

**ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 80 / 2**

**9916 HOUSE LABOR & COMMERCE**

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

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December 29, 1998

JAN 4 1999

The Honorable Norman Rokeberg  
Alaska House of Representatives  
Chairman, House Labor & Commerce Committee  
716 W. 4th Avenue, Suite 640  
Anchorage, AK 99501-2133

Dear Chairman Rokeberg:

*Norm*

The Alaska Department of Commerce and Economic Development respectfully thanks the House Labor and Commerce Committee for introducing legislation to amend the Alaska Securities Act (AS 45.55). Amendments are necessary so Alaska law will conform to the changes Congress made in federal securities law. Other changes address minor improvements to the Act.

Enclosed are a sectional analysis of the bill, an additional sectional of the Non-National Securities Markets Improvement Act (NSMIA)-Related Sections of Draft Securities Act Bill, and a draft sponsor statement. If you have any questions regarding this information or would like additional materials, please do not hesitate to contact us. We are also emailing you a copy of this information for your convenience.

We are pleased to work with the committee on the introduction and passage of this essential legislation. Not only is time of the essence, but we believe the NSMIA amendments and the other improvements described above will improve investor protection and issuer access to capital.

Sincerely,

*Debby*  
Deborah B. Sedwick  
Commissioner

Enclosures

*Happy New Year to you & Jayle!  
I will look forward to working  
with you in the upcoming session.*

## **Comments on Non-NSMIA-Related Sections of Draft Securities Act Bill**

### **Overview**

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

The sections of the bill that deal with non-NSMIA changes (25 of 78 in whole or in part), are included to add or update language to current uniform language as drafted by NASAA, to clarify certain sections of the Act to improve understanding of current policy, and to add certain exemptions from registration to the Act to improve access to capital markets for Alaska businesses. The sections below are the non-NSMIA sections in the proposed legislation. The seven sections indicated with "(Part)" are sections that include some NSMIA and some non-NSMIA changes. This paper concentrates its comments on the non-NSMIA changes. The full comment paper provides comments on all sections of the bill.

### **Section 12 (Part)**

#### **Section 45.55.030(f), (j)**

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

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

### **Section 13**

#### **Section 45.55.035**

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

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

### **Section 15**

#### **Section 45.55.040(b)**

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

Old law contained effectiveness language.

**Section 25**

**Section 45.55.050(d)**

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

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

**Section 26 (Part)**

**Section 45.55.050(k)**

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

Old law did not mention broker-dealer supervision.

**Section 27 (Part)**

**Section 45.55.060(a)**

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

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

**Section 34**

**Section 45.55.080(a)**

Amended to allow registration by notification for fractional or pooled interests in viatical settlements. Notice only, not merit review. Agents will have to be registered.

Old law did not include interests in viatical settlements as securities.

**Section 35**

**Section 45.55.090**

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

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

**Section 38**

**Section 45.55.110(c)**

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

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

**Section 45 (Part)**

**Section 45.55.900(a)**

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

Old law did not mention federal covered securities.

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

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

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

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

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

Old law only covered commercial paper.

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

Old law did not include plans allowed by NSMIA.

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

Old law did not include the Philadelphia Stock Exchange.

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

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

(8) A new subsection (a)(13) is added to provide an exemption from registration of securities issued in connection with the acquisition of a bank by a holding company under

specified circumstances which require the holding company to be substantially equivalent to a bank. This amendment puts holding company acquisitions on an equal footing with the current exemption at (a)(3).

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

**Section 46 (Part)**

**Section 45.55.900(b)**

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

Old law did not mention federal covered securities.

(2) Subsections (b)(5)(A)(ii) and (b)(5)(B)(iii) have been deleted for private, nonpublic offerings that are limited in terms of the number of investors. The Uniform Securities Act does not include a dollar amount limitation.

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

(3) Subsection (b)(5)(B)(ii) is amended and new (b)(5)(F) is added to clarify what information must be made available to an investor to allow the investor to make an informed decision.

Old law tied the information requirement to that required under full registration.

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

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

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

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

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

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

(7) Old subsection (b)(10) is repealed and replaced by new (b)(17), adopting the new language for the "manual exemption," as (b)(10) was sometimes called, which was

developed by NASAA and supported by the Securities Industry Association (SIA). The new language protects investors at least as much as the old language while allowing reliance on publicly available filings with the SEC as well as manuals.

Old law generally required listing in a securities manual.

(8) Old subsections (b)(13)(A) and (B) are deleted eliminating the restriction on commissions and the requirement for notice filing.

Old law limited commissions to standby commissions and required a notice to be filed with the State.

(9) Old subsection (b)(15) is amended to cover votes by security holders and not just stockholders of a corporation. Also includes a typographical error correction.

Old law was limited to corporations and did not include limited liability corporations.

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

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

(11) New subsection (b)(19) is added to provide a noticed exemption for rescission offers pursuant to AS 45.55.930.

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

(12) New subsection (b)(20) is added to provide a self-executing exemption for transactions that are solely between family members.

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

#### **Section 47**

##### **Section 45.55.900(g)**

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

Old law does not provide for offers on the Internet.

**Section 48**

**Section 45.55.910(e)**

This section, dealing with investigations and subpoenas, is amended by adding a new subsection (e) clarifying that investigative files and materials are confidential unless required for discovery in an administrative or a judicial proceeding.

Old law does not specifically provide for confidential investigative files.

**Section 49 (Part)**

**Section 45.55.915**

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

Old law covers only examinations, not investigations.

**Section 50**

**Section 45.55.920(e)**

A new subsection (e) is added to allow the State to reduce a final civil penalty to court judgment without reopening the matter to a new contest. This especially will help the State go after out-of-state violators.

Old law does not provide for this mechanism without a de novo matter being raised.

**Section 52 (Part)**

**Section 45.55.930(a)**

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

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

**Section 53**

**Section 45.55.930(b)**

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

Old law set damages at 6%.

**Section 54**

**Section 45.55.930(f)**

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

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

**Section 55**

**Section 45.55.930(g)**

Clarifies that violations referenced are violations of AS 45.55.

Old law was not clear.

**Section 56**

**Section 45.55.930(j)-(k)**

New subsection (j) is added to allow a buyer to sue if the buyer accepted a rescission offer and has not been paid. New subsection (k) is added to make it clear to those reading AS 45.55.930 that a rescission offer is an offer of a security subject to registration, unless exempt from registration under AS 45.55.900, as provided in the new exemption at AS 45.55.900(b)(19).

Old law did not mention what happens if a rescission offer is made and accepted but not paid, and it did not specifically state that a rescission offer is an offer under the Act.

**Section 60**

**Section 45.55.970(e)**

Subsection (e) is amended to clarify that, in accordance with current practice, the administrator may require a fee to be submitted along with requests for interpretative opinions.

Old law does not explicitly state a fee is required.

**Section 63**

**Section 45.55.980(c)**

Subsection (c)(5) is amended to include limited liability companies and limited liability partnerships to clarify the jurisdiction of the Act, in accordance with current policies and practice.

Old law did not include those relatively new entities.

**Section 67**

**Section 45.55.990(3)**

Subsection (3)(E) is amended to make de minimis exemption more workable by focusing on solicited trades and not just offers.

Old law based on offers which are difficult to trace.

**Section 68**

**Section 45.55.990(9)**

Subsection (9) is amended to add these relatively new entities to the definition of person.

Old law did not include these newer entities in the definition.

**Section 70**

**Section 45.55.990(12)**

Language is added to definition of security to clarify potential confusion between AS 45.55 and AS 45.08 and to add fractional or pooled interests in viatical settlement contracts to the definition of a security.

Old law did not contain this clarifying language and did not include interests in viatical settlements as a security by definition.

## Draft Sponsor Statement

The proposed legislation is a result of the National Securities Markets Improvement Act (NSMIA) passed in October 1996. Two major impacts from NSMIA on Alaska are preemption from registration of a new class of securities, Federal Covered Securities, and changes to registration requirements of Investment Advisers and their agents.

Federal Covered Securities, for the most part Mutual Funds, are no longer required to register in Alaska. However, in an attempt to have a revenue neutral impact on the states and to preserve local investor protection, **congress allowed the states to require Notice filings and fees.** NSMIA provides a three-year window for the states to amend their statutes to provide for Notice filings and Notice fees or lose the authority to require them. **Without this legislation by October 1999, Alaska would lose between \$4-5 million in annual revenue** funds for the purpose of investor protection. Over 40 states already have passed similar legislation.

NSMIA also altered the registration and regulation of investment advisers. Investment advisers were previously registered with the Securities and Exchange Commission (SEC) and each state in which they offered their services. NSMIA created two kinds of advisers: Federal Covered Advisers, those who manage assets in excess of \$25-30 million, must register with the SEC; and State Investment Advisers (SIA) that must register with the states. States may require Federal Covered Advisers to file a Notice and pay a Notice fee in order to provide services in the state. Although Federal Covered Advisers are exempt from registration, the states retain regulatory authority over them for violations of the anti-fraud provisions of state law. Finally, NSMIA allows the states to require registration of the representatives of Federal Covered Advisers, who actually provide the investment advice, if they have a place of business in the state.

The changes in federal law require significant amendments to the Alaska Securities Act. These amendments must provide for Federal Covered Securities, Federal Covered Advisers, Investment Adviser Representatives, and Notices and Notice fees. Provisions must also be added to specify fraudulent and unethical behavior that may lead to action not only against a registered person but now, also against a person who filed a Notice in Alaska. Language for the amendments was, for the most part, drafted by the North American Securities Administrators Association (NASAA), an organization of state securities regulators (members also include Mexico and the provinces of Canada). Division staff also worked with industry in developing this legislation. The Investment Company Institute, representing the mutual fund industry, the Investment Counsel Association of America, Inc., representing the investment adviser industry, and the Institute of Certified Financial Planners, representing about 14,000 CFP licensees in the United States, including 16 in Alaska, have provided written support for the legislation.

In addition to NSMIA changes, other proposed amendments would improve access to the capital market without weakening investor protection. The following changes to the Act are proposed for addition or amendment, as described:

1. AS 45.55.900(b)(5)(A) and (b)(5)(B). The dollar limits on these private offering exemptions are removed. This will benefit smaller issuers that seek to place a private offering.
2. AS 45.55.900(b)(5)(C). A new self-executing exemption is added for initial issuance of stock to up to 10 persons. There is no filing requirement and no limit to persons in this state as in (b)(5)(A) and (B).
3. AS 45.55.900(b)(5)(D). A new self-executing exemption is added for transfer of stock solely incidental to the sale of a business (usually a relatively small business). Currently, if a person buys another person's business and the seller of the business transfers stock to the buyer, the seller may be liable to the buyer under AS 45.55.930 if the seller neglects to either register the stock or obtain an exemption. Often the dollar limits of the current exemption make such transactions difficult to qualify.
4. AS 45.55.900(b)(5)(E) and (F). Two new sections are added to (1) provide the administrator with the ability to waive some of the (b)(5) limitations, if needed, and (2) to clarify what information must be provided to a buyer under (b)(5)(B). Currently, some exemption applications can not be granted because of a small difference between the facts and the limitations, resulting in a less satisfactory "no-action" letter issued by the division. Also, current language at (b)(5)(B)(ii) discourages some Alaska issuers from using the exemption.
5. AS 45.55.900(b)(10). The exemption from registration section is amended to provide investors with information currently required, but, in addition, allowing issuers to use reports filed with the SEC as well as the standard manuals now allowed. The Securities Industry Association encouraged states to adopt this NASAA-drafted exemption along with the NSMIA amendments.
6. AS 45.55.900(b)(18). This is a new exemption that allows a Notice-filing exemption for issuers that are not in the development stage and that are limiting the offering to accredited (qualified) investors. This should allow Alaska issuers to take part in programs like ACE-Net where issuers and accredited investors can be matched electronically. This may assist in providing a source for capital.
7. AS 45.55.900(b)(19). This is a new exemption for issuers that need to make a rescission offer to buyers due to liability under AS 45.55.930. Currently, these must either fit another exemption or, or often, they result in issuance of a "no-action" letter.
8. AS 45.55.900(b)(20). This is a new exemption for transactions involving only family members such as children, brothers and sisters, uncles and aunts, and grandparents to great-great-grandparents. Currently, offers even to family members must meet a current exemption or be registered.
9. AS 45.55.035. This is a new section to allow Canadian broker-dealers a limited license to serve their Canadian clients who are in Alaska temporarily, if the broker-dealers' Canadian Province allows reciprocal rights to U.S. broker-dealers. This language was also drafted by NASAA.

10. AS 45.55.910 is amended to provide the Administrator the authority to charge respondents for investigations as well as examinations. The division should never be in a position where it cannot take action to protect investors because it lacks the funds to investigate a violation. This would provide the authority to recoup the costs of investigation.
11. AS 45.55.930(d) is amended to allow buyers of securities more time to file civil suit against the sellers in those cases where the sellers violated the anti-fraud provisions of the Act. The change is from the current three years from the date of purchase to the later of that date or two years after the fraud was known or should have been known. This provides additional investor protection in cases where the fraud may not be discovered until after the three-year limit has expired.
12. AS 45.55.060(11). A subsection is added to give authority for action against registrants who have failed to meet their child support and student loan obligations. Currently, the division compares registrants to a list provided by the Child Support Enforcement agency. The proposed amendment would make it clear the division can take action against the registrants.
13. AS 45.55.080(a) and 990(12). The definition of a security is amended to add fractional or pooled interests in a viatical settlement contract, and these are added to the securities that may use a registration by notification section of the Act which is less burdensome than registration by qualification. Currently, the division considers these to be investment contracts covered under the Act, but adding the language will make it clear to issuers of these securities that they require registration.

We will be pleased to work with the committee in the introduction and passage of this essential legislation. Not only is time of the essence, but we believe the NSMIA amendments and the other improvements described above will improve investor protection and issuer access to capital. We appreciate the committee's consideration of our request.

## Sectional of Draft Securities Act Bill

### Overview

The National Securities Markets Improvement Act (NSMIA), enacted on October 11, 1996, resulted in significant changes to the regulatory landscape of securities markets and people who sell securities or give investment advice.

By preempting certain securities and investment advisers from state registration, NSMIA would result in a loss of annual fee revenue for the State of Alaska of about \$4-\$5 million, unless Alaska adopts the changes described below to preserve its revenues through notice filings and fees, which are allowed by NSMIA. These fees are the State's primary source of fee revenue available for regulation of securities and investor protection. Without these changes, in addition to losing significant revenue, the State will be hampered significantly in its ability to protect investors from abusive potential practices of those who provide investment advice.

In particular, NSMIA created a new security, the Federal Covered Security (FCS), which is preempted from the registration requirements of the states. While some FCSs were already exempt from registration under the Alaska Securities Act (the Act), the largest impact of NSMIA in Alaska was the preemption of mutual fund and Regulation D 506 securities registrations. Alaska may no longer register these securities, but the State may require the issuers of these securities to file a notice and pay a notice fee in order to sell the security in this state. NSMIA requires states to change their statutes and regulations to provide for these notice filings and notice fees before October 1999, however, in order to preserve the state's ability to require notices and collect fees.

NSMIA also changed the regulatory landscape for broker-dealers and their agents, and for investment advisers and their investment adviser representatives. For example, states may no longer impose certain financial requirements for broker-dealers that are different from those imposed by the United States Securities and Exchange Commission (SEC). More significantly, however, NSMIA ended the dual registration requirements for investment advisers by creating Federal Covered Advisers (FCAs), essentially investment advisers with more than \$25-30 million under management. These FCAs are now registered only with the SEC, while smaller investment advisers, so called State Investment Advisers (SIAs), continue to register with the states. Like the FCSs described above, however, FCAs may be required to file notice and pay fees for providing investment advisory services in Alaska: FCAs remain subject to the anti-fraud provisions of the Act.

Additional language is needed in the Alaska Act for SIAs registered with the states because those SIAs are no longer subject to some of the rules of the SEC as they were prior to NSMIA. Language is also needed to specifically license Investment Adviser Representatives (IARs). These are essentially equivalent to agents of broker-dealers. In the past, we have licensed them based on the fact that they met the statutory definition of an investment adviser. NSMIA, however, provided that the SEC would define IARs and

further provided that the states could register IARs of FCAs, if those IARs have a place of business in the state. Thus, it becomes important to treat IARs of SIAs and FCAs more like agents of broker-dealers.

Many of the changes described below are made to bring the Act into conformity with NSMIA and to preserve the ability of the state to provide investor protection for Alaskans and to continue to collect the fees from market participants who seek to provide various investment services to Alaskans. The North American Securities Administrators (NASAA) developed most of the language to promote uniformity among the states, a major policy of the Act. For the same reason, some other changes are suggested to conform to language adopted by NASAA that are similar to that used in other states.

Finally, the language in the Act needs to be flexible enough to adapt to changing conditions in this new investment environment. In particular, since the SEC now has the authority to define FCSs and IARs, for example, the state's definitions of those have to be able to quickly reflect those changes, or be subject to playing catch up with each revision. NSMIA has made it imperative for states to take into consideration what the federal government and other states are doing in the regulation of securities markets participants.

The Alaska Department of Commerce and Economic Development, Division of Banking, Securities and Corporations has received letters of support for the legislative changes described below from the Investment Company Institute (ICI), the major association for the mutual fund industry, the Investment Counsel Association of America, Inc. (ICAA), the major association for investment advisers, and the Institute of Certified Financial Planners (ICFP), many of whom provide investment advisory services. These organizations represent the market participants most affected by the changes required in the Alaska Act by NSMIA.

#### **Section 1**

##### **Section 14.43.148(h)(1)**

Adds state investment advisers and their representatives to list of those whose license may be revoked for defaulting on a state student loan.

Old law did not specify state-registered investment advisers or their representatives.

#### **Sections 2 and 3**

##### **Section 25.27.244(s)(2)**

Adds state investment advisers and their representatives to list of those whose license may be revoked for noncompliance with child support enforcement requirements.

Old law did not specify state-registered investment advisers or their representatives.

**Section 4**

**Section 37.23.050**

Adds registered state investment advisers and noticed federal covered advisers to list of those entities that can contract to manage investment pools of public entities.

Old law did not differentiate between state investment advisers and federal covered advisers.

**Section 5**

**Section 45.55.010**

Provides that neither exemption by statute nor preemption by NSMIA will exempt a person from this anti-fraud provision.

Old law did not mention preempted federal covered securities.

**Section 6**

**Section 45.55.020(b)**

These restrictions on contracts are limited to state investment advisers since federal covered advisers are covered by SEC rules. Section 2 deleted since covered by new section 45.55.023(a)(16)(E).

Old law did not mention state investment advisers and federal covered advisers.

**Section 7**

**Section 45.55.020(c)**

Certain state investment adviser contracts may be allowed if they conform to the requirements of Section 205 of the Investment Advisers Act of 1940.

Old law prohibited all contracts based on capital appreciation.

**Section 8**

**Section 45.55.020(e)**

These restrictions on custody are limited to state investment advisers since federal covered advisers are covered by SEC rules.

Old law did not mention state investment advisers and federal covered advisers.

**Section 9**

**Section 45.55.023, 45.55.025, 45.55.027, and 45.55.028**

New sections are added providing investor protection from unethical business practices by persons providing investment advisory and securities business services.

Old law did not contain these provisions since we could rely on SEC rules for advisers, and broker-dealers and agents were covered in our regulations at 3 AAC 08.060 and 061.

**Section 10**

**Section 45.55.030(c)**

Registration limited by NSMIA to state investment advisers and investment adviser representatives, and registration exemptions inserted here rather than in definition section.

Old law did not mention investment adviser representatives, and registration exceptions were treated as exclusion from definition.

**Section 11**

**Section 45.55.030(d)**

Adds reference to notice filings as required by NSMIA so that both registrations and notice filings expire in one year.

Old law did not provide for notice filings.

**Section 12**

**Section 45.55.030(e)-(j)**

New sections require federal covered advisers to file notices (e), and investment advisers to hire registered representatives (g)-(i); also, allow agents to do wrap accounts without registration as investment adviser representatives (j); and prohibit agents from dual registration (f).

Old law did not mention federal covered advisers, notice filings, or investment adviser representatives, and dual registration was part of current regulations.

**Section 13**

**Section 45.55.035**

New section to Uniform Securities Act to provide for reciprocal limited registration of Canadian and US broker-dealers and their agents to serve existing customers.

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

**Section 14**

**Section 45.55.040(a)**

Provides for the registration of state investment advisers and investment adviser representatives as permitted by NSMIA, deleting fingerprint and photograph requirements, and allowing filing of promotional materials.

Old law did not mention state investment advisers or investment adviser representatives.

**Section 15**

**Section 45.55.040(b)**

Language describing effectiveness dates of registration is deleted since the Division plans to include this language in its regulations.

Old law contained effectiveness language.

**Section 16**

**Section 45.55.040(c)**

Separately provides for registration and notice fees as required by NSMIA to preserve the State's fee base.

Old law did not provide for notice fees.

**Section 17**

**Section 45.55.040(d)**

Language is added allowing state and federal covered advisers the same rights to transfer their representatives from a predecessor advisory business broker-dealers have for agents.

Old law did not mention federal covered advisers or investment adviser representatives, and advisers did not have same rights as broker-dealers regarding successors.

**Section 18**

**Section 45.55.040(e)**

Makes language more flexible to adapt to NSMIA, under which states are restricted in their ability to impose financial requirements on broker-dealers, and state and federal covered advisers.

Old law required bonding and other requirements now prohibited by NSMIA.

**Section 19**

**Section 45.55.040(f)**

Makes language more flexible to adapt to NSMIA, under which states are restricted in their ability to require bonds of broker-dealers, and state and federal covered advisers.

Old law required bonding now largely prohibited by NSMIA.

**Section 20**

**Section 45.55.040(g)**

Provide for notice filings to preserve the State's fee base, and promotes uniformity in filing and securities examinations.

Old law did not provide for notice filings or mention coordinated examinations.

**Section 21**

**Section 45.55.040(h)-(j)**

Subsection (h) provides for notice filings for federal covered advisers to preserve the State's fee base; subsection (i) provides authority to adopt regulations for fees and other procedures; and subsection (j) provides authority to require certain state investment advisers to post bonds.

Old law did not provide for notice filings or flexibility in bonding requirements, both required by NSMIA.

**Section 22**

**Section 45.55.050(a)**

Section now applies only to broker-dealers, and, pursuant to NSMIA, states may not impose books and records requirements in addition to those imposed by the SEC.

Old law included investment advisers, now covered new section, AS 45.55.050(e).

**Section 23**

**Section 45.55.050(b)**

Makes language more flexible to adapt to NSMIA which limits the financial reporting requirements of states for broker-dealers.

Old language included investment advisers, now covered in new section, AS 45.55.050(g).

**Section 24**

**Section 45.55.050(c)**

Language added to require notice filers to update filed material.

Old law did not mention notice filers.

**Section 25**

**Section 45.55.050(d)**

Language added to clarify that the Division may inspect records at any time.

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

**Section 26**

**Section 45.55.050(e)-(k)**

Sections added:

- (1) to require state investment advisers, located in this state (h), and investment adviser representatives to keep records (e) and file them with the state (g) as allowed by NSMIA (j);
- (2) to allow administrator to require state investment advisers to furnish information to the public (f);

- (3) to require broker-dealers and agents to file NSMIA-allowed reports (i); and
- (4) to require broker-dealers to comply with NASD supervision requirements (k).

Old law did not mention state investment advisers and investment adviser representatives, nor provide for limitations on filing requirements included in NSMIA, nor include language regarding broker-dealer supervision.

#### **Section 27**

##### **Section 45.55.060(a)**

Language added

- (1) to exclude federal covered advisers (a);
- (2) to make repeated violations of the Act a basis for administrative action (a)(2);
- (3) to clarify the definition of "convicted" (a)(3);
- (4) to include actions against investment adviser representatives (a)(5) and (a)(6);
- (5) to include dishonest or unethical conduct and to include the investment advisory business (a)(7);
- (6) to broaden insolvency to include lack of safety to customers (a)(8);
- (7) to provide authority to take action against a person who fails to maintain and produce required records (a)(10); and
- (8) to provide authority to take action against persons who default on a student loan or do not comply with child support enforcement laws (a)(11).

Old law did not include state investment advisers and did not refer to the advisory business, nor provide for actions based on AS 14.43 or AS 25.27, but it did require violations of the Act to be wilful to be actionable under this section.

#### **Section 28**

##### **Section 45.55.060(b)**

Adds supervision of investment adviser representatives by state investment advisers as basis for administrative action.

Old law did not mention investment adviser representatives or state investment advisers.

#### **Section 29**

##### **Section 45.55.060(d)**

Language added to exclude actions against federal covered advisers, and to provide for examinations of investment adviser representatives.

Old law did not mention state investment advisers, federal covered advisers, or investment adviser representatives.

**Section 30**

**Section 45.55.060(f)**

Adds state investment adviser and investment adviser representatives to paragraph dealing with cancellation of a registration or application.

Old law did not mention state investment advisers, federal covered advisers, or investment adviser representatives.

**Section 31**

**Section 45.55.060(g)**

Adds state investment adviser and investment adviser representatives to paragraph dealing with withdrawal of a registration.

Old law did not mention state investment advisers, federal covered advisers, or investment adviser representatives.

**Section 32**

**Section 45.55.070**

Adds a new type of security created by NSMIA, the federal covered security.

Old law did not mention federal covered securities.

**Section 33**

**Section 45.55.075**

Added to provide for the filing of notices and payment of fees with respect to certain federal covered securities, essentially mutual funds and Regulation D 506 securities, to preserve the State's fee base under NSMIA.

Old law did not mention federal covered securities or notice filings.

**Section 34**

**Section 45.55.080(a)**

Amended to allow registration by notification for fractional or pooled interests in viatical settlements. Notice only, not merit review. Agents will have to be registered.

Old law did not include interests in viatical settlements as securities.

**Section 35**

**Section 45.55.090**

Clarifies the SEC is the United States Securities and Exchange Commission.

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

**Section 36**

**Section 45.55.110(a)**

Adds notice filings for federal covered securities created by NSMIA.

Old law did not mention federal covered securities or notice filings.

**Section 37**

**Section 45.55.110(b)**

Adds notice filing fees for federal covered securities to preserve the State's fee base, as allowed by NSMIA.

Old law did not provide for notice filing fees.

**Section 38**

**Section 45.55.110(c)**

Clarifies the SEC is the United States Securities and Exchange Commission.

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

**Section 39**

**Section 45.55.110(d)**

Adds reference to notice filings to incorporate documents by reference.

Old law did not mention notice filings.

**Section 40**

**Section 45.55.110(e)**

Adds reference to notice filings to section dealing with omission of information by permission.

Old law did not mention notice filings.

**Section 41**

**Section 45.55.110(i)**

Adds reference to notice filings for federal covered securities and provides that they may have automatic extension of effectiveness for additional year if the fee reflects that extension.

Old law does not mention federal covered securities, and does not explicitly describe the two-year effectiveness of mutual fund filings.

**Section 42**

**Section 45.55.110(k)**

Adds reference to notice filings and provides for amendments to those filings if the fee structure is based on dollar amount of securities offered.

Old law referred to registrations and not to notice filings.

**Section 43**

**Section 45.55.150**

Allows the administrator to establish requirements for specified sales literature and not just for the filing of the literature, excluding persons or securities exempted by NSMIA.

Old law did not mention federal covered securities, state investment advisers, or federal covered advisers, or limit filing requirements to those allowed by NSMIA.

**Section 44**

**Section 45.55.170**

Subsection (a) is amended to cover notice filings for federal covered advisers and federal covered securities.

Old law did not mention notice filings.

**Section 45**

**Section 45.55.900(a)**

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

Old law did not mention federal covered securities.

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

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

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

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

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

Old law only covered commercial paper.

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

Old law did not include plans allowed by NSMIA.

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

Old law did not include the Philadelphia Stock Exchange.

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

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

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

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

#### **Section 46**

##### **Section 45.55.900(b)**

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

Old law did not mention federal covered securities.

(2) Subsections (b)(5)(A)(ii) and (b)(5)(B)(iii) have been deleted for private, nonpublic offerings that are limited in terms of the number of investors. The Uniform Securities Act does not include a dollar amount limitation.

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

(3) Subsection (b)(5)(B)(ii) is amended and new (b)(5)(F) is added to clarify what information must be made available to an investor to allow the investor to make an informed decision.

Old law tied the information requirement to that required under full registration.

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

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

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

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

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

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

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

Old law generally required listing in a securities manual.

(8) Old subsections (b)(13)(A) and (B) are deleted eliminating the restriction on commissions and the requirement for notice filing.

Old law limited commissions to standby commissions and required a notice to be filed with the State.

(9) Old subsection (b)(15) is amended to cover votes by security holders and not just stockholders of a corporation. Also includes a typographical error correction.

Old law was limited to corporations and did not include limited liability corporations.

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

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

(11) New subsection (b)(19) is added to provide a noticed exemption for rescission offers pursuant to AS 45.55.930.

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

(12) New subsection (b)(20) is added to provide a self-executing exemption for transactions that are solely between family members.

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

#### **Section 47**

##### **Section 45.55.900(g)**

This section is added to provide an exemption for certain offers on the Internet, as drafted by NASAA and adopted by order of the administrator.

Old law does not provide for offers on the Internet.

#### **Section 48**

##### **Section 45.55.910**

This section, dealing with investigations and subpoenas, is amended by adding a new subsection clarifying that investigative files and materials are confidential unless disclosure is required for discovery in an administrative or a judicial proceeding.

Old law does not specifically provide for confidential investigative files.

**Section 49**

**Section 45.55.915**

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

Old law covers only examinations, not investigations.

**Section 50**

**Section 45.55.920(e)**

A new subsection (e) is added to allow the State to reduce a final civil penalty to court judgment without reopening the matter to a new contest. This especially will help the State go after out-of-state violators.

Old law does not provide for this mechanism without a de novo matter being raised.

**Section 51**

**Section 45.55.925**

Language required by NSMIA is added to exclude federal covered advisers and federal covered securities from criminal penalties for not filing notices.

Old law did not mention notices for federal covered advisers and federal covered securities.

**Section 52**

**Section 45.55.930(a)**

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

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

**Section 53**

**Section 45.55.930(b)**

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

Old law set damages at 6%.

**Section 54**

**Section 45.55.930(f)**

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

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

**Section 55**

**Section 45.55.930(g)**

Clarifies that violations referenced are violations of AS 45.55.

Old law was not clear.

**Section 56**

**Section 45.55.930(j)-(k)**

New subsection (j) is added to allow a buyer to sue if the buyer accepted a rescission offer and has not been paid. New subsection (k) is added to make it clear to those reading AS 45.55.930 that a rescission offer is an offer of a security subject to registration, unless exempt from registration under AS 45.55.900.

Old law did not mention what happens if a rescission offer is made and accepted but not paid, and it did not specifically state that a rescission offer is an offer under the Act.

**Section 57**

**Section 45.55.935(a)**

Subsection (a)(2) is amended to add investment adviser representatives.

Old law did not mention investment adviser representatives.

**Section 58**

**Section 45.55.970(b)**

Subsection (b) is amended to require that a register of notice filings be maintained as it is for registrations.

Old law does not mention notice filings.

**Section 59**

**Section 45.55.970(c)**

Subsection (c) is amended to add notice filings to the list of materials available to the public.

Old law did not mention notice filings.

**Section 60**

**Section 45.55.970(e)**

Subsection (e) is amended to clarify that the administrator may require a fee to be submitted along with requests for interpretative opinions.

Old law does not explicitly state a fee is required.

**Section 61**

**Section 45.55.980(a)**

Subsection (a) is amended to add the new sections on fraudulent, dishonest and unethical business practices of broker-dealers and agents (45.55.025-028); limited registration of Canadian broker-dealers and agents (45.55.035); and federal covered securities (45.55.075) to cover those who sell or offer to sell.

Old law did not contain those sections.

**Section 62**

**Section 45.55.980(b)**

Subsection (b) is amended to add 45.05.025-028 and 45.55.035 as described in (a) above to cover those who buy or offer to buy.

Old law did not contain those sections.

**Section 63**

**Section 45.55.980(c)**

Subsection (c)(5) is amended to include limited liability companies and limited liability partnerships.

Old law did not include those relatively new entities.

**Section 64**

**Section 45.55.980(f)**

Subsection (f) is amended to include unethical business practices (AS 45.55.023) and the notice filing requirements for federal covered advisers (AS 45.55.030(e) and 45.55.040(h)) and to include state investment advisers, federal covered advisers, and investment adviser representatives.

Old law did not have these sections or mention state investment advisers, federal covered advisers, and investment adviser representatives.

**Section 65**

**Section 45.55.980(g)**

Language adds notice filings.

Old law did not mention notice filings.

**Section 66**

**Section 45.55.990(2)**

Language adds those excluded from the definition of agent, including agents of issuers of securities exempted by AS 45.55.900(a) and federal covered securities. Also, excludes those preempted by NSMIA in the Securities and Exchange Act of 1934.

Old law limited agent exclusion to exemptions at AS 45.55.900(a)(1)-(5), and did not mention federal covered securities, or the exclusions provided by NSMIA.

**Section 67**

**Section 45.55.990(3)**

Subsection (3)(E) is amended to make de minimis exemption more workable by focusing on solicited trades.

Old law based on offers that are difficult to trace.

**Section 68**

**Section 45.55.990(9)**

Language adds relatively new entities to the definition of person.

Old law did not include these newer entities in the definition.

**Section 69**

**Section 45.55.990(11)**

All federal laws are removed except the Securities Act of 1933.

Old law contains other federal laws that are added below in new sections.

**Section 70**

**Section 45.55.990(12)**

Language is added to definition of security to clarify potential confusion between AS 45.55 and AS 45.08 and to add fractional or pooled interests in viatical settlement contracts to the definition of a security.

Old law did not contain this clarifying language and did not include interests in viatical settlements as a security by definition.

**Section 71**

**Section 45.55.990(14)-(37)**

Language adds new definitions to Act, defining existing terms like "advisory services" and defining new terms like "federal covered security." Most of the new definitions are required by NSMIA and deal with investment adviser representatives, state investment advisers, federal covered advisers, and notice filings.

Old law did not mention any of the new categories created by NSMIA.

**Section 72**

Short title of the chapter is the Alaska Securities Act.

**Section 73**

Repeals AS 45.55.020(d) that is moved to AS 45.55.023(16)(E). Repeals AS 45.55.990(6) that was the old definition of investment adviser.

**Section 74**

The Department may immediately proceed to adopt necessary regulations.

**Section 75-77**

Various technical sections.

**Section 78**

Provides the effective date of the Act.

**HB**

**87**

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 10, 1999

FURTHER REFERRALS:

Finance

Date of Committee Action: 3 MARCH 1999

The LABOR AND COMMERCE Committee considered:

HB 87

HOUSE BILL NO. 87

UNEMPLOYMENT TRUST FUND

"An Act relating to money credited to the account of the state in the unemployment trust fund by the Secretary of the Treasury of the United States; and providing for an effective date."

recommends it be replaced with the following committee substitute \_\_\_\_\_  the same title  
 a new title

additional referral to \_\_\_\_\_ Committee

attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal note(s) \_\_\_\_\_  
Labor

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Sam Kately</i>	✓			
<i>[Signature]</i>	✓			
<i>John L. Harris</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
			✓	

CHAIR'S SIGNATURE

*Sam Kately*

3-3-99

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

**DEPARTMENT OF LABOR**  
*OFFICE OF THE COMMISSIONER*

P.O. BOX 21149  
JUNEAU, ALASKA 99802-1149  
PHONE: (907) 465-2700  
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March 4, 1999

The Honorable Norman Rokeberg  
Alaska State Legislature  
Room 24  
State Capitol  
Juneau, AK 99811

Dear Representative Rokeberg:

This is in response to your request for documentation of the federal legislation requiring HB87. This bill puts a limitation on the use of federal "Reed Act" distributions to the State of Alaska based on requirements in the federal Balanced Budget Act of 1997.

Attached is the Unemployment Insurance Program Letter (UIPL) 44-77 which refers to and describes the balanced budget act of 1997 (public law 105-33) by section. The UIPL 44 -77, pages 1, 4 and 6, identifies section 5403 of the balanced budget act as the exact citation requiring the use of the "Reed Act" be limited to the "administration of the Unemployment Compensation program." Also enclosed is a copy of the federal Balanced Budget Act of 1997, Section 5403, entitled, "special distribution to states from unemployment trust fund.

If you need any further information, please let me know.

Sincerely,



Dwight Perkins  
Deputy Commissioner

Attachments

by Rep. Dir.  
 J. W. P. M.  
 ASD Budget  
 P. Admin. Mgr.  
 X ASD Fiscal  
 X UI Tech

<b>U. S. Department of Labor</b> Employment and Training Administration Washington, D.C. 20210	<b>CLASSIFICATION</b> UI
	<b>CORRESPONDENCE SYMBOL</b> TEUL
	<b>DATE</b> October 9, 1997

**DIRECTIVE :** UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 44-97

**TO :** ALL STATE EMPLOYMENT SECURITY AGENCIES

**FROM :** *David Hansen for*  
 GRACE A. KILBANE  
 Director  
 Unemployment Insurance Service

**SUBJECT :** The Balanced Budget Act of 1997 and the  
 Taxpayer Relief Act of 1997

1. Purpose. To advise the States of amendments made to Federal law by the Balanced Budget Act of 1997 and the Taxpayer Relief Act of 1997 affecting the Federal-State Unemployment Compensation (UC) program.

2. References. The Balanced Budget Act of 1997 (BBA), P.L. 105-33; the Taxpayer Relief Act of 1997 (TPRA), P.L. 105-34; the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193; the Internal Revenue Code of 1986 (IRC), including the Federal Unemployment Tax Act (FUTA); the Social Security Act (SSA); and Unemployment Insurance Program Letters (UIPLs) Nos. 28-87, 45-89, 12-91, 11-92 and 37-96. \*

3. Background. The BBA and the TPRA, both enacted on August 6, 1997, made several changes affecting the UC program. This UIPL provides information on eleven amendments made by the BBA and four amendments made by the TPRA. The amendment discussed in item 4.a., related to disclosure of UC information, may require State to amend their laws to meet Federal UC law requirements. In addition, States will need to amend their laws to implement the special Reed Act transfers discussed in item 6.b. Finally, States will need \*

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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to determine whether they need to amend their laws to permit the continuous levy discussed in item 12.

4. Sections 5201 and 5533, BBA: National Directory of New Hires ("National Directory").

a. Section 5201, BBA, Disclosure to National Directory. Section 303(h)(1), SSA, as amended by the PRWORA, requires States, as a condition of receiving UC administrative grants, to disclose wage and claim information to the Secretary of Health and Human Services for purposes of the National Directory. Section 303(h)(1)(C), as amended by the PRWORA, also required States to establish such safeguards as the Secretary of Labor determines are necessary to insure that such information is used "only for purposes of section 453(i)(1) [SSA] in carrying out the child support enforcement program under title IV" of the SSA. (Emphasis added.) The BBA deleted the underscored language and substituted "subsections (i)(1), (i)(3) and (j) of section 453." This amendment makes clear that States must authorize the disclosure of UC information to the National Directory for:

- o Use by programs funded under the Transitional Assistance to Needy Families program, the child support enforcement program, and any "other purposes" specified in Section 453. (Section 453(i)(1), SSA.) The "other purposes" are specified in Sections 453(i)(3) and (j), SSA, described below.
- o Use in the administration of the earned income tax credit by the Internal Revenue Service (IRS). (Section 453(i)(3), SSA.)
- o Verification of information in the National Directory by the Social Security Administration; comparisons with the Federal Case Registry of Child Support Orders and other child support enforcement purposes; use by the Social Security Administration; and research related to Transitional Assistance to Needy Families or child support enforcement. In the case of research, personal identifiers may not be used. (Section 453(j), SSA.)

As no effective date is provided, this amendment is effective as of the date of enactment of the BBA. However, as discussed in UIPL 37-96, pages 6 and 7, the effective date of the disclosure requirements in Section 303(h), SSA, for

UC conformity purposes is either October 1, 1997, or, if the State qualifies for a grace period, January 1, 1998.

States will need to review their UC laws and regulations to determine if their laws permit disclosure in view of the above requirement concerning redisclosures of information provided to the National Directory. Each State must take all actions necessary to ensure that it will make such disclosures by the effective date discussed in the previous paragraph.

b. Section 5533, BBA: Technical Amendment. Section 453A, SSA, requires each State to establish a Directory of New Hires. Section 453A(g)(2)(B), SSA, as added by PRWORA, specifically cited a provision of Federal UC law:

WAGE AND UNEMPLOYMENT COMPENSATION INFORMATION.--The State Directory of New Hires shall, on a quarterly basis, furnish to the National Directory of New Hires extracts of the reports required under section 303(a)(6) [SSA] to be made to the Secretary of Labor concerning the wages and unemployment compensation paid to individuals, by such dates, in such format, and containing such information as the Secretary of Health and Human Services shall specify in regulations. [Emphasis added.]

Since the Secretary of Labor does not require the submittal of data on individuals under Section 303(a)(6), SSA, this provision created a technical problem. The BBA deleted the underscored language and substituted "information." This amendment does not affect what information must be provided to the Secretary of Health and Human Services. Nor does it change the fact that both the FUTA and the SSA continue to require UC agencies to provide wage and claim information to the State directory. See UIPL 37-96.

5. Section 5401, BBA: Base Periods and the Pennington Case. In 1994 and 1997, the U.S. Court of Appeals for the Seventh Circuit issued two opinions in litigation commonly known as Pennington. 22 F.3d 1376 (7th Cir. 1994), 110 F.3d. 502 (7th Cir. 1997). In its 1994 decision, the Court decided that a State's base period was not an eligibility requirement, but instead was a "method of administration" under Section 303(a)(1), SSA, and, therefore, subject to Federal jurisdiction. In its 1997 decision, the Court ruled that Illinois' base period, consisting of the first four of the last five completed calendar quarters, was not consistent with the "methods of administration" requirement. This

was because the existence of the lag period between the base period and benefit year meant some claimants had to wait for their recent wages to fall within the base period to qualify for UC. As a result of these decisions, States anticipated that they might be required to provide for alternative base periods to reduce the lag.

The BBA clarifies that the base period is not subject to the "methods of administration" requirement. Therefore, in the Department's view, this legislation frees States to determine their base periods without regard to the "methods of administration" requirement. Section 5401, BBA, provides as follows:

(a) In General. No provision of a State law under which the base period for such State is defined or otherwise determined shall, for purposes of section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)), be considered a provision for a method of administration.

(b) Definitions. For purposes of this section, the terms "State law", "base period", and "State" shall have the meanings given them under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [EUCA] (26 U.S.C. 3304 note.)

(c) Effective Date. This section shall apply for purposes of any period beginning before, on, or after the date of the enactment of this Act.

"State law," as defined in Section 205(10), EUCA, "means the unemployment compensation law of the State, approved by the Secretary under section 3304" of the FUTA. "Base period," as defined in Section 205(6), EUCA, "means the base period as determined under applicable State law for the benefit year." "State," as defined in Section 205(8), EUCA, includes the 50 States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

This amendment does not require States to amend their laws.

6. Sections 5402 and 5403, BBA: Increase in Federal Unemployment Account (FUA) Ceiling and Special Distribution to States from the Unemployment Trust Fund. Section 903, SSA, provides that when, among other things, three accounts in the Unemployment Trust Fund reach their statutory limits, the excess amounts will be transferred to the States. These are called "Reed Act" distributions. The three accounts are

\*  
*Special  
 Reed  
 Act  
 Distribution*

the Employment Security Administration Account (ESAA), which pays for the administration of the UC and employment service programs; the Extended Unemployment Compensation Account, which pays for the Federal share of extended benefits; and the FUA, which provides for advances to States for the payment of UC.

a. Section 5402, BBA: Increase in FUA Ceiling. Prior to amendment, the balance in the FUA as of the end of any Federal fiscal year (September 30) could not exceed 0.25 percent of the total wages subject to contributions under all State UC laws. The BBA changes this maximum balance to 0.5 percent effective October 1, 2001.

b. Sections 5403, BBA: Special Distribution to States from the Unemployment Trust Fund. The BBA amended Section 903 of the SSA to cap the amount of Reed Act transfers made with respect to the Federal fiscal years ending in 1999, 2000 and 2001 at \$100,000,000 per year. Each State's share of these transfers will be based on the ratio of the amount of "funds to be allocated to such State for such fiscal year pursuant to the base allocation formula under title III", SSA, to "the total amount of funds to be allocated to all States for such fiscal year pursuant to the base allocation formula under title III." Any amounts in excess of the \$100,000,000 which, but for the BBA amendments, would have been transferred to the States "shall, as of the beginning of the succeeding fiscal year, accrue to the Federal unemployment account, without regard" to its statutory limit. \*

Reed Act moneys transferred with respect to these fiscal years may be used "only to pay expenses incurred by [the State] for the administration of its" UC law. Unlike previous Reed Act transfers, States are prohibited from using the amounts transferred with respect to these three years for the payment of UC or the administration of State public employment offices. However, among other uses, States may, as in the past, use these Reed Act moneys for purchasing real property for UC purposes. These purchases could be amortized against UC grant funds consistent with the UC grant agreement. *limitations \**

Finally, the restrictions applicable to Reed Act transfers in Section 903(c)(2), SSA, are not applicable to the transfers made with respect to fiscal years 1999, 2000 and 2001. This means the amounts transferred to the States may be used without obtaining an appropriation from the State's legislative body.

State UC laws usually contain provisions addressing the use of Reed Act moneys transferred under Section 903, SSA. These laws usually mirror the requirements of Section 903(c)(2), SSA, including a requirement that the moneys be used for the payment of UC unless appropriated by the legislative body. States must amend these provisions to prohibit the use of transfers made with respect to fiscal years 1999, 2000, and 2001 for the payment of UC. States **may** further amend these provisions to authorize use for administrative purposes without a specific appropriation from the State legislature. Nothing prohibits a State legislature from appropriating such money or from attaching conditions to the use of such money, provided the money is used for UC administration.

Draft language for State Reed Act provisions was provided in UIPL 12-91. We recommend that, using that language as a basis, States insert the following language in State law:

(4) Notwithstanding paragraph (1), moneys credited with respect to Federal fiscal years 1999, 2000 and 2001, shall be used solely for the administration of the UC program and are not subject to appropriation by the legislature. [Emphasis added.]

The underscored language is necessary only if the State chooses to avoid the appropriation process. As an alternative, a State could appropriate the moneys without subjecting them to the various restrictions found in Section 901(c)(3), SSA. (For example, under Section 901(c)(2), SSA, Reed Act moneys may be used only for expenses incurred after the date of enactment of the State appropriation.) In this case, the following language is recommended:

(4) Notwithstanding paragraph (1), money credited with respect to Federal fiscal years 1999, 2000 and 2001, shall be used solely for the administration of the UC program, and such money shall not otherwise be subject to the requirements of paragraph (1) when appropriated by the legislature.

c. Reasons for Change. The House Report describes the reason ~~for increasing the FUA~~ ceiling and providing for the special transfers:

This provision has two main effects: (1) raising the ceiling in the Federal Unemployment Account whole [sic] limiting Reed Act transfers allows for further buildup of funds pending a future recession

requiring increased administrative resources; and (2) allowing \$100 million in Reed Act transfers will assist States in the administration of their UI programs. (H. Rep. No. 105-149, 104th Cong. 1st Sess. 106 (1997).)

7. Section 5404, BBA: Interest-Free Advances from the Unemployment Trust Fund. Under Section 1202(b)(2), SSA, advances made from the FUA during a calendar year are interest free if the following conditions are met:

- o The advance is repaid in full before the close of September 30 of the calendar year in which the advances were made, and
- o Following this repayment, no other advance was made to the State during the calendar year.

The BBA adds a third condition to Section 1202(b)(2). States must now meet "funding goals, established under regulations issued by the Secretary of Labor, relating to the accounts of the States in the Unemployment Trust Fund." The amendment applies to calendar years beginning after the date of enactment of the BBA. The Department is commencing work on the required regulations.

According to the House Committee report, this amendment is intended to encourage solvency of State unemployment funds:

Should a State account become insolvent during an economic downturn, adverse conditions can result for the State and its employers. Borrowing Federal funds imposes a cost on the State at a time when it may face other financial difficulties. The State may react by raising taxes on its employers, thereby discouraging economic activity during a period when its economy is already in decline. . . . The provision would encourage States to maintain sufficient unemployment trust fund balances to cover the needs of unemployed workers in the event of a recession. (H. Rep. No. 105-149, 104th Cong. 1st Sess. 108 (1997).)

8. Sections 5405 and 5407, BBA: Election Workers and Employees of Schools Operated Primarily for Religious Purposes. Section 3304(a)(6)(A), FUTA, requires, as a condition for employers in a State to receive credit against

the Federal unemployment tax, that UC be payable based on services performed for State and local governmental entities, their instrumentalities, and certain nonprofit organizations. The BBA amended FUTA to provide for two new exceptions to this required coverage.

Section 5405 of the BBA added new subparagraph (F) to Section 3309(b)(3), FUTA, to permit States to exclude services performed:

as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000.

Section 5407 of the BBA added new subparagraph (C) to Section 3309(b)(1) to permit States to exclude services performed for:

(C) an elementary or secondary school which is operated primarily for religious purposes, which is described in section 501(c)(3), and which is exempt from tax under section 501(a).

States were not previously permitted to exclude services performed for a religiously-oriented school from coverage where the school was not operated, supervised, controlled, or principally supported by a church or convention or association of churches. See UIPL 28-87. Since the new exclusion is limited to elementary and secondary schools, services performed by employees of other nonaffiliated religiously-oriented entities are still required to be covered. (For example, day-care centers, post-secondary schools or cemetery associations.) Both exclusions "apply with respect to service performed after the date of the enactment of" the BBA. With respect to election workers, this means that, if the individual earned less than \$1,000 in calendar year 1997, the services are not required to be covered after August 6, 1997.

States are not required to exclude these services. The Department recommends that States choosing to do so follow the language in Federal law verbatim. However, the language following "religious purposes" in subparagraph (C) of Section 3309(b)(1) may be omitted if, as is commonly the case, State law provisions relating to coverage of nonprofit organizations are already limited to those organizations described in Section 501(c)(3), IRC, which are exempt from tax under Section 501(a), IRC.

9. Section 5406, BBA: Coverage of Services Performed by Inmates. The BBA added an exclusion to the definition of employment in Section 3306(c), FUTA, for:

(21) service performed by a person committed to a penal institution.

This exclusion applies only for purposes of the FUTA tax. However, as a result of this new exclusion, States may elect to amend their laws to exclude these services without the employers for whom the services are performed losing credit against the FUTA tax.

The effective date of this amendment applies "with respect to service performed after January 1, 1994." Should State law be amended retroactively, amounts previously paid into the State's unemployment fund with respect to these services under the State law in effect at that time may not be refunded to employers. This prohibition is explained in UIPL 11-92.

10. Section 5608, BBA: State Program Integrity Activities for Unemployment Compensation. Section 901(c)(1)(A), SSA, authorizes appropriations from the ESAA for assisting States in the administration of their UC laws. (Henceforth, these amounts will be called the "regular" grant.) The BBA amended this section to create a special authorization for State program integrity activities. Specifically, a new paragraph was added to Section 901(c):

(5)(A) There are authorized to be appropriated out of the employment security administration account to carry out program integrity activities, in addition to any amounts available under paragraph (1)(A)(i)--

- (i) \$89,000,000 for fiscal year 1998;
- (ii) \$91,000,000 for fiscal year 1999;
- (iii) \$93,000,000 for fiscal year 2000;
- (iv) \$96,000,000 for fiscal year 2001; and
- (v) \$98,000,000 for fiscal year 2002.

(B) In any fiscal year in which a State receives funds appropriated pursuant to this paragraph, the State shall expend a proportion of the funds appropriated pursuant to paragraph (1)(A)(i) to carry out program integrity activities that is not less than the proportion of the funds appropriated under such paragraph that was expended by the State to carry out program integrity activities in fiscal year 1997.

(C) For purposes of this paragraph, the term "program integrity activities" means initial claims

review activities, eligibility review activities, benefit payments control activities, and employer liability auditing activities.

This amendment merely authorizes amounts for appropriation for integrity purposes; Congress must still appropriate the amounts. If and when "integrity" moneys are received by the States, their use is limited to the integrity activities described in 901(c)(5)(C), SSA.

Since Section 901(c)(5)(B), SSA, provides that the State must expend the same proportion of "regular" granted funds on integrity activities as was expended in fiscal year 1997, States may not use these integrity moneys to reduce integrity costs to the "regular" grant as determined by fiscal year 1997 expenditures.

11. Section 221, TPRA: Employer-Provided Educational Assistance. Section 3306(b)(13), FUTA, excludes from the definition of wages "any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 . . ." of the IRC. Section 127, IRC, excludes from gross income of the employee certain amounts paid, or expenses incurred, up to \$5,250 in a calendar year, by the employer for educational assistance to the employee. Section 127 did not apply to taxable years beginning after May 31, 1997. In the case of tax year 1997, only expenses paid with respect to courses beginning before July 1, 1997, could be taken into account.

The TPRA extends this exclusion. It now applies to expenses paid with respect to courses beginning through May 31, 2000. The amendment applies to taxable years beginning after December 31, 1996. The IRS is responsible for administering this provision.

12. Section 921, TPRA: Securities Brokers. For purposes of determining whether an individual is an "employee," Section 3306(i), FUTA, references Section 3121(d), IRC. That section provides that, among other things, an "employee" is "any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of employee."

The TPRA provides a clarification concerning the employment tax status of registered representatives of a securities broker-dealer. It provides that "no weight shall be given

to instructions from the service recipient which are imposed only in compliance with investor protection standards imposed by the Federal Government, any State government, or a governing body pursuant to a delegation by a Federal or State agency." The IRS is responsible for administering this provision.

The provision is effective for "services performed after December 31, 1997."

13. Section 1024, TPRA: Continuous Levy on Payments of UC. Federal UC law provides that payments of UC may not be subjected to levy. See UIPL 45-89. (A levy is the seizure of a person's property or rights to property to pay a debt.) Although the TPRA did not amend these UC provisions, it authorized the IRS to impose a continuous levy on certain payments, including UC, until the levy is released. This continuous levy may be imposed on any individual who is liable for an internal revenue tax and who does not pay such tax within 10 days of notice and demand by the IRS. Specifically, the TPRA added new subsection (h) to Section 6331, IRC--

(1) IN GENERAL.--The effect of a levy on specified payments to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released. Notwithstanding section 6334, such continuous levy shall attach to up to 15 percent of any specified payment due to the taxpayer.

(2) SPECIFIED PAYMENT.--For the purposes of paragraph (1), the term "specified payment" means--

(A) any Federal payment other than a payment for which eligibility is based on the income or assets (or both) of a payee,

(B) any payment described in paragraph (4) [pertaining to unemployment benefits], (7) [workers compensation], (9) [wages, salary and other income], or (11) [certain public assistance] of section 6334(a), and

(C) any annuity or pension payment under the Railroad Retirement Act or benefit under the Railroad Unemployment Insurance Act.

Under new Section 6331(h)(2)(C), any payment described in paragraph (4) of Section 6334(a), IRC, may be continuously levied up to 15 percent. Paragraph (4) applies to any "amount payable to an individual with respect to his unemployment (including any portion thereof payable with

respect to dependents) under an unemployment compensation law of the United States, or any State, or of the District of Columbia or of the Commonwealth of Puerto Rico." Under this authority, the IRS may levy any payment under State or Federal UC law, including payments under the UC for Federal employees (UCFE), UC for Ex-servicemembers (UCX) and the Disaster Unemployment Assistance (DUA) programs as well as trade readjustment allowances (TRA) under the Trade Adjustment Assistance and NAFTA-Transitional Adjustment Assistance programs.

The IRS may continuously levy up to 15 percent of "any specified payment." The amendment applies to levies issued after the August 6, 1997, date of the enactment of the TPRA.

The continuous levy is administered by the IRS. The IRS may implement the continuous levy through computer crossmatches with State UC agencies. The UC agencies will be responsible for deducting amounts levied from UC, UCFE, UCX, DUA, and TRA and for forwarding such amounts to the IRS. As the IRS does not pay for costs of levies, the Department is examining the funding implications for the UC system.

Since, in accordance with Federal UC law, all State laws currently prohibit the levy of UC, the Department recommends that States amend their laws to specifically authorize continuous levy in accordance with Section 6331, IRC. Alternatively, States may view Section 6331, IRC, as superseding State law.

14. Section 1035, TPRA: Extension of Temporary Tax. Section 3301, FUTA, imposes a tax of 6.2 percent on wages paid in employment by employers. This tax was to have dropped to 6.0 percent beginning in calendar year 1999.

Under the TPRA amendments, the 6.2 percent tax will remain in effect through calendar year 2007. The tax is now scheduled to drop to 6.0 percent beginning with calendar year 2008.

15. Action. Appropriate staff should be advised of these amendments.

16. Inquiries. Please direct inquiries to the appropriate Regional Office.

THE FOLLOWING LANGUAGE WAS INCLUDED IN THE FINAL BUDGET RECONCILIATION BILL THAT WAS SIGNED INTO LAW BY THE PRESIDENT ON AUGUST 5, 1997.

## H.R.2015

← P.L. 105-33

*Balanced Budget Act of 1997 (Enrolled Bill (Sent to President))*

### Subtitle E--Unemployment Compensation

#### **SEC. 5403. SPECIAL DISTRIBUTION TO STATES FROM UNEMPLOYMENT TRUST FUND.**

(a) IN GENERAL- Subsection (a) of section 903 (42 U.S.C. 1103(a)) is amended by adding at the end the following new paragraph:

“(3)(A) Notwithstanding any other provision of this section, for purposes of carrying out this subsection with respect to any excess amount (referred to in paragraph (1)) remaining in the employment security administration account as of the close of fiscal year 1999, 2000, or 2001, such amount shall--

“(i) to the extent of any amounts not in excess of \$100,000,000, be subject to subparagraph (B), and

“(ii) to the extent of any amounts in excess of \$100,000,000, be subject to subparagraph (C).

“(B) Paragraphs (1) and (2) shall apply with respect to any amounts described in subparagraph (A)(i), except that--

“(i) in carrying out the provisions of paragraph (2)(B) with respect to such amounts (to determine the portion of such amounts which is to be allocated to a State for a succeeding fiscal year), the ratio to be applied under such provisions shall be the same as the ratio that--

“(I) the amount of funds to be allocated to such State for such fiscal year pursuant to the base allocation formula under title III, bears to

“(II) the total amount of funds to be allocated to all States for such fiscal year pursuant to the base allocation formula under title III,

as determined by the Secretary of Labor, and

“(ii) the amounts allocated to a State pursuant to this subparagraph shall be available to such State, subject to the last sentence of subsection (c)(2).

Nothing in this paragraph shall preclude the application of subsection (b) with respect to any allocation determined under this subparagraph.

“(C) Any amounts described in clause (ii) of subparagraph (A) (remaining in the employment security administration account as of the close of any fiscal year specified in such subparagraph) shall, as of the beginning of the succeeding fiscal year, accrue to the Federal unemployment account, without regard to the limit provided in section 902(a).”

(b) CONFORMING AMENDMENT- Paragraph (2) of section 903(c) of the Social Security Act is amended by adding at the end, as a flush left sentence, the following:

“Any amount allocated to a State under this section for fiscal year 2000, 2001, or 2002 may be used by such State only to pay expenses incurred by it for the administration of its unemployment

compensation law, and may be so used by it without regard to any of the conditions prescribed in any of the preceding provisions of this paragraph.'

TONY KNOWLES  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

HB 87  
P O Box 110001  
Juneau, Alaska 99811-0001  
(907) 485-3500  
Fax (907) 485-3532

February 8, 1999

The Honorable Brian Porter  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

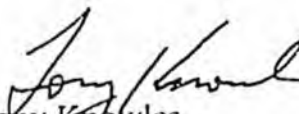
Dear Speaker <sup>Brian</sup> Porter:

This bill I transmit today provides the state with authority to receive federal funds for the administration of the unemployment insurance program as required in the Balanced Budget Act of 1997.

The 1997 Act provided for a disbursement from the federal unemployment trust fund to the state unemployment trust fund, known as "Reed Act distributions." States must enact legislation restricting the use of these distributions for administration of the unemployment insurance program, and not for unemployment benefits or employment services.

This bill complies with the federal requirement by providing the state with express authority to receive the Reed Act distributions for federal fiscal years 1999-2001 for purposes of administering the unemployment insurance program.

Sincerely,

  
Tony Knowles  
Governor

# FISCAL NOTE

No: 1

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

Bill Version: HB 87  
(H) Publish Date: 2/10/99

Revision Date/Time (Note if correction): \_\_\_\_\_  
 Title: "An Act relating to . . . the  
unemployment trust fund . . . "  
 Sponsor: Rules Committee  
 Requestor: Governor

Department Affected: Labor  
 BRU: Employment Security  
 Component: Unemployment Insurance  
 COMPONENT SERIAL NO. 2276

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

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

OPERATING	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>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL</b>						
<b>CHANGE IN REVENUE</b>						
<b>FUND SOURCE #</b>						

**FUNDING:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ 0.0

**ANALYSIS:** (Attach a separate page if necessary) In the Balanced Budget Act (BBA) of 1997, P.L. 1005-33, Congress provided that in federal fiscal years 1999, 2000, and 2001, money in the federal unemployment trust fund would be permitted to be credited to a state's unemployment trust fund for the specific purpose of administering that state's unemployment compensation program. In order for a state to receive this money, the state must enact a statute that provides that this money will be used only to administer its unemployment compensation program (i.e., administrative activities relating to collection of employer contributions and payment of benefits). The money cannot be used to pay unemployment benefits or to support job service and training. Accordingly, this bill would replace statutory restrictions on the use of the money appropriated by the legislature for the specific purpose of administering the unemployment trust fund as required by the BBA. The unemployment trust fund is administered by the Department of Labor. No fiscal impact anticipated.

Prepared by: Rebecca Gamez, Director *Rebecca Gamez* Phone: 465-2711  
 Division: Employment Security Division Date/Time: 11/25/98 1:07 PM  
 Approved by Commissioner: Tom Cashen, Commissioner *Tom Cashen*  
 Agency: Department of Labor Date: 11/25/98

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# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF LABOR

### OFFICE OF THE COMMISSIONER

P.O. BOX 21149  
JUNEAU, ALASKA 99802-1149  
PHONE: (907) 465-2700  
FAX: (907) 465-2784

FEB 23 1999

February 22, 1999

The Honorable Norman Rokeberg  
Chair, House Labor & Commerce Committee  
Alaska State Legislature  
Room 24, State Capito.  
Juneau, AK 99802

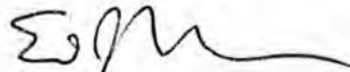
Dear Representative Rokeberg:

I respectfully ask that you hold a hearing on HB 87, An Act Relating to the Unemployment Trust Fund. This legislation provides the state authority to receive federal funds for the administration of the unemployment insurance program as required in the Balanced Budget Act of 1997.

The 1997 Act provided for a disbursement from the federal unemployment trust fund to the state unemployment trust fund, known as "Reed Act Distributions." States must enact legislation restricting the use of the Reed Act funds to the administration of the unemployment insurance program, and not for unemployment benefits or employment services.

This bill complies with the federal requirement by providing the state express authority to receive the Reed Act distributions for federal fiscal years 1999 - 2001 for purposes of administering the unemployment insurance program.

Sincerely,



Ed Flanagan  
Commissioner

## **Sectional Analysis of HB 87.**

### **Section 1: Intent**

The Legislature intends for Alaska to be eligible to receive, in the Alaska account of the federal Unemployment Trust Fund, a share of a federal "Reed Act" distribution of the \$100 million being distributed for each of the federal fiscal years ending in 1999, 2000, 2001.

### **Section 2: Unemployment Trust Fund**

Despite language in the current statute, AS 23.20.145(f) funds received under this special distribution are to be used solely for the purpose of administering the UI program (a condition of receipt). Existing language passed to allow receipt of regular Reed Act distributions allowed expanded use of the funds including direct payment of UI benefits and administrative costs of the Employment Services program. As these limited provisions apply only to the special distributions capped at \$100 million for the federal fiscal years ending in 1999, 2000, 2001 it is anticipated that all distributions will have been made well in advance of the Federal fiscal year ending September 30, 2002.

### **Section 3: Definitions**

Self-explanatory

### **Section 4: Repeal**

As the special limitations relating to the distributions limited to these three years will not apply to future distributions, the Attorney General's office felt that a "sunset" clause for this legislation set for the day after the last possible distribution date would be appropriate. Hence this section repeals the earlier provisions of this Act on October 1, 2002.

### **Section 5: Effective date**

This act to take affect immediately.

## REED ACT

### Background:

The Social Security Act requires that the Secretary of the U.S. Department of Labor (USDOL) provide each state with adequate funding for proper and efficient administration during the fiscal year of the state's Unemployment Insurance (UI) program. Despite this mandate, funding ultimately depends upon what the Congress agrees to appropriate.

Though Congress had determined that the Federal government had responsibility for funding the administration of the UI program, no direct link was established between Federal Unemployment Tax Act (FUTA) receipts and grants to the states. The gap between taxes collected under the FUTA and the amount appropriated by Congress became apparent in the early years of the program. By 1952, approximately \$1 billion more in FUTA taxes had been collected than had been appropriated for administration.

As a result, Congress passed the Reed Act in 1954 providing that funds collected from FUTA taxes must be used for federal and state administration of the UI or Employment Service (ES) programs. If more funds were collected than were needed for administration, the excess funds were to be returned to the states. Such Reed Act distributions of excess funds were made in 1956, 1957, and 1958. Conformity legislation passed by each state guaranteed, as a condition of eligibility for a share of the distribution, that these funds would be used only for administration of UI or ES, or directly for the payment of UI benefits.

Subsequent Reed Act distributions were, in effect, prevented by congressional action raising the "statutory ceilings" of the various accounts within the federal Unemployment Trust Fund on four separate occasions (most recently in 1998).

**HB**

**88**

**Subject: HB 88**

**Date:** Wed, 12 Jan 2000 12:32:20 -0900

**From:** Janet Seitz <Janet\_Seitz@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** prhode@gci.net

Dear Mr. Rhode:

Rep. Rokeberg asked me to responde to your message concerning HB 88 - landowners' tort immunity.

During the 1999 session, the Legislature passed SB 45 - landowner immunity/right of way vacation - and the Governor signed the bill into law as Chapter 94, Session Laws of Alaska 1999. You may want to take a look at SB 45 at the legislature's home page: [www.legis.state.ak.us](http://www.legis.state.ak.us) by selecting BASIS and following the prompts.

Again, thank you for your comments.

Janet Seitz  
Committee Assistant  
House Labor & Commerce Committee.

**Subject: Citizens Comment**

**Date:** Sun, 9 Jan 2000 13:12:25 -0900

**From:** ()

**To:** mailto:bearqst@mosquitonet.com, Representative\_Norman\_Rokeberg@Legis.state.ak.us

Below is the result of your feedback form. It was submitted by  
( ) on Sunday, January 9, 2000 at 13:12:25

---

citizen\_comments: REMOTE\_HOST,REMOTE\_ADDR,HTTP\_USER\_AGENT,REFERER

To: Representative Rokeberg  
State Capitol  
Juneau, AK 99801-1182

Re: House Bill 88

Sir,

I would like to express my support for HOUSE BILL 88. I request that you, as the House Labor and Commerce Committee Chair, set a hearing date for HB 88. This legislation is an important step in protecting land owners who grant public trails across otherwise private property. I would also request that no restrictions are included on what trails will be used for in this legislation. Allowing for use of trails by all users, not creating this important piece of law to benefit any one group.

Please inform me when the hearing date has been set.

Respectfully submitted

Subject: Set a hearing date for HB 88

FirstName: Phillip

LastName: Rhode

Address: 17407 Alice Loop

City: Eagle River

State: AK

Zip: 99577-7527

Email: prhode@gci.net

---

*CH 24  
set aa  
P*

**Subject: House Bill 88**

**Date: Thu, 15 Apr 1999 21:03:39 -0800**

**From: "Darrell L. Bohn" <dlb@gvea.COM>**

**To: "Representative\_Norman\_Rokeberg@legis.state.ak.us" <Representative\_Norman\_Rokeberg@le**

Dear Representative Rokeberg

As I have just snow checked a new 6000 dollar snowmobile for my wife Sang. I hope you will do your part to make sure there are trails for us to ride on the near future. I know the people in my local snowmobile club that are ready to go to work on trails making them safer and easier to ride on.

At the same time please make sure the land owner is covered. No one is going to allow us to use his or her property if Liability is still hanging over them. Make House Bill 88 strong and lets get it moving thru the Legislature.

Thank you  
Darrell Bohn  
1504 27th Ave  
Fairbanks AK 99701

**APR 16 1999**

**Subject: Citizens Comment**

**Date:** Thu, 15 Apr 1999 22:27:20 -0800

**From:** ()

**To:** mailto:bearqst@mosquitonet.com, Representative\_Norman\_Rokeberg@Legis.state.ak.us

Below is the result of your feedback form. It was submitted by  
( ) on Thursday, April 15, 1999 at 22:27:19

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citizen\_comments: REMOTE\_HOST,REMOTE\_ADDR,HTTP\_USER\_AGENT,REFERER

To: Representative Rokeberg<br>  
State Capitol<br>  
Juneau, AK 99801-1182<br>

**APR 16 1999**

Re: House Bill 88

Sir,

I would like to express my support for HOUSE BILL 88. I request that you, as the House Labor and Commerce Committee Chair, set a hearing date for HB 88. This legislation is an important step in protecting land owners who grant public trails across otherwise private property. I would also request that no restrictions are included on what trails will be used for in this legislation. Allowing for use of trails by all users, not creating this important piece of law to benefit any one group.

Please inform me when the hearing date has been set.

Respectfully submitted

Subject: Set a hearing date for HB 88

FirstName: Ron

LastName: Godden

Address: 23254 Northwoods Dr

City: Chugiak

State: AK

Zip: 99567

Email: rgodden@customcpu.com

---

**Subject: SB45,HB88 and Recreational Trails Liability**

**Date: Wed, 14 Apr 1999 11:09:48 -0800**

**From: Bernadette Rupright <beeVRUP@mtaonline.net>**

**To: Representative\_Norman\_Rokeberg@legis.state.ak.us**

Dear Senator Rokeberg,

I mailed this out to the senators and plan to speak at the hearing on the senate bill today telephonically. I would appreciate you sharing this correspondence with the other representatives on your committee. Please keep me informed on the progress of this bill and any language change to the text. Thank you for your time and consideration.

(a copy of AK statute 09.65.200 with Notes to Decisions and a copy of SB45 should be on hand while reviewing this correspondence)

Sincerely,  
Bernadette M. Rupright

---

<input type="checkbox"/> <a href="#">Sb45.doc</a>	<b>Name:</b> Sb45.doc <b>Type:</b> Winword File (application/msword) <b>Encoding:</b> base64
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unable to open

APR 06 1999

**SnoTRAC**

Snowmobile Trails Advisory Committee  
3601 "C" St. #1280  
Anchorage, AK 99503

March 30, 1999

Representative Norman Rokeberg  
State Capital, Room 24  
Juneau, AK 99801-1182


Dear Representative Rokeberg:

At the March 19, 1999 regular meeting of the Alaska Snowmobile Trails Advisory Committee (SnoTRAC), there was unanimous support for a motion to support both Senate Bill 45 and House Bill 88, providing immunity to private property owners from liability when they allow recreational trail use across their property.

The committee feels very strongly that if traditional trails are to be protected in Alaska for the public good, and if new trails are to be established which may in part require crossing private property, that the state will need to provide some protection to property owners as provided in these two bills.

The SnoTRAC committee urges the Legislature and the Administration to enact this much needed new law.

Sincerely,



John Johnston, Chair  
Alaska Snowmobile Trails Advisory Committee

cc: Senator Robin Taylor  
Senator Rick Halford

## Proposed Senate Bill 45 will expand limited immunity

Senator Rick Halford is sponsoring Senate Bill 45 "An Act relating to tort immunity for personal injuries or death occurring on land; relating to the vacation by the state or a municipality of rights-of-way acquired by the state under former 43 U.S.C. 932; and providing for an effective date."

Senate Bill 45 expands the limited immunity granted under AS 09.65.200 to include improved land as well as unimproved land, providing that the land was entered onto for purpose of recreation and that there was no compensation paid for the access or use of the land.

This legislation comes forward in response to the desire to preserve and to expand recreational access for

Alaskans, and for visitors to the State. The ability to access lands for purposes of skiing, hiking, hunting, fishing, snowmachining and numerous other outdoor recreational activities is an important aspect to enjoying the benefits of our great state. The potential for liability and litigation for private landowners who allow the public free access to their lands for recreational purposes has created pressure to further restrict entry and a disincentive to the establishment of other outdoor activity.

Promoting recreational opportunity and establishing additional trail systems has become a priority for a number of groups and organizations around the state. We have received

requests and/or support for this legislation from numerous entities including: the State Division of Parks, the Municipality of Anchorage, the Anchorage Economic Development Corporation, the City of Wasilla, the Wasilla, Palmer, Fairbanks and State Chambers of Commerce, the Alaska State Snowmobile Association, the Mat-Su Motor Musers, the Alaska Boaters' Association, and the Alaska Outdoor Council.

SB 45 also makes a technical correction to the statutes governing vacation of RS 2477 rights-of-way and section line easements granted under former 43 U.S.C. 932. In addition, SB 45 provides concise direction in Title 29, the statutes pertaining to

local governments, that is reflective of the procedures for easement vacation existing in Title 19.

SB 45 will assist in the effort to expand recreational opportunity for Alaskans and visitors alike.



SARAH H. PALIN  
MAYOR

---

CITY OF WASILLA  
290 E. Herning Ave.  
Wasilla, Alaska 99654-7091  
Phone: (907) 373-9055  
Fax: (907) 373-9096

March 16, 1999

MAR 24 1999

Representative Norman Rokeberg  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Dear Representative Rokeberg:

The City of Wasilla would like to ask your support of HB88 on trail liability. Our council recently adopted a Trails Plan as a 1999 amendment to the City Comprehensive Plan. The Trails Plan is intended to provide the city with an integrated system of trails that permit and encourage travel by several means other than automobile, and offer a variety of recreational opportunities. The number one impediment to trail development is access through private property.

By immunizing private property owners from litigation for allowing the public to cross their land, this bill would help us to develop a dedicated system of trails throughout the city, eventually to connect with trails from Anchorage and Denali. A statewide trails system will most certainly boost Alaska's economy and greatly enhance the quality of life for our residents.

Thank you for representing us in this important piece of legislature.

Sincerely,

Sarah Palin  
Mayor

**Subject: H.B 88**

**Date: Mon, 22 Mar 1999 20:37:22 -0800**

**From: "Howard Davis" <h.t.davis@worldnet.att.net>**

**To: <Representative\_Norman\_Rokeberg@legis.state.ak.us>**

The Caribou Hills Cabin Hoppers is a snow machine club with a membership of 280+ representing over 600 individuals. WE strongly support HB 88. Most of the trails on the Kenai Peninsula have several land owners State University Native Corp. and private. We are currently working with land owners to get easements for trails your bill would help us tremendously.

Sincerely  
H.Davis Jr.  
Treasurer

MAR 23 1999

**Subject:** HB88

**Date:** Fri, 19 Mar 1999 11:41:41 -0900

**From:** "Phil & Sharon Berrian" <pberrian@ptialaska.net>

**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

As active trail riders we log many hundred miles per year on our horses in all seasons. We hunt, fish, camp, and tour many areas of the state with our horses, and appreciate your efforts to keep the trails open and available. Some of our most enjoyable pack trips have involved extended periods of time exploring trails and areas that are totally new to us, and that are accessed by routes that have no formal standing, starting at the roadside and traversing privately held lands before entering public lands. We are also active snomobilers, using them for the same purposes as the horses. Your efforts with this legislation will benefit us and all trail users greatly. We intend to take it before the trail riding club this evening to obtain club support for your efforts. Thanks for your efforts. Phil & Sharon Berrian, 2911 Alderberry Trail, Fairbanks, Alaska 99709



## CITY OF WASILLA

---

290 E Herning Avenue  
Wasilla, AK 99654-7091  
Phone: (907) 373-9050  
Fax: (907) 373-9092

March 19, 1999

MAR 22 1999

Representative Norman Rokeberg  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Dear Representative Rokeberg:

The Wasilla Parks and Recreation Commission would like to ask your support of HB88 on trail liability. The Trails Sub-committee of our commission drafted a Trails Plan that was adopted as a 1999 amendment to the City Comprehensive Plan. The Trails Plan is intended to provide the city with an integrated system of trails that permit and encourage travel by several means other than automobile, and offer a variety of recreational opportunities.

The number one impediment to trail development is access through private property. By immunizing private property owners from litigation for allowing the public to cross their land, this bill would help us to develop a dedicated system of trails throughout the city, eventually to connect with trails from Anchorage and Denali. A statewide trails system will most certainly boost Alaska's economy and greatly enhance the quality of life for our residents.

Thank you for representing us in this important piece of legislature.

Sincerely,

Denise Loyer, Chairperson  
Wasilla Parks & Recreation Commission

---

<b>ADMINISTRATION</b> Phone: (907) 373-9055 Fax: (907) 373-9096	<b>CLERK'S OFFICE</b> Phone: (907) 373-9090 Fax: (907) 373-9092	<b>FINANCE</b> Phone: (907) 373-9070 Fax: (907) 373-9085	<b>LIBRARY</b> Phone: (907) 376-5913 Fax: (907) 376-2347	<b>MUSEUM</b> Phone: (907) 373-9071 Fax: (907) 373-9072
<b>PARKS AND RECREATION</b> Phone: (907) 373-9053 Fax: (907) 373-9092	<b>PLANNING</b> Phone: (907) 373-9094 Fax: (907) 373-9089	<b>POLICE</b> Phone: (907) 373-9077 Fax: (907) 373-9051	<b>PUBLIC WORKS</b> Phone: (907) 373-9095 Fax: (907) 373-9054	

MAR 22 1999

**Subject: Citizens Comment**

**Date: Fri, 19 Mar 1999 22:45:48 -0900**

**From: ()**

**To: <mailto:bearqst@mosquitonet.com>, [Representative\\_Norman\\_Rokeberg@Legis.state.ak.us](mailto:Representative_Norman_Rokeberg@Legis.state.ak.us)**

Below is the result of your feedback form. It was submitted by  
( ) on Friday, March 19, 1999 at 22:45:43

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citizen\_comments: REMOTE\_HOST,REMOTE\_ADDR,HTTP\_USER\_AGENT,REFERER

To: Representative Rokeberg<br>  
State Capitol<br>  
Juneau, AK 99801-1182<br>

Re: House Bill 88

Sir,

I would like to express my support for HOUSE BILL 88. I request that you, as the House Labor and Commerce Committee Chair, set a hearing date for HB 88. This legislation is an important step in protecting land owners who grant public trails across otherwise private property. I would also request that no restrictions are included on what trails will be used for in this legislation. Allowing for use of trails by all users, not creating this important piece of law to benefit any one group.

Please inform me when the hearing date has been set.

Respectfully submitted

Howard Hancock (a voter in your district)

Subject: Set a hearing date for HB 88

FirstName: Howard

LastName: Hancock

Address: 1300 West 82nd Ave

City: Anchorage

State: AK

Zip: 99518

---

**Subject: trail Liability**

**Date:** Thu, 18 Mar 1999 21:13:14 -0900

**From:** "Jack Hamik" <whalsong@xyz.net>

**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

Thanks very much for asking for input. As a member of the Homer trails committee, I need to let you know that these property owners need to look into the future and help provide access for recreational trail users. They also need to be reassured about the liability issues and for them to be exempt. Thank you, Carole Hamik- Co-Chair, Homer Trails Committee.

**Subject: HB88**

**Date:** Thu, 18 Mar 1999 21:18:21 -0900

**From:** Lowell North <lnorth@ptialaska.net>

**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

Dear Representative Norman Rokeberg

As an active horseman I am very much in favor of Trail Liability bill  
HB88.

Keep up the good work!

Lowell North  
1241 Silverberry Dr.  
Fairbanks AK. 99712

**Subject: Re: HB 88**

**Date:** Fri, 12 Mar 99 15:57:53 -0800

**From:** Millimom <millimom@xyz.net>

**To:** "Rep. Norman Rokeberg" <Representative\_Norman\_Rokeberg@legis.state.ak.us>

Dear Representative Rokeberg,

Was made aware of HB 88 earlier this week and obtained a copy. It is a wonderful start, and I would like to encourage strong support for this.

I serve on the Kachemak Bay Advisory Planning Commission, and although I am today speaking only for myself, I do plan to bring this before our group for their support. We meet on 3/18 and you will hopefully hear from them then.

The KBAPC has been a strong advocate for saving our trail system and encouraging trail easements from private property owners. But, without this kind of State support, it will never happen.

I am a property owner, and am considering extending a winter easement for recreation, but I will not do so until I can be assured of this kind of immunity from liability litigation.

Thank you.

Sincerely,

Milli Martin  
P.O. Box 2652  
Homer, Alaska 99603  
907-235-6652

**Subject: Fw: HB 88**

**Date:** Wed, 17 Mar 1999 22:58:11 -0800

**From:** "Linda von Bose" <jlvb@gci.net>

**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

-----Original Message-----

From: Linda von Bose <jlvb@GCI.net>

To: Representative Norm Rokeberg@legis.state.ak.us <Representative Norm Rokeberg@legis.state.ak.us>

Cc: Sean Parnell <Senator\_Sean\_Parnell@legis.state.ak.us>; Con Bunde <Representative\_Con\_Bunde@legis.state.ak.us>

Date: Tuesday, March 16, 1999 10:10 AM

Subject: HB 88

>As active trail users in Alaska (hiking, skiing, snowmobiling-you name it!)  
>we are very interested in seeing a bill pass that will help preserve our  
>trails around Alaska, many of which are being cut-up by the changes in land  
>ownership occurring every day. One situation is the  
>Chickaloon/Knik/Nelchina trail near our homestead-a popular trail used for  
>many years. A section has now been closed due to sale of property and while  
>the new owner is sympathetic and has tried to create an alternate, the  
>physical constraints of the land make this difficult. If he had the  
>assurances that he wouldn't be held liable for public use of the trail  
>across his property or if a trail easement had been created this important  
>trail may not have been lost to the community. We urge your support of  
>HB88-please let us know how you feel about this bill.

>

>Jim and Linda von Bose

>7230 Thayer Circle

>Anchorage, Ak. 99516

>Ph#346-1595

>or E-mail--jlvb@GCI.net

>

>

**Subject: HB88**

**Date: Wed, 17 Mar 1999 11:58:00 -0900**

**From: "Michael J. Lettis" <tcaska@xyz.net>**

**To: Representative\_Norman\_Rokeberg@legis.state.ak.us**

Dear Rep. Rokeberg,

With the increase use of public lands in the future for recreation there is a need for access across private in certain cases to access the public lands. At present there is nothing to protect the landowners when they allow public trails to cross their property. HB88 would allow the private property owner to allow public trails across their property without having to worry about the liability.

I urge you to support HB88 as it is a bill that looks toward the future.

Thank you.

Sincerely, Michael J. Lettis

Michael J. Lettis  
31685 Sterling Hwy.  
Anchor Pt., AK 99556

MAR 17 1999

**Subject: Citizens Comment**

**Date:** Tue, 16 Mar 1999 10:34:28 -0900

**From:** ()

**To:** <mailto:bearqst@mosquitonet.com>, [Representative\\_Norman\\_Rokeberg@Legis.state.ak.us](mailto:Representative_Norman_Rokeberg@Legis.state.ak.us)

Below is the result of your feedback form. It was submitted by  
( ) on Tuesday, March 16, 1999 at 10:34:27

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citizen\_comments: REMOTE\_HOST, REMOTE\_ADDR, HTTP\_USER\_AGENT, REFERER

To:: Representative Rokeberg<br>  
State Capitol<br>  
Juneau, AK 99801-1182<br>

Re: House Bill 88

Sir,

I would like to express my support for HOUSE BILL 88. I request that you, as the House Labor and Commerce Committee Chair, set a hearing date for HB 88. This legislation is an important step in protecting land owners who grant public trails across otherwise private property. I would also request that no restrictions are included on what trails will be used for in this legislation. Allowing for use of trails by all users, not creating this important piece of law to benefit any one group.

Please inform me when the hearing date has been set.

Respectfully submitted

Jim and Linda von Bose  
7230 Thayer Circle  
Anchorage, Alaska 99516  
[jlvb@GCI.net](mailto:jlvb@GCI.net)

Subject: Set a hearing date for HB 88

FirstName: Jim and Linda

LastName: von Bose

Address: 7230 Thayer Circle

City: Anchorage

State: Ak

Zip: 99516

Email: [jlvb@GCI.net](mailto:jlvb@GCI.net)

---



**Alaska  
Wilderness  
Recreation &  
Tourism  
Association**

**P.O. Box 22827  
Juneau, AK 99802  
Phone (907) 463-3038  
Fax (907) 463.3280  
Email [awrta@alaska.net](mailto:awrta@alaska.net)  
Web [www.alaska.net/~awrta](http://www.alaska.net/~awrta)**

March 16, 1999  
The Honorable Representative Rokeberg  
Alaska House of Representatives

MAR 17 1999

Dear Representative Rokeberg,

The Board of the Alaska Wilderness Recreation & Tourism Association (AWRTA) has directed me to convey their support for HB88, regarding Recreation Trail Liability.

AWRTA is a trade association of more than 200 tour operators and other tourism businesses across the state. We see great value in developing a statewide recreation trail system. It will provide recreation benefits for residents and create new economic opportunities for a range of different businesses.

Obviously connecting trail segments across private lands is a critical part of any trail system, and this issue is becoming more important in many areas as private owners restrict access. HB88 provides the tools needed to help assure private land owners that they will not be liable for public recreation activities that they allow on their lands. We urge you to hold a hearing, and to support HB 88. Thank you.

Sincerely,

Steven Behnke  
Executive Director

**Subject: Citizens Comment**

**Date: Tue, 16 Mar 1999 09:58:20 -0900**

**From: ()**

**To: mailto:bearqst@mosquitonet.com, Representative\_Norman\_Rokeberg@Legis.state.ak.us**

Below is the result of your feedback form. It was submitted by  
( ) on Tuesday, March 16, 1999 at 09:58:19

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citizen\_comments: REMOTE\_HOST,REMOTE\_ADDR,HTTP\_USER\_AGENT,REFERER

To:: Representative Rokeberg<br>  
State Capitol<br>  
Juneau, AK 99801-1182<br>

Re: House Bill 88

Sir,

I would like to express my support for HOUSE BILL 88. I request that you, as the House Labor and Commerce Committee Chair, set a hearing date for HB 88. This legislation is an important step in protecting land owners who grant public trails across otherwise private property. I would also request that no restrictions are included on what trails will be used for in this legislation. Allowing for use of trails by all users, not creating this important piece of law to benefit any one group.

Please inform me when the hearing date has been set.

Respectfully submitted

Subject: Set a hearing date for HB 88

FirstName: William

LastName: Anglin

Address: 430 East 14th Apt 32

City: Anchorage

State: Ak

Zip: 99501

Email: nutcker@aol.com

---

**Subject: Citizens Comment**

**Date: Fri, 5 Mar 1999 18:29:12 -0900**

**From: ()**

**To: mailto:bearqst@mosquitonet.com, Representative\_Norman\_Rokeberg@Legis.state.ak.us**

Below is the result of your feedback form. It was submitted by  
( ) on Friday, March 5, 1999 at 18:29:11

---

citizen\_comments: REMOTE\_HOST,REMOTE\_ADDR,HTTP\_USER\_AGENT,REFERER

To: Representative Rokeberg  
State Capitol  
Juneau, AK 99801-1182

Re: House Bill 88

Sir,

I would like to express my support for HOUSE BILL 88. I request that you, as the House Labor and Commerce Committee Chair, set a hearing date for HB 88. This legislation is an important step in protecting land owners who grant public trails across otherwise private property. I would also request that no restrictions are included on what trails will be used for in this legislation. Allowing for use of trails by all users, not creating this important piece of law to benefit any one group.

Please inform me when the hearing date has been set.

Respectfully submitted

Subject: Set a hearing date for HB 88

FirstName: Trudy

LastName: Webb

Address: P.O. Box 230228

City: Anchorage

State: Ak

Zip: 99523

Email: rawak@alaska.net

---

**Subject: Citizens Comment**

**Date: Fri, 5 Mar 1999 13:51:00 -0900**

**From: ()**

**To: <mailto:bearqst@mosquitonet.com>, [Representative\\_Norman\\_Rokeberg@Legis.state.ak.us](mailto:Representative_Norman_Rokeberg@Legis.state.ak.us)**

Below is the result of your feedback form. It was submitted by  
( ) on Friday, March 5, 1999 at 13:51:00

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citizen\_comments: REMOTE\_HOST,REMOTE\_ADDR,HTTP\_USER\_AGENT,REFERER

To:: Representative Rokeberg<br>  
State Capitol<br>  
Juneau, AK 99801-1182<br>

Re: House Bill 88

Sir,

I would like to express my support for HOUSE BILL 88. I request that you, as the House Labor and Commerce Committee Chair, set a hearing date for HB 88. This legislation is an important step in protecting land owners who grant public trails across otherwise private property. I would also request that no restrictions are included on what trails will be used for in this legislation. Allowing for use of trails by all users, not creating this important piece of law to benefit any one group.

Please inform me when the hearing date has been set.

Respectfully submitted

Subject: PLEASE SUPPORT SNOWMACHING IN DENALI & STATE WIDE

FirstName: KEVIN

LastName: LIEBNER

Address: P.O., BOX 103776

City: ANCHORAGE

State: AK

Zip: 99510

Email: [kevin\\_liebner@ascg.com](mailto:kevin_liebner@ascg.com)

---

**Subject: Citizens Comment**

**Date: Wed, 3 Mar 1999 21:34:57 -0900**

**From: ()**

**To: mailto:bearqst@mosquitonet.com, Representative\_Norman\_Rokeberg@Legis.state.ak.us**

Below is the result of your feedback form. It was submitted by  
( ) on Wednesday, March 3, 1999 at 21:34:56

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citizen\_comments: REMOTE\_HOST,REMOTE\_ADDR,HTTP\_USER\_AGENT,REFERER

To::

Representative Rokeberg  
State Capitol  
Juneau, AK 99801-1182

Re: House Bill 88

Sir,

As pre. of the Anch. Snowmobile Club it is important that HOUSE BILL 88 be past this session. I request that you, as the House Labor and Commerce Committee Chair, set a hearing date for HB 88. This legislation is an important step in protecting land owners who grant public trails across otherwise private property. I would also request that no restrictions are included

Please inform me when the hearing date has been set.

Respectfully submitted Glenn Swan

Subject: Set a hearing date for HB 88

FirstName: glenn

LastName: swan

Address: po box 770794

City: Eagle River

State: AK

Zip: 99577

Email: tgswany@juno.com

---





1 March 1999

P.O. BOX 210427 ANCHORAGE, AK 99521-0427

Representative Norman Rokeberg  
Chair, House Labor and Commerce  
State Capital  
Juneau, AK 99801-1182

Dear Representative Rokeberg,

It has been brought to my attention that House Bill 88 is now in the House Labor and Commerce, pending a hearing date.

The Alaska State Snowmobile Association strongly urges and supports a hearing on this bill. Alaska possess one of the most unique and complete trail system on this continent. The majority of these trails have historical connections. Some date back to the gold rush era and some rank more current as the Wamcat trails, and the former Haines pipeline. Many of these trails are currently used by local people for recreational and daily use.

However, the past several years have witnessed a progressive change of property owners. Federal, state, city, and borough property is either acquired by a private developer or placed into a municipal's ownership. Quite often, the new property owner does not want to shoulder the burden of a potential lawsuit resulting from an accident or injury. The end result is closed trail heads and denied access.

In order for Alaska to preserve this unique trail system that has become its heritage, a bill to grant a landowner limited immunity is a necessity. Experience has shown that if property owners could be assured of immunity in the event of an accident, they would be more agreeable to grant easement rights and allow continued access on private property.

As a user and supporter of trails, the Alaska State Snowmobile Association requests a hearing to be scheduled on this bill. Passage of it will go a long ways towards ensuring Alaskans have continued access to trails historically used and relied on for years.

Sincerely,

Michele T. Trainor  
President, Alaska State Snowmobile Association

cc: Governor Knowles  
Representative Brice  
Representative Halcro  
Representative Harris  
Representative Murkowski  
Representative Cissna  
Jim Stratton

**Subject: Citizens Comment**

**Date:** Thu, 25 Feb 1999 07:43:56 -0900

**From:** ()

**To:** mailto:bearqst@mosquitonet.com, Representative\_Norman\_Rokeberg@Legis.state.ak.us

Below is the result of your feedback form. It was submitted by  
( ) on Thursday, February 25, 1999 at 07:43:56

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citizen\_comments: REMOTE\_HOST,REMOTE\_ADDR,HTTP\_USER\_AGENT,REFERER .

To.: Representative Rokeberg<br>  
State Capitol<br>  
Juneau, AK 99801-1182<br>

**FEB 25 1999**

Re: House Bill 88

Sir,

My name is Kevin Hite and I currently serve as Vice-president of the Alaska State Snowmobile Association. We represent more than 15,000 snowmobilers statewide along with more than 20 clubs and organizations. As you may or may not realize, we have been working at the grass roots level around Alaska to begin to build a state-wide trail system for snowmobiling.

House Bill 88 is a vital link in this project. Without the same liability protection that other snow-belt states enjoy, Alaska will find it much more difficult to establish a safe trail system.

As you are tasked with the House Labor and Commerce Committee Chair, I am requesting that you set a hearing date for HB 88. I would request that no restrictions are included on what trails will be used for in this legislation. Allowing for use of trails by all users, not creating this important piece of law to benefit any one group.

Please inform me when the hearing date has been set.

Respectfully submitted

Kevin Hite  
Alaska State Snowmobile Association

Subject: Set a hearing date for HB 88

FirstName: Kevin

LastName: Hite

Address: 8050 Summerset Drive

City: Anchorage

State: AK

Zip: 99518

Email: kehite@gci.net

*DH*

---

**Subject: Citizens Comment**

**Date: Thu, 25 Feb 1999 07:01:02 -0900**

**From: ()**

**To: mailto:bearqst@mosquitonet.com, Representative\_Norman\_Rokeberg@Legis.state.ak.us**

Below is the result of your feedback form. It was submitted by  
( ) on Thursday, February 25, 1999 at 07:01:02

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citizen\_comments: REMOTE\_HOST,REMOTE\_ADDR,HTTP\_USER\_AGENT,REFERER

To: Representative Rokeberg<br>  
State Capitol<br>  
Juneau, AK 99801-1182<br>

**FEB 25 1999**

Re: House Bill 88

Sir,

I would like to express my support for HOUSE BILL 88. I request that you, as the House Labor and Commerce Committee Chair, set a hearing date for HB 88. This legislation is an important step in protecting land owners who grant public trails across otherwise private property. I would also request that no restrictions are included on what trails will be used for in this legislation. Allowing for use of trails by all users, not creating this important piece of law to benefit any one group.

Please inform me when the hearing date has been set.

Respectfully submitted

Subject: Set a hearing date for HB 88

FirstName: Lance

LastName: Stevens

Address: 17419 Kantishna

City: Eagle River

State: AK

Zip: 99577

Email: gizmo@arctic.net

-----  
*DA 25*

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

February 25, 1999

The Honorable Norman Rokeberg  
Chairman, House Labor and Commerce  
Committee  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

TONY KNOWLES, GOVERNOR

400 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400  
FAX: (907) 465-3886

3601 C STREET, SUITE 1210  
ANCHORAGE, ALASKA 99503-5921  
PHONE: (907) 269-8431  
FAX: (907) 269-8918

FEB 26 1999

Dear Representative Rokeberg:


The Department of Natural Resources requests a House Labor and Commerce Committee hearing on House Bill 88 "An Act relating to the liability of landowners and others for civil damages for certain acts or omissions occurring on land."

The purpose of the bill is to provide limited immunity for civil damages to private landowners that allow the public to use their developed land for recreational purposes. As the population of the state increases it becomes more important to secure for public use those areas that have traditionally been used by Alaskans. As new owners realize that trails exist across their land that have traditionally been used by recreationists, they are concerned with the liability of continuing to allow trail use. With no certainty that liability will not fall to them, some landowners have closed trails on their land.

The state is in the process of planning a statewide system of trails that would encourage winter tourism and maintain Alaskans' motorized and non-motorized recreational opportunities. With the passage of this bill, private landowners will be more likely to provide long-term access to or across their land through the use of conservation easements. Conservation easements define precisely the area to be used and provide the continuity required to ensure access.

Attached is a more detailed description of the need for this bill. We look forward to working with you in the coming weeks.

Sincerely,



John Shively  
Commissioner

Attachment

*"Develop, Conserve and Enhance Natural Resources for Present and Future Alaskans"*