

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9713 SENATE RULES

## ANALYSIS (cont.):

any provision in the bill. Additional Medicaid funds may be necessary to cover the cost associated with an increased availability and use of in-state secure RPTC beds, but that increased need is not directly dependent upon the provisions of this bill.

Medicaid regulations (7 AAC 43.550 through 7 AAC 43.570) set out requirements for Medicaid recipient eligibility and admission, conditions for provider payment, establishment of a per diem rate for RPTC services, appeal of the Medicaid rate, and other provisions. Not all RPTCs that could be licensed under CSHB 16 (FIN) would necessarily qualify for Medicaid reimbursement since some Medicaid provider enrollment requirements are not requirements under the bill. (For example, Medicaid regulations require that an enrolled RPTC be accredited by the Joint Commission on Accreditation of Healthcare Organizations.)

Medicaid regulations (7 AAC 43.557) establish an initial RPTC rate that is the lesser of the

- (1) per diem rate of \$255 for a single recipient; or
- (2) per diem rate negotiated between a RPTC and the Division of Family and Youth Services; or
- (3) lowest per diem rate charged to any other payor.

Regulations also provide for an increase or decrease of the \$255 per diem (7 AAC 43.557(b)), however, no enrolled program has submitted documentation under that provision for an adjustment. Presently, some out-of-state programs are paid less than the \$255 per diem, but no enrolled provider is paid more.

# STATE OF ALASKA

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF FAMILY AND YOUTH SERVICES

TONY KNOWLES, GOVERNOR

P.O. BOX 110630

JUNEAU, ALASKA 99811-0630

PHONE: (907) 465-3170

FAX: (907) 465-3397

March 23, 1998

The Honorable Representative Pete Kelly  
Alaska House of Representatives  
State Capitol  
Juneau, Alaska 99801

Representative Kelly,

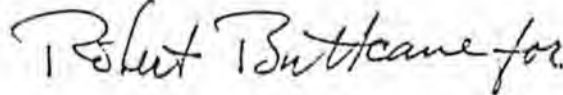
Your staff had requested additional information regarding the department's fiscal note for HB 16 related to costs for semi-secure programs. This letter is a response to that request.

The department had estimated a need for \$210.0 to establish at least one semi-secure residential care facility in each of the three DFYS regions in the state. Based on our discussions with or letters received from our current residential care providers, we estimated this was the minimum amount needed to establish these programs in our regions.

It is not possible to separate out what amount of this might be designated to increased staffing levels as opposed to facility enhancements. Individual providers indicated varying needs in this regard. Some providers would use the bulk of a grant award on facility improvements where others would focus more on increased staffing. As we discussed during our meeting on March 18, 1998, DFYS would develop a Request For Proposal for semi-secure residential services delineating the program goals and objectives while allowing the grant applicant the latitude to specify how they might use these grant funds to provide semi-secure care services.

Finally, your staff wanted to see copies of the letters we received from the providers and I have attached those for your reference. I appreciate your interest and willingness to explore the options to meet the need for semi-secure programming. Please let me know if we can be of further assistance.

Sincerely,



Theresa Tanoury  
Family Services Administrator  
DFYS

rb/TT



## Alaska Baptist Family Services

1600 O'Malley Rd. • Anchorage, Ak. 99516 • Phone (907) 349-2222

### MEMO

**TO: THERESA TANOURY**

**FROM: LEONARD R. EVERMAN**

**SUBJECT: COMMENTS ON CSH 16 DISCUSSION**

**DATE: MARCH 12, 1998**

Alaska Baptist Family Services presently is not a secure or semi-secure unit as defined in this bill. We have, from time to time, placed residents on suicide watch and tight security with one-on-one staff. These one-on-one staffings have been purchased on an as-needed-basis by DFYS or Corrections. Our staff ratio and program runs 1:6 awake staff and 1:12 during sleeping hours. During the day we often are 1:4 due to appointments.

Here are my concerns. If the secure, semi-secure program is developed will it be at the expense of existing programs as was Dot Lake. How much space would the program call for in each region. Presently, I have 16 beds and am full with a waiting list. We have turned away over thirty-five requests for beds since December 26, 1977 because we have been full. If we made two beds available of our sixteen, would we be able to maintain safety for other residents. We serve mostly pre-adolescent children averaging 9-12 years of age. Our program license is unisex out for this cottage. The present grant has twelve beds with DFYS continually purchasing at least three additional beds, regularly. I have one private interstate bed full as well.

If we took the \$70,000 being considered for this service and add some security systems, change the windows in a room with a private bath, and added staff, that would equal what we get for one and three quarters beds per year presently. Our bed rate is \$127 per day and we subsidize all beds up to thirteen. There have been no rate increases since 1991, however, cost for us has increased considerably. You can see that the gain would be slim to negligible for us or you unless we could work out something together.

I believe it is possible, since these clients would not be public enemy number one type offenders, to blend some of these children and youth in programs like ours. Our first concern would be safety for all concerned. Thanks for the opportunity to give input. I look forward to our retreat in May. I am back to work part-time since my mild heart attack --- usually during the a.m.

**BETHEL GROUP HOME, INC.**

P.O. BOX 385 • BETHEL, AK 99559 • (907) 543-2846 • FAX: (907) 543-5219

March 23, 1998

Theresa Tanoury  
Administrator  
Child Protective Services  
Division Of Family And Youth Services  
Juneau, AK

Dear Ms. Tanoury:

I am writing to request additional funding in order that we may better serve the needs of the severely emotionally disturbed children that are placed in our facility.

As you may be aware, on March 11, 1998, a child placed in our facility by your agency attempted to hang himself using a belt and the pipes used for heating our facility. Our staff intervened with barely enough time to prevent a tragedy.

We are being asked on an ever more frequent basis to accept increasingly more disturbed children into our care. While we have implemented some safeguards to assist in the prevention of these children harming themselves or others, we lack the necessary funding to provide for the level of care, supervision, etc. required by these children.

Specifically, we are in need of funds for additional night and evening staff. We currently operate with a staff to child ratio of 1:2.6 during the evening hours of 4:00pm-12:00am. From 12:00am until 7:00am, our staff to child ratio drops to 1:8. We are experiencing much difficulty managing the behaviors of some of these children with a 1:2.6 ratio. We are requesting your assistance in securing the necessary funds to drop the staff to child ratios to 1:2 and 1:4 during the evening and night.

Additionally, there are several building improvements which need to be made to our building to enhance the supervision of the children. First, we need to install a window in a staff office which will enable supervision of the hall/foyer area. Currently, this area is impossible to supervise due to the design of the building. If a window were installed in the staff office, this would enable us to provide this supervision. Second, we would like to install security cameras for the halls and common areas of the building. This would allow a single night staff person the ability to supervise these areas of the house while the second night staff person conducted room checks. Due to the "hodge-podge" construction of our building, it is impossible for two people to physically supervise the entire building without the aid of video equipment.

Thank you for your assistance in this matter. Please contact me should you have any questions or wish to discuss these matters further. Hopefully, we will be able to work

Theresa Tanoury, March 23, 1998, PAGE 2

together to resolve these security issues in order that we may continue to care for the children placed in our facility.

Respectfully,

A large, stylized handwritten signature in black ink, appearing to read 'Amy L. Smith', is written over the typed name and title.

Amy L. Smith, M.A.  
Executive Director

# STATE OF ALASKA

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF FAMILY AND YOUTH SERVICES

TONY KNOWLES, GOVERNOR

P.O. BOX 110630

JUNEAU, ALASKA 99811-0630

PHONE: (907) 465-3170

FAX: (907) 465-2333

March 23, 1998

The Honorable Representative Pete Kelly  
Alaska House of Representatives  
State Capitol  
Juneau, Alaska 99801

Dear Representative Kelly,

James Dieringer, Bruce Campbell and DFYS staff met on March 18, 1998 to discuss funding options for semi-secure facilities related to HB 16. Your staff requested additional information on our corrections facility staff ratios and daily cost of care rates. This letter provides that information.

The average staff to resident ratio at our Youth Corrections facilities throughout Alaska is 1 to 8 during waking hours. This ratio is lower during the night time hours.

The daily cost of care for our facilities is estimated as follows:

Facility	Avg. Pop. First Half FY98	Capacity	%Capacity	Avg. Daily Cost of Care
McLaughlin	195	150	130%	\$155.00
Fairbanks	50	40	125%	\$263.00
Bethel	21	19	110%	\$333.00
Juneau	17	8	218%	\$323.00

We should be cautious in making comparisons between the corrections facility numbers and those related to community residential care services. Differences in facility design, the variations in resident groups and the levels of judicial or regulatory authorities over these youth populations are factors which would effect the respective staffing ratios and daily cost of care rates.

Please let us know if you we can be of further assistance.

Sincerely,



George Buhite

Youth Corrections Administrator

rb/GB

**HB**

**17**

# Alaska State Legislature

REPRESENTATIVE  
**JEANNETTE JAMES**  
P.O. Box 56622  
North Pole, Alaska 99705  
(907) 488-1546  
FAX (907) 488-4271

White in Juneau  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-3743  
FAX (907) 465-2381

## House Of Representatives

House District 34

### **CSHB 17(RES)**

**"An Act establishing the Department of Natural Resources as the platting authority in certain areas of the state; relating to subdivisions and dedications; and providing for an effective date."**

## **Sponsor Statement for HB 17 Rep. Jeannette James**

### **DNR APPROVAL OF PLATS 4/20/98**

Two years ago this was HB 80, the Bill died in the rush of adjournment. HB 17 is a good bill that has been in the process for many Legislative sessions. I believe the work over the last several years has molded the bill into one that has no opposition and is supported by the DNR, surveyors and all impacted classes of people.

Essentially HB 17 brings all of the unorganized Boroughs under the purview of DNR as pertains to platting of real estate. For example there is currently no control over anyone creating landlocked subdivisions with no possible access in the unorganized Boroughs.

The bill also cleans up some definition problems by defining the word "subdivision" so all agencies use the same terminology.

Please contact Walt Wilcox or me if you have any questions or concerns.

**HB**

**18**

Alaska State Legislature

REPRESENTATIVE  
**JEANNETTE JAMES**  
P.O. Box 58822  
North Pole, Alaska 99705  
(907) 488-1546  
FAX (907) 488-4271



White in Juneau  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-3743  
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House Of Representatives  
House District 34

# MEMO

January 27, 1997

To: House Finance Committee  
Attn: Gene  
From: Jeannette  
Re: Scheduling HB 18 in House Finance

Please schedule HB 18 for a hearing as soon as feasible.

## SPONSOR STATEMENT

### HB 18 PROCUREMENT PROCEDURES/DISABLED PERSONS

House Bill 18 will allow 100% disabled owned corporations and partnerships to be eligible for disabled bidder preferences

Current law allows disabled owned sole proprietorships to take advantage of certain disabled bidder preferences.

Equal protection under the law requires all like situations to be treated fairly and equally. Current law discriminates against disabled owned corporations and partnerships, it does allow sole proprietorships

HB 18 has a zero fiscal note.

HB 18 is supported by the impacted Departments of Education and Administration.

The Legislature passed this Bill 2 years ago and the Governor vetoed it in error, last year it was lost in the rush of adjournment.

There is no known opposition.

FISCAL NOTE

Version: 1  
 HB 18  
 (H) Publish Date: 1/29/97

STATE OF ALASKA  
 1997 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: "An Act extending to certain partnerships and corporations the 10 percent procurement preference..."

Department Affected: Administration  
 BRU: General Services

Sponsor: James  
 Requestor: (H) T.&C.

Component: Purchasing  
 COMPONENT SERIAL NO. 60

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER * CIP receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill extends the 10% bid evaluation preference for an Alaska bidder who is a sole proprietor with a disability to partnerships if each partner has a disability and to corporations if wholly owned by individuals with disabilities. The 10% evaluation preference is in addition to other preferences the bidder may qualify for. Under this bill, agency personnel evaluating quotes, bids, or RFPs must calculate the 10% preference for the additional entities if they appear on the disabled vendor list maintained by the Department of Education, Division of Vocational Rehabilitation.

Prepared by: Duqan Petty, Director  
 Division: General Services

Phone: 465-2250  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 1/21/97

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# FISCAL NOTE

No. 2  
 Bill Version: HB 18  
 (H) Publish Date: 2/24/97

STATE OF ALASKA  
 1997 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Education  
 Title: An Act extending to certain partnerships and BRU: Vocational Rehabilitation  
corporations the 10 percent procurement... Component: Vocational Rehabilitation, Administration  
 Sponsor: Representative James  
 Requester: Finance COMPONENT SERIAL NO. 202

Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
Other:						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of current year (FY97) cost: \$ \$0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)  
 Amends A.S. 36.30.170(e), expanding the businesses that qualify to bid for contracts under this law. This bill defines "qualifying entity."

Prepared by: Beth Lape, Special Assistant Phone: 465-2803  
 Division: Commissioner's Office Date: \_\_\_\_\_  
 Approved by Commissioner: Shirley J. Holloway, Ph.D. Date: 2-20-97  
 Agency: Department of Education

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STATE OF ALASKA**

(907) 465-3808  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 400  
Juneau, Alaska 99801-2105

Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

*Senate Rules Committee 4/29/97 10:52 am*

**HB**

**20**

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STATE OF ALASKA

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Juneau, Alaska 99801-2105

Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

*Senate Rules Committee 4/29/97 10:52 a.m.*

Alaska State House of Representatives  
House District 39



Session

Alaska State Capitol  
Juneau, Alaska 99801-1182  
Phone: (907) 465-4942  
1-800-323-4942  
Fax: (907) 465-4589  
[www.akrepublicans.org/Ivan.htm](http://www.akrepublicans.org/Ivan.htm)


Interim

P.O. Box 137  
Akiak, Alaska 99552  
Phone: (907) 765-7326

**Representative Ivan M. Ivan**

**MEMORANDUM**

TO: Senator Tim Kelly, Chair  
Senate Rules Committee

FROM: Representative Ivan M. Ivan 

DATE: April 24, 1997

RE: Request for Scheduling of CS for House Bill 20 (FIN)

---

I respectfully request the scheduling of Committee Substitute for House Bill 20(FIN): Dog Mushing Contests, for the floor at your earliest possible convenience.

This bill would allow dog mushers associations to conduct statewide games of chance on sled dog races that are recognized by the Division of Charitable Gaming.

Thank you for your consideration of my request. Please contact my aide, Tom Wright, if you require further information or if you have any questions.

IMI/tw

*ADAMS TO CARRY*

# Alaska State House of Representatives House District 39

Session  
Alaska State Capital  
Juneau, Alaska 99801-1182  
Phone: (907) 465-4942



Interim  
P.O. Box 137  
Akiak, Alaska 99552  
Phone: (907) 765-7526

**Representative Ivan M. Ivan**

## **SPONSOR STATEMENT - COMMITTEE SUBSTITUTE FOR HOUSE BILL 20 (FIN)**

Committee Substitute for House Bill 20 (FIN) would authorize dog mushers' associations, which run races recognized by the Division of Charitable Gaming, to conduct statewide games of chance. The division recognizes those associations which have been in existence for at least three years, have at least 25 Alaskan members and be a not for profit organization. Prizes of money will be awarded for the closest guesses of at least three elements of uncertainty about a sled dog race that cannot be determined before the start of the race. The intent is to provide a mechanism to assist race organizing committees to become financially self-sufficient.

High profile protests from animal rights activists have caused important corporate sponsors to withdraw financial support. Committee Substitute for House Bill 20 (FIN) would create a sweepstakes similar to one passed by the previous legislature for the Iditarod Race Committee and, hopefully, allow sled dog races which do not have strong financial backing to continue.

Committee Substitute for House Bill 20 (FIN) will allow contestants to purchase tickets on which the contestant would guess the checkpoints and finish line arrival times, the temperature when the a particular team crosses the finish line, total number of dogs that finish the race, etc. The dog mushers' associations will administer the mushers' contests in conjunction with state regulatory authority.

Alaska State House of Representatives  
House District 39

Session  
Alaska State Capital  
Juneau, Alaska 99801-1182  
Phone: (907) 465-4942



Interim  
P.O. Box 137  
Akiak, Alaska 99552  
Phone: (907) 765-7526

**Representative Ivan M. Ivan**

**SECTIONAL ANALYSIS - COMMITTEE SUBSTITUTE FOR HOUSE BILL 20 (FIN)**

**Section 1:** Amends AS 05.15.180(b) by adding dog mushers' contests to the list of permissible activities.

**Section 2:** Amends AS 05.15.690(12) by adding subsection (B) which states that a game of chance may be conducted by a dog mushers' association in conjunction with the race.

**Section 3:** Repeals and reenacts AS 05.15.180 (b). This new section reverts to original statute to include dog mushers' contests due to the sunset clause which was adopted with the passage of House Bill 146 in 1995.

### SECTION 3 EXPLANATION

In 1995, the legislation was enacted authorizing the Iditarod Committee to conduct a mushing sweepstakes which sunsets on December 31, 1999. Section 1 of the bill recognizes the mushing sweepstakes as well as the new dog mushers' contests language proposed by HB 20. Since the mushing sweepstakes sunsets in 1999, Section 3 is effective after 1999 but it deletes any reference to mushing sweepstakes but leaves dog mushers' contests in statute.

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Dog Musers' Contests BRU: Revenue Operations  
 Component: Charitable Gaming Division  
 Sponsor: Rep. Ivan  
 Requestor: (H) FIN COMPONENT SERIAL NO. 1883

Expenditures/Revenues: (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

House Bill 20 adds to the definition of a dog musers' contest to allow a dog musers' association to conduct a raffle-like guessing game.

The Department of Revenue, Charitable Gaming Division does not anticipate any changes in program receipts in respect to this bill.

Prepared by: Dennis R. Poshard, Director *DRP*  
 Division: Charitable Gaming Division  
 Approved by Commissioner: Wilson L. Condon *Wilson L. Condon*  
 Agency: Revenue

Phone: 465-2279  
 Date: \_\_\_\_\_  
 Date: 2/6/97

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**CS for HB 20**

**Amendment**

1 Page 1, Line 9:

2 Following "may not be"

3 Delete "licensed"

4 Insert "granted a permit"

5 Page 1, Line 10:

6 Following "unless"

7 Delete "it"

8 Insert "the sponsoring organization"

9 Page 2, Line 17:

10 Following "may not be"

11 Delete "licensed"

12 Insert "granted a permit"

13 Page 2, Line 18:

14 Following "unless"

15 Delete "it"

16 Insert "the sponsoring organization"

**CS for HB 20**

Page 1, Lines 9 & 10 and Page 2, Lines 17 & 18: replace last sentence with:

A snow machine classic may not be granted a permit under this chapter unless the sponsoring organization has been in existence for at least five years before the permit application date.

Post-It™ brand fax transmittal memo 7671		# of pages > 1
To	TIM B.	From
Co.		Co.
Dept.		Phone #
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FROM VINCE USERA  
 AT DEPT. OF LAW,  
 4-29-97

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Dog Musers' Contests BRU: Revenue Operations  
 Component: Charitable Gaming Division  
 Sponsor: Rep. Ivan  
 Requestor: (H) STA COMPONENT SERIAL NO. 1883

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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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						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

House Bill 20 limits the conduct of a dog mushers' contest to a dog mushers' association. It also adds to the definition of a dog mushers' contest to allow a raffle-like guessing game.

The Department of Revenue, Charitable Gaming Division does not anticipate any changes in program receipts in respect to this bill.

Prepared by: Dennis R. Pashard, Director Phone: 465-2279  
 Division: Charitable Gaming Division Date: January 14, 1997  
 Approved by Commissioner: Wilson L. Condon Date: 1/14/97  
 Agency: Revenue

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**HB**

**22**

Alaska State House of Representatives  
House District 39



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**Representative Ivan M. Ivan**

**SPONSOR STATEMENT  
COMMITTEE SUBSTITUTE for HOUSE BILL 22 (JUD)**

I introduced this legislation because current law seemingly exempts those who sell liquor without a license (bootleggers) from any civil liability for the damages that may be caused by their illegal acts. The basis of the original bill was to remove that exemption and make bootleggers strictly liable for their actions.

During deliberations before the House Judiciary Committee, language was added that addresses civil liability of a person who sells or barter a controlled substance as defined under AS 11.71.900.

The intent of this legislation is to apply strict liability to a bootlegger or drug dealer for any actions taken by a buyer of illegal alcohol or drugs that may result in civil damages to another person, the state or political subdivision of the state. The cost of criminally prosecuting the buyer for any criminal acts while under the influence of the illegally purchased alcohol or drugs may also be sought from the bootlegger or drug dealer.

It is also the intent of the legislation that an injured party can not only be an individual but also the state or a political subdivision of the state. Civil damages includes personal injury, death or injury to property.

Alaska State House of Representatives  
House District 39



Session

Alaska State Capitol  
Juneau, Alaska 99801-1182  
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Interim

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Akiak, Alaska 99552  
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**Representative Ivan M. Ivan**

**MEMORANDUM**

TO: Senator Tim Kelly, Chair  
Senate Rules Committee

FROM: Representative Ivan M. Ivan 

DATE: March 6, 1997

RE: Scheduling of Committee Substitute for House Bill 22 (JUD)

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Please consider this request to schedule Committee Substitute for House Bill 22 (JUD): Civil Liability for Bootleggers and Drug Dealers, for the floor at your earliest possible convenience.

- This bill makes bootleggers and drug dealers strictly liable: (1) to the recipient or another person for civil damages for conduct that results in civil damages and (2) the cost to the state or political subdivision of the state to criminally prosecute the person receiving the illegal alcohol.
- The person who receives the illegal alcohol must be under the influence and the alcohol must substantially contribute to the civil damages.
- A definition of civil damages under subsection (b) includes damages for personal injury, death or injury to a person's property to include the state or political subdivision.
- A person who illegally sells or barter alcohol cannot use as a defense that the recipient voluntarily consumed or was voluntarily under the influence.

**SECTION 2**

This section parallels section 1 of the committee substitute and addresses civil liability of a person who sells or barter a controlled substance as defined under AS 11.71.900.

Please do not hesitate to contact me if I can answer any questions or provide further information.

Thank you for your consideration of my request.

IMI/tw

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Mary Pagenkopf

*Senate Rules Committee 3/12/97 10:50 am*

BILL: HB 22 SHORT TITLE: CIV.LIAB.:ILLEGAL SALE OF ALCOHOL/DRUGS  
BILL VERSION: CSHB 22(JUD)  
SPONSOR(S): REPRESENTATIVE(S) IVAN,Porter,Berkowitz,Croft,Elton,Rokeberg

CURRENT STATUS: (S) RLS

STATUS DATE: 03/06/97

TITLE: "An Act relating to civil liability for illegal sale or barter of an alcoholic beverage or a controlled substance; and providing for an effective date."

01/13/97	33	(H)	PREFILE RELEASED 1/3/97
01/13/97	33	(H)	READ THE FIRST TIME - REFERRAL(S)
01/13/97	33	(H)	JUDICIARY
02/14/97	361	(H)	COSPONSOR(S): PORTER
02/17/97	371	(H)	JUD RPT CS(JUD) NT 7DP
02/17/97	371	(H)	DP: CROFT, ROKEBERG, PORTER, GREEN
02/17/97	371	(H)	BUNDE, JAMES, BERKOWITZ
02/17/97	371	(H)	3 ZERO FISCAL NOTES (COURT, LAW, REV)
02/19/97	407	(H)	COSPONSOR(S): BERKOWITZ
02/25/97	466	(H)	RULES TO CALENDAR 2/25/97
02/25/97	466	(H)	READ THE SECOND TIME
02/25/97	466	(H)	JUD CS ADOPTED UNAN CONSENT
02/25/97	467	(H)	ADVANCED TO THIRD READING UNAN CONSENT
02/25/97	467	(H)	READ THE THIRD TIME CSHB 22(JUD)
02/25/97	467	(H)	PASSED Y39 E1
02/25/97	467	(H)	EFFECTIVE DATE(S) SAME AS PASSAGE
02/25/97	472	(H)	COSPONSOR(S): CROFT, ELTON, ROKEBERG
02/25/97	472	(H)	TRANSMITTED TO (S)
02/26/97	515	(S)	READ THE FIRST TIME - REFERRAL(S)
02/26/97	515	(S)	JUDICIARY
03/06/97	591	(S)	JUD RPT 5 DP
03/06/97	591	(S)	DP: TAYLOR,MILLER,PEARCE,PARNELL,ELLIS
03/06/97	591	(S)	(H) ZERO FNS (REV. LAW, COURT)
03/06/97	591	(S)	REFERRED TO RULES

According to Tom Wright, this bill has no known opposition, and is supported by the ALASKA PEACE OFFICERS' ASSN.

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Civil Liability for Bootleggers BRU: Alcoholic Beverage Control Board  
 Component: Alcoholic Beverage Control Board  
 Sponsor: Representative Ivan  
 Requestor: (H) JUD COMPONENT SERIAL NO. 100

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends Alaska law to clearly assert that immunity for social hosts that serve alcoholic beverages does not extend to those persons engaged in the illegal sale of alcohol. Alaska's strong immunity provisions for social hosts was reaffirmed and relied upon in the 1996 Alaska Supreme Court decision, Chokwok v. Worley, that concluded that civil liability for social hosts applied even when serving minors. This bill is designed to remove the potential for this doctrine to be used as a defense by bootleggers facing prosecution.

No fiscal impact is anticipated.

Prepared by: Douglas B. Griffin Phone: (907) 277-8638  
 Division: Alcoholic Beverage Control Board Date: January 22, 1997  
 Approved by Commissioner: Wilson L. Condon Date: January 22, 1997  
 Agency: Revenue

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# FISCAL NOTE

No. 2  
 Bill Version: CSHB 22(JUD)  
 (H) Publish Date: 2/17/97

**STATE OF ALASKA  
 1997 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: An Act relating to civil liability for illegal sales of BRU: Civil Division  
alcoholic beverages . . . Component: General Legal Services  
 Sponsor: Representative Ivan  
 Requester: (H) JUDICIARY COMPONENT SERIAL NO. 2087

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

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

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

This bill would make individuals who sell or barter an alcoholic beverage to another person in violation of AS 04.11.010 strictly liable for civil damages resulting from the intoxication of the person receiving the alcoholic beverage.

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

Prepared by: Joan Kasson *Joan Kasson* Phone: 465-5370  
 Division: Administrative Services Division Date: 1/14/97  
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 1/14/97  
 Agency: Department of Law

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# FISCAL NOTE

No. 1  
 Bill Version CSHB 22(JUD)  
 (H) Publish Date: 2/17/97

STATE OF ALASKA  
 1997 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Alaska Court System  
 Title: Civil liability for bootlegging BRU: Trial Courts  
 Component: \_\_\_\_\_  
 Sponsor: Rep. Ivan  
 Requestor: House Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES (</b>						

Fund Source (Thousands of Dollars)

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

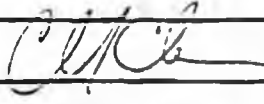
Estimate of any current year (FY 97) cost: None


Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel   
 Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director   
 Agency: Alaska Court System

Phone: 264-8228  
 Date: 01/23/97

Date: 01/23/97

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**HB**

**23**

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Mary Pagenkopf

*Senate Rules Committee 5/1/97 10:51 am*



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

### Beverly Masek

Official Business

State Capitol  
Juneau, AK 99801  
(907) 465-2679

### HB 23

### SPONSOR STATEMENT

#### "ACCESS PROTECTION BILL"

House Bill 23 addresses an increasingly troublesome problem involving public policy relating to the ability of Alaskans to access and utilize common property resources. This legislation will allow the Legislature to address concerns over access to state lands and waters where proposed administrative action involves significant areas of public interest.

Currently the administration may close public access onto state lands and waters regardless of whether Alaskans agree with such policy actions. This situation has led to the exclusion of many traditional uses in areas of public interest when some members of the bureaucracy felt it necessary to impose restrictions on those uses they viewed as socially incompatible or unacceptable.

The legislature has traditionally been responsible for implementing statutes designed to protect lands, waters and resources. However, there are no statutes which provide for the protection of the public's ability to access these common property resources. I feel this is an important public policy question which should rightly come under legislative purview.

HB 23 will allow the administration to affect public access on small areas, or for short periods of time. However, larger areas (more than 640 acres), or restrictions lasting for long time periods (more than eight months in a three year period) would be subjected to legislative approval.

HB 23 includes language which will give the Legislature the authority to protect traditional access for traditional uses, including subsistence activities. Furthermore, this legislation was crafted so as not to impede land disposals, mining, timber harvest or other resource development. Language has been inserted which allows development interests for safety reasons to "control and direct public access through developed properties", and to provide for "reasonable access alternatives".

In addition to enthusiastic individual support, the following groups representing in excess of 25,000 Alaskan outdoor users support HB 23: Alaska Marine Dealers, Resource Development Council, Alaska Visitors Association, Alaska Air Carriers, Alaska Airmen's Association, Alaska Bow Hunters, Alaska Snowmobile Assoc., Alaska Boaters Assoc., Mat-Su Motor Mushers, Mat-Su Boaters, Alaska Outdoor Council, Territorial Sportsmen, Alaska Outdoor Council, Ketchikan Sport and Wildlife Club, and Mat Valley Sportsmen.

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

No. 1  
Bill Version: CSHB 23 (RES)  
(H) Publish Date: 3/5/97

Date: 2/27/97  
Title: An Act relating to traditional means  
of Access...  
Sponsor: Rep. Masek  
Requestor: House Resources

Dept. Affected: DNR  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_  
Serial #: \_\_\_\_\_

**EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)**

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>REVENUE</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUNDING: (THOUSANDS OF DOLLARS)**

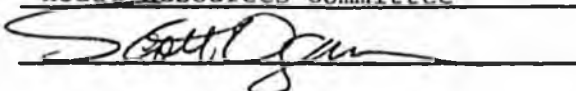
General Fund	0.0	0.0	0.0	0.0	0.0	0.0
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**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)**

see attached analysis

Prepared by: Co-Chairman Scott Ogan  
House Resources Committee  


Date: 2/27/97  
Phone: 465-3715  
Phone: \_\_\_\_\_

**HB**

**25**

# LEGAL SERVICES

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## MEMORANDUM

February 1, 1997

**SUBJECT:** HB 25: An act relating to the issuance of hunting, trapping, and noncommercial fishing licenses, tags, and permits and to residency for fish and game purposes (HB 25)

**TO:** Representative Scott Ogan  
Attn: Dave Stancliff

**FROM:** George Utermohle *GU*  
Legislative Counsel

This memorandum is in response to your request for a description of what HB 25 does.

HB 25 addresses the issue of residency for fish and game purposes generally, as well as, addressing residency for hunting, trapping, and noncommercial fishing licenses in particular.

**Section 1** of the bill expresses in writing the generally understood requirement that a hunting, trapping, or noncommercial fishing license, tag, or permit may be issued only to a natural person. A natural person is a human being and not a nonhuman legal person such as a corporation, partnership, etc.

HB 25 contains two provisions relating to residency for fish and game purposes. The first provision is contained in sec. 2 of the bill and applies to the determination of residency for purposes of issuing hunting, trapping, and noncommercial fishing licenses. The second provision is contained in sec. 3 of the bill and sets out the definition of "resident" for other purposes under AS 16.

**Section 2** of the bill amends AS 16.05. by adding a new section establishing how residency is determined for hunting, trapping, and noncommercial fishing licenses. The basic requirements for a person to establish residency are physical presence in the state with the intent to remain in the state and to make a home in the state; maintaining a domicile in the state for the preceding 12 months; and not doing anything contrary to the assertion of residency such as claim residency in another state or country or obtain benefits in another state or country under a claim of residency in that state or country.

A resident does not lose his or her residency in the state by being absent from the state. In order to lose residency, the person must be absent from the state and claim residency in an

other state or country or the person must do something that is not consistent with the basic requirements for residency set out in this section.

Members of the military who have been stationed in the state for the preceding 12 months and their dependents who have lived in the state for the preceding 12 months are considered as residents. These military personnel and their dependents do not have to surrender their legal residency in their home state or benefits based on their residency in another state. This bill provides that members of the Coast Guard and their dependents shall be eligible for resident status. The Coast Guard is not clearly a branch of the military service, so the bill clarifies that members of the Coast Guard and their dependents are to receive the same benefit as members of the military service and their dependents.

An alien establishes residency in the state by maintaining a domicile in the state for the preceding 12 months and not claiming residency in another state or country or obtaining a residency benefit under a claim of residency in another state or country.

In those instances where a business may apply for a license, such as a taxidermy or fur dealers license, the residency of the business is determined by the location of the business' main office or headquarters. A nonresident person who has an interest in a resident business (such as a partnership or joint venture) in the state cannot qualify as a resident by virtue of that interest in a resident business.

**Section 3** of the bill amends AS 16.05.940(26) which is the general definition of "resident" for AS 16. One change that is made to this definition is the replacement of the undefined term "place of abode" with "domicile". Though the terms have substantially similar meanings in the common law, the term "domicile" is already defined in AS 16.05.940(11).<sup>1</sup>

The other changes made to the definition of "resident" in AS 16.05.940(26) provide that residency is to be determined in a manner comparable to that used in sec. 2 of the bill. For example, a person cannot maintain residency if the person claims residency in another state or obtain benefits in another state or country under a claim of residency; a natural person cannot claim residency based on an interest in a resident business entity; members of the Coast Guard and their dependents get the same privileges as members of the military service and their dependents.

\*

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<sup>1</sup> For purposes of AS 16, "domicile" means the true and permanent home of a person from which the person has no present intention of moving and to which the person intends to return whenever the person is away; domicile may be proved by presenting evidence acceptable to the boards of fisheries and game. AS 16.05.940(11).

Representative Scott Ogan

February 1, 1997

Page 3

In AS 16.05.940, the definition of "resident" is not as detailed as that set out in sec. 2, because there is not an apparent need for a more detailed definition for AS 16. The residency issues that have arisen relate to eligibility for resident hunting, trapping, and noncommercial fishing licenses and those are addressed by sec. 2 of the bill.

If I may be of further assistance, please advise.

GU:lmb

97-023.lmb

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Mary Pagenkopf

Senate Rules Committee 4/11/97 10:52 a.m.

# Alaska State Legislature

Co-Chair, House Resources  
Community & Regional Affairs  
Legislative Council  
Special Committee on Fisheries  
Special Committee on Oil and Gas



State Capitol  
Room 128  
Juneau, Alaska 99801  
(907) 465-3878  
1-800-862-3878  
Fax (907) 465-3265

Representative Scott Ogan  
House District 27

## HB-25 SPONSOR STATEMENT

I have introduced HB-25 to make the residency law applying to the taking of fish and game resources a more workable, consistent, enforceable provision.

Like many other valuable state programs there is always the temptation by nonresidents to bend the rules, or circumvent the letter of the law. By changing the language in existing statute we can close some of the loop holes that have plagued law enforcement officials.

Last session this measure was supported by both the administration and overwhelmingly by the legislature.

I hope I can count on your support this session.

Thank you.

A handwritten signature in cursive script that reads "Scott Ogan".

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO: 1  
Bill Version: HB 25  
(H) Publish Date: 2/5/97

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
Title: An Act relating to residency for Fish and Game purposes BRU: Fish and Wildlife Protection  
Component: Detachments  
Sponsor: Representative Ogan  
Requestor: H.F. 51 COMPONENT SERIAL NO. 0490

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b>	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

**FUNDING: (Thousands of Dollars)**

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

Estimate of current year (FY 97) impact: \$ 0.0

**POSITIONS:**

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

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

This Bill will improve the Division's ability to meet program objectives and will have no significant affect on the Diivision's budget.

Prepared By: Lt. Joel L. Hard Phone: 269-5409  
Division: Fish and Wildlife Protection Date: January 22, 1997  
Approved by Commissioner: *Joel Smith* Date: 1/31/97  
Agency: Ronald L. Otte, Department of Public Safety

# FISCAL NOTE

No. 2  
 Bill Version: HB 25  
 (H) Publish Date: 2/5/97

STATE OF ALASKA  
 1997 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Fish and Game  
 Title: Residency requirements: fish and game licenses BRU: Administration  
 Component: Administration  
 Sponsor: Representative Ogan  
 Requester: House Fisheries COMPONENT SERIAL NO. 479

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

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

**FUND SOURCE** (Thousands of Dollars)

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

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

**POSITIONS**

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

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

Prepared by: Kevin Brooks  
 Division: Administration  
 Approved by Commissioner: Caron Bruce for  
 Agency: Department of Fish and Game

Phone: 465-5999  
 Date: 1/14/97  
 Date: 1/28/97

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**HB**

**26**

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Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

Senate Rules Committee 5/1/97 10:51 a.m.

# Alaska State Legislature

Co-Chair Resources Committee  
Special Committee on Oil & Gas  
Legislative Council  
Community and Regional Affairs  
Fisheries



Room 128  
State Capitol  
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## Representative Scott Ogan House District 27

### Sponsor Statement HB-26

I have introduced HB-26 (HB-313 last session), because the need to provide our wildlife specialists with the proper management tools is extremely important, especially in areas identified as needing intensive management. In light of Ballot Initiative #3 being approved, it is even more important we pass HB-26. Without sufficient latitude, it is difficult for the Department of Fish and Game and Board of Game to meet the requirements of sustained yield management under Article VIII of our State Constitution..

To maintain a healthy population of moose, caribou, and sheep for both human and natural (secondary) harvest the Department and Board of Game have few choices once hunting has been reduced or eliminated. One of the only practical remaining options to further decrease mortality of ungulates is a reduction in natural predation. To assist the Department in meeting their sustained yield goals, HB-26 provides increased incentives for nonresident hunters who consider the purchase of a big game tag to harvest wolves.

These hunters are generally under the supervision of a professional guide which requires a more closely monitored entry into the field. This, together with more stringent reporting requirements of animals both taken and shipped, gives the Department a very well controlled tool in attaining the scientifically established population goals for a given area.

It should be noted, that of the some 10,000 nonresident who typically hunt in Alaska annually, less than 3% purchase tags for harvesting a wolf. The main reason for low tag sales is the opportunity to harvest a wolf is remote at best. Consequently, most hunters are unwilling to pay a large sum of money with such poor odds. By establishing a more reasonable price on tags, the Department should see a significant rise in sales which will in turn put more dollars into the Fish and Game Fund while also increasing the incidental take of wolves.

In summary, HB-26 will provide a wider latitude for the Board of Game in making adjustments to meet the needs of both human and secondary utilization of our important ungulate resources while increasing the revenues for better management. I urge your support for this modification as provided in HB-26.

Thank you.

# FISCAL NOTE

( 1 )  
 Bill Version: HB 26  
 (H) Publish Date: 1/31/97

STATE OF ALASKA  
 1997 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Fish and Game  
 Title: Big Game Tags for Wolves BRU: Wildlife Conservation  
 Component: Wildlife Conservation  
 Sponsor: Representative Ogan  
 Requester: House Resources COMPONENT SERIAL NO. 473

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

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1024)	3.6	3.6	3.6	3.6	3.6	3.6
---------------------------	-----	-----	-----	-----	-----	-----

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

Reduced fees may be an incentive for more nonresidents and nonresident aliens, who come to Alaska to hunt other big game species, to purchase big game tags for wolves. Sales estimates are based on the following assumptions: (1) average annual nonresident and alien licensees will remain constant at 8,050 and 310, respectively; (2) 53% of nonresident/alien hunters who indicated an unwillingness to pay any more for their hunts\* will not purchase wolf tags; (3) of the remainder, 30% of hunters who oppose wolf control\* will not purchase wolf tags; (4) of the remainder, 50% of hunters who do not already purchase wolf tags, will purchase wolf tags (assumption #4 is speculative). Using these assumptions, the number of nonresident/alien wolf tags sold annually will increase from the present 215/30 to 1500/75.

\*from: D.W. McCollum and S.M. Miller, 1994, Alaska voters, Alaska hunters, and Alaska nonresident hunters: their wildlife related trip characteristics and economics and their characteristics and attitudes toward wildlife.

Prepared by: Phil Koehl, Wildlife Biologist *PK*  
 Division: Wildlife Conservation  
 Approved by Commissioner: Gordon Bruce Don  
 Agency: Alaska Department of Fish and Game //

Phone: 465-4190  
 Date: 1/17/97  
 Date: 1/21/97

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**HB**

**33**

# ALASKA STATE LEGISLATURE

## House of Representatives

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## Representative Norman Rokeberg

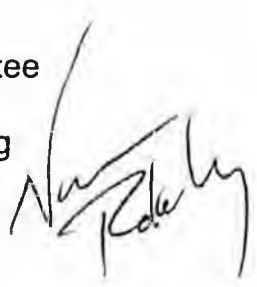
### MEMORANDUM

TO: The Honorable Tim Kelly  
Chairman, Senate Rules Committee

FROM: Representative Norman Rokeberg

DATE: April 23, 1998

RE: CSHB 33 (FIN) am  
Real estate licensees



I would request that CSHB 33 (FIN) am be considered for calendaring for action on the Senate floor.

Attached are the following:

- I. CSHB 33 (FIN) am
- II. Sponsor Statement
- III. Sponsor Summary
- IV. Sectional Analysis
- V. Frequently Asked Questions
- VI. Current Fiscal Note [CSHB 33 (L&C)]
- VII. Position Statement:
  - A. Department of Commerce & Economic Development
  - B. Real Estate Commission
- VIII. Anchorage Daily News, July 2, 1996, "Embezzlement nets five-year sentence"
- IX. "Commission payment disclosures: Why do we care" from the *Alaska Real Estate News*, November 1997.

Senator Tim Kelly  
April 23, 1998  
Page Two

- X. "AmeriNet Financial Systems, Inc. Announces Cash Rebates  
Totaling Over \$1,000,000"
  
- XI. Indications of support from:
  - A. Alaska Land Title Association
  - B. Kachemak Bay Title Agency, Inc.
  - C. Seattle Mortgage
  - D. Alaska Association of REALTORS®
  - E. Anchorage Board of REALTORS®
  - F. Kenai Peninsula Board of REALTORS®
  - G. Kodiak Board of REALTORS®
  - H. Southeast Board of REALTORS®
  - I. Valley Board of REALTORS®
  - J. Kachemak Board of REALTORS®
  - K. Greater Alaska Chapter, Community Associations Institute
  - L. Alaska Mortgage Bankers
  - M. Concerned Advocates for Real Estate Services (C.A.R.E.S.)
  - N. Powell Realty, Inc./Better Homes and Gardens letters (G.  
Eve Reckly, Helen G. Troutt, Janie Bee Powell, Honey Bee  
Anderson, Dale Anderson)
  - O. Dutch Knight, Frontier Realty
  - P. Totem Properties, Inc. letters (Janet Argevitch, Van  
Madding, Gary Lewis, Roger Porto, and Mike Ban)
  - Q. Robert E. Baer, Totem Realty, Inc.
  - R. Jack White Company (Manuel Escobedo, Carol Jensen)
  - S. Trevor Roehl
  - T. Century 21 All Star REALTORS® (Sue Bigelow, Whit  
Weaver, Terry Whitbeck)
  - U. Coldwell Bankers:Whiting Realty (Gene Whiting)
  - V. Larry Spencer
  
- XII. December 18, 1997 letter from Assistant Attorney General Horetski
  
- XIII. April 8, 1998 letter from Ruth Blackwell to Senator Leman

Thank you for considering this bill for scheduling.

# ALASKA STATE LEGISLATURE

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### Representative Norman Rokeberg

#### SPONSOR STATEMENT

#### CSHB 33 (FIN) am

CSHB 33 (FIN) am, An Act relating to real estate licensees, was introduced at the request of the Real Estate Commission (hereinafter "Commission"), and its appointed task force, with the intent of enhanced consumer protection. The most significant changes to the law are: including community association managers in real estate licensing; strengthening the language prohibiting unlicensed activities; expanding educational requirements; increasing the Commission's scope of authority; and expanding the exemptions for property management. The length of this bill is due to the many technical language revisions and housekeeping changes.

The need for new legislation became obvious after the indictment, and subsequent conviction, of a manager for various community associations on charges stemming from the embezzlement of \$570,000 from 18 separate community associations in Anchorage. Currently, anyone can undertake this activity and, with the exception of criminal law, there is no legal protection for the public.

In 1994, the Commission appointed a Task Force to review the significant number of recent consumer complaints and surety fund claims filed regarding property managers and also discussed the consumer losses brought about by some community association manager activities. CSHB 33 (FIN) am is the result of suggestions made by: the Commission's Task Force, members of the real estate community, community association managers, and the public.

The licensure of community association managers will provide the consumer with (1) more qualified managers, (2) recourse to surety fund and fidelity bond recovery, and (3) a licensing agency to oversee those who have a fiduciary responsibility to the public.

The other changes made by the bill are to assure the public that all real estate licensees in Alaska follow certain guidelines. Payments to non-licensed individuals and "marketing kickback" mechanisms ("affinity" groups) are strictly prohibited under this legislation.

The legislation expands the exemptions under current law, and will not impact individuals who (a) manage their own property, (b) manage four or fewer residential units for another, or, if more than four units, without a fee (except for expenses), (c) manage as a resident manager, or (d) manage as a member of a self-managed association.

I urge your support of this legislation.

ED4:2/27/98

# ALASKA STATE LEGISLATURE

## House of Representatives

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## Representative Norman Rokeberg

### SPONSOR SUMMARY OF CSHB 33 (FIN) am Real Estate Licensing, AS 08.88

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

V. PROHIBITED CONDUCT

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

VI. CONFLICT OF INTEREST

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

VII. EXCEPTIONS

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

VIII. MISCELLANEOUS PROVISIONS

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

# ALASKA STATE LEGISLATURE

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## Representative Norman Rokeberg

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

Date: March 3, 1998

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

Section 1: **Registration of mobile home dealers.** Exempts a real estate licensee who buys or sells mobile homes from licensing as a mobile home dealer.

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

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

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

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

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

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

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

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

Section 10. **Entitlement to license.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 45. Maximum liability. Minor language changes.

Section 46. Right to subrogation. Minor language changes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# ALASKA STATE LEGISLATURE

## House of Representatives

### 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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JUNEAU, AK 99801-1182  
PHONE: (907) 465-4968  
FAX: (907) 465-2040

## Representative Norman Rokeberg

### FREQUENTLY ASKED QUESTIONS CSHB 33 (FIN) am Real Estate Licensing By Representative Rokeberg

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

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

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

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

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

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

4. Why license community association managers?

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

5. Can a community association be self-managed?

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

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

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

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

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

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

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

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

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

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

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

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

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

**11. Is there a precedent for such provisions?**

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

# FISCAL NOTE

No: 1

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

Bill Version: CSHB 33 (L&C)  
(H) Publish Date: 1/30/98

Revision Date: \_\_\_\_\_  
Title: An Act relating to real estate licensing and the  
real estate surety fund;....  
Sponsor: Representative Rokeberg by Request  
Requestor: House Labor and Commerce

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

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	7.1	7.1				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>7.1</b>	<b>7.1</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
CAPITAL EXPENDITURES						
CHANGE IN REVENUES	***	***				

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	7.1	7.1				
<b>TOTAL</b>	<b>7.1</b>	<b>7.1</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**ANALYSIS:** (Attach a separate page if necessary)  
 HB 33 makes several amendments to the real estate licensing statutes, AS 08.88. The costs shown on this fiscal note represent costs associated with the re-write and public noticing of regulations for \$1.2; printing and mailing of new statute and regulation booklets to approximately 2,124 licensees for \$6.9. No costs are included for restructuring of the examination since the exam is scheduled for review at no additional costs in FY 98 by the exam contractor. Costs are shown for the first two-years only to cover the implementation stage of this legislation. Once HB 33 is implemented, these costs will no longer apply. \*\*\*Revenue in both designated program receipts and the surety fund can be expected to increase with the authority to set fees for each type of endorsement and to recover costs for educational programs. However, the amount of revenue cannot be estimated at this time until fees are reviewed in accordance with sec. 08.88.221.

Prepared by: Jennifer Strickler, Administrative Manager Phone: 465-2144  
 Division: Occupational Licensing Date: 1/29/98  
 Approved by Commissioner: Deborah B. Sedwick Date: \_\_\_\_\_  
 Agency: Commerce and Economic Development

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

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February 9, 1998

FEB - 9 1998

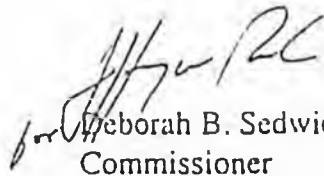
The Honorable Norman Rokeberg  
Chairman, Labor & Commerce Committee  
House of Representatives  
State Capitol, Rm. 24  
Juneau, Alaska 99801

Dear Representative Rokeberg:

The Department of Commerce and Economic Development supports the passage of CSHB 33 (L&C) ("HB 33"), which addresses several key issues of concern to Alaskans involved in real estate transactions. The bill provides for the regulation of Community Association Managers by requiring them to hold a real estate license with specific bonding and trust accounting requirements for handling community association funds. This will help protect community associations from financial loss. HB 33 strengthens enforcement by allowing civil fines for unlicensed practice of real estate and defining what constitutes a conflict of interest. The bill also reduces unregulated real estate activity by prohibiting the payment of any portion of a real estate commission to any unlicensed person either in Alaska or in another state.

The Department appreciates your introduction of House Bill 33 and asks for its favorable consideration by the Legislature.

Sincerely,

  
Deborah B. Sedwick  
Commissioner

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

### DIVISION OF OCCUPATIONAL LICENSING

TONY KNOWLES, GOVERNOR

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February 6, 1998

FEB - 6 1998

Representative Norman Rokeberg  
Chairman, Labor & Commerce Committee  
House of Representatives  
State Capitol  
Juneau, AK 99801

Dear Rep. Rokeberg,

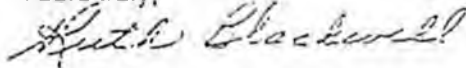
The Real Estate Commission voted to support HB33 at a teleconferenced meeting held on January 28, 1998. They were aware of the amendments being considered by the House Labor and Commerce Committee later that same day. The amendments which were adopted by your committee and incorporated into CSHB33 are amendments which they also supported.

In their discussion, the members expressed specific support for:

- 1) the proposed provisions of AS 08.88.167 which would enable civil penalties to be imposed by the Real Estate Commission on persons practicing without a license after an administrative hearing;
- 2) the new sections (e), (f), & (g) in AS 09.93.401;
- 3) the provisions throughout the bill relative to the licensing of community association managers.

The Commission appreciates your efforts and cooperation with the agency and the industry to address the licensing issues contained in HB33.

Yours truly,



Ruth Blackwell, Chair  
Real Estate Commission

cc: REC Members

Catherine Reardon, Director  
Division of Occupational Licensing

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# BUSINESS

ANCHORAGE DAILY NEWS  
July 2, 1996

ANCHORAGE DAILY NEWS

SECTION D

## Embezzlement nets five-year sentence

Condo association manager took at least \$423,500

By BRUCE MELZER  
Daily News reporter

Condominium manager Ronald W. Thornton stood in court Monday, faced some of the people whose money he embezzled and said, "I do deserve time" in prison.

Superior Court Judge Milton Souter gave it to him: a five-year prison sentence.

Thornton had pleaded no contest to one felony count of theft. The owner of Frontier Management Inc. admitted in court filings that he embezzled at least \$423,610 from 17 Anchorage condominium associa-

tions he managed.

Thornton's thefts totaled \$570,200 from 10 associations in all, said assistant district attorney James Payetto. Given the discrepancy in those amounts, the judge Monday postponed setting restitution that Thornton must pay.

But the judge said he was pessimistic that the homeowners' associations will recoup much. "He's not going to be able to pay this off, short of winning the New York State lottery," Souter said.

"Until the day I die I will try to make restitution to the

associations. I'm sorry. I am truly sorry," Thornton told the 25 or so former clients who filled nearly every seat in the courtroom.

Thornton will be eligible for parole after 20 months, Payetto said.

Thornton was a well-liked, trusted manager who ran the day-to-day affairs and finances of condominium associations around town, his former clients say. A condo association collects dues each month from condominium owners in a de-



RON THORNTON / ANCHORAGE DAILY NEWS  
Ron Thornton is sentenced Monday to five years in state Superior Court.

Please see Page D-4, CONDO

## CONDO: Judge gives 5-year sentence

Continued from Page D-1

velopment. The association decides how to spend the money — on landscaping, snow plowing, roof repairs, etc. — to benefit all the owners. Sometimes associations manage the money themselves; sometimes they hire professional managers like Thornton.

In Thornton's case, he often had the power to sign checks, and embezzled the money in part by writing checks for work never done and falsifying the financial reports he gave the associations, according to prosecutors and the victims.

Thornton's thefts were uncovered by Lorea Taft, president of Goldleaf Terrace on Strawberry Road in South Anchorage. Taft started looking for money in a reserve account to paint the condo units. But the cash wasn't there.

Taft said when he inquired about the money, Thornton replied, "Don't worry, the funds will be there."

Taft went to the association's auditor. There he found out that even though the association has been audited each year, Thornton never passed those audits to the board.

As they cobbled together a financial picture, Taft and the auditor saw that money was missing. All told the association lost \$10,760 since January 1992, according to documents filed in court.

Kalk Arms, downtown, got hit hardest of all. The condo claims Thornton took \$110,000, although Thornton estimated the amount at \$89,000, according to papers his lawyer filed in court.

Throughout it all, Thornton offered apologies but no excuses for his actions, he and his lawyer, Joe Josephson, said.

Thornton's story goes like this. In 1993, his wife left him for another man, according to papers Josephson filed.

Following that breakup, Thornton embarked on

path of self-destructive behavior, Josephson told the court. "It was inevitable that he be found out. I think he wanted to be found out, in a way," Josephson said.

Thornton took up with a woman and invested heavily in her businesses, paid her medical debts and took her on trips. All told, Thornton spent about \$350,000 on her and her companies, according to Josephson's documents.

Even Josephson said the woman, who is no longer with Thornton, didn't speak to the why of the crime.

"That's not a real excuse, that's just a soap opera."

Souler was incredulous. "I can understand \$25,000," the judge said, "But not \$20,000 plus dollars. This is not understandable."

Where is the money now? Fayette the prosecutor said Thornton had no assets that he or the police could find.

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# Alaska Real Estate News



Published by the Alaska Real Estate Commission

Tony Knowles  
Governor

Jeffrey W. Bush  
Acting Commissioner

Catherine Reardon  
Director

Volume 10

November 1997

Number 2

## *Time to renew!*

Any license issued before November 3, 1997 must be renewed by January 31, 1998, or it will lapse.

If your license lapses, you are NOT licensed to practice real estate, and you cannot perform any real estate activity until your license has been reinstated. No exceptions. And there is no grace period.

### *What are the fees?*

Licenses applying for license renewal will submit a fee of \$350. This includes the new biennial license fee of \$250 and a \$100 surety fee.

Applicants for new licenses to be issued after November 21, 1997, will pay \$430. This includes a non-refundable \$50 application fee, the new biennial license fee of \$250 and a \$100 surety fee.

### *How long will it take?*

Applications submitted by December 31 will be processed before January 31st.

Renewed license certificates will be mailed to the broker of  
*(continued on page 7)*

## Commission payment disclosures: *Why do we care?*

The demand for "referral fees" by relocation companies is a source of alarm for Alaska licensees.

These fees amount to 25-35% of total commission fees in transactions where customers or clients are members of affinity groups.

Affinity groups may be groups of employees of a large corporation, government groups or other groups with some association in common.

Relocation companies contract with organizations to assist their employees or members who are relocating from one geographic location to another.

Relocation companies then often have contracts with brokers throughout the country, to which the company refers members of these affinity groups for the sale of their existing homes and the purchase of new homes.

The company collects a referral fee from the real estate broker at the closing of the sale or purchase of a member's home, which often amounts to 25-35% of the commission on the transaction.

In order to gain more clients, relocation companies may offer cash rebates and/or cash discounts in

the form of frequent flyer miles to consumers who use their services.

The rebates or discounts to consumers come from the referral fees the company collects after the sale of the consumer's property. Thus, in effect, the consumer receives a portion of the real estate commission from the sale of the property.

The affinity groups in Alaska include British Petroleum, ARCO, American Airlines and Costco generally market the program to their own members.

*(continued on page 5)*

## *In this issue:*

- Affinity group marketing: what is it?*
- Fee changes*
- Mobile home dealers: register!*
- Why require E&O insurance?*

The concern of real estate brokers in Alaska and elsewhere is that they cannot provide the same services for 35% less than it cost them to provide those services before the emergence of the relocation companies.

### *Why require disclosure?*

The Alaska Real Estate Commission (AREC) is also concerned about the financial health of brokerages, and about the cost and effect of such plans for consumers.

It is clear that eventually the cost of real estate services to consumers would have to increase to provide commissions to an additional party in the transaction. Consumers are generally not aware of the price they are paying for the minimal benefit they receive.

### *It's a national problem.*

If it's any consolation, the same concerns were expressed by regulators and practitioners from across the country at a recent meeting of the Association of Real Estate License Law Officials (ARELLO). ARELLO has set up a special task force to look for solutions to the problem.

AREC has already taken action to ensure that consumers are advised

of exactly what commission money is being paid to whom in connection with real estate transactions in this state. Effective June 28, 12 AAC 64.130 says:

### **"12 AAC 64.130 GROUNDS FOR REVOCATION OR SUSPENSION.**

*The following acts, in addition to those specified elsewhere in the chapter, are grounds for revocation or suspension of a license:*

*(4) any payment or receipt of any rebate or compensation from any licensee or any unlicensed person, entity, or association in a real estate transaction without disclosing the specific names and amounts, in writing, to the principals of that transaction at the time that the following documents are signed:*

- (A) the listing contract;*
- (B) the receipt and agreement to purchase;*
- (C) the settlement statement."*

### *What can the Commission do by regulation?*

In an attempt to further clarify this language, the Commission has noticed its intent to reconsider the regulation at its December meeting.

Many licensees are not satisfied with a requirement for disclosure, but instead, want a prohibition on

any such affinity group marketing plans.

Many other states have attempted to clarify statutes and regulations to make it clear that payment of any kind to unlicensed persons in conjunction with a real estate transaction is unlawful. The most celebrated regulatory revision to date was accomplished by the Mississippi Real Estate Commission (MREC).

### *PHH vs. MREC*

MREC passed a rule making it unlawful for a Mississippi licensee to pay a referral fee to another real estate licensee when they knew that the second licensee intended to pay a portion of that commission to an unlicensed individual.

Mississippi law already provided its Commission power to revoke or suspend a license of an individual who paid any rebate, profit or commission to an unlicensed person.

The regulation further explained that a licensee could not pay any part of a fee, commission or other compensation received in the course of a transaction except to another licensee through the licensee's broker.

*(continued on page 6)*

FRANK & ERNEST® by Bob Thaves



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EMAIL: FRANK@BOBTHAVES.COM

## Commission disclosure (continued from page 1)

In August of this year, MREC added another section to the regulation stating: "No licensee shall knowingly pay a commission, or other compensation to a licensed person knowing that licensee will in turn pay a portion or all of that which is received to a person who does not hold a real estate license."

PHH, a relocation company doing business in Mississippi, sued the Commission seeking an injunction to prevent enforcement of the regulation.

Both parties agreed that the rule as amended prohibits the consumer rebates offered by PHH as part of its incentive program for affinity group members.

Both parties moved for summary judgment, agreeing that there were no genuine issues of material fact and that the case could be finally decided on the issues of law that were before the court.

PHH asserted that the rule was preempted by the provisions of

RESPA, violated the commerce clause of the United States Constitution, and was a violation of its first amendment right to free speech, because it prevented PHH from advertising its consumer rebate program.

### *The court's ruling*

The court found that the federal law did not conflict with the Mississippi rule, that it does not directly discriminate against interstate commerce, that it applies equally to brokers inside and outside the state of Mississippi, and that the rule effectuates the local interest of protecting consumers from unscrupulous organizations.

The court also found that the rule regulates conduct, not speech, and is therefore not subject to a First Amendment challenge.

Further, the court stated that the MREC was well within its statutory authority when it passed the rule in question "to carry out the purposes of this chapter".

### *Alaska law is different.*

In Alaska, recent decisions of the Office of the Attorney General have construed the powers of the Commission very narrowly.

That means that unless the statute specifically addresses a given issue, the Commission has no authority to pass regulations on that issue.

It is the position of the Attorney General's Office is that there is no prohibition in Alaska law against paying rebates or other compensation to principals in the transaction.

Therefore, a statutory revision is necessary to create such a prohibition. To incorporate language such as that upheld in Mississippi, Alaska would need a change in the law passed by the state legislature.

Representative Norman Rokeberg has been working on this issue. Contact his office with comments or suggestions.



## *Do we know where you are?*

*If you have not received your renewal forms, it is likely that the Commission does not have your current address.*

*To provide a current address, you must report your new address to the Commission's Anchorage office in writing. Be sure to indicate on your renewal form that the address you have given is a new address.*



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Tuesday April 14, 8:09 am Eastern Time

Company Press Release

**AmeriNet Financial Systems, Inc. Announces Cash Rebates Totaling Over \$1,000,000**

ENGLEWOOD, Colo.--(BUSINESS WIRE)--April 14, 1998--AmeriNet Financial Systems, Inc. (OTC BB:ANES - news), announced today it has paid out over \$1,000,000 in cash rebates to consumers since introducing the CARES(tm) Program in October, 1997.

The AmeriNet CARES(tm) Program pays consumers cash rebates and discounts when buying, selling, financing and refinancing their home. On a typical real estate and mortgage transaction, the CARES(tm) Program member could receive cash rebates totaling over \$8,600. The AmeriNet CARES(tm) Program is made available to corporations and affinity groups' employees and members and direct to consumers over AmeriNet's Internet Web site. Members and employees of Costco Companies and VETS(R) Data Corporation were the major benefactors of the AmeriNet CARES(tm) Program. \*not

Eric Cunliffe, President and Chief Operating Officer of AmeriNet said, " AmeriNet processed almost \$1 billion in mortgage loans and over \$256 million in real estate transactions. The Company's revenue is increasing at over 25% per month. AmeriNet is expanding into Virginia, Maryland and D.C. in April and California shortly thereafter. Revenues are expected to continue to increase as these and other states are opened. Currently, AmeriNet has approved over 80 real estate brokers with over 250 offices in Washington, Oregon, Arizona, New Mexico, Colorado and Virginia and 55 mortgage lenders to participate in the CARES(tm) Program."

AmeriNet Financial Systems, Inc. operates a technology based, personal contact real estate service. This service provides consumer with cash rebates coupled with unbiased and objective home buying, home selling and home financing assistance. AmeriNet's mission is to reduce the cost and stress of home ownership.

Contact:

AmeriNet Financial Systems, Inc.  
Ed Gresham, 303/267-1946 Fax: 303/290/0180  
Web Site: Ameri-Net.com

More Quotes and News: AMERINET FIN (OTC BB:ANES - news)

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**ALASKA LAND TITLE ASSOCIATION**

P.O. Box 241811 • Anchorage, Alaska 99524

April 10, 1998

Sen. Loren Leman  
Labor and Commerce Chair  
State Capitol  
Juneau AK 99811

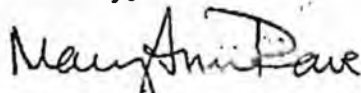
RE: HB 33

Dear Senator Leman:

The Alaska Land Title Association urges you to pass HB 33 in its current draft.

We feel this will be a much needed bill for the real estate industry and will be a benefit to the Alaska consumer.

Sincerely,



Mary Ann Rhee  
President

cc: Rep. Norm Rokeberg