ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672
9646 SENATE LABOR & COMMERCE

Sectional Description of CSHB 451 (JUD)

Relating to warranties for assistive technology for physically disabled persons.

By Representative Joe Green

45.45.600. Express warranty required. Manufacturers who sell assistive technology or mobility aids, directly, or through a dealer, must furnish an express warranty for the equipment they sell. The duration of the warranty cannot be for less than one year. If the manufacturer fails to provide the warranty, the equipment will be covered as if the manufacturer had provided it.

45.45.610. Repairs of nonconformities. If a consumer reports a nonconformity to the manufacturer within one year after first delivery, the nonconformity shall be repaired.

45.45.620 Returns of nonrepairable goods; refunds. If the consumer makes a reasonable attempt, but fails, to get the nonconformity repaired, the manufacturer shall

> **A)** accept return of the nonconforming equipment, and replace it with "comparable new" equipment, or
> **B)** refund the full purchase price, collateral costs, and any finance charge to the consumer, or the full lease amount to the lessor.

45.45.630. Procedures for returns and refunds. Requires consumers to "offer to transfer possession" of the nonconforming equipment to the manufacturer in order to get the "comparable new" equipment, or a refund. Within 30 days after the consumer makes the offer, the manufacturer must act.

45.45.640. Leases unenforceable after refund. If you lease assistive equipment, and it is returned for a refund, the lease cannot be enforced.

45.45.650. Limits on sale or lease of returned mobility aids. If assistive equipment is returned for nonconformity, it can't be leased or sold to another consumer without full disclosure of the reasons for the return.

45.45.660. Rights may not be waived. Consumers cannot waive the rights granted to them under this legislation.

45.45.670. No limitation of other rights. Nothing in this bill limits rights or remedies available to consumers under other laws.

45.45.680. Action for damages authorized. A consumer may bring a legal action to recover damages resulting from a violation of the provisions of the bill. The court shall award twice the amount of any pecuniary loss, together with costs, disbursements, and reasonable attorney fees, and any equitable relief that the court determines is appropriate to a consumer who prevails in an action.

45.45.690. Definitions.

ASSISTIVE TECHNOLOGY LEMON LAWS AT-A-GLANCE

STATE	TYPES OF AT COVERED	TO QUALIFY AS A LEMON THE AT MUST HAVE BEEN REPAIRED	OUT-OF-SERVICE FOR:
CA	motorized wheelchairs	4x for the same reason	30 days, any reason
GA	AT costing $1,000 or more	4x for the same reason	30 days, any reason
LA	all AT (any cost)	2x for the same reason within the first year	30 days, any reason within the first year
MD	motorized wheelchairs and scooters	4x for the same reason	30 days (do not have to be consecutive),
MI	motorized wheelchairs, manual wheelchairs & scooters	4x for the same reason	30 days within the first year
MN	all AT except electrical nerve stimulators	3x for the same reason	over 30 days within the first year

MO	all assistive technology	4x	30 days
MT	manually-powered wheelchairs, motorized wheelchairs, and scooters costing $500 or more	2x for the same reason	45 days
NY	motorized wheelchairs	4x for the same reason AND was out-of-service for 30 days within the first year	60 days, for the same reason within the first year
PA	motorized wheelchairs	4x for the same reason	at least "an aggregate of" 30 days
WA	motorized wheelchairs	4x for the same reason	30 days, any reason
WI	motorized wheelchairs	4x for the same reason	30 days, any reason

The RESNA Technical Assistance Project (#HN92031001) is funded by the National Institute on Disability and Rehabilitation Research (NIDRR), U.S. Department of Education (ED) under the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994. The information contained herein does not necessarily reflect the position or policy of NIDRR/ED or RESNA and no official endorsement of the material should be inferred.

The following information on Assistive Technology Lemon Laws is from RESNA's publication RESNA TAP Bulletin (May 1995), which is a monthly publication of the RESNA Technical Assistance Project.

ASSISTIVE TECHNOLOGY LEMON LAWS

American consumers have long demanded warranties on large purchases such as automobiles and household appliances to protect themselves against the occasional dryer that no longer tumbles three weeks after purchased or the car that needs a new transmission one year after the purchase date. In other words, the proverbial "lemon." Individuals with disabilities are now demanding the same guarantees for purchases of assistive technology (AT).

Assistive technology for persons with disabilities is often an integral part of that person's ability to work, communicate, and live independently. Proper operation of equipment is critical to self-reliance. Yet, not all AT has a manufacturer's warranty. Some devices that carry a purchase tag of thousands of dollars carry only a 90-day or six-month warranty.

In many states, consumers of AT are standing up and speaking out, demanding replacement equipment, loaners while equipment is being fixed, free service on equipment and outright refunds! This issue of The TAP Bulletin examines assistive technology "lemon" or warranty legislation passed by states to date.

Twelve states have passed consumer protection legislation, commonly referred to as assistive technology "lemon laws." Those states are: California, Georgia, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, New York, Pennsylvania, Washington, and Wisconsin. A few other states have similar legislation pending or are working on drafts for future introduction in their state legislatures.

Lemon laws typically demand a minimum one-year warranty on assistive equipment beginning on the date of delivery, not the purchase date. This is an important specification because some consumers wait weeks or months from the order date to the delivery date. While some state warranty laws cover all AT or AT over a specified dollar amount, most cover only motorized wheelchairs (see state-specific data chart).

Louisiana's "lemon law" is considered by many legal experts to be the nation's model AT lemon law because it contains the broadest coverage. The law applies to all assistive devices, without limits. To qualify as a lemon the product must have either broken two times for the same reason within the first year, or have been out-of-service 30 days for any reason within the first year. These provisions within Louisiana's AT lemon law give consumers of AT in Louisiana broader protection than in any other state in the country.

In contrast, New York's lemon law provides narrower coverage. To qualify as a lemon, the product must have been repaired four times for the same reason and been out-of-service 30 days within the first year, or have been out-of-service for 60 days for the same reason within the first year. New York's Technology Related Assistance for Individual's with Disabilities (TRAID) Project plans to undertake a review of the impact of their state's lemon law later this year (see page 2 for more on NY's law).

LOUISIANA

Due to efforts of the Louisiana Assistive Technology Access Network (LATAN), an equipment lemon law was passed, House Bill No. 1956, which provides warranties for new assistive devices, time limits for warranties, and nonconformity disclosure requirements. It defines terms such as: "collateral costs," "consumer/agency," "early termination cost," "early termination savings," "manufacturer," "assistive device," and "reasonable attempt to repair." It also provides for reimbursements and replacements.

MINNESOTA

In Minnesota, the Assistive Device Warranty Protection Act was signed into law by the governor May 19, 1995 and becomes effective August 1, 1995. It was a Department of Administration initiative that was started by the governor's advisory council on technology for people with disabilities and the department's Minnesota STAR Program. The AT lemon law protects the rights of people with disabilities in the purchase of assistive devices. While it does not alter any warranty that offers greater protection, it affords a basic level of consumer protection by providing that if a device is taken in for repairs three times in the first year for the same problem, or if it is in the repair process for over thirty days in the first year, then the device can either be returned for a full refund or exchanged for a new device at the consumer's option. The warranty does not include defects that result from misuse or alterations. It also has a provision that it is the manufacturer's responsibility to provide a replacement device or reimbursement for temporary replacement of assistive devices for the duration of the repair period.

PENNSYLVANIA

Pennsylvania's Motorized Wheelchair Warranty Act covers motorized wheelchairs for at least a year that have been repaired four times for the same nonconformity or have been out-of-service for an "aggregate" of at least 30 days. Like Minnesota's lemon law, it also does not cover defects resulting from abuse, neglect or unauthorized modifications by the consumer.

MARYLAND

Maryland Technology Assistance Program (TAP) researched national lemon law legislation. This resulted in the Motorized Wheelchair Warranty Enforcement Act signed into law by Governor William Donald Schaefer on April 12, 1994. This act defines a lemon as "a motorized wheelchair or scooter with a "substantial" defect, which the manufacturer or its authorized dealer has unsuccessfully attempted to repair at least four times, or which has been out-of-service because of "substantial" defects for a total of thirty calendar days within one year after first delivery to the consumer. The thirty days DO NOT have to be consecutive." [Tapping Technology, p 2. (Maryland TAP newsletter)]. Specific provisions of the bill include, but are not limited to: certain express warranties; duration of certain warranties; prohibiting resale of returned non-conforming wheelchairs without full disclosure; repair, return and replacement of wheelchair; procedures for return of certain non-conforming wheelchairs; any waiver of consumer rights is void under this Act; and authorization of consumer action for damages, fees, costs and other equitable relief (Provisions of the Motorized Wheelchair Warranty Enforcement Act fact sheet, Maryland TAP).

WISCONSIN

In Wisconsin, a law was enacted in 1992 also relating to motorized wheelchair warranties. Wisconsin Act 222 requires manufacturers to issue express warranties to consumers purchasing motorized wheelchairs with the duration of the warranty being one year after first delivery to the consumer. It also includes provisions in case a "reasonable attempt to repair" the wheelchair fails. Replacement of the wheelchair with a comparable new motorized wheelchair and refunding "collateral costs" is one option. Collateral costs is defined in this act as "expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative wheelchair or other assistive device for mobility" [Sec. 134.87 (a)]. The other option is accepting the return of the "lemon" and refunding the consumer. Collateral costs and usage of the device are considered in regard to refunds. If the consumer demands a refund, they may receive collateral costs as well. Other refund and replacement provisions are included in this act as well.

MICHIGAN

Michigan's lemon law (Public Act #54 of 1994) is similar to the above mentioned laws requiring an express warranty (one-year minimum) by the manufacturer and states, "If the manufacturer is found to have violated this act the courts shall award the consumer twice the amount of any damages plus attorney fees." [Tech 2000, p.3 (Michigan's AT project newsletter)]. The Michigan Tech Act project, Michigan Tech 2000, is currently working to amend this act, trying to get coverage for all AT and to extend the warranty from one year after first delivery to three years.

MISSOURI

The Missouri Assistive Technology Project (MATP) efforts to promote the passage of a one-year warranty and lemon protection for all assistive devices used by consumers with disabilities successfully passed the state legislature and was signed into law June 13, 1995.

A lemon is an assistive device with a substantial defect which rises in the device itself and not from consumer abuse. After attempting to repair the device four times, or being without the device for 30 days due to a substantial defect, the device can be returned to the manufacturer for a comparable device or refund. Project staff report that early opposition focused on arguments that distributors would make good faith efforts to work with consumers who purchased defective equipment to repair or replace the device and that distributors with unfair practices would be naturally weeded out of the market. The MATP was able to demonstrate that comparison shopping for AT is rarely possible, since only one manufacturer may produce a particular device or a third-party payor may fund only a single approved vendor. Therefore using the free market to address lemons is not practical.

Many devices are purchased with tax dollars through Vocational Rehabilitation or Medicaid and lemons bought with these dollars are a waste of public money on the initial purchase. The MATP is now beginning to disseminate information on the new statute to consumers and the general public through press releases to disability and advocacy related organizations.

NEW YORK

The Motorized Wheelchair Lemon Law (General Business Law § 670) enacted in August 1993, provides a minimum one-year warranty covering both parts and labor from the date of first delivery to the consumer. The lemon law covers

only motorized wheelchairs but includes those purchased, leased or transferred in New York to a consumer. A consumer is protected when purchasing a wheelchair previously returned to the manufacturer under New York's or a similar lemon law of another state. The manufacturer may not sell or lease the returned wheelchair again in New York unless full disclosure of the reasons for return is made to the prospective buyer or lessor. The law also incorporates an alternative arbitration program for disputes. Arbitration offers the consumers an option that may be less complicated, time consuming and expensive than choosing to go to court.

The Attorney General's office of New York State Department of Law prepared a booklet "New York's Motorized Wheelchair Lemon Law: A Guide For Consumers" to help consumers understand the warranty law and instructions for the NY State Arbitration Program. Page 3 of the guide states: "If the wheelchair does not conform to the terms of the written warranty and the manufacturer or its authorized dealer is unable to repair the wheelchair after a reasonable number of attempts during the first year, the consumer can choose a full refund or a comparable new replacement wheelchair."

An important consumer tip in this guide includes the necessity of the consumer keeping "careful records of all complaints and copies of all work orders, repair bills and correspondence." The consumer has the burden of proving he/she owns a lemon and must have documentation of repeated attempts to have it repaired. Under the arbitration program, a consumer who does not have all the documents, may request the arbitrator to direct the manufacturer to provide necessary information or to subpoena documents or witnesses.

MONTANA

The Montana Wheelchair Warranty Act was endorsed by the Montana Consortium for Assistive Technology and developed by MonTECH and the Montana Advocacy Program through an agreement with the Protection & Advocacy service. The law takes effect October 1, 1995 and will cover any manually-powered or motor-driven wheelchair, scooter or other motorized device that is used for mobility assistance and costs $500 or more. The act states that failure by the manufacturer to provide a written warranty (minimum one year) results in the wheelchair to be covered under warranty "for a period of 2 years following the date of delivery of the wheelchair to the consumer."[H.B. 0335 Sec.3 (3).]

SOUTH DAKOTA

DakotaLink (South Dakota's Tech Act project) is currently surveying consumers and manufacturers to lay the groundwork for AT lemon legislation. They seek to build upon the state's General Product Liability Law, which is based

upon the federal Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (P.L. 93-637). Signed into law in January 1975, P.L. 93-637 recognizes the need for minimum warranty protection for consumers, for consumer understanding of warranties, for assurance of performance and for better product reliability.

GEORGIA

Georgia Tools For Life worked to get the Assistive Technology Warranty Act (House Bill 93) and Motorized Wheelchair Warranty Act (Senate Bill 11) passed in Georgia State. The Assistive Technology Warranty Act covers AT devices defined as "any device or equipment with a retail cost of $1,000 or more, that assists a person with disabilities to perform specific tasks such as moving, walking, standing, speaking, breathing, hearing, seeing, grasping, or caring for himself or herself that would not be possible for such person without an assistive technology device." [H.B. 93 Sec.1 Art. 31 (1)].

CALIFORNIA

The California Civil Code contains two sections relating to AT warranties, Section 1793.02 Wntten Warranty to Accompany Assistive Devices and Section 1793.025, Warranty Requirements for Motorized Wheelchairs; Disclosure Requirements for Defective Wheelchairs. Section 1793.02 (a) states that all new and used AT sold at retail in California may be returned to the seller within 30 days of actual receipt by the consumer or completion of fitting by the seller, whichever occurs later. Civil Code Section 1793.025 (a) states that "the warranty shall be for a period of at least one year from the date of the first delivery of the wheelchair to the consumer." The wheelchair may be repaired four or more times bythe "manufacturer, lessor, or an agent of."

STATES WITH PENDING LEMON LAWS

The Massachusetts Assistive Technology Partnership Center is pursuing passage of a lemon law bill covering customized wheelchairs in Massachusetts. The Illinois Assistive Technology Project is working with the Attorney General's Office on the development of a warranty act that would cover all AT. In Utah a lemon law has been presented but not passed. The Utah Assistive Technology Program will introduce a lemon law again in 1996 as part of its legislative agenda.

To find out more about these lemon laws, contact the state Tech Act project directly. For state project contact information, see the state contact list.

HB

458

No: 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

FISCAL NOTE

Version: CSHB 458 (L&C)
(H) Publish Date: 3/2/98

Revision Date:
Dept. Affected: Revenu Revenue
Title: Regulation of Alcohol
BRU: Alcoholic Beverage Control Board
Component: Alcoholic Beverage Control Board
Sponsor: (H) L&C
Requestor: (H) L&C
COMPONENT SERIAL NO. 100

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 ( )						

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 (FY96) cost $ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 458 would create a new "golf course license" which would authorize a golf course licensee to sell beer and wine anywhere on the course. This makes the entire golf course a licensed premise. This designation would make it illegal for a golfer under 21 years of age to be on the course unless he/she is accompanied by a parent or legal guardian. There are also increased liability implications involved in designating the entire course as a licensed premise. I doubt if a golf course would wish to be licensed under these conditions. Therefore, the fiscal note is zero.

If the legislation is changed to make this type of license more attractive, some golf courses may choose to convert existing licenses to the golf course license. This could end up costing the State between $300 - $1,300 per year.

Prepared by: Douglas B. Griffin Phone: 277.8638
Division: Alcoholic Beverage Control board Date: February 26, 1998
Approved by Commissioner: Wilson L. Condon Date: February 26, 1998
Agency: Department of Revenue

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COMMITTEE COPY

Hb458fn.xls

SENATE COMMITTEE REPORT

DATE: 5/2/98

FURTHER: Finance

DATE TURNED IN TO OFFICE: 5-5-98

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 458(RLS)

"An Act relating to establishing a golf course alcoholic beverage license to allow sales of beer and wine; extending the termination date of the Alcoholic Beverage Control Board; and providing for an effective date."

and recommends:

[ ] be **replaced** with _____ CS _____(_____)

[ ] adopt **previous** _____ CS _____(_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR#_____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
Tim Kelly	✓		✓		
CHAIR:		*CHAIR:* Loren D. Lewan X			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
Revenue	3/2/98	✓	

[ ] APPROPRIATION -- no fiscal note

***include fiscal notes accompanying Governor's bill**

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
JUDICIARY COMMITTEE, MEMBER
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER
ADMINISTRATION BUDGET SUBCOMMITTEE ,MEMBER
HESS BUDGET SUBCOMMITTEE, MEMBER

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Representative Norman Rokeberg

SUPPORTING INFORMATION
COMMITTEE SUBSTITUTE FOR HOUSE BILL 458 ( )
By Representative Norman Rokeberg

An Act establishing a golf course alcoholic beverage license to allow sales of beer and wine; extending the termination date of the Alcoholic Beverage Control Board; and providing for an effective date.

This bill establishes a new type of beer and wine sales license for "championship" style golf courses with a minimum of nine (9) holes and 2950 yards, and extends the sunset date of the ABC Board to June 30, 2002.

The popularity of golf is exploding as "baby boomers" take up perhaps the oldest game in western culture, and the youth of our country are exposed to a sport steeped in tradition, discipline, ethics and rules by exciting young stars such as Tiger Woods, Juston Leonard and Phil Mickelson. Alaska needs more golf courses.

I. Establishment of a new golf course license will:

1. **Encourage development** and strengthen economic viability of new and existing golf courses contributing to job growth.

2. Create new or enhanced **TOURIST** opportunities.

3. **Streamline** the ABC Board authority to issue golf course licenses by:

   a. Repealing the regulation for "municipal golf course licenses" contained in 15 AAC 104.670; and

   b. Eliminating the use of recreational event licenses with restricted areas and hours of use (Birch Ridge – Soldotna).

4. Allow course management to Increase **control** and to monitor consumption of alcoholic beverages by players on the course (rationale – currently some courses allow players to bring their own beverages vs. purchase at the course because of restrictions on current license types).

5. Allow on course sales from **beverage and vending carts**, and "snack shacks" which is customary and traditional worldwide, as well as to makes the courses competitive with military golf courses operating under federal law.

   Please note that most courses allow beverage vending carts on the golf course to **give away** free beverages during charity tournaments.

6. Allow year-round operations and enhance potential for expanded and higher quality improvements.

II. Additional issues:

1. The seven (7) existing golf courses currently possess eight (8) licenses impacted by this bill. They may elect to:

   a. Trade in their current license and, if originally issued by the ABC Board, for no net gain in new licenses, or

   b. Sell their existing restaurant eating place license (one in Kenai and one in Fairbanks) and their existing package storage license (one in Fairbanks and one in Anchorage) on the open market. This would have a minimal impact on the gross number of licenses in an area, and would allow recovering of the invested capital and avoid any uncompensated "taking issue" if the license were voided by law. (See attachment.) Moreover, the bill prohibits relocation of these licenses.

2. Exempting new golf course licenses from population count will also have a minimal impact on the number of licenses in an area. This is due to the large capital cost and/or enormous effort to develop a "championship" style course. This should be encouraged as a matter of policy because of the recreation and tourism benefits to a

community; for example, the granting of a license for hotel development (see 15 AAC 104.325 – tourism - attached.)

3. Youth golfers will not be endangered or influenced by allowing on course sales of alcoholic beverages. It is current practice on all licensed courses **now**. Moreover, it has been common practice worldwide for hundreds of years. Young golfers are either in foursomes of a similar age or are with adults. Foursomes are generally separated by 8 to 10 minutes. If underage golfers are negatively influenced by this activity, then they should be prohibited from watching TV!

Supporters of this legislation include: the Palmer Municipal Golf Course; the City of Palmer; Alyeska Resort operators of the Anchorage Golf Course; Birch Ridge Golf Course of Soldotna; Alaska Visitors Association; and C.H.A.R.R. The ABC Board prefers this bill to SB 233.

Your support is appreciated.

"FORE"

Attachments

CITY OF PALMER

231 W. EVERGREEN AVE.
PALMER, ALASKA 99645

Phone (907) 745-3271

A HOME RULE CITY

Representative Norm Rokburg
Juneau
FAX Only this page

02-27-98P12:15 RCVD

Dear Norm,

The City of Palmer operates a golf course that is an important part of our City.

Important to any golf course is the food and other refreshments. We are acknowledge HB 458 and support it with enthusiasm.

We allow alcoholic beverage at the gold course. We sell it only to those who are of legal age.

Golfers and those who offer services to golfers are respected people in any community. Please help us keep our golf course and operated it profitably, for the enjoyment of the people, and for the enhancement of golf in Alaska.

Please know of our support for HB 458.

Sincerely,

Henry P. Guinotte, mayor

Alaska State Legislature

Please enter into the record my testimony to the H L&C
committee name

committee on HB 458, dated 2-27-98.
bill # / subject

Birch Ridge Golf Course, Inc. supports HB 458.

FROM: *Pat Cowan*
Birch Ridge Golf Course, Inc.
P. O. Box 828
Soldotna, Alaska 99669-0828

Phone *907 262-5270*
Fax Phone *907 262-6352*

Birch Ridge along with other golf courses in the state have been operating under Recreational Beer & Wine Licenses. Those allow us to sell Beer & Wine one hour before, during and one hour after a scheduled athletic event. We personally believe that a Scheduled Tee Time for a foursome is a scheduled athletic event, but we are not sure that the regulators agree with us. Therefore HB 458 will make the law more easily understood.

Patrick S. Cowan, President

Myrna K. Cowan, Sec. / Treas.

Cc: Rep. Gary Davis, Rep. Gail Phillips & Rep. Mark Hanley

Testifier

Representing (Optional)

Address

Phone number

March 25, 1998 Original in Mail

Representative Norman Rokeberg
House of Representatives
State Capitol
Room 24
Juneau, AK 99801-1182

Via Facsimile 907-465-2040

Dear Representative Norman:

Thank you very much for sponsoring HB 458 "an act relating to establishing a Golf Course Alcoholic Beverage License to allow sale of beer & wine".

On behalf of Alyeska Resort, The Anchorage Golf Course and also on behalf of the Alaska Visitors Association, we strongly support this bill.

ALYESKA RESORT

As a golf course operator, we get many requests for golfers especially during golf tournaments to serve beer and wine in a mobile cart.

In Hawaii, where our company operates 5 golf courses, we provide such a beer & wine service to our guests on the golf course and it has never been a problem to control. Actually it is better controlled than when the golfers bring their own booze.

We believe it is a good bill and hope it will pass. Let me know what we can do to support it.

Hope to see you in Juneau next week April 1 & 2.

Sincerely,

Chris von Imhof
Vice President & Managing Director, Alyeska Resort
Vice President, Government Relations, Alaska Visitors Association

CC: Tina Lindgren, Executive Director, Alaska Visitors Association
Bill Elander, President & CEO, Anchorage Convention & Visitors Bureau
Linda Anderson, Legislative Lobbyist
Sam Kito, Legislative Lobbyist
Mitch Gravo, Legislative Lobbyist

P.O. Box 249
Girdwood, Alaska 99587
Telephone (907) 754-1111
Fax (907) 754-2200

ALASKA VISITORS ASSOCIATION

3201 C Street, Suite 403 • Anchorage, Alaska 99503

Tel: (907) 561-5733 • Fax: (907) 561-5727

e-mail: ava@alaska.net • www.visitalaska.org

April 6, 1998

Representative Norman Rokeberg
State Capitol
Juneau, AK
99801

Dear Representative Rokeberg,

I am writing to inform you of the association's position on two bills currently in the legislature.

The Alaska Visitors Association (AVA) Board of Directors recently voted to support House Bill 458, which would establish a golf course alcoholic beverage license to allow sales of beer and wine. Many residents and summer visitors enjoy Alaska's beauty from the links and would appreciate beverage service similar to many courses in the Lower 48.

AVA also supports retaining the current structure of the Alaska Railroad Corporation. As it currently exists, the Alaska Railroad is an important link in transporting both tour package and independent travelers within Alaska. It is also a self-supporting corporation that does not drain state general fund or administrative resources. Placing the Alaska Railroad under Executive Budget Act constraints would jeopardize its flexibility in responding to the demands of customers, including tourism operators, independent visitors and residents.

If you would like additional information about AVA's priorities, please call me at (907) 561-5733. Thank you for taking the time to consider issues important to the state's visitor industry.

Sincerely,

Tina Lindgren
Executive Director

Alaska Cabaret, Hotel,
Restaurant & Retailers Association

3400 Spenard Road, Suite • Anchorage, Alaska 99503
(907) 274-3133 • Fax: (907) 274-8640
Toll Free In Alaska: (800) 478-2427

April 17, 1998

Representative Norm Rokeberg
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

On behalf of the Alaska Cabaret, Hotel, Restaurant and Retailers Association (CHARR), I would like to express CHARR's support of CSHB 458. This bill establishes a specific alcohol beverage license for golf courses in the state of Alaska.

CHARR does not generally support the creation of any new category of alcohol beverage license. However, this new license will be essentially a "seasonal" license with many limitations.

This license is basically seasonal due to the fact that golf courses obviously only operate during the summer months in Alaska. CSHB 458 also does not allow the license to be transferred or relocated and only allows the sale of beer and wine. These limitations ensure precise application in the future.

Additionally, considering hotels, motels, resorts and seasonal recreational sites are allowed a specific license option, such as a "recreational" or "tourism" license; why not allow the same for a golf course? CSHB 458 allows for specific use, for a specific time period.

CHARR does have one area of concern. CSHB 458 currently allows for the "...licensed premise..." to include a "...building or a motor vehicle...." Allowing for a "motor vehicle" creates a standard that could be challenged in the future. For example, if a golf course is allowed to have a moving "licensed premise" why shouldn't anyone else? Please consider removing the "motor vehicle" option from the CSHB 458.

Except for this one area of concern, CHARR supports the passage of CSHB 458.

Please call me if you have any questions.

Sincerely,

Mary Beth Whitehurst
Executive Director

CITY OF PALMER

231 W. EVERGREEN AVE.
PALMER, ALASKA 99645

Phone (907) 745-3271

A HOME RULE CITY

MEMO

To: Alaska State Legislature

From: Tom Smith City Mgr.

02-27-90A11:42 RCVD

Subject: H.B. 458

The City is in support of Legislation that will enhance it's ability to sell Beer & Wine to it's Customers in a Manner that is consistant with the Industry. We understand that Rep. Rokeburg is spearheading this and is also working with Doug Griffith from State A.B.C. for possible appropriate Amendments for HB 458, which we support. It is further understood that the Legislation would be applicable and help to enhance business at other Courses.

Sincerely

Tom Smith

PALMER GOLF COURSE

231 W. EVERGREEN AVE. PALMER, ALASKA
1-907-745-GOLF

25 FEB. 1998

02-26-98P04:55 RCVD

Dear Representative Rokeberg,

I am the management contractor for both the Palmer golf course and the Russian Jack golf course. Each facility is city owned but operated through a private contractor. I employ thirty people but hope to expand this number. I am writing this letter in strong support of HB-458. I have many reasons for this support and hope these will only strengthen your position on this bill.

- HB-458 would allow golf courses access to licenses without competing against the local business people for package store licenses.
- It would increase the golf courses chances of profitability in an increasingly competitive market thus lessening the local tax payers financial burden. (ie. Ft. Richardsons 18 hole expansion.) My ability to increase pay and add jobs will be enhanced.
- Our ability to monitor and control consumption we be increased as we are the people selling the beverages consumed on the course. As it stands now folks bring their own and we really can only guess as to their consumption level. We will prohibit the introduction of beer and wine not bought though PGC. This way we can have a much more accurate account of the quantity a group or individual consumes.
- Tourism has become a large part of our growth. We need to give our visitors the complete package to continue enhancing our tourist golfers Alaskan experience.
- Lastly, as golf demand continues to grow golf courses will be built. HB-458 will make development more feasible and enhance the growth.

Sincerely,

Jeff Barnhart

ALASKA GOLF COURSE LIQUOR LICENSE DIRECTORY
April 24, 1998

ANCHORAGE

1. Anchorage Golf Course
   O'Malley's on the Green
   3651 O'Malley's Road
   Seibu Alaska, Inc.
   P.O. Box 249
   Girdwood, AK 99587

   Beverage Dispensary License
   Secondary Purchase from Sourdough Mining Co.
   Issued: 12/10/87
   Biennial license cost: $2,500 + 200 app. fee

   Kokudo Corporation
   Chris von Imhof
   Phone #: 754-2201

   Seasonal Package Store License, May 1 toOct 31
   Secondary Purchase from Estate of Edward G. Barber
   Biennial license cost: $750 + 200 app. fee
   Issued : 5/30/89

MATANUSKA-SUSITNA BOROUGH

2. Settler's Bay
   Legends at Settler's Bay
   Mile 8 Knik Road
   Trillium Corporation
   4350 Cordata Parkway
   Bellingham, WA 98226

   David R. Syre, Shareholder

   Paula Kurtz, Executive V.P.
   Phone #: (360) 676-9400

   Beverage Dispensary License--Main Clubhouse
   Issued directly from ABC Board to Settler's Bay Properties, Inc. 11/26/76 -- Settler's Bay development bought and sold twice
   Biennial license cost: $2,500 + 200 app. fee

   Restaurant/eating place – Golf Clubhouse
   Issued directly from ABC Board to Trillium Corp. 7/28/88

3. Palmer Municipal Golf Course
   1000 Lepak Avenue
   City of Palmer

   231 W. Evergreen Ave.
   Palmer, AK 99645
   Thomas C. Smith, City Manager
   Phone #: 745-3271

   Municipal Golf Course License
   Issued directly from ABC Board 6/4/92
   Beer and wine in Clubhouse only
   Biennial license cost: $400 + 200 app. fee

Post-it® Fax Note 7671	Date 4-24-98	# of pages 4
To Rep. Norm Rokeberg	From Doug Griffin	
Co./Dept.	Co. ABC Board	
Phone #	Phone # 277-8638	
Fax # 465-2040	Fax # 272-9412	

FAIRBANKS

4. North Star Golf Club
North Star Golf Club, Inc.
330 Golf Club Drive
P.O. Box 10059
Fairbanks, AK 99710

Hawley & Melinda Evans
Star Lee Evans
Joy Anne Miller
Phone #: 479-8362

Seasonal Restaurant/eating place License
April 15 to Oct. 15
Issued directly from ABC Board 6/17/97
Biennial License cost: $300 + 200 app. fee

5. Fairbanks Golf and Country Club
Fairbanks Golf and Country Club, Inc.
1735 Farmers Loop Road.
P.O. Box 70928
Fairbanks, AK 99707

Karen Jones, President
Phone #: 474-6812

Seasonal Restaurant/eating place License
May 1 to Oct. 31
Secondary purchase from Franklin Eagle
Approved by Board 10/10/97
Biennial License cost: $300 + 200 app. fee

Seasonal Package Store License
May 1 to Oct. 31
Secondary purchase from Franklin Eagle
Approved by Board 10/10/97
Biennial License cost: $750 + 200 app. fee

SOLDOTNA

6. Birch Ridge Golf Course
Birch Ridge Golf Course. Inc.
42223 Sterling Highway
P.O. Box 828
Soldotna, AK 99669

Patrick & Myrna Cowan
Phone #: 262-5270

Seasonal Recreational Site License
April 15 to Oct. 14
Issued directly from ABC Board 7/15/89
Biennial License cost: $400 +200 app. fee

KENAI

7. Kenai Golf Course
Kenai Golf Course Cafe Inc.
1420 Lawton Dr.
P.O. Box 289
Kenai, AK 99611

Richard I. Morgan
Phone#: 283-7606

Seasonal Restaurant/eating place License
April 15 to Oct. 14
Secondary purchase from George and Ekaterini Pitsilionis-- Issued 9/13/91

OTHERS

The Weeping Trout Sports Resort in Haines has a Seasonal Beverage Dispensary License/Tourism. The golf course does not meet the standards for length; it is only 9 holes at about 1,000 yards. The golf course is just a small part of the entire resort offerings.

The Eagle Glen Golf Course on Elmendorf Air Force Base and Moose Run Golf Course on Ft. Richardson are under Federal military reservation jurisdiction and, therefore, not subject to State alcoholic beverage regulation.

ANALYSIS

The "golf course license" would meet a dual purpose of allowing the sale of beer and wine in the club house and provide package sales for consumption on the golf course. The courses that would benefit most from this new type of license would be Settler's Bay, Palmer Municipal, North Star, Birch Ridge, and Kenai. The two golf courses that have made substantial investments in liquor licenses through purchase of various licenses in the secondary market are the Anchorage Golf Course and the Fairbanks Golf and Country Club. These two courses would be in a position of deciding whether to stay with their existing licensing scheme or opt for the golf course license. Both of these courses have full package store licenses which would allow them to sell spirits as well as beer and wine. The licensing costs are substantially more. It is assumed that the Anchorage Golf Course would want to keep its beverage dispensary license to service its O'Malley on the Green restaurant. These two courses would be the ones affected by provisions not allowing the resale of existing licenses if they opt for the golf course license.

The issue of control of the course remains an important question. Operating like a package store and then allowing patrons over 21 to consume on the course "in public" is the cleanest approach. Some will still be concerned about the consumption of alcohol in an area where minors are present and this may make it harder to explain why other venues where alcohol is served, bars

and package stores, remain legally off-limits to underage persons. The provision allowing a rolling beer cart to traverse the golf course increases this concern. Dropping the beer cart idea would help address that problem. The alternative of making the golf course a licensed premise is not rational or workable.

The "recreational site" version contained in CSSB 233(FIN)am does not appear to allow a person to take alcohol out of closely designated areas. If it is interpreted to allow taking alcohol out on to the golf course, then it raises the concern of making the entire course a licensed premise. Reworking the recreational site license continues to present problems.

15 AAC 104.670
MUNICIPAL GOLF COURSE LICENSE.

(a) A municipal golf course license authorizes the licensee to sell and serve beer and wine for consumption on licensed premises in a building at a municipal golf course. An applicant for a municipal golf course license must be a municipality.

(b) A license will be issued only if an application is approved by the local governing body and the board.

(c) The biennial license fee is $400. The license fee and application fee must accompany the application for license. An application must include a drawing of the golf course and a detailed diagram that clearly identifies the proposed licensed premises. A sample minimum food menu must accompany the application.

(d) Beer and wine may only be sold, served, and consumed during times when the golf course is open for play. Food similar to that listed in the sample menu must be available during times when beer and wine are sold, served, and consumed on the licensed premises.

(e) A municipal golf course license may not be transferred or relocated.

(f) In this section "golf course" means a course, having a minimum of nine holes covering at least 1,200 yards, that is open to the public and is owned or leased by a municipality.

History -
Eff. 5/22/92, Register 122; am 5/1/94, Register 130
Authority -
AS 04.06.090
AS 04.06.100

Register 122
Authority -
AS 04.06.090
AS 04.06.100
AS 04.11.320
AS 04.11.340
AS 04.11.400

Editor's Notes -

Effective in Register 133 (April, 1995), the regulations attorney made technical corrections in 15 AAC 104.325 to reflect the new subsection designations in AS 04.11.400 after it was reorganized by the revisor of statutes.

15 AAC 104.325
LICENSE ISSUED TO ENCOURAGE TOURISM.

(a) The board will, in its discretion, approve the issuance or transfer of location of a beverage dispensary or restaurant or eating place license under AS 04.11.400(d) only upon a showing that

(1) the approval will encourage the construction or improvement of a tourist facility which would not be financially feasible without a liquor license; and

(2) construction or improvement of the tourist facility will encourage tourism, and tourist business will constitute a substantial portion of the business of the tourist facility.

(b) Repealed 10/24/87.

(c) The licensee must show, upon application for renewal, that issuance of the license encouraged tourism, that the facility was constructed or improved in accordance with the application, and that the facility continues to be operated by the licensee. If the licensee does not make the showings required by this subsection, renewal will be denied.

(d) A license issued or transferred under AS 04.11.400(d) may be transferred only to a person to whom the tourist facility is also being transferred. The license will not be renewed and will, in the board's discretion, be revoked if the tourist facility is transferred to a new owner without transfer of the license to the new owner.

(e) A license issued under AS 04.11.400(d) may not be transferred to a new location.

(f) In this section, "improvement" means expenditure of labor and capital which increases the value of the premises, and which can be depreciated for federal income tax purposes.

(g) If two or more persons are named on a beverage dispensary license issued or transferred to encourage tourism and are also named on a related duplicate license for that tourist facility, those licensees may be separately licensed if

(1) the licensees have previously been identified as licensees in the tourism facility in applications that were filed and approved by the board before 11/29/81;

(2) one or more licensees do not have a financial interest in the tourist facility as required under (d) of this section, but operate a restaurant in the tourist facility and dispense alcoholic beverages in that restaurant under the duplicate license;

(3) in order to remove one or more licensees without a financial interest in the tourist facility from the primary license, the licensees file an application for transfer under the procedures set out in AS 04.11.280 and the transfer meets the requirements of AS 04.11.360; and

(4) in order to remove the licensees with the financial interest in the tourist facility from the separate duplicate license, the licensees concurrently file an application for transfer under the procedures set out in AS 04.11.280 and the transfer meets the requirements of AS 04.11.360.

(h) A separate duplicate license issued under (g) of this section

(1) does not create a new license for the purpose of population limitations set out in AS 04.11.400;

(2) may not be transferred to a new location;

(3) may be transferred under the procedures and requirements set out in AS 04.11.280 and 04.11.360, to another person who operates a restaurant in the tourist facility on the same licensed premises, but the license has no value and may not be transferred in exchange for anything of value;

(4) terminates if the tourist facility, for which the primary beverage dispensary license was issued, ceases to exist;

(5) will not be renewed if the board finds that the separate duplicate license has not encouraged tourism at the tourist facility; and

(6) is not subject to suspension, revocation or other action by the board due to the conduct of the primary beverage dispensary licensee.

History -
Eff. 11/29/81, Register 80; am 5/19/85, Register 94; am 10/24/87, Register 104; am 5/22/92,

HB

474

FISCAL NOTE

No: 1

Bill Version: HB 474

STATE OF ALASKA

BILL NO: (H) Publish Date: 4/9/98

1998 LEGISLATIVE SESSION

Revision Date: 4-7-98
Title: An Act... relating to Correctional Officers
Sponsor: House Judiciary
Requestor: (H) Jud

Dept. Affected: Alaska Police Standards Council
BRU: Alaska Police Standards Council
Component:
COMPONENT SERIAL NO.

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

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 98) impact: $ -0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

The purpose of HB 474 is to provide the Alaska Police Standards Council regulatory authority for certification and training to Municipal Correctional Officers hired under contract by the Department of Corrections.
Estimates are to train a minimum of 15 officers per year at a cost of $ 1500.00 per officer for the 120 hour course.
The Alaska Police Training Fund allows for the establishment of training programs through the Alaska Police Standards Council, such as the Depatment of Corrections Municipal Correctional Offficer Academy.

Prepared By: Laddie Shaw
Division: Alaska Police Standards Council
Phone: 465-4378
Date: 4-7-98

Approved by Commissioner: D. e Smith
Agency: Ronald L. Otte, Dept. of Public Safety
Date: 4/7/98

COMMITTEE COPY

SENATE COMMITTEE REPORT

DATE: 5/4/98

FURTHER:

DATE TURNED IN TO OFFICE: 5-5-98

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 474(RLS)

"An Act relating to the Alaska Police Standards Council and to municipal correctional officers."

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*
CHAIR:		*CHAIR:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
AK Police Standards Council	4/9/98	✓	

[ ] APPROPRIATION -- no fiscal note

***include fiscal notes accompanying Governor's bill**

Alaska State Legislature

Representative Joe Green
District 10

CHAIRMAN, JUDICIARY COMMITTEE
VICE CHAIRMAN, HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE
MEMBER, RESOURCES COMMITTEE
FINANCE SUBCOMMITTEES
DEPT. OF COMMERCE & ECONOMIC DEVELOPMENT
ALASKA COURT SYSTEM

SPONSOR STATEMENT

HOUSE BILL 474

"An act relating to the Police Standards Council"

The Alaska Police Training Fund, created by the legislature, was established January 1, 1996. The purpose of this fund is to "...provide a stable funding source for law enforcement and corrections officer training...." To this end, the legislature established a schedule of surcharges to be applied to various offenses and provided that the equivalent of the surcharges be deposited in the Police Training Fund. This fund allows for the establishment of training programs through the Alaska Police Standards Council, such as the Department of Corrections Municipal Corrections Officer Academy.

HB 474 creates a separate new class of officers called "municipal corrections officers." Its purpose is to provide the Alaska Police Standards Council regulatory authority, over participating municipalities, for certification and training of Municipal Corrections Officers.

more than five years. (Eff. 9/23/84, Register 91; am 8/5/95, Register 135)

Authority: AS 18.65.220 AS 18.65.240

13 AAC 85.150. DEFINITIONS. Redesignated as 13 AAC 85.900, 8/8/90.

ARTICLE 2. MINIMUM STANDARDS FOR PROBATION, PAROLE, AND CORRECTIONAL OFFICERS.

13 AAC 85.200. APPLICABILITY. The requirements of 13 AAC 85.200 — 13 AAC 85.280 apply to probation, parole, and correctional officers hired or rehired by a correctional agency six months or more after the effective date of 13 AAC 85.200 — 13 AAC 85.280 and those previously hired officers who seek to become certified after the effective date of 13 AAC 85.200 — 13 AAC 85.280. (Eff. 8/8/90, Register 115)

Authority: Sec. 10, ch. 112, SLA 1988 AS 18.65.220 AS 18.65.242 AS 18.65.248 AS 18.65.285

13 AAC 85.210. BASIC EMPLOYMENT STANDARDS FOR PROBATION, PAROLE, AND CORRECTIONAL OFFICERS. (a) A correctional agency may not hire a person as a probation, parole, or correctional officer unless the person meets the following minimum qualifications:

(1) is a citizen of the United States, or a resident alien who has demonstrated the intent to become a citizen of the United States;

(2) is 21 years of age or older;

(3) is of good moral character;

(4) has a high school diploma, or its equivalent, or has passed a General Educational Development (GED) test;

(5) is, at the time of hire, certified by a licensed physician on a medical record form supplied by the council to

(A) be physically sound and free from physical handicaps that would adversely affect performance as a probation, parole, or correctional officer;

(B) have normal color discrimination, normal binocular coordination, normal peripheral vision, and corrected visual acuity of 20/30 or better in each eye;

(C) have normal bilateral hearing or have hearing corrected to normal limits as commonly defined by physicians;

(D) be free from any speech impairment that would render the person incapable of effectively communicating with inmates, probationers, parolees, or the general public;

(6) has taken the Department of Corrections' psychological screening examination and is free from any mental or emotional disorder that might adversely affect the person's performance as a probation, parole, or correctional officer.

(b) A correctional agency may not hire as a probation, parole, or correctional officer a person

(1) who has been convicted of a felony by a civilian court of this state, the United States, or another state or territory, or by a military court;

(2) who has been convicted by a civilian court of this state, the United States, or another state or territory, or by a military court, during the 10 years immediately before hire as a probation, parole, or correctional officer, of a misdemeanor crime of dishonesty or moral turpitude, of a misdemeanor crime that resulted in serious physical injury to another person, or of two or more DWI offenses;

(3) who

(A) has illegally manufactured, transported, or sold a controlled substance;

(B) within the 10 years before the date of hire, has illegally used a controlled substance other than marijuana, unless the person was under the age of 21 at the time of using the controlled substance;

(C) within the one year before the date of hire, has used marijuana, unless the person was under the age of 21 at the time of using marijuana;

(4) who has been denied any certification by the council or has had a basic certificate revoked by the council, unless the denial or revocation has been rescinded by the council.

(c) A correctional agency must, within 90 days after the date of hire, confirm that the person hired as a probation, parole, or correctional officer meets the standards of (a) and (b) of this section. Upon written request by a correctional agency that explains the reason the extension is necessary, the council will, in its discretion, grant an extension of the 90-day period, if the council determines that the person will probably be able to meet the standards by the end of the extension period. If a correctional agency concludes at the end of an investigation that a person does not meet the required standards, the agency shall immediately discharge the person from employment as a probation, parole, or correctional officer. When determining whether a person meets the standards of (a) and (b) of this section, the agency shall

(1) obtain proof of age, citizenship status, and applicable education;

(2) obtain fingerprints on two copies of FBI Applicant Card FD-258, and forward both cards to the automated fingerprint identification section of the Department of Public Safety;

(3) obtain a complete personal history of the person on a form supplied or approved by the council;

(4) conduct a thorough personal-history investigation of the person to determine character traits and habits indicative of moral character and fitness as a probation, parole, or correctional officer, which includes a criminal history, wants and warrants check, a check of job references from at least three previous employers unless the person has had less than three previous jobs, a check of job references from all previous law enforcement or criminal justice system employers in the preceding 10 years, and a check of two personal references;

(5) obtain a complete medical history report of the person; the report must be provided to a licensed physician for use in conducting a physical examination of the person;

(6) require the person to take the Department of Corrections' psychological screening examination and, if there is an indication of past or present personality defect or mental problem, require the person to undergo an examination by a licensed psychiatrist or psychologist approved by the council; and

(7) determine if the person has ever been denied any certification, or if any certification has been revoked, by the council or by a similar agency in another jurisdiction, and if so, whether the denial or revocation has been rescinded.

(d) All information, documents, and reports obtained by a correctional agency under (c) of this section must be placed in the permanent files of the agency and must be available for examination, at any reasonable time, by representatives of the council. A copy of any criminal record discovered and of the following completed council forms must be sent to the council within 90 days after the date of each hire:

(1) repealed 10/24/92;

(2) the medical examination form;

(3) the health questionnaire;

(4) the personal history statement;

(5) the psychological screening report; and

(6) the psychological or psychiatric examination report, if the examination is required.

(e) A correctional agency shall begin field training with a probation, parole, or correctional officer, using the Department of Corrections Field Training Manual, immediately after the officer is hired. The Field Training Manual must be completed and sent to the council within six months after the date the officer began work with the agency.

(f) The information in the council's files regarding an applicant or a probation, parole, or correctional officer is confidential, and available

only for use by the council in carrying out the requirements of AS 18.65.130 – 18.65.290 and the regulations adopted under AS 18.65.130 – 18.65.290. However, training records and the documents listed in (c) and (d) of this section relating to an applicant or a probation, parole, or correctional officer may be reviewed by the applicant or officer. Information that indicates that a person might not qualify for certification as an officer, or that adversely reflects upon a person's ability to be a competent officer will, in the council's discretion, be furnished by the council to a correctional agency. An officer or applicant may not review information in the council's files which was supplied to the council with the understanding that the information or the source of the information would remain confidential, except that any information that serves as the basis for a decision to deny or revoke certification will be revealed to the officer or applicant.

(g) If the signature of the officer or applicant is required on a council form, the signature must be under oath or affirmation and must be accompanied by a statement by the officer or applicant that the information supplied is true, to the best of the person's knowledge. (Eff. 8/8/90, Register 115; am 10/24/92, Register 124; am 8/5/95, Register 135)

Authority: AS 18.65.220 AS 18.65.242 AS 18.65.248

13 AAC 85.220. PERMANENT EMPLOYMENT FOR PROBATION, PAROLE, AND CORRECTIONAL OFFICERS. (a) A correctional agency may not grant a person permanent status as a probation, parole, or correctional officer unless the person has a current basic certificate issued by the council under 13 AAC 85.230.

(b) A correctional agency may not employ a person as a probation, parole, or correctional officer for more than 14 consecutive months unless the person has a current basic certificate issued by the council under 13 AAC 85.230, or unless an extension is granted under (c) of this section.

(c) The council will, in its discretion, grant an extension for employment for longer than 14 months if the chief administrative officer of the correctional agency makes a written request for extension and certifies that the agency is temporarily understaffed. An extension will not exceed six months. (Eff. 8/8/90, Register 115)

Authority: AS 18.65.220 AS 18.65.242 AS 18.65.248

13 AAC 85.230. BASIC CERTIFICATE. (a) The council will issue a basic certificate to a probation, parole, or correctional officer meeting the standards set out in this section. No certificate will be issued unless documents required under 13 AAC 85.210 are submitted to the council.

(b) To be eligible for the award of a basic correctional officer certificate, an applicant must

DRAFT DRAFT

PROPOSED
ALASKA POLICE STANDARDS COUNCIL
ARTICLE 2
MINIMUM STANDARD FOR PROBATION, PAROLE, [AND] CORRECTIONAL OFFICERS AND MUNICIPAL CORRECTIONAL OFFICERS

13 AAC 85.200. APPLICABILITY

(a) The requirements of 13 AAC 85.200 - 13 AAC 280, except for 13 AAC 85.215 and 13 AAC 85.235, apply to probation, parole, and correctional officers hired or rehired by [A CORRECTIONAL AGENCY] the Department of Corrections six months or more after the effective date of 13 AAC 85.215 and 13 AAC 85.235 and those previously hired officers who seek to become certified after the effective date of 13 AAC 85.215 and 13 AAC 85.235;

(b) The requirements of 13 AAC 85.200 - 13 AAC 85.280, except for 13 AAC 85.210 and 13 AAC 85.230 apply to municipal correctional officers hired or rehired by a municipality six months or more after the effective date of 13 AAC 85.215 and 13 AAC 85.235 and those previously hired officers who seek to become certified after the effective date of 13 AAC 5.215-13 AAC 85.235. This subsection only applies to those municipal correctional officers employed by a municipality that has adopted an ordinance under AS18.65.285 that requires a person employed at a municipal correctional facility to meet the requirements of AS 18.65.130-18.65.290.

(NEW) 13 AAC 85.215. BASIC EMPLOYMENT STANDARDS FOR MUNICIPAL CORRECTIONAL OFFICERS

(a) A municipality operating a correctional facility under contract with the State Department of Corrections may not hire a person as a municipal correctional officer unless the person meets the following minimum qualifications:

(1) is a citizen of the United States, or a resident alien who has demonstrated the intent to become a citizen of the United States;

(2) is 19 years of age or older;

(3) is of good moral character;

(4) is capable of reading, understanding and has demonstrated the ability to apply operational rules and policies;

(5) is, at the time of hire, certified by a licensed physician, certified physicians assistant, or nurse practitioner on a medical form supplied by the council to be physically sound and free from physical handicaps, including vision, hearing, and speech impairments that would, even with a reasonable accommodation, adversely affect performance as a municipal correctional officer.

(b) A municipality may not hire as a municipal correctional officer a person,

(1) who has been convicted of a felony by a civilian court of this state, the United States, or another state or territory, or by a military court;

(2) who has been convicted by a civilian court of this state, the United States, or another state or territory, or by a military court, during the three years immediately before hire as a municipal correctional officer, of a misdemeanor crime of dishonesty or moral turpitude, of a misdemeanor crime that resulted in serious physical injury to another person, or of two or more DWI offenses;

(3) who has been convicted by a civilian court of this state, the United States, or another state or territory, or by a military court, of the sale, possession for purposes of sale, manufacture, or transport of controlled substances;

(4) who has within three years before the date of hire, illegally used a controlled substance other than marijuana unless the person was under the age of 21 years at the time of using the controlled substance;

(5) who has been denied any certification by the council or has had a basic certificate revoked by the council regarding qualifications to be a municipal correctional officer, unless the denial or revocation has been rescinded by the council.

(c) A municipality must within 90 days after the date of hire, confirm that the person hired as a municipal correctional officer meets the standards of (a) and (b) of this section. Upon written request by the municipality, the council will in its discretion, grant an extension of the 90 day period if the council determines that the person will probably be able to meet the standards by the end of the extension period. If a municipality concludes at the end of an investigation that a person does not meet the required standards, the agency shall immediately discharge the person from employment as a municipal correctional officer. When determining whether a person meets the standards of (a) and (b) of this section, the municipality shall

(1) obtain proof of age, citizenship status, and applicable education;

(2) obtain fingerprints on two copies of FBI applicant card FD-258, and forward both cards to the automated fingerprint identification section of the Department of Public Safety;

(3) obtain a complete personal history of the person on a form supplied or approved by the council;

(4) conduct a thorough personal-history investigation of the person to determine character traits and habits indicative of moral character and fitness as a municipal correctional officer, which includes a criminal history, wants and warrants check, a check of

prior job references, and a check of personal references;

(5) obtain a complete medical history report of the person; the report must be provided to a licensed physician, or certified physicians assistant, or nurse practitioner for use in conducting a physical examination of the person;

(6) determine if the person has ever been denied any certification or if any certification has been revoked, by the council or by a similar agency in another jurisdiction, and if so, what the circumstances of the denial or revocation were, and whether the denial or revocation has been rescinded.

(d) All information, documents, and reports obtained by a municipality under (c) of this section must be placed in the permanent files of the municipality and must be available for examination, at any reasonable time, by representatives of the council. A copy of any criminal record discovered and of the following completed council forms must be sent to the council within 90 days after the date of each hire:

(1) medical examination form;

(2) health questionnaire;

(3) personal history statement.

(e) A municipality shall begin field training with a municipal correctional officer, using the Department of Corrections Municipal Correctional Officers Field Training Manual, immediately after the officer is hired. The field training manual must be completed and sent to the council within six months after the date the officer began work with the agency.

(f) The information in the council's files regarding an applicant or a municipal correctional officer is confidential, and available only for use by the council in carrying out requirements of AS 18.65.130 - 18.65.290 and the regulations adopted under AS 18.65.130 - 18.65.290. However, training records and the documents listed in (c) and (d) of this section relating to an applicant or a municipal correctional officer may be reviewed by the applicant or the officer. Information that indicates that a person might not qualify for certification as an officer, or that adversely reflects upon a person's ability to be a competent officer will, in the council's discretion, be furnished by the council to a correctional agency. An officer or applicant may not review information in the council's files which was supplied to the council with the understanding that the information or the source of the information would remain confidential, except that any information that serves as the basis for a decision to deny or revoke certification will be revealed to the officer or applicant.

(g) If the signature of the officer or applicant is required on a council form, the signature must be under oath or affirmation and must be accompanied by a statement by the officer or applicant that the information supplied is true, to the best of the person's knowledge.

13 AAC 85.220. PERMANENT EMPLOYMENT FOR PROBATION, PAROLE, [AND] CORRECTIONAL OFFICERS AND MUNICIPAL CORRECTIONAL OFFICERS.

(a) A correctional agency may not grant a person permanent status as a probation, parole, or correctional officer unless the person has a current basic certificate issued by the council under 13 AAC 85.230; or as a municipal correctional officer unless the person has a current basic certificate issued by the council under 13 AAC 85.235.

(b) A correctional agency may not employ a person as a probation, parole, or correctional officer, or municipal correctional officer for more than 14 consecutive months unless the person has a current basic certificate issued by the council under 13 AAC 85.230 or 18 AAC 85.235, or an extension is granted under (c) of this section.

(c) The council will, in its discretion, grant an extension for employment for longer than 14 consecutive months if the chief administrative officer of the correctional agency makes a written request for extension and certifies that the agency is temporarily understaffed. An extension will not exceed six months.

13 AAC 85.230. BASIC CERTIFICATE FOR PROBATION, PAROLE AND CORRECTIONAL OFFICERS (No Change Except for Title)

(NEW) 13 AAC 85.235. BASIC CERTIFICATE FOR MUNICIPAL CORRECTIONAL OFFICERS

(a) The council will issue a basic certificate to a municipal correctional officer meeting the standards set out in this section. No certificate will be issued unless documents required under 13 AAC 85.215 are submitted to the council.

(b) To be eligible for the award of a basic municipal correctional officer certificate, an applicant must

(1) successfully complete the Department of Corrections basic municipal correctional officer training program meeting the standards set out in 13 AAC 87.075 and field training required by 13 AAC 85.215;

(2) be a full time, paid municipal correctional officer employed by a correctional agency in Alaska;

(3) have worked 12 consecutive months as a municipal correctional officer on a probationary status with the participating municipality where the applicant is employed at the time of application for certification;

(4) meet the basic employment standards set out in 13 AAC 85.215; and

(5) attest and subscribe to the municipal correctional officer Code of Ethics.

(c) The municipal correctional officer Code of Ethics is:

As a municipal correctional officer, my fundamental duty is to respect the

dignity and individuality of all people, to provide professional and compassionate service, and to be unfailingly honest. I will respect the right of the public to be safeguarded from criminal activity, and will be diligent in recording and making available for review all case information that could contribute to sound decisions affecting the public safety, or an inmate. I will maintain the integrity of private information, and will neither seek personal data beyond that needed to perform my duties, nor reveal case information to anyone not having a proper professional use for the information. In making public statements, I will clearly distinguish between those that are my personal views and those that are made on behalf of the agency. I will not use my official position to secure privileges or advantages for myself, and will not accept any gift or favor that implies an obligation inconsistent with the objective exercise of my professional duties. I will not act in my official capacity in any matter in which I have a personal interest that could in the least degree impair my objectivity. I will not engage in undue familiarity with inmates. I will report any corrupt or unethical behavior of a fellow municipal correctional officer that could affect either an inmate or the integrity of the agency, but will not make statements critical of colleagues or other criminal justice agencies unless the underlying facts are verifiable. I will respect the importance of, and cooperate with, all elements of the criminal justice system, and will develop relationships with colleagues to promote mutual respect for the profession and improvement of the quality of service provided.

(d) Not withstanding (a) and (b) of this section, the council will, in its discretion, issue a basic municipal correctional officer certificate, to an applicant with a current basic correctional officer certificate in this or another state, or a certificate which has lapsed for a period of less than five years. The council will in its discretion, require supplemental training by the applicant, as a condition of issuing a certificate under this subsection.

(e) College credits or degrees awarded by an institution of higher learning will be recognized by the council only if the institution is accredited by the National Association of Post-Secondary Education.

13 AAC 85.240. WAIVER AND RECIPROCITY

(a) The council will, in its discretion, waive part or all of the training required under 13 AAC 85.230(b)(1) or (c)(1) or 13 AAC 85.235 (b)(1) if an applicant furnishes satisfactory evidence of successful completion of an equivalent training program.

(b) The council will, in its discretion, enter into reciprocity agreements for certification with states that regulate or supervise the quality of probation, parole or correctional officer training, or municipal correctional officer training and that require training standards for probation, parole, or correctional officers, or municipal correctional officers equivalent to the standards set by the council.

(c) Notwithstanding (a) of this section, the council will not grant a waiver if the applicant was previously issued a certificate that lapsed more than five years before the waiver was sought.

13 AAC 85.250. PERSONNEL REPORTS

(a) A correctional agency shall report to the council the name, address, and other pertinent information concerning each newly appointed probation, parole [OR], correctional officer or municipal correctional officer within 30 days after the probation, parole [OR], correctional officer, or municipal correctional officer is appointed.

(b) If a probation, parole [OR], correctional officer, or municipal correctional officer resigns or is terminated from the agency, the agency shall notify the council within 30 days after the resignation or termination and shall state the reason for the resignation or termination.

(c) Forms for the notification required in (a) and (b) of this section will be supplied by the council. The council will keep the information, and will, in its discretion, furnish it to an agency that has hired or is considering the hire of a person who resigned or was terminated from employment as a probation, parole, [OR] correctional officer, or municipal correctional officer.

13 AAC 85.260. DENIAL OF CERTIFICATE

(a) The council will, in its discretion, deny a basic certificate upon a finding that the applicant for the certificate

(1) falsified or omitted information required to be provided on the application for certification or on supporting documents; or

(2) has been discharged or resigned under threat of discharge, for cause other than dishonesty or misconduct, from employment as a probation, parole or, correctional officer, or municipal correctional officer in this state or any other state or territory.

(b) The council will deny a basic certificate upon a finding that the applicant for the certificate

(1) has, after hire as a probation, parole, [OR] correctional officer, or municipal correctional officer, been convicted of a felony or of a misdemeanor crime listed in 13 AAC 85.210(b)(2), or 13 AAC 85.215(b)(2) or (3), as applicable;

(2) has, after hire as a probation, parole,[OR] correctional officer, or municipal correctional officer

(A) used marijuana;

(B) illegally used or possessed any other controlled substance; or

(C) illegally purchased, sold, cultivated, transported, manufactured, or distributed a controlled substance;

(3) does not meet the standards in 13 AAC 85.210, or 13 AAC

85.215, as applicable; or

(4) has been discharged or resigned under threat of discharge, for cause relating to dishonesty or misconduct, from employment as a probation, parole, [OR] correctional officer, or municipal correctional officer in this state or any other state or territory.

(c) The executive director may act on an application for certification, consistent with standards and qualifications adopted by the council and consistent with AS 18.65.130 - 18.65.290. The executive director may deny an application if the applicant does not satisfy those requirements. An applicant aggrieved by the decision of the executive director may petition for review of that decision by the council. The council's review of that decision is controlled by the Administrative Procedures Act.

(d) If a person has been denied a basic certificate under this section, the person may petition the council for rescission of the denial after one year following the date of the denial. The petitioner must state in writing the reasons why the denial should be rescinded. A denial will, in the discretion of the council, be rescinded for the following reasons:

(1) Newly discovered evidence that by due diligence could not have been discovered before the effective date of the denial;

(2) the denial was based on a mistake of fact or law or on fraudulent evidence; or

(3) conditions or circumstances have changed so that the basis for the denial no longer exists.

(e) If a petition for rescission is based on one or more of the reasons set out in (d) of this section, a hearing on the petition for rescission will be held before a hearing officer or the council. Following the hearing, the council will decide whether to rescind the denial, and will state on the record at the hearing, or in writing, the reasons for the decision. If the denial is rescinded, the applicant is eligible for hire by a correctional agency, but must serve the full probationary period required under 13 AAC 85.230 or 13 AAC 85.235, as applicable, before reapplying for certification.

13 AAC 85.270. REVOCATION OF CERTIFICATE

(a) The council will, in its discretion, revoke a basic certificate upon a finding that the holder of the certificate

(1) falsified or omitted information required to be provided on an application for certification, or in supporting documents;

(2) has been discharged or resigned under threat of discharge, for cause other than for dishonesty or misconduct, from employment as a probation, parole, [OR] correctional officer, or municipal correctional officer in this state or any

other state or territory; or

(3) does not meet the standards in 13 AAC 85.210 (a) or (b) or 13 AAC 85.215 (a) or (b), as applicable.

(b) The council will revoke a basic certificate upon a finding that the holder of the certificate

(1) has, after hire a probation, parole, [OR] correctional officer, or municipal correctional officer, been convicted of a felony or of a misdemeanor crime listed in 13 AAC 85.210 (b)(2) or 13 AAC 85.215 (b)(2) or (b)(3), as applicable;

(2) has, after hire as a probation, parole, [OR] correctional officer, or municipal correctional officer,

(A) used marijuana;

(B) illegally used or possessed any other controlled substances; or

(C) illegally purchased, sold, cultivated, transported, manufactured, or distributed a controlled substances; or

(3) has been discharged or resigned under threat of discharge, for cause relating to dishonesty or misconduct, employment as a probation, parole, [OR] correctional officer, or municipal correctional officer in this state or any other state or territory.

(c) The executive director of the council may initiate proceedings under the Administrative Procedure Act for the revocation of a certificate issued by the council when the revocation complies with AS 18.65.130 - 18.65.290 and 13 AAC 85.200 - 13 AAC 85.280.

(d) If a basic certificate was revoked under this section, the former probation, parole, [OR] correctional officer, or municipal correctional officer may petition the council for rescission of the revocation after one year following the date of the revocation. The petitioner must state in writing the reasons why the revocation should be rescinded. A revocation will, in the discretion of the council, be rescinded for the following reasons:

(1) Newly discovered evidence that by due diligence could not have been discovered before the effective date of the revocation;

(2) the revocation was based on a mistake of fact or law or on fraudulent evidence; or

(3) conditions or circumstances have changed so that the basis for the revocation no longer exists.

(e) If a petition for rescission is based on one or more of the reasons set out in (d) of the section, a hearing on the petition for rescission will be held before a hearing officer or the council. Following the hearing, the

council will decide whether to rescind the revocation, and will state on the record at the hearing, or in writing, the reasons for the decision. If the revocation is rescinded, the petitioner is eligible for hire by a correctional agency, but must serve the full probationary period required under 13 AAC 85.230 or 13 AAC 85. 235. as applicable. before applying for reinstatement of a basic certificate.

13 AAC 85.280. LAPSE OF CERTIFICATE

(a) A basic certificate lapses if the holder is not employed as a probation, parole, [OR], correctional officer. or municipal correctional officer with a correctional agency for a period of 12 consecutive months.

(b) A person may request reinstatement of a lapsed certificate after serving an additional 12-month probationary period. The council will, in its discretion, require supplemental training as a condition of reinstatement. A certificate will not be reinstated if it has lapsed for more than five years.

(NEW) 13 AAC 85.900. DEFINITIONS

In this chapter,

(1) "controlled substance" means a controlled substance as defined in AS 11.71.900 ;

(2) "correctional agency" means the Department of Corrections or a municipality that has adopted an ordinance under AS 18.65.285 that requires a person employed at a municipal correctional facility to meet the requirements of AS 18.65.130 - 18.65.290;

(3) "correctional officer" means a person [(A)] appointed by the commissioner of corrections whose primary duty under AS 33.30 is to provide custody, care, security, control, and discipline of persons charged or convicted of offenses against the state or held under authority of state law; [OR(B) EMPLOYED IN A MUNICIPAL CORRECTIONAL FACILITY BY A MUNICIPALITY THAT IS A CORRECTIONAL AGENCY];

(4) "council" means the Alaska Police Standards Council;

(5) "felony" means a crime classified as a felony in Alaska at the time the crime was committed; a conviction in another jurisdiction by a civilian or military court is a felony conviction if the crime has elements similar to those of a felony under Alaska law at the time the offense was committed; a completed suspended imposition of sentence, expungement of record, or a pardon does not remove a felony conviction from a person's record;

(6) "for cause relating to dishonesty or misconduct" means acts or conduct that would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and the United States or that are detrimental to the integrity of the department or agency where the officer works, including

(A) illegal conduct, including the illegal purchase, use, possession, transportation, distribution, cultivation, manufacture, or sale of any controlled substance, any imitation controlled substance, or alcohol in an area that has adopted a local option under AS 04.11.490-04.11.500;

(B) conduct involving moral turpitude, including dishonesty, fraud, deceit, or misrepresentation in an application, examination, or other document for securing employment, eligibility, or certification;

(7) "good moral character" means the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and the nation; for purposes of this standard, a determination of lack of"good moral character" is not restricted to acts that reflect moral turpitude, but may be based upon a consideration of all aspects of a person's character; the following are indicia of a lack of good moral character:

(A) illegal conduct;

(B) conduct involving moral turpitude, including dishonesty, fraud, deceit, or misrepresentation;

(C) intentional deception or fraud, or attempted deception or fraud in an application, examination, or other document for securing employment, eligibility, or certification;

(D) conduct that adversely reflects on a person's fitness to perform as a police, probation, parole, [OR] correctional officer, or municipal correctional officer; examples include intoxication while on duty, unauthorized absences from duty not involving extenuating circumstances, or a history of personal habits off the job which could affect the officer's performance on the job, such as excessive use of alcohol; undue familiarity with inmates;

probationers, or parolees is conduct that adversely reflects on a person's fitness to perform as a probation, parole, [OR] correctional officer, or municipal correctional officer;

(E) illegal purchase, use, possession, transportation, distribution, cultivation, manufacture, or sale of any controlled substance, any imitation controlled substance, or alcohol in an area that has adopted a local option under AS 04.11.490-04.11.500;

(8) "imitation controlled substance" means an imitation controlled substance as defined in AS 11.73.099 ;

(9) "misdemeanor" means a crime classified as a misdemeanor in Alaska at the time the crime was committed; a conviction in another jurisdiction by a civilian or military court is a misdemeanor conviction if the crime has elements similar to those of a misdemeanor under Alaska law at the time the offense was committed; a completed suspended imposition of sentence, expungement of record, or a pardon does not remove a misdemeanor conviction from a person's record unless the offense was committed by the person before the age of 21;

(10) "moral turpitude" means an act

(A) contrary to justice, honesty, principle, or good morals;

(B) that violates the private and social duties that a person owes to another or to society in general; or

(C) that is immoral in itself, regardless of illegality;

(11) "municipal correctional officer" means a person employed by a municipality in a municipal correctional facility on a full time basis

(A) where the facility is operated under a contract with the Department of Corrections, and the municipality has adopted an ordinance under AS 18.65.265 that requires a person employed at a municipal correctional facility to meet the requirements of AS 18.65.130--8.65.290;and

(B) whose primary duty is to provide custody, care, security and control of persons charged or convicted of offenses against the state or held under authority of state law; the term "municipal correctional officer" does not include emergency guard hires who are not required to be certified under this chapter;

[11] (12) "parole officer" means a person appointed by the

commissioner of corrections to perform the duties of supervising the parole of prisoners under AS 33.16 ;

[12] (13) "participating police department" includes the Alaska Department of Public Safety and a police department of any political subdivision of the state that has not excluded itself under the provision of AS 18.65.280 (b);

[13] (14) "police department" means a civil force of police officers organized by the state or a political subdivision of the state whose basic purpose and function is to maintain peace and order and to prevent and investigate criminal offenses;

[14] (15) "probation officer" means a person appointed by the commissioner of corrections to perform the duties of a probation officer under AS 33.05 ;

[15] (16) "probationary period" means employment as a police, probation, parole, [OR] correctional officer, or municipal correctional officer for a period of 12 consecutive months with a single police department or a single correctional agency; separation of less than 91 consecutive days will be considered unbroken;

[16] (17) "serious physical injury" means serious physical injury as defined in AS 11.81.900 ;

[17] (18) "undue familiarity" means developing, or attempting to develop, an intimate, personal, or financial relationship with an inmate, probationer, or parolee, or otherwise failing to maintain an appropriate professional relationship with an inmate, probationer, or parolee;

[18] (19) "DWI offense" means the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements;

[19] (20) "for cause relating to other than dishonesty or misconduct" means inefficiency, incompetency, dishonesty, misconduct, or some other reason that adversely affects the ability and fitness of the officer to perform job duties or that is detrimental to the reputation, integrity, or discipline of the department or agency where the officer works, including conduct that adversely reflects on a person's fitness to perform as a police, probation, parole, [OR] correctional officer, or municipal correctional officer; the term "for cause relating to other than dishonesty or misconduct" includes intoxication while on duty, unauthorized absences from duty

not involving extenuating circumstances, a history of personal habits off the job that could affect the officer's performance on the job, such as excessive use of alcohol, and undue familiarity with inmates, probationers, or parolees.

PROPOSED
ALASKA POLICE STANDARDS COUNCIL
ARTICLE 3
CERTIFICATION OF PROBATION, PAROLE, CORRECTIONAL OFFICER AND MUNICIPAL CORRECTIONAL OFFICER TRAINING PROGRAM

(NEW) 13 AAC 87.075. CERTIFICATION OF BASIC MUNICIPAL CORRECTIONAL OFFICER TRAINING PROGRAM

(a) The Department of Corrections shall
- (1) establish a program of instruction to qualify students for municipal correctional officer certificates under 13 AAC 85.235;
- (2) apply for certification of the program of instruction by the council;
- (3) provide information to the council showing that the requirements for certifications of the program have been met; and
- (4) comply with requirements of this chapter.

(b) The council will approve the Department of Corrections' application for certification of a program of instruction as meeting the requirements of the training program provided for in 13 AAC 85.235, upon a showing that the program meets the following minimum standards;
- (1) the program of instruction meets the requirements of 13 AAC 87.080 and the courses, curriculum and instruction are adequate in content, quality, and length to provide students with the education and training necessary to become successful, knowledgeable, and effective municipal correctional officers;
- (2) the directors and administrators have adequate training and experience, and all full time instructors have been certified under 13 AAC 87.085;
- (3) a copy of the rules of operation, program outline and policies pertaining to absences, grading, conduct, and conditions for dismissal for unsatisfactory conduct, is provided to each student upon enrollment;
- (4) adequate records are kept to show attendance and grades, and satisfactory standards relating to attendance, progress, and conduct are enforced in accordance with the requirements of 13 AAC 87. 080;
- (5) written examinations are required for each student in those courses

for which written examinations are appropriate, and practical tests are required in those courses where practical tests are appropriate; and

(6) the Department of Corrections gives students, upon successful completion of the program, a certificate indicating the program of instruction was satisfactorily completed.

(c) Within 10 working days after the completion of each program the Department of Corrections shall provide the council with a roster of those students who attended at least 90 percent of the classes offered (in class hours), and the roster must show the full name, rank, employing agency, and examination scores for each student completing the program.

(d) The program of instruction for municipal correctional officers is subject to periodic inspection by the council or its representatives to assure compliance with this section.

(e) The council will in its discretion, certify additional training courses for municipal correctional officers, offered by the Department of Corrections, designed to provide for continuing education, and supervisory, mid-management, executive, specialized, and in service training.

(NEW) 13 AAC 87.080. MUNICIPAL CORRECTIONAL OFFICER TRAINING PROGRAM REQUIREMENTS

(a) The basic program of instruction for municipal correctional officers must include a minimum of 120 hours of instruction in security and search procedures, supervision of inmates, use of force and methods of self defense, report writing, rights and responsibilities of inmates, fire and emergency procedures, domestic violence, communication skills and interpersonal relations, special needs inmates, recognition of the signs and symptoms of mental illness and retardation, substance abuse, physical deficiencies and suicide prone behavior and suicide prevention, cross cultural awareness, legal issues and liability, cardiopulmonary resuscitation (CPR), and first aid instruction sufficient to qualify students for a standard Red Cross first aid certificate.

(b) To receive credit for the municipal correctional officer training program for purposes of certification under 13 AAC 85.235, a person must attend all sessions of the course, except for absences approved by the head of the program, and be awarded a certificate of graduation by the head of the program. . . person may not be certified for successful completion of the municipal correctional officer program if the person;

(1) has excused absences exceeding 10 percent of the total hours of instruction;

(2) fails to achieve a passing grade of 70 percent or higher in each block of instruction; or

(3) fails to achieve a cumulative average of 70 percent or higher.

(NEW) 13 AAC 87.085. CERTIFICATION OF MUNICIPAL CORRECTIONAL INSTRUCTORS

(a) Except as provided in (d) of this section, an instructor in the municipal correctional officer training program must be certified by the council as qualified to provide instruction to municipal correctional candidates for certification under 13 AAC 85.235.

(b) The council will certify an instructor who meets the following minimum qualifications in the following areas of education, training, and experience:

(1) A person applying for certification to teach municipal correctional subjects must meet the following minimum criteria:

(A) a high school diploma or its equivalent;

(B) three years experience in corrections;

(C) 40 hours of verified training in each subject to be taught;

(D) at least 40 hours of instructor development training approved by the council, including training in the areas of communication, psychology of learning, techniques of instruction, use of instructional aids, preparation and use of lesson plans, preparing and administering tests, teaching resources, and motivation; and

(E) the recommendation of the director of the Department of Corrections training program established under 13 AAC 87.080

(2) A person applying for certification to teach general subjects, including management, administration, or human relations must have

(A) a baccalaureate degree;

(B) at least three years of experience in the subject to be taught;

(C) 40 hours of verified training in each subject to be taught; and

(D) the recommendation of the director of the Department of Corrections' training program established under 13 AAC 87.080.

(c) The council will, in its discretion, waive any part of the requirements of (b) of this section, if it finds that a person is qualified to be an instructor based upon education, training, or experience, despite the person's inability to meet the specific requirements of (b) of this section.

(d) An instructor used on a one-time basis for a specialized subject area of a training program may be classified as a guest lecturer. Requirements for application and certification as an instructor do not apply to a guest lecturer. A guest lecturer is defined as a person who, by reason of position

or experience, can make a worthwhile contribution to a training program. A guest lecturer must be experienced in a specialized area, and the instruction limited to that area of experience.

(e) The director of the Department of Corrections training program shall supervise all instructors to ensure instructional excellence is maintained.

(f) Instructor certification will, in the council's discretion, be revoked if an instructor is found by the council to be no longer qualified. Revocation of instructor certification will be considered by the council if

(1) the instructor is terminated, is asked to resign, or resigns instead of discharge for cause by the Department of Corrections;

(2) there is a recommendation to revoke certification by the Department of Corrections for failure of the instructor to provide adequate instruction; or

(3) the holder of the instructor certificate falsified or omitted required information on any application for certification or on supporting documents.

(g) A person who is currently certified or licensed by the State of Alaska or a nationally recognized certifying body need not be certified by the council to teach municipal correctional officer candidates in the subject for which the person is certified or licensed.

(h) The director of the Department of Corrections training program must furnish the council documentary verification of the certification or licensure of a person described in (g) of this section before council approval as an instructor will be considered.

(I) An instructor certificate becomes inactive if the holder of the certificate does not instruct at least one course certified by the council during an interval of three consecutive years.

(j) An inactive instructor certificate may be reactivated upon written request of the Department of Corrections following the applicant's instruction of at least one course, certified by the council, under direct supervision of a currently certified instructor.

Article 3 definitions (becomes Article 4)

HB 486

FISCAL NOTE

No: 1

Bill Version: CSHB 486 (L&C)

(H) Publish Date: 4/28/98

STATE OF ALASKA

1998 LEGISLATIVE SESSION

Revision Date:

Department: Commerce and Economic Development

Title: Alaska Securities Act

BRU: Banking, Securities and Corporations

Component: Banking, Securities and Corporations

Sponsor: Labor & Commerce

Requestor:

COMPONENT SERIAL NO.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY02	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	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	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/Mental Health						
Other						
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)

Because most of the provisions of HB 486 simply bring the Alaska Securities Act (the Act) into compliance with federal law (National Securities Markets Improvement Act of 1996 (NSMIA)), thus preserving the State's revenue and current authority to regulate market participants, there is no cost to implement this bill. Failure to pass this bill would result in a loss of revenue to the State of an estimated $5.2 million in FY00, rising to $8.8 million in FY04. Most of the language in HB 486 is uniform language, drafted by the North American Securities Administrators Assn., and has been adopted in a majority of the states at this time.

Prepared by: Willis F. Kirkpatrick, Director Phone: 465-2521

Division: Banking, Securities and Corporations Date: 4-17-98

Approved by Commissioner: Deborah B. Sedwick Date: 4-18-98

Agency: Commerce and Economic Development

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SENATE COMMITTEE REPORT

DATE: 5/2/98

FURTHER:

DATE TURNED IN TO OFFICE: 5-5-98

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 486(L&C)

"An Act relating to the Alaska Securities Act; and providing for an effective date."

and recommends:

[ ] be **replaced** with _____ CS _____(_____)

[ ] adopt **previous** _____ CS _____(_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR#_____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
	✓				
	✓				
CHAIR: Loren D. Leman	✓	*CHAIR:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
C+ED: Div. Banking Securities, Corp.	4/28/98	✓	

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

FISCAL NOTE

STATE OF ALASKA **BILL NO.** CSHB486 (L&C)

1998 LEGISLATIVE SESSION

Revision Date:

Department: Commerce and Economic Development

Title: Alaska Securities Act

BRU: Banking, Securities and Corporations

Component: Banking, Securities and Corporations

Sponsor: Labor & Commerce

Requestor: Senate Rules

COMPONENT SERIAL NO.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY02	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	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	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/Mental Health						
Other						
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)

Because most of the provisions of HB 486 simply bring the Alaska Securities Act (the Act) into compliance with federal law (National Securities Markets Improvement Act of 1996 (NSMIA)), thus preserving the State's revenue and current authority to regulate market participants, there is no cost to implement this bill. Failure to pass this bill would result in a loss of revenue to the State of an estimated $5.2 million in FY00, rising to $8.8 million in FY04. Most of the language in HB 486 is uniform language, drafted by the North American Securities Administrators Assn., and has been adopted in a majority of the states at this time.

Prepared by: Willis F. Kirkpatrick, Director Phone: 465-2521

Division: Banking, Securities and Corporations Date: 5-6-98

Approved by Commissioner: Deborah B. Sedwick Date: 5-6-98

Agency: Commerce and Economic Development

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Testimony on CSHB 486(L&C) before the Senate Labor and Commerce Committee

Mr. Chairman and members of the Committee, my name is Terry Elder. I'm the Senior Securities Examiner with the Division of Banking, Securities and Corporations in the Department of Commerce and Economic Development.

I am here to testify in favor of passing CSHB 486(L&C), an Act amending the Alaska Securities Act, and I would like to thank the Committee for so promptly scheduling for hearing this important piece of legislation which we believe helps preserve over $4 million in annual General Fund revenues while improving investor protection and providing new, easier access to capital markets for Alaska businesses.

We have provided information packets to the Committee that include:

1. a short description of the National Securities Markets Improvement Act (NSMIA) by which congress made significant changes to the regulation of securities and securities industry participants;
2. a zero fiscal note and an information only fiscal note that shows the loss in State revenue if our Act is not amended.
3. a letter of support for this legislation from the Investment Company Institute (ICI) an organization representing the mutual fund industry;
4. a letter of support for this legislation from the Investment Counsel Association of America (ICAA), an organization representing the investment adviser industry;
5. brief sectional comments on each section of the bill that make changes to the Securities Act that are not required by NSMIA; and
6. sectional comments on every section of the bill, including those that make changes to the Securities Act that are required by NSMIA.

Why are we amending the Alaska Securities Act and why is the bill so long?

We are amending the Act because:

1. Congress passed NSMIA in 1996 which created a new class of securities called federal covered securities and a new type of investment adviser called federal covered advisers.

2. NSMIA preempts states from registering and collecting registration fees for these securities and advisers. In order to be roughly revenue neutral for states, however the law allows states to require notice filings and notice fees for these securities and advisers if the states amend their statutes and regulations within a three-year window to provide for notice filings and fees.

3. Alaska currently receives annual revenues from these sources in excess of $4 million, and these revenues have been growing at about a 14% rate in recent years. At that rate, these revenues could double in about 5 years.

4. So, to preserve our revenues, we must amend our Act to include these new types of securities and investment advisers, and to provide for notice filings and fees.

5. We must also amend our Act to preserve the authority NSMIA gives to the states to continue to provide assistance to Alaska investors who complain about abusive business practices by their investment advisers. We do this by requiring notice filings and by providing a section on unethical business practices of investment advisers. NSMIA provides states the responsibility for enforcing antifraud provisions for large investment advisers and their representatives that register with the SEC and for smaller investment advisers that register with the states.

6. If we do not amend our Act, the General Fund loses this revenue, and we lose the authority to enforce antifraud provisions of the Securities Act with respect to federal covered advisers and their representatives.

Why is the bill so long?

1. NSMIA is the most significant change to federal securities laws in the last 50 years.

2. It affects not only securities regulation by creating federal covered securities, but makes changes to regulation of broker-dealers and especially to regulation of investment advisers.

3. This means a lot of sections of our statute must be amended to conform to the new regulatory regime. Our current statutes do not include

   A. Notice filings and fees

   B. Federal covered securities

   C. Federal covered advisers that since NSMIA register only with the SEC and file notices with the states

   D. State investment advisers that since NSMIA register only with the states and no longer are subject to SEC regulations

   E. Investment adviser representatives

   F. Prohibitions against unethical and fraudulent business practices, especially for investment advisers, which NSMIA provided was the proper domain of the states to enforce.

4. Since NSMIA required states to adopt statutes and regulations for federal covered advisers and for state investment advisers, who are no longer covered by many of the SEC rules, we also reorganized and moved the unethical and fraudulent business practices section for broker-dealers and agents from current regulations to the statute.

5. NSMIA also placed new limitations on states concerning state requirements for broker-dealer and investment adviser bonding, books and records, and minimum financial standards.

6. All of these require numerous changes and additions to the Securities Act, resulting in a long bill.

   A. Most of the language for these NSMIA-related changes was drafted by the North American Securities Administrators Association (NASAA) comprising securities regulators from every state, the District of Columbia, Puerto Rico, Mexico, and the provinces of Canada. NASAA drafts the language for the Uniform Securities Act that Alaska largely adopted.

B. We also worked with those parts of the securities industry most affected by NSMIA changes, and, as previously mentioned, we have received and given you copies of letters endorsing this legislation from the Investment Company Institute and the Investment Counsel Association of America. These organizations represent mutual funds and investment advisers, the two groups that are most affected by changes in NSMIA and, therefore, by changes in this bill.

C. Broker-dealer and agent regulation as it relates to dealings with customers is not changed much by this bill. Those sections that are added on pages 12-19 are largely the reorganized sections from current regulations on that subject. Other sections of the bill affecting broker dealers are required by NSMIA, and place limitations on state requirements, which we have been following already since passage of NSMIA. For example, we used to require broker-dealers to post a bond at registration, but dropped this requirement after NSMIA passed.

D. We also provided drafts of our proposed changes to persons, mostly attorneys, who requested them, and we participated in a continuing legal education seminar of the Alaska Bar Association last October, giving them copies of our proposals and soliciting comments.

7. In addition to the changes required by NSMIA, we are proposing new or updated language to other sections of the Securities Act, sometimes to modernize the language, and sometimes to improve access to capital markets for Alaska businesses. Some of these improvements involve new or updated exemptions from registration. For the Committee's information, the exemption section of the Securities Act is at AS 45.55.900. The exemptions listed in that section are only exemptions from registration. The securities in subsection (a) and transactions in subsection (b) remain subject to the antifraud provisions of the Securities Act, but registration documents do not have to be filed with the state. With that clarified, I will describe some of the improvements.

A. A new exemption from registration is added on page 49 line 5 ((b)(18)) for businesses that are seeking capital, but limiting their search to a select category of wealthy investors and institutions defined by the SEC and called "accredited investors." This will allow Alaska businesses to participate in new methods of raising capital such as the ACE-net (Angel Capital Electronic Network), a creation of the Small Business Administration in cooperation with NASAA.

B. A new exemption from registration is added on page 44 line 5 for businesses making their initial issue of securities to 10 or fewer persons. This exemption maintains the investor protection clauses of the existing (b)(5)(B) exemption, but deletes the limitation on the amount of issue and the requirement to file a notice.

i. This will help businesses where the owner is incorporating and issuing himself or herself stock. Often there are never sales to the public. Currently, that person must write us for an exemption or what we call a no-action letter where we agree not to take administrative action against the person.

ii. This will help businesses where the IRS would make them alter their accounting methods just because they currently must file for an exemption.

C. A new exemption is added on page 44 line 10 ((b)(5)(D)) for sellers of a business who transfer stock to they buyers of the business when that transfer is solely incidental to the sale of the business. That will remove the potential liability of the owner of a small

business usually who is selling his or her business to someone and transferring stock because the owner had incorporated. Currently, if that seller neglects to register or exempt the transfer, he or she could be liable to the buyer for 3 years.

D. A new exemption from registration is added on page 52 line 8 ((b)(20)) covering transactions solely involving family members. This will help estate planners who are creating family limited partnerships, for example, that currently must write us and ask us not to take administrative action against them.

E. A new paragraph is added to the exemption section on page 52 line 12 providing for offers made on the internet that will not be considered violations of the Securities Act if the web site owner takes the required precautions. This brings into statute a current Division policy previously adopted by order.

F. A new reciprocal limited registration is created on page 21 line 8 (AS 45.55.035) for Canadian broker-dealers to provide service to their existing clients who happen to be here for whatever reason without having to be subject to the full examination and registration requirements of the Act. They are subject to antifraud provisions, and can not compete for new customers, but only service existing Canadian customers who are in Alaska. It is reciprocal in that for a Canadian broker-dealer to be able to do this, that Canadian province must allow the same for a US broker-dealer.

G. Language is added at page 54 line 24 to allow investors additional time to sue the sellers of securities if they are victims of fraud. The current limit is 3 years from the date of the transaction, and this language makes it 2 years from the date the basis for the action was known or should have been known. This helps victims of fraud since fraud may take time to unfold.

H. Finally, language is added to some of the sections of the statute that deal with the filing of proxy-related materials with the Division by certain ANCSA corporations. This new language is found in section 42 and 43 on page 37, section 45 on page 38, and section 57 on page 55. In each case, this is language added for clarity and does not change the Division's responsibilities in any way. The language does provide a clearer basis for the Division's current proxy regulations at 3 AAC 08.305-365.

8. Mr. Chairman, the changes I have discussed are probably the largest changes to the Act. So, in the interest of the Committee's time, I will not go into the other changes, but will refer you to the comments we have provided on all sections of the bill and again for the non-NSMIA sections of the bill. That concludes my prepared remarks, Mr. Chairman. I will be happy to answer any questions the Committee may have.

Franklin Tellen

Senior Securities Examiner

CS HB 486(L&C)

An Act Amending the Alaska Securities Act

Table of Contents

Tab - A

01/16/98

AMENDMENTS TO THE ALASKA SECUTITIES ACT

Congress has recently enacted federal securities laws[1] that have a direct effect on Alaska (and other states) securities law and regulations. This federal action results in significant changes in both the registration of securities and those who market them. It is therefore essential that Alaska amend the Alaska Securities Act to conform to new federal provisions and to assure a degree of uniformity with other states. Another primary issue is to preserve Alaska's ability to collect designated revenues in excess of $3 million that funds the division's investor protection programs.

The new federal law (NSMIA) provides in part:

- New class of security **Federal Covered Securities,** exempt from state registration. These include securities like Mutual Funds and limited offerings under Regulation D of the SEC.
- Federal Covered Securities would:
  - File a Notice with the State[2].
  - Pay Notice fees.
- New class of **Federal Covered Advisers** which are those with more than $25 million under management. This class would no longer fall under the jurisdiction of the States. Although exempt, they too would have to file Notice and pay fees for the purpose of funding local investor protection.

The effect of this federal legislation also provides greater responsibility of the state to register and regulate those who are not within the Federal Covered Advisers and their investment adviser representatives (equivalent to Broker Dealer representatives.)

The legislation we propose covers the areas that need to be addressed because of federal action. This will allow Alaska to:

- Preserve funding for investor protection.
- Conform with securities laws of other states.
- Establish regulation for state licensed investment advisers and representatives of investment advisers. Also regulation for those Federal Covered Advisers who have a place of business in Alaska.

There are two primary points to consider. This legislation preserves the right for Alaska to continue to collect over $3 million dollars in Notice fees. If by 1999 we do not enact legislation, Alaska will be preempted from requiring Notice and the intended fees. With the increase of problems in Alaska in investment advising it is essential that Alaska continues to receive this financial support.

---

[1] The National Securities Markets Improvement Act (NSMIA) enacted October 11, 1996.

[2] NSMIA requires the states to amend their securities law by October 1999 to prevent preemption of Notice and fees.

FISCAL NOTE

STATE OF ALASKA **BILL NO.** HB 486

1998 LEGISLATIVE SESSION

Revision Date:

Title: Alaska Securities Act

Department: Commerce and Economic Development

BRU: Banking, Securities and Corporations

Component: Banking, Securities and Corporations

Sponsor: Labor & Commerce

Requestor:

COMPONENT SERIAL NO.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY02	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	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	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/Mental Health						
Other						
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)

Because most of the provisions of HB 486 simply bring the Alaska Securities Act (the Act) into compliance with federal law (National Securities Markets Improvement Act of 1996 (NSMIA)), thus preserving the State's revenue and current authority to regulate market participants, there is no cost to implement this bill. Failure to pass this bill would result in a loss of revenue to the State of an estimated $5.2 million in FY00, rising to $8.8 million in FY04. Most of the language in HB 486 is uniform language, drafted by the North American Securities Administrators Assn., and has been adopted in a majority of the states at this time.

Prepared by: Willis F. Kirkpatrick, Director Phone: 465-2521

Division: Banking, Securities and Corporations Date: 4-17-98

Approved by Commissioner: Deborah B. Sedwick Date: 4-18-98

Agency: Commerce and Economic Development

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IMPACT OF NOT PASSING HB 486

DRAFT FISCAL NOTE

STATE OF ALASKA **BILL NO.** *For Information Only*

1998 LEGISLATIVE SESSION

Revision Date:

Title: Securities Act

Department: Commerce and Economic Development

BRU: Banking, Securities and Corporations

Component: Banking, Securities and Corporations

Sponsor: *For Information Only*

Requestor:

COMPONENT SERIAL NO.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY02	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	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES	(4,600.0)	(5,200.0)	(5,900.0)	(6,800.0)	(7,700.0)	(8,800.0)

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	(4,600.0)	(5,200.0)	(5,900.0)	(6,800.0)	(7,700.0)	(8,800.0)
1006 GF/Mental Health						
Other						
TOTAL	(4,600.0)	(5,200.0)	(5,900.0)	(6,800.0)	(7,700.0)	(8,800.0)

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There is no cost to implement the Securities Act, but if this bill were <u>not</u> to pass, the State through the division, would lose revenue from refundable and non-refundable mutual funds and such a loss would be fiscally devastating as depicted above. In addition the State would lose approximately 287 federally covered advisers at $75 per year per adviser - totaling approximately $21,000. As well as revenue of $20,000 from loss of notice fees for the Reg D 506 filings.

Prepared by: Willis F. Kirkpatrick, Director Phone: 465-2521

Division: Banking, Securities and Corporations Date:

Approved by Commissioner: Deborah B. Sedwick Date:

Agency: Commerce and Economic Development

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Tab - B

INVESTMENT COMPANY INSTITUTE

January 5, 1998

Willis F. Kirkpatrick, Director
Department of Commerce & Economic Development
Division of Banking, Securities & Corporations
333 Willoughby Avenue, 9th Floor
Juneau, Alaska 99811

Re: Proposed Securities Legislation

Dear Director Kirkpatrick:

The Investment Company Institute[1] is writing to you to express our support for the amendments recently proposed by the Department of Commerce & Economic Development to the Alaska Securities Act. In particular, these amendments will faithfully and comprehensively implement the provisions of the National Securities Markets Improvements Act of 1996 ("NSMIA"), which effected sweeping reforms of the nation's federal securities acts. We are most supportive of the legislative enactment of the amendments proposed by the Department and stand ready to assist the Department in this process.

The Institute believes that the amendments proposed by the Department will not only conform the Alaska Act to federal law, but also strengthen the ability of the Department to concentrate its efforts on redressing fraud and abusive practices in the offer and sale of securities and in the rendering of investment adviser. As a result, enactment of these amendment will benefit all Alaska investors.

As stated above, the Institute stands ready to assist the Department in securing the enactment of this most worthwhile legislation. In this regard, please contact me at 202/326-5825 if I or the Institute can be of any assistance to you in this process, including providing oral or written testimony in support of the legislation. Also, please do not hesitate to provide this letter of support to the legislature during its consideration of this bill.

Sincerely,

Tamara K. Reed

Tamara K. Reed
Associate Counsel

---

[1] The Investment Company Institute is the national association of the American investment company industry. Its membership includes 6,742 open-end investment companies ("mutual funds"), 442 closed-end investment companies and 10 sponsors of unit investment trusts. Its mutual fund members have assets of about $4.359 trillion, accounting for approximately 95% of total industry assets, and over 59 million individual shareholders. The Institute also represents the interests of investment advisers. Many of the Institute's investment adviser members render investment advice to both investment companies and other clients. In addition, the Institute's membership includes 472 associate members which render investment management services exclusively to non-investment company clients. A substantial portion of the total assets managed by registered investment advisers are managed by these Institute members and associate members.

C - API

ICAA

'98 JAN 9 07 9:18

January 2, 1998

By Facsimile and U.S. Mail

Willis F. Kirkpatrick, Director
Department of Commerce and Economic Development
Division of Banking, Securities and Corporations
333 Willoughby Avenue, 9th Floor
Juneau, AK 99811

Re: Draft Legislation to Amend Alaska Securities Act

Dear Mr. Kirkpatrick:

I am writing on behalf of the Investment Counsel Association of America (ICAA) to express our support for the Division of Banking, Securities and Corporation's proposed statutory revisions to the Alaska Securities Act relating to investment advisers.

The ICAA is a national not-for-profit association of 225 investment advisory firms. ICAA member firms collectively manage funds in excess of $1.3 trillion for a wide variety of institutional and individual clients. All of our members are SEC-registered.

We commend the Division for its efforts in drafting this important legislation. As you know, the Investment Advisers Supervision Coordination Act ("Coordination Act," Title III of the National Securities Markets Improvement of 1996) allocated regulatory responsibility for larger advisers to the SEC and responsibility for smaller advisers and financial planners to the states. The proposed revisions to the Alaska Securities Act relating to investment advisers effectively respond to changes in the regulatory structure mandated by the Coordination Act. Significantly, the legislation would implement the Coordination Act in a manner that is substantially uniform with other states that already have adopted such implementing legislation. The legislation should result in less duplicative and overlapping regulation of investment advisers, while enhancing the protection of Alaska investors through more focused use of limited regulatory resources.

We appreciate the Division's consideration of our comments during the drafting process and recommend that the proposed legislation be accorded prompt consideration. Please feel free to share this letter with or relay our support of this bill to the legislature. We look forward to working with you on proposed implementing regulations once the

INVESTMENT COUNSEL ASSOCIATION OF AMERICA, INC.
1050 17TH STREET, N.W., SUITE 725 WASHINGTON, DC 20036-5503
(202) 293-ICAA FAX (202) 293-4223

bill has been enacted. Please do not hesitate to call me if you require any further information.

Sincerely,

Karen L. Barr
General Counsel

Tab - D

Comments On Non-NSMIA-Related Sections Of CS HB 486(L&C)

Overview

CS HB 486(L&C) preserves over $4 million in annual State revenue and maintains the State's role in investor protection by amending the Alaska Securities Act (AS 45.55) to conform with federal law (National Securities Markets Improvement Act of 1996 (NSMIA)) passed in October 1996. The uniform language for those sections of the bill dealing with NSMIA (55 of 82 in whole or part) was drafted by the North American Securities Administrators Association (NASAA), and is supported by the Investment Company Institute (ICI) and the Investment Counsel Association of America (ICAA).

The sections of the bill that deal with non-NSMIA changes (30 of 82 in whole or part), are included to add or update language to current uniform language as drafted by NASAA, to clarify certain sections of the Act to improve understanding of current policy, and to add certain exemptions from registration to the Act to improve access to capital markets for Alaska businesses. The sections below are the non-NSMIA sections in CS HB 486(L&C). Sections indicated with "(Part)" are sections that include some NSMIA and some non-NSMIA changes. This paper concentrates its comments on the non-NSMIA changes. The full comment paper provides comments on all sections of the bill.

Section 12 (Part)
Section 45.55.030(f), (j)

New subsection (f). prohibits agents from dual registration which is currently prohibited by regulation. New subsection (j) allows agents to do wrap accounts without registration as investment adviser representatives which is standard practice in the industry and current Division policy.

Old law did not specifically provide for wrap accounts and dual registration.

Section 13
Section 45.55.035

New section to Uniform Securities Act provides for reciprocal limited registration of Canadian and US broker-dealers and their agents to serve existing customers who are temporarily residing outside their jurisdiction. Language drafted and adopted by NASAA and supported by the Securities Industry Association (SIA).

Old law does not provide for anything less than full registration, limiting the ability of Canadian and US broker-dealers to serve clients temporarily located outside their registered locations.

Section 15
Section 45.55.040(b)

Language describing effectiveness dates of registration is deleted from subsection (b), since the Division plans to include this language in its regulations.

Old law contained effectiveness language.

Section 25
Section 45.55.050(d)
Language is added to subsection (d) to clarify, in accordance with current policy and practice, that the Division may inspect records at any time.

Old law did not clearly state inspections may come at any time.

Section 26 (Part)
Section 45.55.050(k)
Subsection (k) is added to require broker-dealers to comply with NASD supervision requirements. Compliance is required by the NASD, but this amendment is needed to allow the Division to take action against broker-dealer for failure to supervise its agents.

Old law did not mention broker-dealer supervision.

Section 27 (Part)
Section 45.55.060(a)
Subsection (a)(2) makes repeated violations of the Act a basis for administrative action and not just wilful acts. Subsection (a)(3) clarifies the definition of "convicted" to conform with current policy. Subsection (a)(10) provides authority to take action against a person who fails to maintain and produce required records. Subsection (a)(11) provides authority to take action against persons who default on a student loan or do not comply with child support enforcement laws.

Old law did not provide for actions based on AS 14.43 or AS 25.27, and it did require violations of the Act to be wilful to be actionable under this section.

Section 34
Section 45.55.090
Adds language to clarify that the SEC is the United States Securities and Exchange Commission.

Old law did not specify that the SEC is the US SEC.

Section 37
Section 45.55.110(c)
Adds language to clarify that the SEC is the United States Securities and Exchange Commission.

Old law did not specify that the SEC is the US SEC.

Section 42
Section 45.55.139
Adds reference to the administrator's designee as provided in the current definition of "administrator" at AS 45.55.990. This would allow the administrator to remain at arms length in the event a hearing is required.

Old law did not mention the administrator's designee in this section.

Section 43
Section 45.55.139(b)
New subsection (b) clarifies that the administrator may establish and enforce proxy, as the Division does currently.

Old law does not explicitly state the administrator's authority to establish and enforce certain requirements, although AS 45.55.950 provides general rule making authority.

Section 45 (Part)
Section 45.55.170
Subsection (b), in accordance with current Division policy, adds corporations and shareholders of corporations meeting the requirements of AS 45.55.139 to those prohibited from making unlawful representations about filing.

Old law did not refer to qualifying ANCSA corporations and their shareholders as filers.

Section 46 (Part)
Section 45.55.900(a)
(1) Subsection (a) is amended to include exemption from notice filing requirements of federal covered securities.

Old law did not mention federal covered securities.

(2) Subsection (a)(1) is amended to include US territories and the District of Columbia in order to update this exemption to the current uniform language.

Old law did not include US territories and the District of Columbia in this exemption.

(3) Subsection (a)(3) is amended to cover any security issued or guaranteed by a bank or other issuer listed in the subsection and not only a security representing an interest in or debt of the issuer. In addition, obligations of a federal reserve bank are explicitly added to the exemption.

Old law limited the issued security to interests in or debts of the issuer, and did not mention federal reserve banks.

(4) Subsection (a)(4) is amended to expand the types of short-term debt securities that are covered by the exemption from commercial paper to other types of securities that are also eligible for discount by a federal reserve bank.

Old law on covered commercial paper.

(5) Subsection (a)(5) is amended to reflect a provision in NSMIA which excluded certain plans from the definition of an investment company if the assets were used exclusively for the benefit of the beneficiaries, thus putting these plans on the same footing as similar employee benefit plans covered by this exemption.

Old law did not include plans allowed by NSMIA.

(6) Subsection (a)(10) is amended to update the names of stock exchanges and to add the Philadelphia Stock Exchange, which has been accepted by the administrator as having sufficiently high financial standards to be comparable to other exchanges currently covered by the exemption.

Old law did not include the Philadelphia Stock Exchange.

(7) Subsection (a)(11) is amended to include securities of funds excluded from the definition of an investment company. This was added by the Philanthropy Protection Act of 1995 to include pooled funds of charitable organizations. Without this amendment the subsection would not comply with the Philanthropy Protection Act of 1995.

Old law did not include funds exempted by the Philanthropy Protection Act of 1995.

(8) A new subsection (a)(13) is added to provide an exemption from registration of securities issued in connection with the acquisition of a bank by a holding company under specified circumstances which require the holding company to be substantially equivalent to a bank. This amendment puts holding company acquisitions on an equal footing with the current exemption at (a)(3).

Old law did not provide an exemption for a bank holding company to acquire a bank under these limiting circumstances.

Section 47 (Part)
Section 45.55.900(b)
(1) Subsection (b) is amended to include exemption from notice filing requirements of federal covered securities.

Old law did not mention federal covered securities.

(2) Subsections (b)(5)(A)(ii) and (b)(5)(B)(iii) have been increased by 50% to $150,000 and $750,000 respectively partially to account for inflation without posing a public problem.

Old law limits the exemptions to $100,000 and $500,000, respectively.

(3) New subsection (b)(5)(C) is added as a self-executing exemption, without a dollar limitation, to cover initial issuance of securities to up to 10 persons while maintaining disclosure requirements and commission restrictions for investor protection.

Old law requires such persons to register, seek another exemption, or obtain a no-action letter from the Division to avoid violating the Alaska Securities Act.

(4) New subsection (b)(5)(D) is added as a self-executing exemption, without a dollar limitation, for an issuer who sells a business and its assets and liabilities to a buyer, when the transfer of stock is solely incidental to the sale of the business.

Old law requires such persons to register, seek another exemption, or obtain a no-action letter from the Division to avoid violating the Alaska Securities Act.

(5) Subsection (b)(9) is amended to exclude promoters or controlling persons from claiming this exemption and escaping a registration requirement altogether after using the new exemption at (b)(5)(C).

Old law does not make it clear that a "nonissuer" is not a "promoter" or "controlling person."

(6) Old subsection (b)(10) is repealed and replaced by new (b)(17), adopting the new language for the "manual exemption," as (b)(10) was sometimes called, which was developed by NASAA and supported by the Securities Industry Association (SIA). The new language protects investors at least as much as the old language while allowing reliance on publicly available filings with the SEC as well as manuals.

Old law generally required listing in a securities manual.

(7) New subsection (b)(18) is added, as drafted by NASAA and supported by the SIA, to provide an exemption for qualifying issuers that are limiting sales to accredited investors (essentially, institutions and wealthy natural persons). This will allow Alaska entrepreneurs to use ACE-Net to raise capital electronically. defined by SEC

Old law would require these issuers to register or seek another exemption.

(8) New subsection (b)(19) is added to provide a noticed exemption for rescission offers pursuant to AS 45.55.930. This is clarifying language reflecting current requirements, while making it easier for people to comply with the Act.

Old law contains no specific provision for these offers which requires them to either be registered, fit another exemption, or covered by a no-action letter.

(9) New subsection (b)(20) provides a self-executing exemption for transactions solely between family members.

Old law contains no exemption for these transactions which requires them to either be registered, fit another exemption, or covered by a no-action letter from the Division.

Section 48
Section 45.55.900(g)
This subsection is added to provide an exemption for certain offers on the Internet, as drafted by NASAA and adopted by order of the administrator.

Old law does not provide for offers on the Internet.

Section 49
Section 45.55.910(e)
This section, dealing with investigations and subpoenas, is amended by adding a new subsection (e) clarifying that investigative files and materials are confidential until the administrator determines otherwise.

Old law does not specifically provide for confidential investigative files.

Section 50
Section 45.55.915
This section is amended to allow the administrator the option, not the obligation, to require reimbursement for expenses of investigations in addition to examinations. Language is added to include investment adviser representatives, federal covered advisers, and state investment advisers.

Old law covers only examinations, not investigations.

Section 52 (Part)
Section 45.55.930(a)
Subsection (a) is amended to change the interest rate for rescission offers from 6% to the stated rate of the security if it had a stated, fixed rate or 8% whichever is less, and makes a corrective amendment changing "seller" to "buyer," and excludes federal covered securities which are not subject to registration.

Old law set the interest rate for rescission offers at 6%, and does not mention federal covered securities.

Section 53
Section 45.55.930(b)
Subsection (b) is amended to change the interest rate associated with damages to 8% or the stated rate of the security, whichever is less.

Old law set damages at 6%.

Section 54
Section 45.55.930(f)
Subsection (f) is amended to allow more time to bring suit when the violation alleged is that of misrepresentation or fraud, and the rescission rate to prevent suit is raised to 8% or the stated rate of the security, whichever is less.

Old law limits a civil suit to three years from the date of purchase, and sets the rescission rate at 6%.