the extent of snowmobiling's social and economic impacts. Also, by quantifying the number of snowmobiles we begin to address the formula for determining snowmobiling's gas tax contribution. To determine the value of this tax account two issues require defining. These are the number of snowmobiles that gas is being bought for and the number of gallons being bought. For our immediate purpose current registration stands at approximately 13,000. Snowmobile sales figures for the 1995-1996 and 1996-1997 seasons are 15,700 units sold and data is probably available for the three seasons prior to

that. In other words data is available to show that approximately 35,000 snowmobiles were sold in this state over the past five seasons and I'm confident this is conservative.

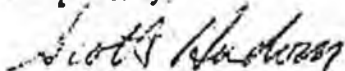
The second question is how much fuel are snowmobilers using. Over the years states publish information on user characteristics and I've noticed that east and west coast riders each travel about 1100 miles per year. I have done some informal surveys and found that Alaskans also ride on the average 1100 mile per year. The average gas mileage on today's machines is probably 11 mpg. This shows that the average Alaskan snowmobiler purchases 100 gallons of gas per season of which \$8.00 goes for a tax. If 35,000 snowmobilers are contributing \$8.00 each then the general fund receives \$280,000 each year from this user group. The boater and aircraft owners are being taxed similarly but I am not aware if they are benefiting from the tax. Let me know if you need some actual figures from other states or I can at least supply you with contact in other states to verify their program procedures. This tax should be used to develop a snowmobile program that maintains trails and promotes snowmobile safety education and conservation awareness.

In addition to removing the hassle of waiting in line and the benefits of quantifying the social and economic impacts of snowmobiling this legislation will also act as a theft deterrent. Right now no method of tracking a machine exists and HB 231 will require notification of transfer of ownership which will keep the Department of Public Safety's records updated with current owner names.

This is important legislation to the future of snowmobiling and I respectfully request your committee's support in assuring that the future remains a bright one. If you are interested in lighting the way with a 280,000 candle power headlight I am confident you would garner considerable interest and support from the paying customers. The gas tax is an entirely different issue but no better time than the present to be proactive toward snowmobiling.

Thank you for your time and consideration.

Respectfully,



Scott Heidorn
PO Box 757380
Fairbanks AK 99775-7380
474-5558

cc Representative Beverly Masek

ASRA

ALASKA SNOWMOBILE REPRESENTATIVES ALLIANCE

P.O. Box 243664 • Anchorage, AK 99524-3664 • (907) 258-3700

February 26, 1998

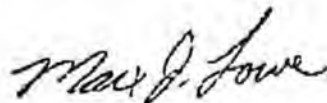
The Honorable Beverly Masek
State Capitol
Juneau, AK 99801-1182

Dear Representative Masek,

I am writing to you in support of HB 231 point of sale registration for snowmobiles. This bill is the anticipated funding mechanism to provide safe, marked, groomed snowmobile trails for Alaskan recreational users. As President of A.S.R.A. I can assure you that the majority of snowmobile users in Alaska are in favor of this bill. To date we have worked with the Anchorage Snowmobile Club, The Alaska State Snowmobile Association, The Mayor's of Anchorage and Wasilla, the Chamber of Commerce of Eagle River, Wasilla and Seward, the State Department of Parks and Outdoor Recreation, and other key groups on this issue. We are trusting that our legislators will listen to and react to the wishes of the snowmobilers in Alaska.

I would be pleased to discuss this important bill further at your convenience.

Sincerely,



Max J. Lowe
President, A.S.R.A.



Feb. 18, 1998

Representative Beverly Masek

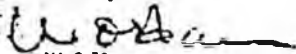
Dear Beverly,

I would like to take this opportunity to support HB 231, snowmobile registration. We further would like to see the revenues collected put into an account to be dedicated to improving trails, education and access for snowmobilers.

As a dealer, this will put an additional workload on us, however we feel strongly that this is a step in the right direction to help control theft provide for better tracking of machines and eventually provide funds for improvement of the sport.

Thank you for your support of this bill

Sincerely,



Bill O'Hara
Bill's Car House
Big Lake, AK



Fairbanks Area Alaska State Parks Citizen Advisory Board

3700 Airport Way Fairbanks, Alaska 99709-4613 (907) 451-2695

February 12, 1998

Representative Gene Therriault
Co-Chair, House Finance Committee
Alaska State Legislature
State Capitol, Room 511
Juneau, AK 99801-1182

Dear Representative Therriault,

The Fairbanks Area State Parks Citizens Advisory Board fully supports House Bill 231, the point of sale snowmobile registration legislation. The bill will streamline the registration process for snowmobiling and may eventually provide better trails for a variety of trail users.

Trail use is an important concern of the Citizen Advisory Board. The trail systems within our park units and our community need to be improved to better serve the recreating public. More and better trails lead to more trail use. More trail use contributes to healthier communities – physically, mentally, economically, and environmentally.

We applaud your efforts to provide point of sale registration and mail-out renewals. Additionally, House Bill 231 will give public land managers and local government a means to better quantify the numbers of snowmobilers, which should result in improved trail program development. We would like to see any additional funds collected through this legislation be applied to develop and manage a shared-use trail program.

Thank you for your consideration.

Sincerely,

Jack L. Jefferies
Chair

cc: Representative Beverly Masek

**DENALI STATE BANK****"Your Community Bank"**

Member FDIC

February 11, 1998

Representative Beverly Masek
Alaska State Capitol
Juneau, AK 99801

RE: House Bill 231

Dear Representative Therriault,

I am writing in support of point of sale registration for snowmobiles. As a major area lender, I find that my customers do not have the necessary time to spend in a Department of Motor Vehicles line to register their snowmachines.

Registration will deter thefts and assist in the recovery of stolen machines by providing easily visible registration numbers. It will also identify snowmachiners' economic impact and their contribution to the gas tax. Trail development should follow with an appropriate allocation of those tax dollars. Registration has been a law for nearly thirty years and registration (user) fees should be utilized for the user group they are extracted from. I would appreciate your support from both a business and personal perspective, as I am also an avid snowmachine user.

Sincerely,

Brent LeValley
Assistant Vice President

MAIN BRANCH
P.O. BOX 74568
119 N. CUSHMAN
FAIRBANKS, AK 99707
(907) 456-1400
FAX (907) 458-4240

GOLDEN HEART BRANCH
P.O. BOX 74568
1989 AIRPORT WAY
FAIRBANKS, AK 99707
(907) 458-4260
FAX (907) 458-4270

TOK BRANCH
P.O. BOX 579
MILE 1314 ALASKA HWY
TOK, AK 99780
(907) 863-2265
FAX (907) 863-2268

HB

266

SENATE COMMITTEE REPORT

DATE: 5/6/97

FURTHER:

DATE TURNED IN TO OFFICE: 5-7-97

Labor and Commerce Committee considered HOUSE BILL NO. 266

"An Act relating to limited liability companies and limited partnerships; 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 change

new: SCR# _____

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

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

C+ED	5/2/97	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

05/07/97

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

13:08:33

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:FBX

TCN:70793

SCHEDULED FOR:05/07/97 13:00 TO 15:00

FOR:FBX

PUBLIC HEARING

SENATE LABOR & COMMERCE

LOCATION:FAIRBANKS

HB 266

MR.

RICHARD

HOMPESCH

TESTIFY

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. H3 266

Revision Date: _____
 Title: Limited Liability Companies and Limited Partnerships
 Sponsor: Rep. Ryan
 Requestor: _____

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

COMPONENT SERIAL NO. _____ 1233

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

Estimate of any current year (FY 97) cost: \$ _____

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

The proposed amendments to AS 10.50 and AS 32.11 will have no fiscal impact on the operation of the division. The conversion provision to Alaska domestic organizations may create an increase in funds collected. While work loads through increased filings may be substantial, there would be no change in process procedures and systems. The only impact would be a function of time which would be addressed through electronic efficiencies.

Prepared by: Willis F. Kirkpatrick, Director
 Division: Banking, Securities and Corporations
 Approved by Commissioner: William L. Hensley *(Signature)*
 Agency: Commerce and Economic Development

Phone: 465-2521
 Date: _____
 Date: 4/30/97

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Alaska State Legislature

House of Representatives

COMMITTEE ASSIGNMENTS

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OIL & GAS



Representative Joe Ryan

1 800-922-3875

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PHONE (907) 258-8161

SESSION:

STATE CAPITOL
ROOM 420
JUNEAU, AK 99801-1182
PHONE (907) 465-3875

Sponsor Statement for HB 266

The Limited Partnership and Limited Liability Company Simplification Act. This bill responds to a recent change in federal tax law which affects partnerships and limited liability companies. On January 1, 1997 the "check the box" entity classification regulations issued by the IRS became final. This change in federal law simplifies the formation and operation of partnerships and limited liability companies.

The check-the-box regulations will make it easier for business entities to be taxed as partnerships for federal income tax purposes. Under old law if a business entity had two or fewer of four corporate characteristics, it was taxed as a partnership. If it had more than two corporate characteristics, it was taxed as a corporation. In most instances the profits of a corporation are taxed twice. On the other hand, income is taxed to the partners of a partnership only once. Under the check the box regulations a business entity can have all four corporate characteristics and it will still be taxed as a partnership unless the partners "check-the-box" and elect to be taxed as a corporation.

Alaska's uniform limited liability act and limited partnership act were drafted with this four corporate characteristics test in mind to make sure that by default Alaska limited liability companies and limited partnerships would be taxed as partnerships under federal law. Most of the complexity required by this four corporate characteristic test can be deleted from Alaska law. Alaska has the opportunity to be the first state to amend its limited liability company and limited partnership law to conform to the new check the box regulations. If this bill is enacted it is anticipated that business men and women from outside will choose to form their limited liability companies and limited partnerships in Alaska.

This bill will simplify our law, will reduce the legal fees for those who decide to form limited liability companies and limited partnerships, and should result in increased revenue to the state.

Alaska State Legislature

House of Representatives

COMMITTEE ASSIGNMENTS

LABOR & COMMERCE
MILITARY & VETERANS AFFAIRS
COMMUNITY & REGIONAL AFFAIRS
OIL & GAS



Representative Joe Ryan

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SESSION:

STATE CAPITOL
ROOM 420
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PHONE (907) 465-3875

Memorandum in Support of House Bill NO. 266

This bill was written in response to a recent change in federal tax law. On January 1, 1997 the "check-the-box" entity classification regulations issued by the IRS became final. This change in federal tax law permits more flexibility in the formation and operation of business entities.

The check-the-box regulations will make it easier for business entities to be taxed as partnerships. Most taxpayers who own a small business want to avoid being taxed as a corporation because in most instances the profits of a corporation are taxed twice. First, income is taxed to a corporation when it is earned. Second, when a corporation distributes its profits to its shareholders in the form of a dividend, the shareholders are taxed again. On the other hand, a partnership is taxed only once. Income is taxed to the partners of a partnership when it is earned. However, in most cases partners pay no second tax when the partnership distributes its profits.

Under old law if an entity had more than two of four corporate characteristics, then it was taxed as a corporation. The four corporate characteristics were: (1) limited liability, (2) continuity of life, (3) centralized management, and (4) free transferability of interests.

In the past limited liability companies posed a challenge to attorneys and accountants whose clients wanted to be taxed as partnerships. It was very easy for a limited liability company to have two of the four characteristics. First, the members of a limited liability company have limited liability. Second, if the company was managed by a manager, rather than member managed, the company would have centralized management. In order to avoid any more corporate characteristics most state statutes made sure that the company would not have continuity of life or free transferability of interests. A company would not have continuity of life if it dissolved upon the death or withdrawal of a member.

A company would not have free transferability of interests if its interests could be assigned, but the assignee could not become a member of the company without the consent of all other members. In this way the limited liability statutes in most states were drafted for income tax reasons and not necessarily with the best business goals in mind.

These changes also offer a better framework for those estate plans that use limited liability companies and limited partnerships. Many families will transfer their real estate and other investment assets to limited liability companies and will gift their non-management shares to Alaskan trusts. These families will want their businesses to have the same continuity of life that corporations enjoy. They do not want to face an expensive dissolution and risk losing control of their business if a family member dies.

This bill is intended to encourage Alaskans and residents of other states to form and conduct their businesses in Alaska. Our laws should continue to foster business and economic development. This bill is intended to be another step in that direction.

HB

347

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 347

Revision Date (Note if correction): _____
 Title: Overtime Wage Exemption
for Mechanics
 Sponsor: Representative Cowdery
 Requestor: House Labor & Commerce

Department Affected: Labor
 BRU: Labor Standards & Safety
 Component: Wage & Hour Administration
COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	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						
----------------	--	--	--	--	--	--

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 (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY98) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

This bill provides a new exemption from overtime in the Wage and Hour Act for auto mechanics employed on a flat rate of pay based upon a standardized industry manual. Such mechanics would not be entitled to overtime pay even though they may work more than eight hours in a single day or 40 straight time hours per week. This legislation will have no fiscal impact on Wage and Hour Administration.

Prepared by: Alan W. Dwyer, Director *WHD for* Phone: 465-4855
 Division: Labor Standards & Safety Date: 2/12/98
 Approved by Commissioner: Tom Cashen, Commissioner
 Agency: Department of Labor Date: 2/12/98

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SENATE COMMITTEE REPORT

DATE: 5/5/98

FURTHER:

DATE TURNED
IN TO OFFICE: 5-5-98

Labor and Commerce Committee considered

CS FOR HOUSE BILL NO. 347(L&C)

"An Act relating to an exemption from overtime wage requirements for certain motor vehicle mechanics."

and recommends:

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

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>[Signature]</i>	✓		
		<i>T. Kelly</i>	✓		
CHAIR: <i>Loren J. Roman</i> ✓		CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>Labor</i>	<i>4/30/98</i>	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

House Bill 347

Existing law does not exempt flat-rate mechanics from overtime pay requirements. Employers currently prohibit their flat-rate mechanics from working overtime because of complications in existing regulations. House Bill 347 spells out the conditions and minimum allowable rates for flat-rate mechanics. It requires that these conditions and minimums must be agreed upon in writing by the employee and that overtime must be paid at the standard rate based on the agreed upon compensation. Finally, the bill requires that an employee's compensation, for overtime purposes, be computed on a weekly basis.

IT IS THE INTENT OF THIS AMENDMENT TO THE ALASKA WAGE AND HOUR ACT TO SIMPLIFY THE COMPUTATION OF THE REGULAR RATE OF PAY FOR FLAT RATE MECHANICS. WHEN A FLAT RATE MECHANIC IS PAID AN AMOUNT EQUAL TO OR IN EXCESS OF HIS/HER STRAIGHT TIME HOURS (UP TO 8 HOURS IN A WORKDAY OR 40 HOURS IN A WORKWEEK) AT THE FLAT HOURLY RATE DEFINED IN SUBSECTION (B) OF THE BILL, AND IS PAID FOR ALL HOURS WORKED IN EXCESS OF 8 HOURS IN A WORKDAY OR 40 HOURS IN A WORKWEEK, WHICHEVER IS GREATER, AT 1.5 TIMES SUCH FLAT HOURLY RATE THE MECHANIC IS EXEMPT FROM THE OVERTIME REQUIREMENTS OF THE ALASKA WAGE AND HOUR ACT. THIS IS TRUE WHETHER THE FLAT HOURLY RATE EARNINGS (BILLABLE HOURS TIMES THE MECHANICS FLAT HOURLY RATE) ARE LESS THAN OR GREATER THAN THE MECHANICS COMPENSATION COMPUTED IN ACCORDANCE WITH SUBSECTIONS (C) AND (D). IF THE FLAT RATE MECHANICS BILLABLE HOURS TIMES HIS/HER FLAT HOURLY RATE ARE GREATER THAN THE AMOUNT COMPUTED UNDER SUBSECTIONS (C) AND (D) THEN THE BILLABLE HOURS AMOUNT SHALL BE PAID AS THE EMPLOYEES GROSS PAY FOR THE WORKWEEK AND NO OVERTIME PREMIUM, DAILY OR WEEKLY IS DUE. TWO EXAMPLES FOLLOW USING A FLAT HOURLY RATE OF \$20.00.

EXAMPLE ONE

THE MECHANIC WORKS 9 CLOCK HOURS AND BILLS 9 HOURS EACH DAY MONDAY THROUGH FRIDAY. THE MINIMUM AMOUNT DUE THE MECHANIC PER 23.10.060 (d) (17) (C) AND (D) IS 40 STRAIGHT TIME HOURS (FIVE 8 HOUR DAYS) AT \$15.00 [75% OF \$20.00 IS \$15.00 OR TWICE THE ALASKA MINIMUM WAGE OF \$5.65 (\$11.30), SO THAT \$15.00 IS USED] OR A TOTAL OF \$600.00 REGULAR TIME PLUS FIVE HOURS IN EXCESS OF 8 HOURS IN A DAY OR 40 IN A WEEK, FIGURED ON A WEEKLY BASIS, AT 1.5 TIMES \$15.00 OR \$22.50 FOR OVERTIME PAY OF \$112.50 WHICH YIELDS \$712.50. THE MECHANICS FLAT RATE PAY IS \$900.00 (45 BILLABLE HOURS TIMES \$20.00) SO THAT THE EMPLOYEE IS PAID \$900, BECAUSE THIS AMOUNT EXCEEDS THE MINIMUM COMPENSATION DUE UNDER THE (d)(17) EXEMPTION NO ADDITIONAL OVERTIME PREMIUM IS DUE.

EXAMPLE TWO

THE MECHANIC WORKS 9 CLOCK HOURS AND BILLS 8 HOURS ON MONDAY AND TUESDAY AND WORKS 8 CLOCK HOURS AND BILLS 4 HOURS ON WEDNESDAY THROUGH FRIDAY. THE MINIMUM AMOUNT DUE THE MECHANIC UNDER THE (d)(17) EXEMPTION IS 40 STRAIGHT TIME HOURS (FIVE 8 HOUR DAYS) TIMES \$15.00 [75% OF \$20.00 IS \$15.00 AND 2 TIMES ALASKA MINIMUM WAGE IS \$11.30 SO THAT \$15.00 IS USED] OR \$600.00 OF STRAIGHT TIME HOURS PLUS 2 HOURS IN EXCESS OF 8 HOURS IN A DAY OR 40 IN A WEEK FIGURED ON A WEEKLY BASIS TIMES \$22.50 (1.5 TIMES \$15.00) OR \$45.00 WHICH YIELDS \$645.00. THE MECHANICS FLAT RATE OF PAY IS 28 (8+8+4+4+4) BILLABLE HOURS TIMES \$20.00 OR \$560.00. THEREFORE THE EMPLOYEE IS PAID \$645.00 OF WHICH \$45.00 WAS PAY FOR THE 2 OVERTIME HOURS WHICH INCLUDES HALF-TIME OVERTIME PREMIUM OF \$15.00

Example #1

FLATRATE	\$20.00	REG HOURS	O/T HOURS	BILLED HOURS
MONDAY		8	1	9
TUESDAY		8	1	9
WEDNESDAY		8	1	9
THURSDAY		8	1	9
FRIDAY		8	1	9
SATURDAY			0	0
TOTAL HOURS		40	5	45
TOTAL \$ DUE		\$600.00	\$112.50	\$900.00
ACTUAL \$ VS BILLED \$			\$712.50	\$900.00

Example #2

FLATRATE	\$20.00	REG HOURS	O/T HOURS	BILLED HOURS
MONDAY		8	1	8
TUESDAY		8	1	8
WEDNESDAY		8	0	4
THURSDAY		8	0	4
FRIDAY		8	0	4
SATURDAY			0	0
TOTAL HOURS		40	2	28
TOTAL \$ DUE		\$600.00	\$45.00	\$560.00
ACTUAL \$ VS BILLED \$			\$645.00	\$560.00

ALASKA STATE LEGISLATURE

News from the House Majority

web site: <http://www.akrepublicans.org>

State Capitol
Juneau, AK 99801
Actuality line: 1-800-478-6540

Jerry Ritter
Press Secretary
(907) 465-3804

For Immediate Release May 4, 1998

Contact: Rep. John Cowdery
(907) 465-3879

House Approves Overtime for Flat-Rate Mechanics **Situation New Approach is a "Win-Win"**

(JUNEAU) – Flat-rate auto mechanics statewide would be allowed to work overtime under House Bill 347, which passed the Alaska House of Representatives today.

"Under current law, the process for figuring out a flat-rate mechanic's overtime is so complicated, shops don't allow overtime for fear of being sued for messing up the calculation," said the bill's sponsor Rep. John Cowdery.

'Flat-rate' is a form of piece work. The mechanic is paid based on the number of hours the manual says it should take to complete a certain task. House Bill 347 spells out the conditions and methods for computing overtime, thus protecting both employer and employee. Under this bill, a flat-rate mechanic can work overtime to finish a job instead of holding the customer's car for another day.

"Consumers will see better service and mechanics can earn more doing it this way," said Cowdery. "This is a win-win bill."

###

HB

387

FISCAL NOTE

No: 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: CSHB 387 (L&C)
 (H) Publish Date: 2/20/98

Revision Date: _____
 Title: An Act relating to dentists.
 Sponsor: Rep. Therriault
 Requestor: House Labor & Commerce

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

Expenditures/Revenues (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
 HB 387 amends dental statute AS 08.36.070(a). New funds are not required to implement this bill.

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

Phone: 465-2144
 Date: 2/18/98
 Date: 2-18-98

SENATE COMMITTEE REPORT

DATE: 4/6/98

FURTHER:

DATE TURNED IN TO OFFICE: 4-21-98

Labor and Commerce Committee considered

CS FOR HOUSE BILL NO. 387(L&C)

"An Act relating to dentists."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS HIS (~~615~~)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tim Kelly</i>	✓				
<i>Mike Miller</i>	✓				
<i>[Signature]</i>					
<i>[Signature]</i>					
CHAIR: <i>[Signature]</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>CED</i>	<i>4/21/98</i>	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT

Mailing Address:
119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
FAX: (907) 488-4271

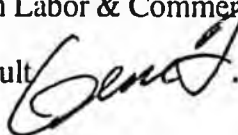
While in Session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax: (907) 465-3884

House Of Representatives

House District 33

Memorandum

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

FROM: Representative Gene Therriault 

DATE: April 8, 1998

SUBJECT: Scheduling of CSHB 387(L&C)

I respectfully request that CSHB 387 (L&C) be scheduled for a hearing in the Senate Committee on Labor & Commerce.

The bill is intended to give the Board of Dental Examiners the ability to enter into memorandums of agreement with applicants or licensees who are unable to perform cardio-pulmonary resuscitation. This will allow the Board to avoid a potential conflict with the Americans with Disabilities Act.

The House passed this bill on Monday, March 30 with a vote of 30 yeas, 3 nays, 5 excused, and 2 absent.

Please contact me if you have any additional questions

attachments

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-5795

(907) 465-2539

February 12, 1998

The Honorable Gene Therriault
House of Representatives
State Capital, Room 511
Juneau, Alaska 99801

Re: HB 387

Dear Mr. Therriault:

Your staff requested that this office write a letter addressing the legal effects of proposed House Bill 387. The bill proposes to amend the Dental Practice Act (AS 08.36) to permit the Board of Dental Examiners (Board) to enter into agreements with applicants and licensees to waive the cardiopulmonary resuscitation (CPR) requirements for licensure. Current Alaska law requires that the Board only issue or renew licenses to applicants or licensees that maintain CPR certification. AS 08.36.070(a)(13). In certain instances, this current requirement may be inconsistent with the American with Disabilities Act (ADA). 42 U.S.C. 12101-12213.

The ADA preempts conflicting state laws which provide lesser protection to individuals with disabilities. Specifically, federal regulations prohibit a public entity from administering a licensing program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of a disability. 28 CFR 35.130(b)(6). The regulation further prohibits a public entity from establishing requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of a disability. *Id.*

While this office has never concluded as a matter of law that the ADA preempts the provisions of AS 08.36.070, a question persists whether the two laws conflict. House Bill 387 would remove the question regarding AS 08.36.070(a)(13) and whether the Board licenses dentists and dental hygienists consistent with the ADA.

Representative Gene Therriault
Re: HB 387

February 12, 1998
Page 2

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

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL



By:

G. Ken Truitt
Assistant Attorney General

GKT/bm

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110800
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500
FAX: (907) 465-5442
TDD: (907) 465-5437

February 12, 1998

The Honorable Gene P. Therriault
House of Representatives
State Capitol, Room 511
Juneau, AK 99801-1182

Dear Representative Therriault:

As requested, our comments on HB 387 "An Act Relating to Dentists," are noted below.

This bill allows the Board of Dental Examiners to waive the cardiopulmonary resuscitation certification (CPR) requirement for dental applicants and licensees, if the licensee agrees to ensure that a person who is certified in CPR will be in the same room as the licensee whenever dentistry is practiced on a living patient.

The board currently has two Memorandum of Agreements permitting dentists, who have physical disabilities which permit them from obtaining CPR certification, to practice dentistry under conditions similar to this bill. The department supports the new statutory authority this bill provides.

The Department recommends narrowing the ability of applicants to request a waiver of the CPR requirement, to those individuals who have satisfactorily documented a physical disability that precludes them from successfully completing CPR certification.

Unless the waiver is limited to physical disabilities, there is a strong likelihood that numerous renewal applicants who fail to update the CPR cards will use the provisions of this bill to request board consideration of a waiver of the CPR requirement until they are able to obtain an updated CPR card.

Finally, the Legislature may want to consider whether the waiver should be extended to dental hygienists.

Sincerely,


Deborah B. Sedwick
Commissioner

DBS/BG/go2770
021298a

cc: Jeff Bush, Deputy Commissioner, DCED
Catherine A. Reardon, Director, Division of Occupational Licensing
Pat Pourchot, Legislative Director, Office of the Governor

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
Internet e-mail address:
legaudit@legis.state.ak.us

MEMORANDUM

TO: The Honorable Gene Therriault
Alaska State House

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: October 24, 1997

RE: Report #08-4556-97 Selected Occupational
Licensing Investigations Issues

This memorandum is in response to your question regarding the circumstances involved with a specific dentist who had entered into a formal Memorandum of Agreement (MOA) with the Board of Dental Examiners. Specifically, you were concerned about the investigative actions of the Division of Occupational Licensing (OccLic) and the appropriateness of a requirement that the dentist continue to practice under the terms of the MOA.

As stated in our report, we were satisfied in general with the procedures followed by OccLic investigators in utilizing MOAs in policing regulated professions. All MOAs included in our audit scope were subject to the review and approval of the relevant licensing board prior to being finalized with the licensed individual. By verifying that OccLic consistently followed this procedure when putting MOAs in place, we were satisfied the licensing board involved was kept informed, had the opportunity to make amendments, and signed off on the terms included in each MOA. In our view, OccLic staff were acting within their authority and discretion with the appropriate oversight and input from the various licensing boards involved.

In the specific circumstances that triggered the audit request, a licensed dentist entered into an MOA with the Board of Dental Examiners. Although this particular MOA was originally developed at a time that preceded the period covered by our audit, we did review the board minutes of the discussion involved with its extension. Attached to this memorandum is an excerpt from the board meeting minutes where the extension of this particular MOA was discussed.

Presumably the board reviewed the terms of the original MOA, and approved an indefinite extension of its terms. This approval was made even though the accompanying letter from OccLic suggests that the Board was being indulgent when setting out the terms of the MOA. Essentially, the board agreed to permit the dentist to continue licensed practice if he made sure he had an individual who was qualified to perform cardiopulmonary resuscitation (CPR) present at all times while he was practicing dentistry. The board ratified this MOA extension, even though the licensing statutes specifically require the licensed individual to have the CPR certification.¹

Further, as reflected in the attached excerpt, the board approved a resolution to accept the conditions of the MOA as ". . . ongoing, rather than reviewing them every two years, unless there [is] a change of status." In our view, this resolution endorses the language in the OccLic letter notifying the licensee of the MOA extension. In that December 1996 letter (also attached to this memorandum - and originally supplied by your office), the OccLic investigator stated "[i]n the future you may renew your license without having to seek Board approval for the exception granted to you."

Our review of this particular case has raised concerns about whether the board can exercise such discretionary authority. From our reading of the statute it appears the board has, through the use of the MOA, permitted the dentist to continue practice under terms that are inconsistent with the requirements of statute. We have made inquiries of the Department of Law and will be notifying OccLic of our question regarding the board's authority and action in this area. We will keep your office apprised of any further developments in this area.

I hope this memorandum clarifies our analysis of the specific circumstances involved with this particular MOA. As commented previously, we found that in this case and in general, OccLic staff acted appropriately and within their purview with appropriate oversight and input from the licensing board involved. If you have any further questions regarding this issue please contact me at 465-3830.

Jim [unclear]
x 317 [unclear]

Kent [unclear] x3600
Dore [unclear]
x 3573 - CC
1/2

¹AS 08.36.070(a)(13) states that the Board of Dentistry, shall

require, as a condition of license or license renewal issued by the board, that an applicant or licensee has at the time of licensing or renewal and maintains throughout the period of a license current certification in cardiopulmonary resuscitation techniques

February 13, 1998

Representative Gene Therriault
Alaska State Legislature

Dear Representative:

I wish to express my support for the intent of HB 387. As I understand this bill, the intent is to enable or facilitate the licencing of dentists in Alaska who may not be physically able, providing that they have certified staff present, or required by necessity to be able to perform cardiopulmonary resuscitation (CPR) while performing their professional functions.

I do not believe that dentists who suffer physical handicaps but who are still able to provide quality care to their patients should be barrred from practicing if provisons for patient protection can be accomplished. Nor do I believe that dentists who are performing non-clinical administrative functions should be required to be ready and able to perform CPR.

I am concerned that the language of HB 387, as I have seen it, would allow practicing dentists who are not in the above categories to apply for waivers when they have failed to obtain recertification for CPR. I would not like to see a "loophole" such as this created.

I absolutely approve of a bill to allow the Board of Examiners to grant waivers in the licensing process through Memorada of Agreement for dentists who are not capable or required by their job functions to perform CPR. I encourage the approval of a modification of HB 387 which has language which prevents potential implementation problems.

Please continue to pursue this legislation. If I may be of assistance in the future, do not hesitate to contact me.

Sincerely,
Kenneth L. Crooks, DDS

HB

343

FISCAL NOTE

No: 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO: Bill Version: CSHB 343 (TRA)
(H) Publish Date: 2/4/98

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to the definition of BRU: Motor Vehicles
Commercial Motor vehicle..." Component: Driver Services
 Sponsor: Representative Davis
 Requestor: (H) TRANS COMPONENT SERIAL NO. 2150

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	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

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

CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will not fiscally impact the Division of Motor Vehicles

Prepared By: Juanita M. Hensley Phone: 465-5648
 Division: Motor Vehicles Date: _____
 Approved by Commissioner: *Mark Boyer* Date: 1/30/98
 Agency: Mark Boyer, Dept. of Administration

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SENATE COMMITTEE REPORT

DATE: 5/1/98

FURTHER:

DATE TURNED IN TO OFFICE: 5-5-98

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 343(TRA)

"An Act excluding certain motor vehicles from the definition of commercial motor vehicle."

and recommends:

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

Senate Bill:

- same title
- new title
- House Bill:**
- same title
- technical title
- new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
CHAIR: <i>[Signature]</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
Administration	3/4/98	✓	
DOT/PF	3/4/98	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaska State Legislature

Interim:

145 Main St. Lp., 223

Kenai, Alaska 99611

907/283-7095

907/283-3075 fx

907/262-7574 hm

Session:

State Capitol

Juneau, AK 99801

907/465-2693

fx 907/465-3835

800/463-2693

Representative Gary Davis

SECTIONAL ANALYSIS

SCS CS HB 343 (TRA)

“An Act excluding certain motor vehicles from the definition of commercial motor vehicle”

Section 1: Amends **AS 28.40.100(a)(2)** by expanding the exceptions listed under subsection (D) to include special mobile equipment that is driven on roads in order to relocate the vehicle to a job site from the definition of a commercial motor vehicle.

Title 13 of the Alaska Administrative Code, Chapter 10, Section 010 defines special mobile equipment as follows:

13 AAC 10.010. Definitions

In Chapters 02, 04, 06, and 08 of this title, and in AS 28, unless otherwise provided . . .

(52) "special mobile equipment" means a vehicle which is not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to ditch digging apparatus, well boring apparatus, construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earthmoving carryalls and scrapers, power shovels and drag lines, and self-propelled cranes and earthmoving equipment; it does not include house trailers, mobile homes, off-highway vehicles, dump trucks, truck-mounted transit mixers, cranes, or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached; . . .

CSHB343/SA/1/28/98

Representing House District 8

Cooper Landing, Funny River, Hope, Moose Pass, Seward, Sterling, Soldotna

Representative_Gary_Davis@legis.state.ak.us

Alaska State Legislature

Interim:

145 Main St. Lp., 223
Kenai, Alaska 99611
907/283-7095
907/283-3075 fx
907/262-7574 hm

Session:

State Capitol
Juneau, AK 99801
907/465-2693
fx 907/465-3835
800/463-2693

Representative Gary Davis

SPONSOR STATEMENT

SCS CS HB 343(TRA)

"An Act excluding certain motor vehicles from the definition of commercial motor vehicle"

There is apparent confusion among law enforcement officials as to under what circumstances an individual is required to possess a commercial driver's license (CDL). Some Alaska statutes and regulations reference federal requirements, which exempt the need for a CDL in cases of moving construction equipment from one site to another—this is considered by them to be an incidental move. However other Alaska statutes require drivers of any equipment weighing over 26,000 pounds "used upon a land highway or vehicular way" to possess a commercial driver's licenses.

This legislation amends the definition of "commercial motor vehicle" in AS 28.40.100(a)(2) by expanding the exceptions to include "special mobile equipment"--construction vehicles--that are driven on roads in order to relocate the vehicle to a job site. This exception occurs only when the equipment is on a highway **in order to relocate to a job site**. In addition, existing permitting requirements for oversize or overweight vehicles remain in effect, which include pilot vehicles, radio communications, etc. This legislation also has no effect on the statutes concerning commercial motor vehicle financial responsibility or commercial motor vehicle safety inspections.

Including this exception clears up the confusion. The intent of the legislation is to allow individuals to move their construction equipment from one site to another without being required to have a commercial driver's license. If an individual is involved in work on the road, a commercial driver's license is still required.

SCSHB343/SS/2/4/98

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

Representative_Gary_Davis@legis.state.ak.us