

**ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 00/2**

**9855 HOUSE JUDICIARY**

*Idaho*

**Collateral References.** Validity of statute of foreign languages in schools. 7 A.L.R. 1695; or other regulations as to the use, or teaching, 29 A.L.R. 1452.

X

**33-1602. United States Constitution — National flag and colors — National anthem — "America." — a.** Instruction in the Constitution of the United States shall be given in all elementary and secondary schools. The state board of education shall adopt such materials as may be deemed necessary for said purpose, and shall also determine the grades in which such instruction shall be given;

b. Instruction in the proper use, display and history of and respect for the American flag and the national colors shall be given in all elementary and secondary schools. Such instruction shall include the pledge of allegiance to the flag, the words and music of the national anthem, and of "America." [1963, ch. 13, § 177, p. 27; am. 1991, ch. 287, § 1, p. 738.]

**Compiler's notes.** Federal flag laws are compiled as 36 U.S.C. §§ 172-180. such as oath of allegiance or salute to the flag, power to require performance by pupils. 110 A.L.R. 393; 120 A.L.R. 655; 127 A.L.R. 1502;

Federal laws as to the national anthem are compiled as 36 U.S.C. §§ 170 and 171. 141 A.L.R. 1030; 147 A.L.R. 698.

**Collateral References.** Patriotic ritual,

**33-1603. Sectarian instruction forbidden. —** No sectarian or denominational doctrine shall be taught in the public schools, nor shall any books, tracts, papers or documents of sectarian or denominational character be used therein. [1963, ch. 13, § 178, p. 27.]

**Cross ref.** Books of sectarian nature excluded from library, § 33-512.

Religious tests, qualifications, and teachings prohibited, Const., Art. 9, § 6.

State university, sectarian and partisan instruction forbidden, § 33-2806.

**Collateral References.** Releasing public school pupils from attendance for purpose of attending religious education classes. 2 A.L.R.2d 1372.

Bible distribution or use in schools — modern cases. 111 A.L.R.Fed. 121.

**33-1604. Bible reading in public schools. —** Selections from the Bible, to be chosen from a list prepared from time to time by the state board of education, shall be read daily to each occupied classroom in each school district. Such reading shall be without comment or interpretation. Any question by any pupil shall be referred for answer to the pupil's parent or guardian. [1963, ch. 13, § 179, p. 27.]

**Compiler's notes.** This section was declared unconstitutional in *Adams v Engelking*, 232 F. Supp. 666 (D. Idaho 1964).

**Cross ref.** Religious tests, qualifications, and teachings prohibited, Const., Art. 9, § 6.

**Unconstitutional.**

This statute, providing for daily Bible reading in public schools, is in conflict with the

First and Fourteenth Amendments of the United States Constitution and hence is unconstitutional, invalid and unenforceable. *Adams v. Engelking*, 232 F. Supp. 666 (D. Idaho 1964).

**Collateral References.** Bible distribution or use in public schools -- modern cases. 111 A.L.R.Fed. 121.

**33-1605. Health and physical fitness — Effects of alcohol, tobacco, stimulants and narcotics. —** In all school districts there shall be instruction in health and physical fitness, including effects of alcohol, stimulants, tobacco and narcotics on the human system. The state board of

X § 7-105. Display of flag; patriotic exercises.

(a) *Purpose.* — This section is enacted so that the love of freedom and democracy, shown in the devotion of all true and patriotic Americans to their flag and country, shall be instilled in the hearts and minds of the youth of America.

(b) *School flags.* — Each county board shall:

(1) Require the display of an American flag on the site of each public school building in its county while the school is in session;

(2) Buy all necessary flags, staffs, and appliances for the flags; and

(3) Adopt rules and regulations for the proper custody, care, and display of the flag.

(c) *Classroom flags; flag salute and pledge of allegiance.* — Each county board shall:

(1) Provide each public school classroom with an American flag;

(2) Prepare a program for each public school classroom for the beginning of each school day that provides for the salute to the flag and other patriotic exercises that are approved by the United States government; and

(3) Require all students and teachers in charge to stand and face the flag and while standing give an approved salute and recite in unison the pledge of allegiance as follows: "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

(d) *Exception from flag salute or pledge requirement.* — Any student or teacher who wishes to be excused from the requirements of subsection (c) (3) of this section shall be excused.

(e) *Other patriotic exercises.* — Each county board may provide for any other patriotic exercises it considers appropriate under the regulations and instruction that best meet the requirements of the different grades in the schools.

(f) *Disrespect in violation of section.* — Any individual who commits an act of disrespect, either by word or action, is in violation of the intent of this section. (An. Code 1957, art. 77, § 77; 1978, ch. 22, § 2.)

Maryland Law Review. — For comment on flag desecration statutes and the right to free speech, see 30 Md. L. Rev. 322 (1970).

Constitutionality. — Former mandatory sa-

lute and pledge of allegiance requirements of this section were unconstitutional and void. *State v. Lundquist*, 262 Md. 534, 278 A.2d 263 (1971).

§ 7-106. Textbooks, materials of instruction, and supplies.

(a) *Selection and purchase of school materials.* — On the recommendation of the county superintendent and subject to the provisions of this article, each county board shall adopt procedures for the selection and purchase of the following necessary items, at the lowest price consistent with good quality, for use in the public schools:

(1) Textbooks;

printed as set forth in Act 478 after deletion of "of sensory skills, any disease of eyes or ears, or evidence of dyslexia" from the end of the first sentence.

The amendment by Acts 1989, No. 241 deleted "sensory screening;" from the section heading;

the amendment by Acts 1989, No. 478 retained the phrase. On authority of R.S. 24:253, the section heading contained in Act 241 was printed, as the title of that Act reflected an intent "to delete certain requirements involving testing a student's proficiency in sensory skills".

§ 2115. Silent prayer or meditation; pledge of allegiance

A. Each parish and city school board in the state shall permit the proper school authorities of each school within its jurisdiction to allow an opportunity, at the start of each school day, for those students and teachers desiring to do so to observe a brief time in silent prayer or meditation. The allowance of a brief time for silent prayer or meditation shall not be intended nor interpreted as state support of or interference with religion, nor shall such time allowance be promoted as a religious exercise and the implementation of this Section shall remain neutral toward religion.

B. Each parish and city school board in the state shall also permit the proper authorities of each school to allow the opportunity for group recitation of the "Pledge of Allegiance to the Flag". Such recitation shall occur at the commencement of the first class of each day in all grades and in all public schools.

Amended by Acts 1987, No. 620, § 1; Acts 1989, No. 380, § 2; Acts 1992, No. 320, § 1.

Historical and Statutory Notes

Acts 1992, No. 321, § 1 amended this section to authorize, in addition to silent meditation, silent voluntary prayer in public schools, and added lan-

guage relating to the interpretation of the section as regards state support or interference with religion.

Cross References

Charter schools demonstration programs, see R.S. 17:3971 et seq.

United States Supreme Court

Daily period of silence in public schools for meditation or voluntary prayer, see *Wallace v. Jaffree*, 1985, 105 S.Ct. 2479, 472 U.S. 38, 86 L.Ed.2d 29.

student groups, see *Board of Educ. of Westside Community Schools v. Mergens* By and Through *Mergens*, 1990, 110 S.Ct. 2356, 496 U.S. 226, 110 L.Ed.2d 191.

Religious entanglement, schools, student religious groups, access, other noncurriculum related

Notes of Decisions

1. Validity

*Karen B. v. Treen*, C.A.5 (La.)1981, 653 F.2d 897, [main volume] affirmed 102 S.Ct. 1267, 455 U.S. 913, 71 L.Ed.2d 455.

2. In general

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§ 2115.1. Official prayer; prohibition

No public elementary or secondary school shall adopt or use any official or standard prayer and when a voluntary, student-initiated, student-led prayer is offered, it shall be done in accordance with the religious views of the student offering the prayer.

Added by Acts 1995, No. 264, § 1.

§ 2115.2. Student participation

No student attending any public elementary or secondary school shall be required to participate in any religious activity at such school.

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religious services during regular scheduled  
periods. OAG 64-111.

The nativity scene can be used in schools at  
Christmas so long as no religious significance  
is attached thereto. OAG 64-111.

The utterance of prayers or the reading of  
the Bible can continue in PTA meetings and  
voluntary Bible classes held without the reg-  
ular school hours or school curriculum. OAG  
64-111.

There would be nothing objectionable in a  
student, during a period of meditation, volun-  
tarily or spontaneously saying a prayer, silent  
or vocal, but a teacher could not do so. OAG  
64-111.

This section is unconstitutional as violative

of the first and fourteenth amendments of the  
United States Constitution under the doc-  
trine of Engel v. Vitale, 370 U.S. 421, 82 S. Ct.  
1261, 8 L. Ed. 2d 601 (1962) and School Dist.  
v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L.  
Ed. 2d 844 (1963). OAG 79-463.

For those school officials, employees and  
school board members that participate in or  
permit the continued practice of Bible reading  
as denounced by the United States Supreme  
Court, there stands a strong possibility of a  
legal claim by a student against them that the  
student's constitutional rights are being in-  
fringed under color of state law by these  
school personnel's actions. OAG 79-463.

DECISIONS UNDER PRIOR LAW

1. Sectarian Book.

The Bible is not a sectarian book. Hackett v.  
Brooksville Graded Sch. Dist., 120 Ky. 608, 27  
Ky. L. Rptr. 1021, 87 S.W. 792, 117 Am. St. R.  
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Collateral References. 68 Am. Jur. 2d,  
Schools, §§ 337-339.

78A C.J.S., Schools and School Districts,  
§ 684.

Power of school authorities to provide  
course of Bible study. 70 A.L.R. 1314.

Constitutionality of regulation or policy  
governing prayer, meditation, or "moment of  
silence" in public schools. 110 A.L.R. Fed. 211.

Bible distribution or use in public  
schools—modern cases. 111 A.L.R. Fed. 121.

158.175. Recitation of Lord's prayer and pledge of allegiance —  
Instruction in proper respect for and display of the  
flag — Observation of moment of silence or reflection.

- (1) As a continuation of the policy of teaching our country's history and as an affirmation of the freedom of religion in this country, the board of education of a local school district may authorize the recitation of the traditional Lord's prayer and the pledge of allegiance to the flag in public elementary schools. Pupil participation in the recitation of the prayer and pledge of allegiance shall be voluntary. Pupils shall be reminded that this Lord's prayer is the prayer our pilgrim fathers recited when they came to this country in their search for freedom. Pupils shall be informed that these exercises are not meant to influence an individual's personal religious beliefs in any manner. The exercises shall be conducted so that pupils shall learn of our great freedoms, including the freedom of religion symbolized by the recitation of the Lord's prayer.
- (2) The board of education of each school district shall establish a policy and develop procedures whereby the pupils in each elementary and secondary school may participate in the pledge of allegiance to the flag of the United States at the commencement of each school day. The policy shall include a plan for incorporating instruction concerning the proper display of and respect for the flag of the United States and the flag of Kentucky into the social studies curriculum.
- (3) The board of education of each local school district may purchase or otherwise acquire and provide for display in each classroom copies of the Declaration of Independence, the Gettysburg Address, and other documents the local board deems significant to the history of Kentucky and the United States.

# CORRECTION

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



Rev. 6/98

Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

*Idaho*  
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- (2) The board of education of each school district shall establish a policy and develop procedures whereby the pupils, in each elementary and secondary school may participate in the pledge of allegiance to the flag of the United States at the commencement of each school day. The policy shall include a plan for incorporating instruction concerning the proper display of and respect for the flag of the United States and the flag of Kentucky into the social studies curriculum.
- (3) The board of education of each local school district may purchase or otherwise acquire and provide for display in each classroom copies of the Declaration of Independence, the Gettysburg Address, and other documents the local board deems significant to the history of Kentucky and the United States.

CHAPTER 43.

UNITED STATES FLAG AND STATE FLAG.

Sec.  
 16-43-1. Flags must be displayed daily.  
 16-43-2. Teacher's report on display.  
 16-43-3. Teachers not displaying flag not allowed public funds.

Sec.  
 16-43-4. Purchase of flags.  
 16-43-5. Students to be afforded opportunity to voluntarily recite pledge of allegiance to United States flag.

§ 16-43-1. Flags must be displayed daily.

All schools in this state that are supported in whole or in part by public funds shall display every day on which school is in session, at some suitable place about the school building, the flag of the United States and the flag of the State of Alabama. (School Code 1927, § 615; Code 1940, T. 52, § 549.)

§ 16-43-2. Teacher's report on display.

Teachers in making monthly reports shall show on the same that the provisions of Section 16-43-1 have been complied with, and superintendents of city schools in drawing public money, or moneys, shall certify that each school under his supervision has complied with said section. (School Code 1927, § 616; Code 1940, T. 52, § 550.)

§ 16-43-3. Teachers not displaying flag not allowed public funds.

Teachers in the state shall not be allowed to draw public funds unless the provisions of this chapter are complied with, and the State Superintendent of Education is charged with the enforcement of the provisions hereof. (School Code 1927, § 617; Code 1940, T. 52, § 551.)

§ 16-43-4. Purchase of flags.

The flags provided for in this chapter shall be paid for by local school boards, in localities where local school boards exist, and in localities where there are no local school boards, such flags shall be paid for by the county boards of education. (School Code 1927, § 618; Code 1940, T. 52, § 552.)

X § 16-43-5. Students to be afforded opportunity to voluntarily recite pledge of allegiance to United States flag.

The State Board of Education shall afford all students attending public kindergarten, primary and secondary schools the opportunity each school day to voluntarily recite the pledge of allegiance to the United States flag. (Acts 1976, No. 360, p. 425.)

Collateral references. — 63 Am. Jur. 2d, Schools, § 247.

*Arizona*

Notes of Decisions

Refusal to take oath 1

oath required by A.R.S. §§ 15-504 and 38-231, Op.Atty.Gen. No. 186-020.

1. Refusal to take oath

School district may not continue to employ teacher's aide who is unwilling to sign loyalty

§ 15-505. Examination of persons displaying symptoms of pulmonary disease

A school district employee shall not be required to submit to annual or other regular periodic examinations for tuberculosis, except that in instances where such employee displays symptoms of pulmonary disease the governing board may require such employee to submit to such tests or examinations as a licensed physician deems appropriate.

Added by Laws 1981, Ch. 1, § 2, eff. Jan. 23, 1981. Amended by Laws 1986, Ch. 58, § 1; Laws 1986, Ch. 399, § 5; Laws 1990, Ch. 35, § 1.

Historical and Statutory Notes

Source:

Laws 1912, Ch. 37, § 1.  
Civ.Code 1913, § 2809.  
Rev.Code 1928, § 1045.  
Code 1939, § 54-1007.  
A.R.S. former § 15-206.

Laws 1960, Ch. 127, § 11.  
Laws 1976, Ch. 22, § 1.

The 1986 amendment of this section by Ch. 399 explicitly amended the 1986 amendment of this section by Ch. 58.

Cross References

Noncompliance as unprofessional conduct and grounds for certificate revocation, see § 15-509.

Library References

Schools ¶63(1), 133.1.  
WESTLAW Topic No. 345.

C.J.S. Schools and School Districts §§ 107 et seq., 146 to 148, 170 et seq.

Notes of Decisions

Testing 1

1. Testing

School district is not legally required to have job applicants tested for pulmonary tuberculosis. Op.Atty.Gen. No. 187-054.

X

§ 15-506. Flag display; recitation of the pledge of allegiance

School authorities shall purchase a United States flag, flagstaff and appurtenances, display the flag upon or near the school building during school hours and at such other times as they direct and set aside a specific time each day for those students who wish to recite the pledge of allegiance to the United States flag.

Added by Laws 1981, Ch. 1, § 2, eff. Jan. 23, 1981.

Historical and Statutory Notes

Source:

Laws 1912, Ch. 77, §§ 117 to 119.

Civ.Code 1913, §§ 2843, 2844.

## PROVISIONS

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later than the opening of the 8th grade and shall continue in the high school courses and in courses in state colleges, universities and the educational departments of state and municipal institutions. The extent and content of such courses below the college level shall be determined by the State Board of Education. In institutions of higher learning the trustees or other governing body of such institutions shall determine the extent and content of such courses. (33 Del. Laws, c. 183, §§ 1, 2; Code 1935, § 2759; 14 Del. C. 1953, § 4104; 49 Del. Laws, c. 379; 50 Del. Laws, c. 247, § 1; 60 Del. Laws, c. 246, § 1.)

### § 4104. Display of American flag.

(a) Every board of education in this State shall procure the American flag and cause the same to be displayed out-of-doors (weather permitting) on the school grounds of every school house in this State during school hours.

(b) The State Board of Education shall procure American flags for every free public school in this State and cause the same to be displayed in every school house in this State during school hours.

(c) The State Board shall make drafts, by warrants upon the State Treasurer from funds not otherwise appropriated, of such sums as are necessary to carry into full effect subsection (b) of this section. (33 Del. Laws, c. 184; 34 Del. Laws, c. 180, §§ 1, 4; Code 1935, §§ 2760, 2761; 14 Del. C. 1953, § 4105; 57 Del. Laws, c. 113.)

### § 4105. Salute to flag and pledge of allegiance.

In the opening exercises of every free public school each morning, the teachers and pupils assembled shall salute and pledge allegiance to the American flag as follows: "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation, under God, indivisible, with liberty and justice for all." (34 Del. Laws, c. 180, § 2; Code 1935, § 2761; 14 Del. C. 1953 § 4106; 51 Del. Laws, c. 51.)

### § 4106. Failure to require salute and pledge; penalty.

When the State Board of Education has procured and distributed American flags in each free public school, any principal or teacher of such free public school who fails to require the salute and pledge as set out in § 4105 of this title shall be fined not more than \$50 or imprisoned not more than 10 days. (34 Del. Laws, c. 180, § 3; Code 1935, § 2761; 14 Del. C. 1953, § 4107.)

### § 4107. General election day; closing of schools.

(a) Every day on which a general election is held in this State shall be a legal holiday for all school purposes and all schools, colleges and other institutions of learning shall be closed during the whole of such day.

(b) Whoever, having the control of any school, college or other institution of learning, causes or permits the same to be open and instruction given on such

*Boyer* 20-2-310. Student directory information; registering to vote and with selective service; pledge of allegiance.

(a) Any public school at the secondary level which provides access to the campus or to student directory information to persons or groups which make students aware of occupational or educational options shall provide access to the campus and student directory information on at least the same basis to official recruiting representatives of the military forces of the state and the United States for the purpose of informing students of educational and career opportunities available in the military.

(b) Each student in the public schools of this state, upon attaining the age of 18 years, shall be apprised of his or her right to register as an elector and to vote in elections and of any obligation to register with the Selective Service System. The State Board of Education shall promulgate rules and regulations to carry out this Code section. An excused absence of a student to register or vote, at the discretion of the local unit of administration, shall not exceed one school day.

(c) Each student in the public schools of this state shall be afforded the opportunity to recite the Pledge of Allegiance to the flag of the United States of America during each school day. It shall be the duty of each local board of education to establish a policy setting the time and manner for recitation of the Pledge of Allegiance. Such policy shall be established in writing and shall be distributed to each teacher within the school. (Code 1981, §§ 20-2-302 — 20-2-304, as enacted by Ga. L. 1985, p. 1657, § 1; Code 1981, § 20-2-310, as redesignated by Ga. L. 1987, p. 1169, § 1.)

Editor's notes. — See the editor's notes under the Article 6 heading for information as to the repeal of the former Code section.

**20-2-311. State Board of Postsecondary Vocational Education.**

Repealed by Ga. L. 1988, p. 1252, § 1, effective July 1, 1988.

Editor's notes. — This Code section was 1987, p. 575, § 2; and Ga. L. 1987, p. 1169, based on Ga. L. 1985, p. 1657, § 1; Ga. L. § 1.

**PART 15**

**MISCELLANEOUS PROVISIONS**

Editor's notes. — Ga. L. 1987, p. 1169, § 1, effective July 1, 1987, in effect created this part by transferring and redesignating former Code Sections 20-2-306, 20-2-307 and 20-2-308 as Code Sections 20-2-320, 20-2-321 and 20-2-322, respectively. See the editor's notes at the beginning of Part 14 of this article.

*Other States address "students."*

## CASE ANNOTATIONS

1. School regulation expelling pupil for refusal to salute flag held invalid; freedom of religion. *State v. Smith*, 155 K. 558, 559, 127 P.2d 518.

**72-5307.**

History: L. 1919, ch. 274, § 4; R.S. 1923, 72-5307; Repealed, L. 1939, ch. 309, § 7; June 30.

## Revisor's Note:

Later act, see 73-707, 73-710.

## CASE ANNOTATIONS

1. School regulation expelling pupil for refusal to salute flag held invalid; freedom of religion. *State v. Smith*, 155 K. 588, 589, 127 P.2d 518.

**72-5308.** Patriotic exercises; observation of holidays. It shall be the duty of the state board of education to prepare for the use of the public schools a program providing for patriotic exercises as may be deemed by it to be expedient, under such instructions as may best meet the varied requirements of the different grades in such schools. The program of patriotic observation of every school district shall include a daily recitation of the pledge of allegiance to the flag of the United States of America. It shall also make provision for the observance in public schools of Lincoln's birthday, Washington's birthday, Memorial day, and Flag day, and such other legal holidays of like character as may be designated by law.

History: L. 1907, ch. 319, § 3; R.S. 1923, 72-5308; L. 1969, ch. 310, § 23; July 1.

## Cross References to Related Sections:

Holidays, see ch. 35.

## CASE ANNOTATIONS

1. School regulation expelling pupil for refusal to salute flag held invalid; freedom of religion. *State v. Smith*, 155 K. 588, 589, 590, 596, 127 P.2d 518.

**72-5308n.** "Periods of silence" authorized. In each public school classroom the teacher in charge may observe a brief period of silence with the participation of all the pupils therein assembled at the opening of every school day. This period shall not be conducted as a religious exercise but shall be an opportunity for silent prayer or for silent reflection on the anticipated activities of the day.

History: L. 1969, ch. 310, § 24; July 1.

## Law Review and Bar Journal References:

"Constitutional Law: A Valid Secular Purpose is Required for 'Moment of Silent Prayer' Statutes (*Wallace v. Jaffree*, 105 S.Ct. 2479 (1985))." Paul C. Herr, 25 W.L.J. 366 (1986).

## Attorney General's Opinions:

Constitutionality of statute. 85-83.

**72-5308b.** Severability. If any clause, paragraph, subsection or section of this act [\*]

shall be held invalid or unconstitutional it shall be conclusively presumed that the legislature would have enacted the remainder of this act [\*] without such invalid or unconstitutional clause, paragraph, subsection or section.

History: L. 1969, ch. 310, § 61; July 1.

\* "This act," see, also, 8-272 to 8-279; 72-120, 72-127 to 72-129; 72-1110, 72-2401 to 72-2403; 72-4107, 72-4107a, 72-4141, 72-4142, 72-4148 to 72-4152; 72-4605, 72-5308, 72-5308b, 72-5326 to 72-5332; 72-5332a, 72-5333b, 72-5333d, 72-6201 to 72-6203; 72-6501, 72-6504 to 72-6506; 72-6518, 72-6802 to 72-6809; 72-6904, 72-6911, 72-6914, 72-7109, 72-8212, 75-608, 75-2302, 75-2305a, 75-2308, 79-1429, 79-2926.

**72-5309.**

History: L. 1907, ch. 319, § 4; R.S. 1923, 72-5309; Repealed, L. 1969, ch. 310, § 66; July 1.

**72-5310.**

History: L. 1915, ch. 365, § 1; R.S. 1923, 72-5310; Repealed, L. 1969, ch. 310, § 66; July 1.

## CASE ANNOTATIONS

1. Power to school board to determine subjects to be taught. *The State, ex rel., v. School District*, 112 K. 66, 68, 69, 209 P. 665.

**72-5311.** Secret fraternity of school organization. It shall be unlawful for the pupils of any high schools to participate in or be members of any secret fraternity or secret organization whatsoever that is in any degree a school organization.

History: L. 1907, ch. 320, § 1; May 27; R.S. 1923, 72-5311.

## Research and Practice Aids:

Schools 169.

C.J.S. Schools and School Districts §§ 493, 496.

**72-5312.**

History: L. 1907, ch. 320, § 2; R.S. 1923, 72-5312; Repealed, L. 1943, ch. 248, § 42; June 30.

**72-5313 to 72-5315.**

History: L. 1909, ch. 208, §§ 1 to 3; R.S. 1923, 72-5313 to 72-5315; Repealed, L. 1943, ch. 248, § 42; June 30.

**72-5316.**

History: L. 1893, ch. 128, § 1; R.S. 1923, 72-5316; Repealed, L. 1969, ch. 312, § 6; May 10.

## CASE ANNOTATIONS

1. Liability of city on bonds of school district. *Board of Education v. The State*, 64 K. 6, 9, 67 P. 579, *The State v. Nichols*, 67 K. 847, 73 P. 50.

2. Disorganized school-district territory not liable for debts of district to which attached. *Hunziker v. School District*, 153 K. 102, 107, 109 P.2d 115.

(5) Every state agency shall cooperate in making their staff and facilities available to further the objectives of this program.

**118.06 Flag and pledge of allegiance.** (1) Every school board and the governing body of every private school shall cause the U.S. flag to be displayed in the schoolroom or from a flagstaff on each school ground during the school hours of each school day.

(2) Every public and private school shall offer the pledge of allegiance in grades one to 8 at the beginning of school at least one day per week. No pupil may be compelled, against the pupil's objections or those of the pupil's parents or guardian, to recite the pledge.

History: 1993 a. 492

**118.07 Safety requirements.** (1) Every school board and the governing body of every private school shall provide a standard first aid kit for use in cases of emergency.

(2) (a) Once each month, without previous warning, the person having direct charge of any public or private school shall drill all pupils in the proper method of departure from the building as if in case of fire, except when the person having direct charge deems that the health of the pupils may be endangered by inclement weather conditions.

(b) Annually the person having direct charge of any public or private school shall file a report pertaining to such drills on forms furnished by the department of commerce. Such reports shall be made to the department of commerce and, in each community having a recognized fire department, to the chief of the fire department. When no fire drill is held during any month, the person having direct charge of the school shall state the reasons therefor in the report.

History: 1971 c. 164 s. 85, 1975 c. 39, 1981 c. 373, 1987 a. 27, 1995 a. 27 ss. 3938, 9116 (5)

**118.08 School zones; crossings.** (1) On any street or highway which borders the grounds of any public or private school in which school is held for a term of not less than 6 months, the authority in charge of the maintenance of the street or highway shall erect black and yellow "school" warning signs. The authority may also designate school crossings across any street or highway, whether or not the street or highway borders on the grounds of a school.

(2) All signs required by this section and their installation shall comply with standards adopted by the department of transportation

History: 1973 c. 90, 1975 c. 43, 1977 c. 29 s. 1654 (8)(g)

**118.09 Safety zones.** (1) Every school district maintaining a school outside the corporate limits of a city or village shall provide at the school site a zone which will provide safety for pupils from vehicular traffic during loading and unloading of pupils at the school. The zone may consist of a widening toward or into the schoolyard of the traveled portion of the adjacent highway so as to permit a vehicle to stop in the extended area completely clear of such traveled portion or may be constructed wholly within the schoolyard with connecting roads to the adjacent highway. The zone and approaches from the highway for use of vehicles shall be graveled or hard-surfaced.

(2) The school district shall cooperate with the agency of the town, county or state having jurisdiction of the highway to the end that matters pertaining to the highway will be properly protected. Contracts for the necessary materials and construction and maintenance, including snow removal, of zones may be entered into with the county or town or with private persons. If the contracting party does not have jurisdiction over the highway, the contract shall be approved by the agency of the state, county or town having jurisdiction over the highway before any work is commenced thereunder.

(3) All loading and unloading of pupils at the school, whether transported by a public or private vehicle, shall take place in the safety zone. The operator of a vehicle under contract to transport

pupils to the school shall have necessary police powers so that pupils will be properly safeguarded in loading and unloading at the zone and while the operator's vehicle is approaching and leaving the zone. The operator shall first alight before loading or unloading pupils at the zone, and while at stops on the operator's highway route to load and unload pupils, the operator shall exhibit the vehicle's stop sign.

(4) Private schools shall comply with this section to the same extent as school districts.

History: 1993 a. 492.

**118.10 School safety patrols.** Any school board may organize school safety patrols and, with the permission of the parents, appoint pupils as members thereof for the purpose of influencing and encouraging the other pupils to refrain from crossing public highways at points other than at regular crossings and for the purpose of directing pupils not to cross highways at times when the presence of traffic would render such crossing unsafe. Nothing in this section authorizes or permits the use of any safety patrol member for the purpose of directing vehicular traffic, nor may any safety patrol member be stationed in that portion of the highway intended for the use of vehicular traffic, but this section shall not affect any plan in operation on July 11, 1939, under which a junior police patrol directs traffic under the authorization, supervision and control of either the sheriff's department or of the chief of police or traffic department of the police department of any city, town or village. No liability shall attach to the school district or any individual, school board member, school district administrator, teacher or other school authority by virtue of the organization, maintenance or operation of a school safety patrol organized, maintained and operated under this section.

**118.105 Control of traffic on school premises.** (1) Any school board may request local authorities to control motor vehicle and pedestrian traffic on off-highway school premises located within the jurisdiction of such local authorities.

(2) If the governing body of any town, city or village by ordinance regulates the operation and parking of motor vehicles on off-highway public school premises, school drives or parking lots or pedestrian traffic on any such drives or parking lots, the school board may enter into written agreements with such governing body for reimbursement of the cost of enforcing such ordinance.

(3) Nothing in this section shall preclude the governing body of any town, city or village from repealing ordinances regulating the operation or parking of motor vehicles on off-highway public school premises, drives or parking lots or regulating pedestrian traffic on such drives or parking lots without prior consent of a school board which requested enactment of such ordinance.

History: 1975 c. 251

**118.11 School fences.** The school district shall erect and maintain all the fence necessary to enclose the school site or grounds without any financial burden on the holders of adjoining properties.

**118.12 Sale of goods and services at schools.** (1) (a) Except as provided under par. (b), any person may sell or promote the sale of goods or services on school district or cooperative educational service agency property.

(b) A school board may adopt written resolutions governing the sale and promotion of goods and services on school district property. The board of control of a cooperative educational service agency may adopt written resolutions governing the sale and promotion of goods and services on agency property. The resolutions may prohibit, restrict or provide guidelines for such sales and promotions.

(2) (a) No school district employe may receive for his or her personal benefit anything of value from any person other than his or her employing school district to sell, promote the sale of or act as an agent or solicitor for the sale of any goods or services to any public school pupil while on the property of his or her employing

Va. 1, 254 S.E.2d 561 (1979); Meadows v. Hey, 184 W. Va. 75, 399 S.E.2d 657 (1990); Lincoln County Bd. of Educ. v. Adkins, 188 W. Va. 430, 424 S.E.2d 775 (1992).

Cited in Fox v. Board of Educ., 160 W. Va. 668, 236 S.E.2d 243 (1977).

§ 18-5-15a. Study of multicultural education for school personnel.

County boards of education shall annually provide a program, during at least one noninstructional day of the school term, for the study of multicultural education for all school personnel as defined in subsection (a), section one [§ 18A-1-1(a)], article one, chapter eighteen-a of this Code. The study provided shall be in compliance with regulations to be developed by the state board of education.

As used in this section, multicultural education means the study of the pluralistic nature of American society, including its values, institutions, organizations, groups, status positions and social roles. (1981, c. 82.)

Stated in Bailey v. Truby, 174 W. Va. 8, 321 S.E.2d 302 (1984).

§ 18-5-15b. Pledge of allegiance to the flag.

Every instructional day in the public schools of this state shall be commenced with a pledge of allegiance to the flag of the United States. Pupils who do not wish to participate in this exercise shall be excused from making such pledge. (1986, c. 60.)

Former rule making it compulsory for public school pupils to salute the flag and pledge allegiance, as applied to children who were expelled for refusal to comply, and whose absence thereby became "unlawful," subjecting them and their parents or guardians to punishment, was held unconstitutional. West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628, 147 A.L.R. 674 (1943).

§ 18-5-15c. County boards of education; training in prevention of child abuse and neglect and child assault; regulations; funding.

(a) In recognition of the findings of the Legislature as set forth in section one [§ 49-6C-1, repealed], article six-e, chapter forty-nine of this code, the Legislature further finds that public schools are able to provide a special environment for the training of children, parents and school personnel in the prevention of child abuse and neglect and child assault and that child abuse and neglect prevention and child assault prevention programs in the public schools are an effective and cost-efficient method of reducing the incidents of child abuse and neglect, promoting a healthy family environment and reducing the general vulnerability of children.

(b) County boards of education shall be required, to the extent funds are provided, to establish programs for the prevention of child abuse and neglect and child assault. Such programs shall be provided to pupils, parents and

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67, 203 S.E.2d 358

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tests under the supervision of the state department of elementary and secondary education in accordance with the programs.

#### History of Section.

G.L. 1956, § 16-22-9; P.L. 1963, ch. 12, § 1; (P.L. 1996, ch. 404, § 1) deleted "of Rhode P.L. 1979, ch. 78, § 1; P.L. 1985, ch. 46, § 1. Reenactments. The 1996 Reenactment Island" following "state" in the last sentence.

**16-22-10. Voting instruction.** — The school committees of the several cities, towns, and school districts shall provide for students of the senior class in high school a course of instruction and demonstration in the operation of a voting machine, and of the manner of casting a valid ballot. The board of elections is hereby directed to make available to each city and town school committee one voting machine per town, to carry out the purposes of this section.

#### History of Section.

P.L. 1969, ch. 139, § 1.

**16-22-11. Pledge of allegiance.** — (a) All public schools, commencing with preprimary school through and including high school, shall commence each day with the following pledge:

"I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all."

(b) Any person not wishing to participate in the "pledge of allegiance" is hereby exempt from participation and need not participate in the pledge.

#### History of Section.

P.L. 1981, ch. 282, § 1.

Repealed Sections. The former section

(G.L. 1956, § 16-22-11); P.L. 1970, ch. 293, § 1), concerning classroom periods of silence, was repealed by P.L. 1977, ch. 84, § 2.

**16-22-12. Required courses on alcohol and substance abuse.** — (a) The school committees of the several cities, towns, and school districts shall provide for the incorporation of mandatory instruction of students in grades one through twelve (12) on the effects of alcohol and substance abuse upon the human system in existing health education or other courses.

(b) The board of regents for elementary and secondary education shall institute courses of instructions for teachers in the public school system on the effects of alcohol and substance abuse.

#### History of Section.

P.L. 1976, ch. 304, § 1; P.L. 1985, ch. 74, § 1; P.L. 1985, ch. 303, § 1.

**RESEARCH REFERENCES AND PRACTICE AIDS:**

52 NY Jur, Schools, Colleges, and Universities § 467.  
68 Am Jur 2d, Schools § 283.

**Annotations:**

Bible distribution or reading in public schools. 45 ALR2d 742.

X

**§ 802. Instruction relating to the flag; holidays**

1. It shall be the duty of the commissioner of education to prepare, for the use of the public schools of the state, a program providing for a salute to the flag and a daily pledge of allegiance to the flag, for instruction in its correct use and display and such other patriotic exercises as may be deemed by him to be expedient, under such regulations and instructions as may best meet the varied requirements of the different grades in such schools.

2. It shall also be his duty to make special provision for the observance in the public schools of Lincoln's birthday, Washington's birthday, Memorial day and Flag day, and such other legal holidays of like character as may be hereafter designated by law when the legislature makes an appropriation therefor.

3. Nothing herein contained shall be construed to authorize military instruction or drill in the public schools during school hours, except that the board of education of any school district may offer during school hours a junior reserve officer training program in conjunction with the United States Department of Defense to those students in grades nine through twelve who are at least fourteen years of age provided that enrollment and participation in such program is voluntary on the part of the student and written consent of a parent or guardian is submitted by such student and further provided, that the conduct of instruction on or the presence within any school of any type of current or future weaponry as part of such program is prohibited.

**HISTORY:**

Add. L. 1947, ch 820, eff July 1, 1947 with substance transferred from former §§ 712, 713.

Sub 1, amd. L. 1956, ch 177, L. 1963, ch 874, eff Apr 26, 1963.

Sub 3, amd. L. 1973, ch 791, eff June 22, 1973.

**CROSS REFERENCES:**

Other provisions with regard to the flag, §§ 418-420.

Exhibition or display of flag, CLS Gen Bus § 136.

**CODES, RULES AND REGULATIONS:**

Regulations of the commissioner: elementary and secondary education: flag regulations. 8 NYCRR §§ 108.1 et seq.

Regulations of the commissioner: elementary and secondary education: holiday and religious observance. 8 NYCRR §§ 109.1, 109.2.

**RESEARCH REFERENCES AND PRACTICE AIDS:**

52 NY Jur, Schools, Colleges, and Universities §§ 435, 468, 469.

68 Am Jur 2d, Schools § 283.

References

C.J.S. Schools and School Districts § 445.

Electronic Research

vide following the Preface.

in the public school system shall 30.

11, 1968.

Legal Note

49, L.1933, c. 400, § 6, p. 1117, 18:15-45. L.1913, c. 294, § 22, p. 605, amended by L.1917, c. 117, § 1, p. 257 [1924 Suppl. § 185-367].

References

Schools, see § 18A:6-1 et seq. see § 18A:54-25.

Code References

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References

C.J.S. Schools and School Districts §§ 14, 483.

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Legal Note

Notes of Decisions

Duration of Instruction 1

tion for a period of not less than 180 days in the school year. Atty.Gen.F.O. 1975, No. 19.

Duration of Instruction

Public schools in New Jersey are mandated by law to remain open for instruc-

18A:36-3. Display of and salute to flag; pledge of allegiance

Every board of education shall:

(a) Procure a United States flag, flagstaff and necessary appliances therefor for each school in the district and display such flag upon or near the public school building during school hours;

(b) Procure a United States flag, flagstaff and necessary appliances or standard therefor for each assembly room and each classroom in each school, and display such flag in the assembly room and each classroom during school hours and at such other time as the board of education may deem proper; and

(c) Require the pupils in each school in the district on every school day to salute the United States flag and repeat the following pledge of allegiance to the flag: "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all," which salute and pledge of allegiance shall be rendered with the right hand over the heart, except that pupils who have conscientious scruples against such pledge or salute, or are children of accredited representatives of foreign governments to whom the United States government extends diplomatic immunity, shall not be required to render such salute and pledge but shall be required to show full respect to the flag while the pledge is being given merely by standing at attention, the boys removing the headdress.

L.1967, c. 271, § 18A:36-3, eff. Jan. 11, 1968.

Historical Note

Source: R.S. 18:14-80, amended by L.1944, c. 212; L.1954, c. 83.

Prior Laws: L.1903 (2d Sp.Sess.), c. 1, § 230, p. 91 [C.S. p. 4803, § 230], amended by L.1932, c. 145, § 1, p. 260.

Library References

Schools 164.  
WESTLAW Topic No. 345.

C.J.S. Schools and School Districts § 485.

194:14 Nonresident Pupils. A district may determine upon what terms scholars from other districts may be admitted to its schools, and if a district neglects to make such determination the school board may do it.

HISTORY

Source. RS 73:7. CS 77:7. GS 78:19. GL 86:19. PS 89:12. 1921, 85, IV:13. PL 119:14. RL 138:14.

194:15 School Year. The fiscal and scholastic year for all school districts shall end June 30 in each year.

HISTORY

Source. 1917, 122:1. 1921, 85, IV:15. PL 119:15. RL 138:15.

X

194:15-a Lord's Prayer and Pledge of Allegiance in Public Elementary Schools. As a continuation of the policy of teaching our country's history and as an affirmation of the freedom of religion in this country, a school district may authorize the recitation of the traditional Lord's prayer and the pledge of allegiance to the flag in public elementary schools. Pupil participation in the recitation of the prayer and pledge of allegiance shall be voluntary. Pupils shall be reminded that this Lord's prayer is the prayer our pilgrim fathers recited when they came to this country in their search for freedom. Pupils shall be informed that these exercises are not meant to influence an individual's personal religious beliefs in any manner. The exercises shall be conducted so that pupils shall learn of our great freedoms, which freedoms include the freedom of religion and are symbolized by the recitation of the Lord's prayer.

HISTORY

Source. 1975, 225:1, eff. Aug. 2, 1975.

CROSS REFERENCES

Freedom of assembly and religion in public schools, see RSA 180:1-b.

LIBRARY REFERENCES

West Key Number

Schools and School Districts 465

CJS

Schools and School Districts § 196

ALR

Power to require pupil to recite oath of

allegiance or salute to the flag, 110 ALR 388; 120 ALR 655; 127 ALR 1502; 141 ALR 1020; 117 ALR 698.

Prayers in public schools, 86 ALR2d 1352.

What constitutes "prayer" under federal constitutional prohibition of prayer in public schools, 30 ALR3d 1352.

194:15-b Instruction in New Hampshire's Cultural Heritage and Ethnic History Authorized. A school district may include one-semester courses at the elementary and secondary levels in the cultural heritage and ethnic history of New Hampshire's people, and may raise and appropriate money for this purpose.

HISTORY

Source. 1988, 122:1, eff. June 15, 1988.

Supplemental Material

flag of the United States and the flag of the State of Mississippi and said course of study shall include the history of each flag and what they represent and the proper respect therefor. There shall also be taught in the public schools the duties and obligations of citizenship, patriotism, Americanism and respect for and obedience to law.

SOURCES: Codes, 1942, § 6216-07; Laws, 1953, Ex Sess, ch. 26, § 7; 1970, ch. 360, § 1, eff from and after passage (approved April 1, 1970).

Cross references—

Criminal offense of desecration of national or state flag, see § 97-7-39.

§ 37-13-7. Pledges of allegiance to United States and Mississippi flags.

(1) The boards of trustees of the public schools of this state shall require the teachers under their control to have all pupils repeat the oath of allegiance to the flag of the United States of America at least once during each school month, such oath of allegiance being as follows:

"I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

(2) The official pledge of the State of Mississippi shall read as follows:

"I salute the flag of Mississippi and the sovereign state for which it stands with pride in her history and achievements and with confidence in her future under the guidance of Almighty God."

The pledge of allegiance to the Mississippi flag shall be taught in the public schools of this state, along with the pledge of allegiance to the United States flag.

SOURCES: Codes, 1942, §§ 6216-02, 6216-08.5; Laws, 1953, Ex Sess, ch. 26, § 8; 1960, ch. 391; 1962, ch. 492, §§ 1-3.

Research and Practice References—

69 Am Jur 2d, Schools § 255.

§ 37-13-9. Curriculum committee.

The state board of education is hereby authorized to appoint a curriculum committee, composed of professional and lay members, not to exceed seven in number, to make a continuous study of the curriculum of the public schools and to make recommendations to the state board of education from time to time as to changes which should be made in the curriculum in the grammar school grades and in the high school grades. The members of such committee as of July 1, 1954, shall continue to serve until the expiration of the terms for which they were appointed; thereafter the members of such committee shall be appointed and serve for a term of two years and until their successors are appointed. Each member of said committee shall receive a per diem of fifteen dollars (\$15.00) for each day actually spent attending the meetings of the

and Statutory Notes

SCHOOLHOUSES

§ 69. Display of national flags; pledge of allegiance; penalty for violation

The school committee shall provide for each schoolhouse under its control, which is not otherwise supplied, flags of the United States of silk or bunting not less than two feet long, such flags or bunting to be manufactured in the United States, and suitable apparatus for their display as hereinafter provided. A flag shall be displayed, weather permitting, on the school building or grounds on every school day and on every legal holiday or day proclaimed by the governor or the President of the United States for especial observance; provided, that on stormy school days, it shall be displayed inside the building. A flag shall be displayed in each assembly hall or other room in each such schoolhouse where the opening exercises on each school day are held. Each teacher at the commencement of the first class of each day in all grades in all public schools shall lead the class in a group recitation of the "Pledge of Allegiance to the Flag". A flag shall be displayed in each classroom in each such schoolhouse. Failure for a period of five consecutive days by the principal or teacher in charge of a school equipped as aforesaid to display the flag as above required, or failure for a period of two consecutive weeks by a teacher to salute the flag and recite said pledge as aforesaid, or to cause the pupils under his charge so to do, shall be punished for every such period by a fine of not more than five dollars. Failure of the committee to equip a school as herein provided shall subject the members thereof to a like penalty.

Amended by St.1998, c. 463, § 65.

Historical and Statutory Notes

1998 Legislation

St.1998, c. 463, § 65, an emergency act, approved Jan. 14, 1999, a corrections bill, substituted "of" for "or".

§ 71. Use of school property; purposes

Historical and Statutory Notes

Related Laws:

St.1996, c. 151, § 613, approved June 30, 1996, and by § 690 made effective July 1, 1996, provides:

"Subject to the provisions of section seventy-one of chapter seventy-one of the General Laws but notwithstanding the provisions of any other general or special law to the contrary, the department of

education is hereby authorized and directed to promulgate regulations which control the utilization of school buildings for multiple purposes. Said regulations shall advocate and encourage the utilization of said school buildings for uses including but not limited to after school programs, day care centers, recreation centers, senior centers and night school programs."

RIGHTS AND RESPONSIBILITIES OF PUBLIC SECONDARY SCHOOL STUDENTS

§ 82. Public secondary schools; right of students to freedom of expression; limitations; definitions

Notes of Decisions

Vulgar language 3

may reasonably be considered vulgar, but does not cause disruption or disorder; clear statutory language could not be construed as creating exception for arguably vulgar, lewd or offensive language absent showing of disruption within school. *Field v. School Committee of South Hadley* (1999) 67 N.E.2d 869, 423 Mass. 283.

3. Vulgar language

High school students in public school have freedom under school freedom of expression statute to engage in nonschool sponsored expression that

in  
ted

References

71,

of Decisions

Statutory authority of school principals to select all teachers and staff assigned to their school, subject to approval of school superintendent, extends to approval of staff transfers as well as of new hires. *School Committee of Lowell v. Local 159, Service Employees Intern. Union* (1997) 679 N.E.2d 583, 42 Mass.App.Ct. 690.

1. Arbitration

Arbitrator's ruling in favor of school service employees' union, directing school committee to approve transfer of custodian, was contrary to statute vesting authority to approve such transfers in school principal, and was therefore beyond scope of arbitrator's authority, as statute vesting authority in principal was not one over which collective bargaining agreement could prevail. *School Committee of Lowell v. Local 159, Service Employees Intern. Union* (1997) 679 N.E.2d 583, 42 Mass.App.Ct. 690.

committee; representation; meetings; em-  
removal

hall, for the purposes of the union, be a joint participating town, provided that any school be represented therein by its chairman and two committee shall annually, after completion of annual a day and place agreed upon by the chairmen of size by choosing a chairman and a secretary. It perintendent of schools, determine the relative to each town, fix his salary, which shall not be e for fringe benefits, and other conditions of erance pay, relocation expenses, reimbursement duties or office, liability insurance, and leave for ayment thereof in accordance with section sixty- respective shares to the several town treasurers. de department, by a two thirds vote of the full

Statutory Notes

# FISCAL NOTE

**STATE OF ALASKA  
1999 LEGISLATIVE SESSION**

**BILL NO. House Bill 192**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Education  
 Title An Act relating to reciting the BRU \_\_\_\_\_  
pledge of allegiance by public school students Component \_\_\_\_\_  
 Sponsor Representative James \_\_\_\_\_  
 Requester House State Affairs Component Serial No. \_\_\_\_\_

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

House Bill 192 addresses the display of flags and the pledge of allegiance and requires appropriate flag exercises to be conducted in schools.

There is no fiscal impact for the department.

Prepared by Barbara Thompson Phone 465-8727  
 Division Teaching and Learning Support Date/Time 4/28/99 4:13 PM  
 Approved by Commissioner: Richard S. Cross Date 4/28/99  
 Agency Department of Education

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# The Pledge of Allegiance

Thirty-one words which affirm the values and freedom that the American flag represents are recited while facing the flag as a pledge of Americans' loyalty to their country. The Pledge of Allegiance was written for the 400th anniversary, in 1892, of the discovery of America. A national committee of educators and civic leaders planned a public-school celebration of Columbus Day to center around the flag. Included with the script for ceremonies that would culminate in raising of the flag was the pledge. So it was in October 1892 Columbus Day programs that school children across the country first recited the Pledge of Allegiance this way:

**I pledge allegiance to my Flag and  
to the Republic for which it stands:  
one Nation indivisible, with Liberty  
and Justice for all.**

Controversy continues over whether the author was the chairman of the committee, Francis Bellamy - who worked on a magazine for young people that published the pledge - or James Upham, who worked for the publishing firm that produced the magazine. The pledge was published anonymously in the magazine and was not copyrighted.

According to some accounts of Bellamy as author, he decided to write a pledge of allegiance, rather than a salute, because it was a stronger expression of loyalty - something particularly significant even 27 years after the Civil War ended. "One Nation indivisible" referred to the outcome of the Civil War, and "Liberty and Justice for all" expressed the ideals of the Declaration of Independence.

The words "my flag" were replaced by "the flag of the United States" in 1923 because some foreign-born people might have in mind the flag of the country of their birth, instead of the U.S. flag. A year later, "of America" was added after "United States." No form of the pledge received official recognition by Congress until June 22, 1942, when it was formally included in the U.S. Flag Code. The official name of The Pledge of Allegiance was adopted in 1945. The last change in language came on Flag Day 1954, when Congress passed a law which added the words "under God" after "one nation."

Originally, the pledge was said with the right hand in the so-called "Bellamy Salute," with the hand resting first outward from the chest, then the arm extending out from the body. Once Hitler came to power in Europe, some Americans were concerned that this position of the arm and hand resembled the salute rendered by the Nazi military. In 1942 Congress established the current practice of rendering the pledge with the right hand placed flat over the heart.

Section 7 of the Federal Flag Code states that when not in military uniform, men should remove any headdress with their right hand and hold it at the left shoulder, thereby resting the hand over the heart. People in military uniform should remain silent, face the flag and render the military salute.

The Flag Code specifies that any future changes to the pledge would have to be with the consent of the President.

The Pledge of Allegiance now reads:

**I pledge allegiance to the flag of the United States of America;  
and to the Republic for which it stands, one Nation  
under God, indivisible, with liberty and justice for all.**

Dear Editor:

As a Veteran I support House Bill 192 which relates to the American Flag and the pledge of allegiance. Remember to some, the American Flag is very important and sometimes their only hope, I pray that other Americans would share this love for our nations flag and what it stands for.

I would like to share the following story with you. It is called "Mike's Flag" and was condensed from a speech by Leon K. Thornness, recipient of The Congressional Medal of Honor.

You've probably seen the bumper sticker somewhere along the road. It depicts an American Flag, accompanied by the words "These colors don't run." I'm always glad to see this, because it reminds me of an incident from my confinement in North Vietnam at the Hao Lo POW Camp, or "Hanoi Hilton," as it became known, then a Major in the U.S. Air Force. I had been captured and imprisoned from 1967-1973. Our treatment had been frequently brutal.

After three years, however, the beatings and torture became less frequent. During the last year, we were allowed outside most days for a couple of minutes to bathe. We showered by drawing water from a concrete tank with a homemade bucket.

One day as we all stood by the tank, stripped of our clothes, a young naval pilot named Mike Christian found the remnants of a handkerchief in a gutter that ran under the prison wall. Mike managed to sneak the grimy rag into our cell and began fashioning it into a flag.

Over time we all loaned him a little soap, and he spent days cleaning the material. We helped by scrounging and stealing bits and pieces of anything he could use. At night under his mosquito net, Mike worked on the flag. He made red and blue from ground-up roof tiles and tiny amounts of ink and painted the colors onto the cloth with water rice glue. Using thread from his own blanket and a homemade bamboo needle, he sewed on stars.

Early one morning a few days later, when the guards were not alert, he whispered loudly from the back of our cell, "Hey gang, look here." He proudly held up this tattered piece of cloth, waving it as if in a breeze. If you used your imagination, you could tell it was supposed to be an American flag. When he raised that smoky fabric, we automatically stood straight and saluted, our chest puffing out, and then a few eyes had tears.

About once a week the guards would strip us, run us outside and go through our clothing. During one of those shakedowns, they found Mike's flag. We all knew what would happen.

That night they came for him. Night interrogations were always the worst. They opened the cell door and pulled Mike out. We could hear the beginning of the torture before they even had him in the torture cell.

They beat him most of the night. About daylight they pushed what was left of him back through the cell door. He was badly broken; even his voice was gone.

Within two weeks, despite the danger, Mike scrounged another piece of cloth and began another flag. The Stars and Stripes, our national symbol, was worth the sacrifice to him. Now, whenever I see the flag, I think of Mike and the morning he first waved that tattered emblem of a nation.

It was then, thousands of miles from home in a lonely prison cell, that he showed us what it is to be truly free.

May God bless you

Edward Furman

Edward Furman  
P.O. Box 2367  
Cordova, AK 99574

**HB**

**2022**

9/26/99

JUD

WORK DRAFT

WORK DRAFT

WORK DRAFT

1-LS1137G -  
Utermohle  
9/26/99

*adapted as  
work draft 9/26*

**CS FOR HOUSE JOINT RESOLUTION NO. 202(JUD)**

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

**TWENTY-FIRST LEGISLATURE - SECOND SPECIAL SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST**

**A RESOLUTION**

1 Proposing amendments to the Constitution of the State of Alaska relating to use  
2 of indigenous subsistence resources by residents and relating to litigation on behalf  
3 of the state.

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 \* Section 1. Article VIII, sec. 4, Constitution of the State of Alaska, is amended to read:

6 Section 4. Sustained Yield. (a) Fish, forests, wildlife, grasslands, and all  
7 other replenishable resources belonging to the State shall be utilized, developed, and  
8 maintained on the sustained yield principle, subject to preferences among beneficial  
9 uses.

10 (b) The legislature may provide a preference to and among residents for a  
11 reasonable opportunity to take an indigenous subsistence resource on the basis of  
12 customary and traditional use, direct dependence, proximity to the resource, or the  
13 availability of alternative resources. The preference may be granted only when the  
14 harvestable surplus of the resource, consistent with the sustained yield principle  
15 and sound resource management practices, is not sufficient to allow a reasonable  
16 opportunity for all beneficial uses.

WORK DRAFT

WORK DRAFT

1-I.S1137G

1 \* Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding new  
2 sections to read:

3 **Section 30. Effective Date and Repeal of Subsistence Amendment.** (a) If  
4 Section 4 of Article VIII, as amended, regarding indigenous subsistence resources, is  
5 adopted at the 2000 general election, the amendment takes effect immediately on  
6 certification of the election returns by the lieutenant governor.

7 (b) Subsection (b) of Section 4 of Article VIII, regarding use of indigenous  
8 subsistence resources, is repealed on the day after the date of a final, nonappealable  
9 judgment or order by a federal court deciding that the rural subsistence priority in  
10 Section 804, Alaska National Interest Lands Conservation Act (P.L. 96-487), as  
11 amended, violates the Constitution of the United States. In this subsection, "final,  
12 nonappealable judgment or order" means a judgment or order that cannot be appealed  
13 because all possible appeals, including a petition for certiorari to the United States  
14 Supreme Court, have been taken or the time for taking an appeal has expired without  
15 appeal.

16 (c) Subsection (b) of Section 4 of Article VIII, regarding use of indigenous  
17 subsistence resources, is repealed on the day following the date on which the governor  
18 determines that State management of fish and wildlife on State land, including  
19 navigable waters to which the State holds title, has been preempted by the federal  
20 government under Title VIII, Alaska National Interest Lands Conservation Act (P.L.  
21 96 - 487).

22 **Section 31. Litigation on Behalf of the State.** The legislature may bring an  
23 action in the name of and on behalf of the State in an appropriate federal court to  
24 challenge the constitutionality of the rural subsistence priority of Title VIII, Alaska  
25 National Interest Lands Conservation Act (P.L. 96-487) under the Constitution of the  
26 United States on grounds as the legislature may determine appropriate.

27 \* Sec. 3. PURPOSE. The purpose of the amendments proposed by this resolution is to  
28 provide for a preference for subsistence uses of fish, wildlife, and other renewable natural  
29 resources; to ensure state management of fish and wildlife throughout the state; and to bring  
30 the state into compliance with Title VIII, Alaska National Interest Lands Conservation Act  
31 (P.L. 96-487).

WORK DRAFT

WORK DRAFT

1-I.S1137G

- 1 \* Sec. 4. The amendments proposed by this resolution shall be placed before the voters of
- 2 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
- 3 State of Alaska, and the election laws of the state.

**Subject: House Judiciary Amendments**

**Date:** Tue, 28 Sep 1999 13:46:02 -0800

**From:** Crystalline Jones <Crystalline\_Jones@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Mindy Rowland <Mindy\_Rowland@legis.state.ak.us>,  
Crystalline Jones <Crystalline\_Jones@legis.state.ak.us>

Mindy,  
Hope this is helpful.

Amendment 4:

Page 1, Delete lines 10-16

Insert

1 "(b) The Legislature may, consistent with the sustained yield principle and sound  
2 resource management practices, provide a preference to and among residents for a  
3 reasonable opportunity to take an indigenous subsistence fish or wildlife resource on the  
4 basis of customary and traditional use, direct dependence, the availability of alternative  
5 resources, the place of residence and proximity to the resource. The preference may be  
6 granted only when the harvestable surplus of the resource is not sufficient to provide for  
7 the customary and traditional level of subsistence use."

Amendment to Amendment 4:

(was not adopted)

Delete text, after "granted only"

Insert:

"in times of shortage as defined by statute."

Amendment to Amendment 4:

(was not adopted)

In the last sentence of Amendment 4,

Delete text after "granted"

Insert:

"when no practical alternative means are available to replace the food supplies and other items gathered from the fish and wildlife which supply residents dependent on subsistence uses."

Amendment to Amendment 4:

(adopted)

In the last sentence of Amendment 4,

Delete "The preference may be granted only"

The last sentence of Amendment 4 would read as follows:

"When the harvestable surplus of the resource is not sufficient to provide for all beneficial uses, other beneficial uses shall be limited to protect subsistence uses."

Amendment to Amendment 4:

(adopted)

Line 3 of Amendment 4; page 1, line 2(conforming title)

Delete "indigenous subsistence fish or wildlife"

Insert "wild renewable"

Page 2, line 4

Delete "indigenous subsistence"

Insert " wild renewable"

Amendment 5(refer to language in Amendment 4):

(was not adopted)  
Line 2 of Amendment 4,  
Delete "for a reasonable opportunity"

Amendment 6(refer to language in Amendment 4):  
(was adopted)  
Line 5 of Amendment 4,  
Delete "and"  
Insert "or"

THEREFORE, AMENDMENT 4 ended up reading as follows:

Page 1, Delete lines 10-16

Insert

1 "(h) The Legislature may, consistent with the sustained yield principle and sound  
2 resource management practices, provide a preference to and among residents for a  
3 reasonable opportunity to take a wild renewable resource for subsistence uses on the  
4 basis of customary and traditional use, direct dependence, the availability of alternative  
5 resources, the place of residence or proximity to the resource.  
6 When the harvestable surplus of the resource is not sufficient to provide for all  
7 beneficial uses, other beneficial uses shall be limited to protect subsistence uses uses."

9-26  
# }

**Amendment**

OFFERED IN THE HOUSE JUDICIARY COMMITTEE  
TO: HJR 202

BY REPRESENTATIVE

*Markowski*

1. Page 1, line 11 after "proximity to the resource,"

insert "place of residence,"

*adpta.*  
*w/o*

ROKBERG

DELETE P 2, L 7-21

#2

1 Page \_\_\_\_\_ Line \_\_\_\_\_ add

INSERT :

2

3 Subsection B, of Section 4 of Article VIII, regarding a subsistence priority, is repealed  
4 when the governor certifies that;

- 5 1. any federal agency has implemented regulations on the management of fish  
6 and or wildlife on State land, including navigable waters to which the State  
7 holds title, under Title VIII, Alaska National Interest Lands Conservation Act  
8 (P.L. 96-487); or  
9 2. a state or federal court has issued a final nonappealable judgment or order  
10 deciding that any provision of Title VIII, Alaska National Interest Lands  
11 Conservation Act (P.L. 96-487), as amended, violates the constitution of the  
12 United States.

13 Any person may bring an action in superior court to enforce this subsection.

14

15

16

17

18

19

20

Fcd

CROFT

AMENDMENT #3

PAGE 2

DELETE LINES 7-26

Am #4 as an adptd

GREEN

~~#3~~ #4

AMENDMENT

~~by Rep.~~

Page 1, Delete lines 10-16.

Insert:

1 "(b) The Legislature may, consistent with the sustained yield principle and sound  
 2 resource management practices, provide a preference to and among residents for a  
 3 reasonable opportunity to take an (indigenous) <sup>→ MURK</sup> subsistence fish or wildlife resource on the  
 4 basis of customary and traditional use, direct dependence, the availability of alternative  
 5 resources, the place of residence and proximity to the resource. (The preference may be  
 6 granted only when the harvestable surplus of the resource is not sufficient to provide for  
 7 the customary and traditional level of subsistence use." >

adptd.  
as amended

delete:

AM #5 - KERTT "for a reasonable opp"

↳ Fld

CROFT - AM #6 adptd "OR"

9/26/99

from AOC  
Kelleyhouse add.

(b) The legislature may, consistent with the sustained yield principle and sound resource management practices, provide a preference to and among residents for a reasonable opportunity to take an indigenous subsistence fish or wildlife resource on the basis of [CUSTOMARY AND TRADITIONAL USE,] direct dependence, proximity to the resource, [OR] and the availability of alternative food resources in areas where the residents are characteristically dependent upon that resource for personal and family nutrition. The preference may be granted only when [the harvestable surplus of the resource, CONSISTENT WITH THE SUSTAINED YIELD PRINCIPLE AND SOUND RESOURCE MANAGEMENT PRACTICES,] is not sufficient to <sup>provide</sup> allow <sup>a</sup> reasonable opportunity <sup>for other</sup> [for all beneficial uses.]

for nonwasteful, noncommercial subsistence taking

a historically unusual shortage of a fish stock or wildlife population occurs, until the stock or population of the resource has increased to a level that is consistent with the normal range of historic stock or population levels of the resource in the area and with the habitat limitations for the resource in the area.

↳ would suggest inserting in [ ]

~~Handwritten signature~~  
not issued

**Amendment**

OFFERED IN THE HOUSE JUDICIARY COMMITTEE  
TO: HJR 202

BY REPRESENTATIVE

*Murkowski*

- 1. Page 1, line 10 after "take",
- delete "an indigenous subsistence resource"
- insert "replenishable natural resources"



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Alaska Region  
4230 University Drive, Suite 300  
Anchorage, Alaska 99508-4626  
Tel: (907)271-4131 Fax: (907)271-4143

extra  
(refers to  
Version D)

September 23, 1999

## MEMORANDUM

TO: Special Assistant to the Secretary for Alaska  
FROM: Regional Solicitor  
SUBJECT: Analysis of Proposed Constitutional Amendment

The Speaker of the Alaska State House of Representatives has asked us to review a proposal for a state constitutional amendment which would, among other things, allow the legislature to "establish criteria for determining eligibility for a resident to take a resource for subsistence use. Those criteria may include proximity of residence to the fish or wildlife resource as a primary factor for determining eligibility." The Solicitor's Office has reviewed the proposal, and we have identified some significant legal problems. Several of these are discussed below:

1. The proposed constitutional amendment is insufficiently specific to allow the state legislature to enact a law containing the rural subsistence priority as provided for in the Alaska National Interest Lands Conservation Act (ANILCA). Other provisions of the Alaska State Constitution (*i.e.*, Article VIII, §§ 3, 15 and 17) were interpreted by the Alaska Supreme Court in *McDowell v. State of Alaska*, 785 P.2d 1 (AK 1989), *reh. denied* (March 2, 1990), as prohibiting the enactment of a statutory subsistence priority based on rural residence. Without specific enabling language in a constitutional amendment which would permit a subsistence priority to be based on rural residence, the Speaker's proposed amendment to "establish criteria for determining eligibility" most likely does not state the amendment's purpose clearly and specifically enough to overcome the previous interpretation of the state constitution by the Alaska Supreme Court.

2. The only eligibility criteria which is explicitly mentioned in the Speaker's proposed constitutional amendment is "proximity of residence to the resource," which the proposal states may be applied as a "primary factor for determining eligibility." A proximity-based preference would be inconsistent with ANILCA § 804, which provides the priority for subsistence uses to rural residents. Eligibility based on "proximity," by contrast, is determined by where fish and wildlife are physically located at a time when there is determined to be a shortage. Using proximity to the resource as a primary eligibility criteria would create a preference for whomever encounters the fish and wildlife first in their migrations when the subsistence seasons open, regardless whether the person is an urban or rural resident. Because many fish and wildlife populations in Alaska range over extensive geographical areas, it would mean, for example, that residents of an urban area downstream on a river would be legally entitled to take all the fish

Barnes  
quote

available for subsistence, preventing the fish from swimming upstream to where rural residents are waiting to harvest them. This result is wholly inconsistent with ANILCA's rural priority.

3. Using proximity to the resource as a primary criteria for the subsistence priority also raises other problems. Under ANILCA § 803, a cornerstone of the subsistence priority is its assurance of protection for "customary and traditional uses." Rural Alaskans, particularly Alaska Natives, customarily and traditionally have hunted and fished up and down rivers and over large areas of the state, following the resource populations as they migrate. A preference based primarily on proximity of residence to the fish and wildlife resource may not protect all customary and traditional uses.

4. Other difficulties with the proposed wording of the amendment may also render it inconsistent with ANILCA. As one example, the amendment includes proximity to the resource as a primary factor for eligibility whereas ANILCA has three specific criteria for applying the priority in rural Alaska in times of shortage: (1) customary and direct dependence upon the populations as the mainstay of livelihood; (2) local residency; and (3) the availability of alternative resources. The amendment also adopts the "reasonable opportunity" approach to providing the subsistence priority which was previously contained in amendments to ANILCA enacted by Congress in 1997, but which expired in 1998 without ever taking effect because the state legislature did not approve a constitutional amendment as the Act containing the amendments required. By focusing on criteria like these which are not in the federal law, the proposal risks creating new conflicts with ANILCA.

5. For these and other reasons, the constitutional amendment proposed by the Speaker does not satisfy the requirements established by Congress (in the FY 1999 Interior Appropriations Act) to prevent federal assumption of subsistence fisheries management on October 1, 1999. That Act requires that any proposed amendment to the state constitution which is placed on the ballot by the legislature must, if approved by the electorate, "enable the implementation of state laws of general applicability which are consistent with, and provide for, the definition, preference, and participation specified in sections 803, 804 and 805" of ANILCA. As explained above, the Speaker's proposed language likely does not meet that test. Even if adopted by the state legislature, it would not stop the Interior Department from assuming subsistence fisheries management on October 1, 1999, as required by law.



**HB**

**2017**

CS FOR HOUSE BILL NO. 207( )

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE ROKEBERG

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the licensure and registration of individuals who perform  
2 home inspections; relating to home inspection requirements for residential loans  
3 purchased or approved by the Alaska Housing Finance Corporation; relating to  
4 civil actions by and against home inspectors; and providing for an effective date."

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

6 \* Section 1. AS 08 is amended by adding a new chapter to read:

7 Chapter 57. Home Inspectors.

8 Article 1. Board of Home Inspectors.

9 Sec. 08.57.010. Creation and membership of board. There is created the  
10 Board of Home Inspectors consisting of five members. Three members shall be  
11 licensed under this chapter and shall have been engaged in the practice of home  
12 inspection in the state for three years immediately preceding appointment, one member  
13 shall be a licensed real estate broker or certified real estate appraiser, and one member  
14 shall be a public member.

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**Sec. 08.57.020. General duties.** The board shall

- (1) administer and enforce this chapter;
- (2) regulate the practice of home inspection;
- (3) establish education and experience requirements that must be met for licensure under this chapter; the requirements established by the board must include Alaska or northern education or experience in Arctic construction or building;
- (4) establish standards for continuing education of home inspectors;
- (5) adopt a code of ethics for home inspectors; and
- (6) in addition to the meeting required under AS 08.01.070(2), meet when requested by a majority of the members of the board.

**Sec. 08.57.030. Meetings.** The board may meet by teleconference.

**Article 2. Licensure.**

**Sec. 08.57.050. Licensure required.** (a) Unless exempt under AS 08.57.900 or serving lawfully as an associate home inspector under (b) of this section, an individual may not perform a home inspection

(1) for new construction unless that individual is licensed as a home inspector for new construction under this chapter;

(2) for previously occupied construction unless that individual is licensed as a home inspector for previously occupied construction under this chapter.

(b) Notwithstanding (a) of this section, an individual who is not licensed under this chapter may perform a home inspection as an associate home inspector if the individual

(1) is employed by a licensed home inspector who supervises the associate's work and the inspection is of the type that the supervising individual is authorized to perform; and

(2) is registered with the board as an associate home inspector.

(c) A home inspector who employs an associate home inspector under (b) of this section is liable for the work done by the associate home inspector.

(d) An individual who holds a joint license is considered to be licensed as both a home inspector for new construction and a home inspector for previously occupied construction.

1           **Sec. 08.57.060. Qualifications.** The board shall authorize the department to  
2 issue a home inspector license for new construction, previously occupied construction,  
3 or both, as appropriate, to an individual who

4           (1) passes the appropriate home inspection examination; the  
5 examination, which must include a written portion and other test methodologies as  
6 determined by the board, must test competence in relation to Alaska construction  
7 techniques and other matters as determined by the board; the examination may be  
8 based on a recognized national examination or other methodology;

9           (2) meets the educational and experience requirements adopted by the  
10 board in regulations for the type of license applied for;

11           (3) submits a complete application for licensure within one year after  
12 passing the examination required under (1) of this section;

13           (4) within the seven years preceding the date of application, has not  
14 been under a sentence for an offense related to forgery, theft in the first or second  
15 degree, extortion, or conspiracy to defraud creditors or for a felony involving  
16 dishonesty; and

17           (5) pays the appropriate fees.

18           **Sec. 08.57.070. License renewal; continued competency.** (a) A license  
19 issued under this chapter may not be renewed unless the applicant submits proof of  
20 continued competency relating to home inspecting that satisfies the board.

21           (b) A lapsed license may be reinstated within two years after the lapse upon  
22 proof of continued competency, payment of a renewal fee for the intervening time  
23 period, and payment of any penalty fee established under AS 08.01.100(b). If the  
24 license has been lapsed for more than two years, the license may not be reinstated until  
25 the individual also passes the appropriate home inspection examination described in  
26 AS 08.57.060.

27           (c) The license of an applicant whose license has been suspended or against  
28 whom a fine has been imposed under this chapter may not be renewed until the period  
29 of suspension has expired and any fine has been paid.

30           **Sec. 08.57.080. Fees.** (a) The department shall set fees under AS 08.01.065  
31 for

1 (1) licensure and renewal of licensure for a home inspector qualified  
2 to inspect new construction;

3 (2) licensure and renewal of licensure for a home inspector qualified  
4 to inspect previously occupied construction;

5 (3) joint licenses and renewal of joint licenses;

6 (4) registration and renewal of registration as an associate home  
7 inspector;

8 (5) examinations; and

9 (6) board and departmental publications and seminars related to this  
10 chapter.

11 (b) An individual who fails a home inspector examination shall pay the  
12 examination fee set by the department if the individual applies to retake an  
13 examination.

14 **Sec. 08.57.090. Identification requirements.** (a) Except as provided  
15 otherwise by law, an individual who is licensed under this chapter by one name may  
16 not act in the capacity of a home inspector under any other name unless the individual  
17 is also licensed under that name.

18 (b) All advertising and business cards prepared by a licensed home inspector  
19 for the home inspection business must show the home inspector's name, mailing  
20 address, and license number.

21 (c) Individual licensed home inspectors and partners, associates, agents,  
22 salespeople, solicitors, officers, and employees of licensed home inspectors shall use  
23 their true names and addresses and the true name of the home inspecting firm at all  
24 times while acting in the capacity of a licensed home inspector or performing related  
25 activities.

26 (d) Regardless of whether they are exempt from licensure and registration  
27 under AS 08.57.900, persons who perform home inspections may not hold themselves  
28 out to be licensed home inspectors or use words or titles that may reasonably be  
29 confused with the title of "licensed home inspector" unless they are licensed under this  
30 chapter.

31 **Article 3. Insurance Requirement.**

1           **Sec. 08.57.200. Types of insurance.** Each applicant, at the time of applying  
2 for licensure or for renewal of licensure, shall file with the board satisfactory evidence  
3 that there is in effect for the applicant public liability and property damage insurance  
4 covering the applicant's home inspecting operations in this state in the sum of not less  
5 than \$20,000 for damage to property, \$50,000 for injury, including death, to any one  
6 person, and \$100,000 for injury, including death, to more than one person.

7           **Sec. 08.57.210. Suspension of license.** If the insurance required in  
8 AS 08.57.200 ceases to be in effect, the license of the home inspector shall  
9 immediately be suspended until the insurance has been reinstated.

10           **Article 4. Disciplinary Actions; Other Enforcement Mechanisms.**

11           **Sec. 08.57.300. Grounds for disciplinary sanctions or other license**  
12 **decisions.** The board may take disciplinary action authorized under AS 08.01.075 or  
13 refuse to grant or renew a license or registration under this chapter on a finding that

14                   (1) the application is fraudulent or misleading;

15                   (2) the individual has knowingly violated this chapter or a lawful order  
16 or regulation of the department or the board;

17                   (3) the individual is incompetent or has engaged in fraudulent practices  
18 relating to home inspection.

19           **Sec. 08.57.310. Administrative Procedure Act applicable.** Proceedings for  
20 the denial, suspension, or revocation of a license or registration under this chapter are  
21 governed by AS 44.62 (Administrative Procedure Act).

22           **Sec. 08.57.320. Injunction.** In an action instituted in the superior court by the  
23 board or the department, the court may enjoin an individual from performing a home  
24 inspection in violation of this chapter. In addition to other relief, the court may  
25 impose a civil penalty of not more than \$250 for each violation. Each day that an  
26 unlawful act continues constitutes a separate violation.

27           **Sec. 08.57.330. Violations.** (a) An individual who knowingly violates  
28 AS 08.57.050 is guilty of a class B misdemeanor. A person who violates another  
29 provision of this chapter is guilty of a violation punishable under AS 12.

30                   (b) Criminal prosecution for a violation of this chapter does not preclude the  
31 board or the department from seeking available civil remedies.

1                                    **Article 5. Miscellaneous Provisions.**

2                    **Sec. 08.57.800. Legal actions by home inspector.** An individual may not  
3 bring an action in a court of this state for the collection of compensation for the  
4 performance of a home inspection or for breach of a contract for which a license is  
5 required under this chapter without alleging and proving that the individual was a  
6 licensed home inspector or registered associate home inspector at the time of  
7 contracting for the performance of the work.

8                    **Sec. 08.57.810. Legal actions against home inspector.** (a) A person may not  
9 bring an action against an individual licensed or registered under this chapter based on  
10 statements made in a written home inspection report prepared by the inspector unless  
11 the action is brought

12                                    (1) by a person who was a seller, owner, or prospective buyer of the  
13 inspected property at the time the inspection was performed; and

14                                    (2) within one year after the date of the written report.

15                    (b) A person may not bring an action against an individual licensed or  
16 registered under this chapter based on omissions in a written home inspection report  
17 prepared by the inspector unless the action is brought by a person who was a seller,  
18 owner, or prospective buyer of the inspected property at the time the inspection was  
19 performed.

20                    **Sec. 08.57.820. Inspection report required.** (a) Before performing a home  
21 inspection, a licensee or an associate home inspector shall provide to the person on  
22 whose behalf a home is inspected a written document specifying

23                                    (1) the scope of intended inspection, including the structural elements,  
24 systems, and subsystems that will be inspected; and

25                                    (2) that the inspector will notify in writing the person on whose behalf  
26 the inspection is being made of defects noted during the inspection along with a  
27 recommendation, if any, that experts be retained to determine the extent of defects and  
28 corrective action necessary to address the defects.

29                    (b) After performing a home inspection, a licensee shall provide to the person  
30 on whose behalf the inspection was performed a written description of defects noted  
31 during the inspection along with a recommendation, if any, that experts be retained to

1 determine the extent and corrective action necessary to address the defects.

2 **Sec. 08.57.830. Prohibited acts.** (a) An individual licensed or registered  
3 under this chapter, a company that employs an individual licensed or registered under  
4 this chapter, or a company that is controlled by a company that also has a financial  
5 interest in a company employing an individual licensed or registered under this chapter  
6 may not

7 (1) perform or offer to perform, for an additional fee, repairs to a  
8 structure on which the home inspector or the home inspector's company has prepared  
9 a home inspection report in the past 12 months;

10 (2) inspect for a fee any property in which the home inspector or the  
11 home inspector's company has a financial interest or an interest in the transfer of the  
12 property;

13 (3) offer or deliver compensation, an inducement, or a reward to the  
14 owner of the inspected property, the broker, or the agent, for the referral of business  
15 to the home inspector or the home inspector's company;

16 (4) without the written consent of the home inspection client or the  
17 client's legal representative, disclose information from a home inspection report  
18 prepared by the home inspector or the home inspector's company unless the disclosure  
19 is made

20 (A) more than one year after the date of the report; or

21 (B) to a subsequent client who requests a home inspection of  
22 the same premises;

23 (5) without the written consent of all interested parties, accept  
24 compensation from more than one interested party for the same services;

25 (6) accept from a person who has other dealings with a home  
26 inspection client a commission or allowance, directly or indirectly, for work for which  
27 the home inspector or the home inspector's company is responsible;

28 (7) accept an engagement to make an inspection or to prepare a report  
29 in which the employment itself or the fee payable for the inspection is contingent upon  
30 the conclusions in the report, preestablished findings, or the close of escrow.

31 (b) Contractual provisions that purport to limit the liability of a home inspector

1 to the cost of the home inspection report are contrary to public policy and void.

2 **Sec. 08.57.840. Limitation on activities.** A license or registration issued  
3 under this chapter does not authorize the holder to perform an activity for which a  
4 license is required under provisions of this title that are outside of this chapter.

5 **Article 6. General Provisions.**

6 **Sec. 08.57.900. Exemptions.** Notwithstanding other provisions of this chapter,  
7 an individual who performs a home inspection is not required to be licensed or  
8 registered under this chapter if the individual is

9 (1) employed by the federal or state government, a political subdivision  
10 of the state, or a municipality or unincorporated community and the employee is  
11 performing only duties that are within the employee's official duties;

12 (2) performing a home inspection only with respect to property that is  
13 the individual's residence or in which the individual has a financial interest;

14 (3) registered as a civil engineer or architect under AS 08.48 and the  
15 individual either

16 (A) affixes the individual's seal to the home inspection report;

17 or

18 (B) signs the report and puts the individual's registration number  
19 on the report;

20 (4) engaged as an engineer in training or architect in training who  
21 works for and is supervised by a person described in (3) of this section and the person  
22 described in (3) of this section affixes the person's seal to the home inspection report  
23 or signs and puts the person's registration number on the report;

24 (5) licensed as a pesticide applicator by the Department of  
25 Environmental Conservation and is performing only activities within the scope of that  
26 license;

27 (6) registered as an engineer or architect under AS 08.48 and is  
28 performing only activities that are authorized by the Board of Registration for  
29 Architects, Engineers and Land Surveyors under that registration; or

30 (7) certified as any type of real estate appraiser under AS 08.87 and is  
31 performing only activities that are authorized under that certification.

1                   **Sec. 08.57.990. Definitions.** In this chapter,

2                   (1) "board" means the Board of Home Inspectors;

3                   (2) "department" means the Department of Community and Economic  
4                   Development;

5                   (3) "home inspection" means an inspection of the condition of a  
6                   residence or intended residence performed for compensation on behalf of a prospective  
7                   buyer, seller, or lender in a real estate transaction or on behalf of the owner of the  
8                   residence;

9                   (4) "joint license" means a license that authorizes an individual to  
10                  inspect both new construction and previously occupied residences;

11                  (5) "real estate transaction" means the transfer or attempted transfer of  
12                  an interest in a unit of real property or an act conducted as a result of or in pursuit of  
13                  a contract to transfer an interest in a unit of real property;

14                  (6) "residence" means

15                         (A) a single-family home;

16                         (B) a duplex, triplex, or four-plex; or

17                         (C) a residential townhouse or residential condominium unit.

18                  \* **Sec. 2.** AS 08.01.010 is amended by adding a new paragraph to read:

19                         (3) Board of Home Inspectors (AS 08.57.010).

20                  \* **Sec. 3.** AS 08.03.010(c) is amended by adding a new paragraph to read:

21                         (22) Board of Home Inspectors (AS 08.57.010) -- June 30, 2004.

22                  \* **Sec. 4.** AS 18.56.300(b) is amended to read:

23                         (b) As a condition of a commitment to purchase or approve a loan under this  
24                         section for residential housing the construction of which begins after June 30, 1992,  
25                         the corporation shall require inspection of the unit of residential housing that is the  
26                         subject of the loan. The inspection must be performed by a municipal building  
27                         inspector, by a person who is approved or certified to perform residential inspections  
28                         by the International Conference of Building Officials or the International Association  
29                         of Electrical Inspectors, by an individual who is licensed or registered under  
30                         AS 08.57.050 to perform home inspections [OR, WHEN THE UNIT OF  
31                         RESIDENTIAL HOUSING IS LOCATED IN A RURAL AREA], by an architect

1 licensed under AS 08.48, by an engineer licensed under AS 08.48, or by another  
2 person approved by the corporation. When the unit of residential housing is located  
3 in a rural area, the person who makes the inspection may use methods other than a  
4 personal physical inspection to make the inspection if the method is approved by the  
5 corporation, and variations from the applicable code may be accepted at the  
6 corporation's discretion, if the person authorized to inspect the unit under this  
7 subsection satisfies the corporation that the variation does not adversely affect the  
8 structural integrity of the unit or the health and safety of the residents. The person  
9 who makes the inspection shall determine whether the construction conforms to  
10 relevant provisions of the construction codes of the municipality or of the state  
11 building code, as applicable, at each of the following stages of construction:

- 12 (1) plan approval;
- 13 (2) completion of footings and foundations;
- 14 (3) completion of electrical installation, plumbing, and framing;
- 15 (4) completion of installation of insulation;
- 16 (5) final approval.

17 \* Sec. 5. AS 18.56.300(b) is amended to read:

18 (b) As a condition of a commitment to purchase or approve a loan under this  
19 section for residential housing the construction of which begins after June 30, 1992,  
20 the corporation shall require inspection of the unit of residential housing that is the  
21 subject of the loan. The inspection must be performed by a municipal building  
22 inspector, [BY A PERSON WHO IS APPROVED OR CERTIFIED TO PERFORM  
23 RESIDENTIAL INSPECTIONS BY THE INTERNATIONAL CONFERENCE OF  
24 BUILDING OFFICIALS OR THE INTERNATIONAL ASSOCIATION OF  
25 ELECTRICAL INSPECTORS,] by an individual who is licensed or registered under  
26 AS 08.57.050 to perform home inspections, by an architect licensed under AS 08.48,  
27 by an engineer licensed under AS 08.48, or by another person approved by the  
28 corporation. When the unit of residential housing is located in a rural area, the person  
29 who makes the inspection may use methods other than a personal physical inspection  
30 to make the inspection if the method is approved by the corporation, and variations  
31 from the applicable code may be accepted at the corporation's discretion, if the person

1 authorized to inspect the unit under this subsection satisfies the corporation that the  
2 variation does not adversely affect the structural integrity of the unit or the health and  
3 safety of the residents. The person who makes the inspection shall determine whether  
4 the construction conforms to relevant provisions of the construction codes of the  
5 municipality or of the state building code, as applicable, at each of the following stages  
6 of construction:

- 7 (1) plan approval;
- 8 (2) completion of footings and foundations;
- 9 (3) completion of electrical installation, plumbing, and framing;
- 10 (4) completion of installation of insulation;
- 11 (5) final approval.

12 \* Sec. 6. AS 44.62.330(a) is amended by adding a new paragraph to read:

- 13 (60) Board of Home Inspectors.

14 \* Sec. 7. AS 45.50.471(b) is amended by adding a new paragraph to read:

- 15 (43) violating AS 08.57.830.

16 \* Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section  
17 to read:

18 REGULATIONS. The Board of Home Inspectors may proceed to adopt regulations  
19 to implement this Act. A regulation adopted under this section takes effect under AS 44.62  
20 (Administrative Procedure Act) but not before the effective date of the law implemented by  
21 the regulation.

22 \* Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section  
23 to read:

24 INITIAL BOARD MEMBERS. Notwithstanding AS 08.57.010, added by sec. 1 of this  
25 Act, the three home inspectors appointed to the initial Board of Home Inspectors are not  
26 required to be licensed as home inspectors before appointment but must be licensed as home  
27 inspectors in order to be appointed or reappointed after expiration of their first term in office.

28 \* Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section  
29 to read:

30 TRANSITIONAL LICENSING PROVISIONS. (a) Notwithstanding AS 08.57, added  
31 by sec. 1 of this Act, the Board of Home Inspectors shall issue a joint license that is valid

1 until January 1, 2002, to an individual who submits to the board satisfactory evidence of being  
2 in the business of home inspection in the state at the time of application for a license under  
3 this subsection and of having

4 (1) been in the business of home inspection in the state on October 1, 1999;  
5 or

6 (2) passed the building inspector examination or property maintenance and  
7 housing inspector examination given by the International Conference of Building Officials.

8 (b) Notwithstanding AS 08.57, added by sec. 1 of this Act, the Board of Home  
9 Inspectors shall issue a license to practice home inspection of previously occupied residences  
10 that is valid until January 1, 2002, to an individual who submits to the board satisfactory  
11 evidence of being in the business of home inspection in the state at the time of application for  
12 a license under this subsection and of having passed

13 (1) the national home inspector examination given by the American Society  
14 of Home Inspectors; or

15 (2) the examination of the Examination Board of Professional Home Inspectors.

16 (c) Notwithstanding AS 08.57, added by sec. 1 of this Act, the Board of Home  
17 Inspectors shall issue a license to practice home inspection of new construction that is valid  
18 until January 1, 2002, to an individual who submits to the board satisfactory evidence of being  
19 in the business of home inspection in the state at the time of application for a license under  
20 this subsection and of having passed the combination inspector examination or the  
21 combination dwelling inspector examination given by the International Conference of Building  
22 Officials.

23 (d) Notwithstanding AS 08.57, added by sec. 1 of this Act, the Board of Home  
24 Inspectors shall grant registration as an associate home inspector that is valid until January 1,  
25 2002, to an individual who submits to the board satisfactory evidence of being employed by  
26 an individual who is in the business of home inspection and is licensed under this section or  
27 under AS 08.57.

28 (e) A license or registration issued under this section may not be renewed or extended.

29 (f) Except as provided in (e) of this section, a license or registration issued under this  
30 section is considered to be a license or registration issued under AS 08.57, added by sec. 1  
31 of this Act.

1 (g) In this section, "joint license" has the meaning given in AS 08.57.990, added by  
2 sec. 1 of this Act.

3 \* Sec. 11. AS 08.57.050, 08.57.090, 08.57.330(a), 08.57.800 - 08.57.820, enacted by sec. 1  
4 of this Act, and the amendment of AS 18.56.300(b), made by sec. 4 of this Act, take effect  
5 July 1, 2001.

6 \* Sec. 12. Section 5 of this Act takes effect January 1, 2002.

7 \* Sec. 13. Except as provided in secs. 11 - 12 of this Act, this Act takes effect immediately  
8 under AS 01.10.070(c).



ALASKA ASSOCIATION OF REALTORS, INC.  
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503  
Telephone 907-563-7133 • Fax 907-561-1779

March 21, 2000

Representative Rokeberg  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Rokeberg,

The Alaska Association of REALTORS with over 1,100 members statewide supports House Bill 207 with the following recommended changes to version B of the Bill.

- A. Delete the following language from HB 207. Sec. 8.57.810 lines 2-7.

[Sec. 08.57.810 Legal actions against home inspector. A person may not bring an action against an individual licensed or registered under this chapter based on the content of or omissions in a written home inspection report prepared by the inspector unless the action is brought

- (1) by the person who contracted and paid for the report; and  
(2) within one year after the date of the written report.]

The working group agrees that the bill would enhance consumer protection if this section were deleted.

- B. Delete the following language from the bill. Section 8.57.900 – lines 3-6.

[AS 08.48.101 and 08.48.221 and regulations adopted under these statutes to use the seal of an engineer or architect if the individual affixes the individual's seal to the home inspection report, signs the report, or puts the individual's registration number on the report.]

The working group agrees that this section should be replaced with a to be defined grandfather clause.

The Alaska Association of REALTORS encourages the passage of HB 207 with these recommended changes.

Sincerely,

Jim Wakefield  
2000 President

RECEIVED

MAR 23 2000





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March 22, 2000

The Honorable Norman Rokeburg  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska

Subject: HB 207, Licensure of Home Inspectors

Dear Representative Rokeburg:

Thank you for sharing a copy of the latest draft of HB 207, an Act relating to licensure of home inspectors. Staff here at AHFC is reviewing the proposed CS, and we will endeavor to attend the hearing on Friday to express our support and comments.

Since 1992, AHFC has been mandated by state law for new homes to meet minimum standards of construction for building codes and energy efficiency in order to qualify for . Building codes are set to the standards of inspection by the International Conference of Building Officials (ICBO), and AHFC administers the guidelines for the Building Energy Efficiency Standards (BEES).

Establishing state licensing procedures for home inspectors will provide better protection for home buyers in Alaska. AHFC would like HB 207 to allow licensed home inspectors to approve home for mortgages that can be purchased by the corporation. Sections 4 and 5 of the draft would make this change to current law.

These comments are based on discussions with AHFC staff, and based on AHFC's long and successful history of providing secondary mortgage financing. In FY99, AHFC purchased 3,889 single family loans at a loan volume of over \$502 million. AHFC was established in 1971, and has issued roughly \$12 billion in bonds to finance housing across the state.

I will endeavor to be available at hearings on this legislation to answer any questions or offer comments as necessary.

Sincerely,

A handwritten signature in black ink, appearing to read "John Bitney".

John Bitney, Legislative Liaison  
Alaska Housing Finance Corporation



"HOUSING FOR ALL ALASKANS"



RECEIVED  
MAR 23 2000

# FISCAL NOTE

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

**BILL NO. CSHB 207**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Community & Econ. Dev.  
 Title An Act relating to home inspections. BRU Occupational Licensing  
 Component Occupational Licensing  
 Sponsor Rep. Rokeberg  
 Requester House Labor & Commerce Component Serial No. 2360

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

CSHB 207 no longer creates licensing for home inspectors and therefore does not affect the Division of Occupational Licensing.

Prepared by Jennifer Strickler, Administrative Manager  
 Division Occupational Licensing  
 Approved by Commissioner Deborah B. Sedwick  
 Agency Community & Economic Development

Phone 465-2144  
 Date/Time 3/10/2000 4:03 PM  
 Date 3/10/00

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## REPRESENTATIVE NORMAN ROKEBERG

e-mail: [Representative\\_Norman\\_Rokeberg@legis.state.ak.us](mailto:Representative_Norman_Rokeberg@legis.state.ak.us)

### SPONSOR STATEMENT

#### HB207

**“An Act relating to home inspections.”**

**HB207 will protect consumers and the home inspection industry by prohibiting certain home inspector trade practices and limiting legal actions against home inspectors. HB207 revises Title 9, Civil Actions, by limiting them; it is not a home inspector licensing bill.**

**Consumers deserve assurance that they can bring an action against an individual home inspector based on the contents of or omissions in a written home inspection report. HB 207 allows recourse against inspectors; it is limited to the person who contracted and paid for the report and the action must be brought within one year of the written report. HB207 further accomplishes this by making it contrary to public policy and void for any home inspection report limiting liability to the cost of the report.**

**A faulty inspection could have serious consequences for consumers, particularly when they are buying or selling a home. Common sense dictates that home inspectors must be held accountable for their work.**

**I have met with representatives from the industry who agree that home inspector accountability is a worthy goal. The goal of HB 207 is to establish a framework, within which the home inspector can operate, the home inspection profession is protected and consumers are shielded from egregious faulty inspections.**

**I urge you to support this legislation.**

**03/16/00 HB207(L&C) version T**



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

Official Business

State Capitol  
Juneau, AK 99801-1182

**SUBJECT:** SECTIONAL ANALYSIS: HB 207/(L&C)  
**HOUSE BILL 207:** "A BILL RELATING TO HOME INSPECTIONS"  
**FROM:** Representative Norman Rokeberg  
**DATE:** March 16, 2000

### SECTION 1.

Limits the legal actions against a home inspector to action brought by the person who contracted and paid for the written home inspection report; and is limited to within one year after the date of the written report. It makes any contract provision limiting the liability of a home inspector to the cost of the home inspection report as contrary to public policy and void. It defines applicable home inspection, real estate transaction and residence.

### SECTION 2.

Delineates prohibited acts relating to home inspectors, including, prohibiting:  
getting an extra fee to perform repairs on any structure that the individual or the company has prepared a home inspection report in the past 12 months;  
inspecting for a fee any property that they have a financial interest;  
offering or delivering compensation for referral of business;  
disclosing information from a home inspection report, without written consent from the home inspection client or the client's representative or within one year after the date of the report, unless to a subsequent client who requests a home inspection of the same premises;  
accepting compensation from more than one interested party for the same services without the written consent of all interested parties;  
accepting a commission or allowance, directly or indirectly, for work for which the individual or company is responsible;  
accepting a fee payable or contingent fee for a report, based on the conclusions, preestablished findings, or the close of escrow.

It defines home inspection, intentionally, real estate transaction and residence. It makes violation of this section a class A misdemeanor.

tjm/03/16/2000HB 207(L&C)sectional analysis)

**HB**

**211**

**CS FOR HOUSE BILL NO. 211(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIRST LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE ROKEBERG BY REQUEST**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to liability for providing managed care services, to regulation  
2 of managed care insurance plans, and to patient rights and prohibited practices  
3 under health insurance; relating to patient rights under a health care insurance  
4 plan or contract providing coverage for dental care, and prohibiting certain  
5 practices by health care insurers relating to dental care; amending Rule 602(b),  
6 Alaska Rules of Appellate Procedure; and providing for an effective date."

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

8 \* Section 1. The uncodified law of the State of Alaska is amended by adding a new  
9 section to read:

10 **SHORT TITLE.** Section 3 of this Act may be known as the Alaska Patients Bill of  
11 Rights.

12 \* Sec. 2. AS 09.65 is amended by adding a new section to read:

13 **Sec. 09.65.175. Civil liability of managed care entity.** (a) A managed care

1 entity has the duty to exercise ordinary care when making a health care treatment  
2 decision.

3 (b) A managed care entity is civilly liable for damages for harm to a covered  
4 person

5 (1) proximately caused by

6 (A) its failure to exercise ordinary care; or

7 (B) a health care treatment decision that constitutes a failure to  
8 exercise ordinary care made by an employee, agent, ostensible agent, or  
9 representative who is acting on behalf of a managed care entity; or

10 (2) resulting from the failure to provide care or treatment covered by  
11 the health care plan.

12 (c) This section does not create

13 (1) an obligation on the part of a managed care entity to provide to a  
14 covered person care or treatment that is not covered by the health care plan; or

15 (2) civil liability for an employer, an association of employers, a labor  
16 organization, or other employer group if the employer, association, labor organization,  
17 or group does not make health care treatment decisions.

18 (d) It is a defense to a civil action asserted against a managed care entity if  
19 the managed care entity proves by a preponderance of the evidence that it did not  
20 control, influence, or participate in the health care treatment decision and did not deny  
21 or delay payment for any treatment prescribed or recommended to a covered person  
22 by a treating provider.

23 (e) In a civil action against a managed care entity, a finding that a physician  
24 or other health care provider is an employee, agent, ostensible agent, or representative  
25 of that managed care entity may not be based solely on proof that the physician's or  
26 health care provider's name appears in a list of approved physicians or health care  
27 providers made available to a covered person under the health care plan of the  
28 managed care entity.

29 (f) In this section,

30 (1) "covered person" means a person enrolled in or insured by a health  
31 care plan;

1 (2) "health care treatment decision" means

2 (A) a determination made when medical services are actually  
3 provided by a health care plan;

4 (B) a decision that affects the quality of the diagnosis, care, or  
5 treatment provided to a health care plan's insureds or enrollees; and

6 (C) a decision based on prospective and current review of  
7 proposed medical treatment;

8 (3) "managed care entity" has the meaning given in AS 21.07.250;

9 (4) "ordinary care" means care that satisfies reasonable medical  
10 standards that prevail in the area in which the person being treated is located.

11 \* Sec. 3. AS 21 is amended by adding a new chapter to read:

12 **Chapter 07. Regulation of Managed Care Insurance Plans.**

13 **Sec. 21.07.010. Patient and health care provider protection.** (a) A contract  
14 between a participating health care provider and a managed care entity that offers a  
15 group managed care plan must contain a provision that

16 (1) clearly identifies all health care services to be provided;

17 (2) clearly identifies which health care services are to be provided by  
18 a contracting health care provider;

19 (3) clearly identifies and describes each insurance policy used by the  
20 group managed care plan to provide identified health care services to a covered person;

21 (4) clearly states the health care provider's rate of compensation;

22 (5) clearly states all ways in which the contract between the health care  
23 provider and managed care entity may be terminated; a provision that provides for  
24 discretionary termination by either party must apply equitably to both parties;

25 (6) provides that, in the event of a dispute between the parties to the  
26 contract, the following procedure must be used before either party may pursue other  
27 remedies:

28 (A) an initial meeting at which all parties are present or  
29 represented by individuals with full decision-making authority regarding the  
30 matters in dispute shall be held within seven working days after the plan  
31 receives notice of the dispute or gives notice to the provider, unless the parties

1 otherwise agree in writing to a different schedule;

2 (B) if, within 30 days following the initial meeting, the parties  
3 have not resolved the dispute, the dispute shall be submitted to mediation  
4 directed by a mediator who is mutually agreeable to the parties and who is not  
5 regularly under contract to or employed by either of the parties; each party  
6 shall bear its proportionate share of the cost of mediation, including the  
7 mediator fees;

8 (C) if, after a period of 60 days following commencement of  
9 mediation, the parties are unable to resolve the dispute, either party may submit  
10 the dispute to binding arbitration in accordance with (E) of this paragraph;

11 (D) the parties shall agree to negotiate in good faith in the  
12 initial meeting and in mediation;

13 (E) after 10 days' written notice to the other party, either party  
14 may submit the dispute to final and binding arbitration; binding arbitration shall  
15 be held in the judicial district in this state where the services at issue in the  
16 dispute were or are to be performed; at the request of either party, an  
17 arbitration proceeding may be conducted electronically, including by telephone  
18 or video conferencing; and

19 (F) binding arbitration shall be conducted under the rules of the  
20 National Health Lawyers Association Alternative Dispute Resolution Project;  
21 each party shall be responsible for its own costs and expenses related to the  
22 arbitration, including attorney fees, and shall bear a proportionate share of the  
23 arbitrator fees; the arbitrator shall be selected by mutual agreement between the  
24 parties; the arbitrator shall be a person who is knowledgeable of state law and  
25 business practices, an attorney, and a member of the National Academy of  
26 Arbitrators or the National Health Lawyers Association;

27 (7) states that a health care provider may not be penalized or the health  
28 care provider's contract terminated by the managed care entity because the health care  
29 provider acts as an advocate for a covered person in seeking appropriate, medically  
30 necessary health care services;

31 (8) protects the ability of a health care provider to communicate openly

1 with a covered person about all appropriate diagnostic testing and treatment options;  
2 and

3 (9) defines words in a clear and concise manner.

4 (b) A contract between a participating health care provider and a managed care  
5 entity that offers a group managed care plan may not contain a provision that

6 (1) provides financial incentives to the health care provider for  
7 withholding covered health care services that are medically necessary;

8 (2) describes the products used by the plan as including all products  
9 that are currently offered or that may be offered in the future by the managed care  
10 entity; and

11 (3) requires the health care provider to be compensated for health care  
12 services performed at the same rate as the health care provider has contracted with  
13 another managed care entity.

14 (c) A managed care entity may not enter into a contract with a health care  
15 provider that includes an indemnification or hold harmless clause for the acts or  
16 conduct of the managed care entity. An indemnification or hold harmless clause  
17 entered into in violation of this subsection is void.

18 **Sec. 21.07.020. Required contract provisions for group managed care**  
19 **plans.** A group managed care plan must contain

20 (1) a provision that payment for a covered medical procedure that has  
21 been preapproved by a managed care entity may not be denied after it has been  
22 preapproved;

23 (2) a provision for emergency room services if any coverage is  
24 provided for treatment of a medical emergency;

25 (3) a provision that covered health care services be reasonably available  
26 in the community in which a covered person resides or that adequate referrals outside  
27 the community be available if the health care service is not available in the  
28 community; this paragraph is intended to require that a managed care entity contract  
29 with a sufficient number of health care providers in each community in which it  
30 operates or intends to operate to allow persons covered by the plan to have access to  
31 health care services that fall within the standard of care for that community;

1 (4) a provision that any utilization review decision

2 (A) must be made within 72 hours after receiving the necessary  
3 claim for payment or request for preapproval for nonemergency situations; for  
4 emergency situations, utilization review decisions for care following emergency  
5 services must be made as soon as is practicable but in any event no later than  
6 24 hours after receiving the request for preapproval or for coverage  
7 determination; and

8 (B) to deny, reduce, or terminate a health care benefit or to  
9 deny payment for a health care service because that service is not medically  
10 necessary shall be made by an employee or agent of the managed care entity  
11 who is a licensed health care provider trained in the specialty or subspecialty  
12 pertaining to the health care service involved and only after consultation with  
13 the covered person's treating health care provider;

14 (5) a provision that provides for an internal appeal mechanism for a  
15 covered person who disagrees with a utilization review decision made by a managed  
16 care entity; this appeal mechanism must provide for a written decision from the  
17 managed care entity within 15 working days from the date an appeal is received;

18 (6) a provision that discloses the existence of the right to an external  
19 appeal of a utilization review decision made by a managed care entity; the external  
20 appeal shall be as conducted in accordance with AS 21.07.050;

21 (7) a provision that discloses covered items and services, optional  
22 supplemental benefits, and benefits relating to and restrictions on nonparticipating  
23 provider services;

24 (8) a provision that describes the covered service area, preapproval  
25 requirements, and the coverage for clinical trial, experimental, or investigational  
26 treatment;

27 (9) a provision describing compensation methods, including assignment  
28 of benefits, for health care providers and health care facilities;

29 (10) a provision describing availability of prescription medications or  
30 a formulary guide, including specific exclusions; if a formulary guide is made  
31 available, the guide must be updated annually; and

1 (11) a provision describing available translation or interpreter services,  
2 including audiotape or braille information.

3 **Sec. 21.07.030. Choice of health care provider.** (a) If a managed care entity  
4 offers a group health plan that provides for coverage of health care services only if the  
5 services are furnished through a network of health care providers that have entered into  
6 a contract with the managed care entity, the managed care entity shall also offer a non-  
7 network option to enrollees at initial enrollment, as provided under (c) of this section.  
8 The non-network option may require that a covered person pay a higher deductible or  
9 copayment and a higher premium for the plan if the higher deductible, copayment, or  
10 premium results from increased costs caused by the use of a non-network provider.  
11 The managed care entity shall provide an actuarial demonstration of the increased costs  
12 to the director at the director's request. If the increased costs are not justified, the  
13 director shall determine the appropriate costs allowed and determine the appropriate  
14 amount of higher deductible, copayment, or premium. This subsection does not apply  
15 to an enrollee who is offered non-network coverage through another group health plan  
16 or through another managed care entity in the group market.

17 (b) The amount of any additional premium charged by the managed care entity  
18 for the additional cost of the creation and maintenance of the option described in (a)  
19 of this section and the amount of any additional cost sharing imposed under this option  
20 shall be paid by the enrollee unless it is paid by the employer through agreement with  
21 the managed care entity.

22 (c) An enrollee may make a change to the health care coverage option  
23 provided under this section only during a time period determined by the managed care  
24 entity. The time period described in this subsection must occur at least annually.

25 (d) If a managed care entity that offers a group managed care plan requires or  
26 provides for a designation by an enrollee of a participating primary care provider, the  
27 managed care entity shall permit the enrollee to designate any participating primary  
28 care provider that is available to accept the enrollee.

29 (e) Except as provided in this subsection, a managed care entity that offers a  
30 group managed care plan shall permit an enrollee to receive medically necessary or  
31 appropriate specialty care, subject to appropriate referral procedures, from any qualified

1 participating health care provider that is available to accept the individual for medical  
2 care. This subsection does not apply to specialty care if the managed care entity  
3 clearly informs enrollees of the limitations on choice of participating health care  
4 providers with respect to medical care. In this subsection,

5 (1) "appropriate referral procedures" means procedures for referring  
6 patients to other health care providers that comply with ethical guidelines established  
7 by the American Medical Association;

8 (2) "specialty care" means care provided by a health care provider with  
9 training and experience in treating a particular injury, illness, or condition.

10 (f) A managed care entity shall notify a covered person when a contract  
11 between a health care provider and the managed care entity is terminated for cause.

12 (g) If a contract between a health care provider and a managed care entity is  
13 terminated, a covered person may continue to be treated by that health care provider  
14 as provided in this subsection. If a covered person was treated by a provider within  
15 the six-month period immediately preceding the date of the termination of the contract  
16 between that provider and the managed care entity, the covered person may continue  
17 to receive health care services from that provider, and the managed care entity shall  
18 continue to treat the provider in all respects as if the contract were still in force. The  
19 covered person shall be treated for the purposes of benefit determination or claim  
20 payment as if the provider were still under contract with the managed care entity.  
21 However, treatment is required to continue only while the group managed care plan  
22 remains in effect and

23 (1) for the period that is the longest of

24 (A) the end of the current plan year;

25 (B) the end of the medically necessary treatment for the  
26 condition, disease, illness, or injury that the covered person was treated for  
27 during that most recent six-month period before the termination of the contract  
28 between the provider and the managed care entity; or

29 (C) six months from the initial treatment by a provider; or

30 (2) until the end of the medically necessary treatment for the condition,  
31 disease, illness, or injury if the person has a terminal condition, disease, illness, or

1 injury; in this paragraph "terminal" means a life expectancy of less than one year.

2 (h) The requirements of this section do not apply to health care services  
3 covered by Medicaid.

4 **Sec. 21.07.040. Confidentiality of managed care information.** (a) Medical  
5 and financial information in the possession of a managed care entity regarding an  
6 applicant or a current or former person covered by a managed care plan is confidential  
7 and is not subject to public disclosure.

8 (b) This section does not apply to medical information that is disclosed for  
9 research purposes if

10 (1) the individual whose identity is disclosed gives written consent to  
11 the disclosure; or

12 (2) the information is released in a form that does not reveal the  
13 identity of an individual.

14 **Sec. 21.07.050. External health care appeals.** (a) A managed care entity  
15 offering group health insurance coverage shall provide for an external appeal process  
16 that meets the requirements of this section in the case of an externally appealable  
17 decision for which a timely appeal is made either by the managed care entity or by the  
18 enrollee.

19 (b) A managed care entity may condition the use of an external appeal process  
20 in the case of an externally appealable decision upon a final decision in an internal  
21 review under AS 21.07.020, but only if the decision is made in a timely basis  
22 consistent with the deadlines provided under this chapter.

23 (c) A managed care entity

24 (1) may condition the use of an external appeal process upon payment  
25 to the managed care entity of a filing fee that does not exceed \$25;

26 (2) may not require payment of a filing fee in the case of an enrollee  
27 who certifies that the enrollee is indigent;

28 (3) shall refund payment of the filing fee under (1) of this subsection  
29 if the recommendation of the external appeal agency is to reverse or modify the denial  
30 of a claim for benefits that is the subject of the appeal.

31 (d) Except as provided in this subsection, the external appeal process shall be

1 conducted under a contract between the managed care entity and one or more external  
2 appeal agencies that have qualified under AS 21.07.060. The managed care entity  
3 shall provide

4 (1) that the selection process among external appeal agencies qualifying  
5 under AS 21.07.060 does not create any incentives for external appeal agencies to  
6 make a decision in a biased manner;

7 (2) for auditing a sample of decisions by external appeal agencies to  
8 assure that decisions are not made in a biased manner; and

9 (3) that all costs of the process, except those incurred by the enrollee  
10 or treating professional in support of the appeal, shall be paid by the managed care  
11 entity and not by the enrollee; this paragraph does not apply to the imposition of a  
12 filing fee under (c) of this section.

13 (e) An external appeal process must include at least the following:

14 (1) a fair, de novo determination based on coverage provided by the  
15 plan and by applying terms as defined by the plan; however, nothing in this paragraph  
16 may be construed as providing for coverage of items and services for which benefits  
17 are specifically excluded under the plan or coverage;

18 (2) an external appeal agency shall determine whether the managed care  
19 entity's decision, is in accordance with the medical needs of the patient involved, as  
20 determined by the managed care entity, taking into account, as of the time of the  
21 managed care entity's decision, the patient's medical needs and any relevant and  
22 reliable evidence the agency obtains under (4) of this subsection; if the agency  
23 determines the decision is in accordance with the patient's needs, the agency shall  
24 affirm the decision and to the extent that the agency determines the decision is not in  
25 accordance with the patient's needs, the agency shall reverse or modify the decision;

26 (3) in making a determination, the external appeal agency shall  
27 consider, but is not bound by, any language in the plan or coverage document relating  
28 to the definitions of the terms "medical necessity," "medically necessary or  
29 appropriate," "experimental," "investigational," or similar terms;

30 (4) the external appeal agency shall include among the evidence taken  
31 into consideration

1 (A) the decision made by the managed care entity upon internal  
2 review under AS 21.07.020 and any guidelines or standards used by the  
3 managed care entity in reaching a decision;

4 (B) any personal health and medical information supplied with  
5 respect to the individual whose denial of claim for benefits has been appealed;  
6 and

7 (C) the opinion of the individual's treating physician or health  
8 care provider;

9 (5) the external appeal agency may also take into consideration, but is  
10 not limited to considering, the following evidence:

11 (A) the results of studies that meet professionally recognized  
12 standards of validity and replicability or that have been published in peer-  
13 reviewed journals;

14 (B) the results of professional consensus conferences conducted  
15 or financed in whole or in part by one or more government agencies;

16 (C) practice and treatment guidelines prepared or financed in  
17 whole or in part by government agencies;

18 (D) government-issued coverage and treatment policies;

19 (E) community standard of care and generally accepted  
20 principles of professional medical practice;

21 (F) to the extent that the agency determines it to be free of any  
22 conflict of interest, the opinions of individuals who are qualified as experts in  
23 one or more fields of health care that are directly related to the matters under  
24 appeal; and

25 (G) to the extent that the agency determines it to be free of any  
26 conflict of interest, the results of peer reviews conducted by the managed care  
27 entity involved;

28 (6) an external appeal agency shall determine

29 (A) whether a denial of a claim for benefits is an externally  
30 appealable decision;

31 (B) whether an externally appealable decision involves an

1 expedited appeal; and

2 (C) for purposes of initiating an external review, whether the  
3 internal review process has been completed;

4 (7) a party to an externally appealable decision may submit evidence  
5 related to the issues in dispute;

6 (8) the managed care entity involved shall provide the external appeal  
7 agency with access to information and to provisions of the plan or health insurance  
8 coverage relating to the matter of the externally appealable decision, as determined by  
9 the external appeal agency; and

10 (9) a determination by the external appeal agency on the decision must

11 (A) be made orally or in writing and, if it is made orally, shall  
12 be supplied to the parties in writing as soon as possible;

13 (B) be made in accordance with the medical exigencies of the  
14 case involved, but in no event later than 21 working days after the appeal is  
15 filed, or, in the case of an expedited appeal, 72 hours after the time of  
16 requesting an external appeal of the managed care entity's decision;

17 (C) state, in layperson's language, the basis for the  
18 determination, including, if relevant, any basis in the terms or conditions of the  
19 plan or coverage; and

20 (D) inform the enrollee of the individual's rights, including any  
21 limitation on those rights, to seek further review by the courts of the external  
22 appeal determination.

23 (f) If the external appeal agency reverses or modifies the denial of a claim for  
24 benefits, the managed care entity shall

25 (1) upon receipt of the determination, authorize benefits in accordance  
26 with that determination;

27 (2) take action as may be necessary to provide benefits, including items  
28 or services, in a timely manner consistent with the determination; and

29 (3) submit information to the external appeal agency documenting  
30 compliance with the agency's determination.

31 (g) A decision of an external appeal agency is binding unless a person who is

1 aggrieved by a final decision of an external appeal agency appeals the decision to the  
2 superior court.

3 (h) An appeal of a final decision of an external appeal agency must be filed  
4 within six months after the date of the decision of the external appeal agency.

5 (i) In this section, "externally appealable decision"

6 (1) means

7 (A) a denial of a claim for benefits that is based in whole or in  
8 part on a decision that the item or service is not medically necessary or  
9 appropriate or is investigational or experimental, or in which the decision as to  
10 whether a benefit is covered involves a medical judgment; or

11 (B) a failure to meet an applicable deadline for internal review  
12 under AS 21.07.020;

13 (2) does not include specific exclusions or express limitations on the  
14 amount, duration, or scope of coverage that do not involve medical judgment, or a  
15 decision regarding whether an individual is a participant, beneficiary, or enrollee under  
16 the plan or coverage.

17 **Sec. 21.07.060. Qualifications of external appeal agencies.** (a) An external  
18 appeal agency qualifies to consider external appeals if, with respect to a group health  
19 plan, the agency is certified by a qualified private standard-setting organization  
20 approved by the director or by a health insurer operating in this state as meeting the  
21 requirements imposed under (b) of this section.

22 (b) An external appeal agency is qualified to consider appeals of group health  
23 plan health care decisions if the agency meets the following requirements:

24 (1) the agency meets the independence requirements of this section;

25 (2) the agency conducts external appeal activities through a panel of  
26 not fewer than three clinical peers; and

27 (3) the agency has sufficient medical, legal, and other expertise and  
28 sufficient staffing to conduct external appeal activities for the managed care entity on  
29 a timely basis consistent with this chapter.

30 (c) A clinical peer or other entity meets the independence requirements of this  
31 section if

1 (1) the peer or entity does not have a familial, financial, or professional  
2 relationship with a related party;

3 (2) compensation received by a peer or entity in connection with the  
4 external review is reasonable and not contingent on any decision rendered by the peer  
5 or entity;

6 (3) the plan and the issuer have no recourse against the peer or entity  
7 in connection with the external review; and

8 (4) the peer or entity does not otherwise have a conflict of interest with  
9 a related party.

10 (d) In this section, "related party" means

11 (1) with respect to

12 (A) a group health plan or health insurance coverage offered in  
13 connection with a plan, the plan or the insurer offering the coverage; or

14 (B) individual health insurance coverage, the insurer offering  
15 the coverage, or any plan sponsor, fiduciary, officer, director, or management  
16 employee of the plan or issuer;

17 (2) the health care professional that provided the health care involved  
18 in the coverage decision;

19 (3) the institution at which the health care involved in the coverage  
20 decision is provided;

21 (4) the manufacturer of any drug or other item that was included in the  
22 health care involved in the coverage decision; or

23 (5) any other party that, under the regulations that the director may  
24 prescribe, is determined by the director to have a substantial interest in the coverage  
25 decision.

26 **Sec. 21.07.070. Limitation on liability of reviewers.** An external appeal  
27 agency qualifying under AS 21.07.060 and having a contract with a managed care  
28 entity, and a person who is employed by the agency or who furnishes professional  
29 services to the agency, may not be held by reason of the performance of any duty,  
30 function, or activity required or authorized under this chapter to have violated any  
31 criminal law, or to be civilly liable if due care was exercised in the performance of the

1 duty, function or activity and there was no actual malice or gross misconduct in the  
2 performance of the duty, function, or activity.

3 **Sec. 21.07.080. Religious nonmedical providers.** This chapter may not be  
4 construed to

5 (1) restrict or limit the right of a managed care entity to include health  
6 care services provided by a religious nonmedical provider as health care services  
7 covered by the managed care plan;

8 (2) require a managed care entity, when determining coverage for  
9 health care services provided by a religious nonmedical provider, to

10 (A) apply medically based eligibility standards;

11 (B) use health care providers to determine access by a covered  
12 person;

13 (C) use health care providers in making a decision on an  
14 internal or external appeal; or

15 (D) require a covered person to be examined by a health care  
16 provider as a condition of coverage; or

17 (3) require a managed care plan to exclude coverage for health care  
18 services provided by a religious nonmedical provider because the religious nonmedical  
19 provider is not providing medical or other data required from a health care provider  
20 if the medical or other data is inconsistent with the religious nonmedical treatment or  
21 nursing care being provided.

22 **Sec. 21.07.250. Definitions.** In this chapter,

23 (1) "clinical peer" means a health care provider who is licensed to  
24 provide the same or similar health care services and who is trained in the specialty or  
25 subspecialty applicable to the health care services that are provided;

26 (2) "clinical trial" means treatment, research, study, or investigation  
27 over a period of time of an injury, illness, or medical condition;

28 (3) "emergency room services" means health care services provided by  
29 a hospital or other emergency facility after the sudden onset of a medical condition  
30 that manifests itself by symptoms of sufficient severity, including severe pain, that the  
31 absence of immediate medical attention would reasonably be expected by a prudent

1 person who possesses an average knowledge of health and medicine to result in

2 (A) the placing of the person's health in serious jeopardy;

3 (B) a serious impairment to bodily functions; or

4 (C) a serious dysfunction of a bodily organ or part;

5 (4) "group managed care plan" or "plan" means a group health  
6 insurance plan operated by a managed care entity;

7 (5) "health care provider" means a person licensed in this state or  
8 another state of the United States to provide health care services;

9 (6) "health care services" means treatment of an individual for an  
10 injury, illness, or disability and includes preventative treatment of an injury or illness;

11 (7) "health insurance" has the meaning given in AS 21.12.050(a);

12 (8) "managed care" means a contract given to an individual, family, or  
13 group of individuals under which a member is entitled to receive a defined set of  
14 health care benefits in exchange for defined consideration and that requires the member  
15 to comply with utilization review guide lines; "managed care" does not include  
16 Medicaid coverage under 42 U.S.C. 1396 - 1396p (Social Security Act);

17 (9) "managed care contractor" means a contractor who establishes,  
18 operates, or maintains a network of participating health care providers, conducts or  
19 arranges for utilization review activities, and contracts with a managed care entity;

20 (10) "managed care entity" means an insurer, a hospital or medical  
21 service corporation, a health maintenance organization, an employer or employee  
22 health care organization, a managed care contractor that operates a group managed care  
23 plan, or a person who has a financial interest in health care services provided to an  
24 individual;

25 (11) "medical emergency" means the sudden onset of a medical  
26 condition that manifests itself by symptoms of sufficient severity, including severe pain  
27 that in the absence of immediate medical attention would reasonably be expected by  
28 a prudent person who possesses an average knowledge of health and medicine to result  
29 in

30 (A) the placing of the person's health in serious jeopardy;

31 (B) a serious impairment to bodily functions; or